



# Competition MAGAZINE

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*PIONEERING PERSPECTIVES:  
COMPETITION LAW, LITIGATION,  
AND THE NEXT GENERATION OF LEGAL THOUGHT*

# THE DMA AND DMCC HAVE INTRODUCED EX ANTE REGULATORY FRAMEWORKS FOR SOME TECHNOLOGY BUSINESSES WHICH ARE INTENDED TO COMPLEMENT AND SUPPLEMENT COMPETITION LAW.



**HOW WILL THIS LEGISLATION IMPACT PRIVATE ENFORCEMENT AND INTERACT WITH AND IMPACT UPON PUBLIC ENFORCEMENT OF CONDUCT IN THE DIGITAL WORLD?**

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The digital age has reshaped global markets, amplifying the influence of a few dominant players known as gatekeepers. These entities, while driving innovation, have also raised concerns about competition, consumer rights, and market fairness.

***The European Union (“EU”), as a pioneer in regulatory frameworks, has taken bold steps to address these challenges through initiatives like the Digital Markets Act (“DMA”).***

This legislation aims to ensure a competitive digital ecosystem, limit monopolistic behaviors, and protect smaller players’ ability to innovate and thrive. However, the DMA is more than a regulatory tool; it symbolizes a broader geopolitical and cultural narrative. It reflects the EU’s determination to assert its values and standards in a digital economy largely shaped by U.S.-based

tech giants. This essay examines the DMA’s implications, the balance it seeks to achieve between innovation and regulation, and its potential to influence global digital governance, particularly within the interconnected Western world.



Despite its aging population and the rapid contraction in key industries, the EU remains the world’s second-largest economy, with a combined nominal GDP of approximately \$18.35 trillion.<sup>1</sup> One of the aspects of DMA lies in the economic interdependence between the EU and gatekeepers—such as Amazon, Google, and Meta—still generate between 15% and 30% of their total revenues from the EU.<sup>2</sup> This makes the EU the second-largest partner of gatekeepers after the United States. In contrast, China’s

stringent technology regulations have largely excluded Big Tech from establishing any substantial foothold within its borders.<sup>3</sup> This economic reality secures its position as an indispensable actor in the digital economy.

***While the EU’s substantial economic power, I believe the EU’s true strength lies not in its market size but in its normative framework. Emerging as a third power in the post-Cold War bipolar world, the EU has transcended being merely an economic force by establishing global alternatives through its institutions, standards, and emphasis on social welfare and economic integrity.***

1 World Bank, ‘Data for United States, European Union, China’ (2024) <https://data.worldbank.org/?locations=US-EU-CN> accessed 6 December 2024

2 Statista, ‘Regional distribution of Google’s revenue’ (2024) <https://www.statista.com/statistics/266250/regional-distribution-of-googles-revenue/> accessed 6 December 2024; World Population Review, ‘Amazon Revenue by Country 2024’ (2024) <https://worldpopulationreview.com/country-rankings/amazon-revenue-by-country> accessed 6 December 2024; Stock Dividend Screener, ‘Meta Revenue Breakdown by Region and User Geography’ (4 Şubat 2024) <https://stockdividendscreener.com/information-technology/meta-revenue-breakdown-by-region-and-user-geography/> accessed 6 December 2024.

3 Wikipedia, ‘Censorship in China’ (2024) [https://en.wikipedia.org/wiki/Censorship\\_in\\_China](https://en.wikipedia.org/wiki/Censorship_in_China) accessed 6 December 2024.

Its commitment to principles ensuring human rights, democracy, and the proper functioning of democratic institutions positioned it as a beacon of cultural and social leadership for decades. Remarkably, this was achieved despite the politically charged environment of the Cold War.



In today's, the significant advancements in technology by Asia-Pacific countries and their emergence as alternative hubs challenge the dominance of American and European players in Western markets, raising the question of whether the world is returning to a bipolar order. This time, however, the contest is between the United States—where start-ups have transformed into massive economic powerhouses—and China, which, despite entering the race relatively late and maintaining internet restrictions alongside its anti-freedom stance (a reality that disrupts the conventional argument that advanced economies must develop through democracy), has become a formidable rival to the U.S. While the United States and China seem to be paving the way for a new bipolar global structure, the EU appears poised to maintain its role as a global actor by leveraging its regulatory power and still-strong economy.

Given Asia's prominence as a global economic force, its distinct socio-political framework and cultural divergence, coupled with its politically and economically protectionist stance, underscore the lack of alignment between Asian and Western governance paradigms. In particular, China's regulatory environment, characterized by state-driven policies and limited engagement with global liberal norms, renders any examination of the EU's regulatory influence in this context ineffective.



On the surface, the EU's primary objective with the DMA appears to be safeguarding the competitive market structure considered vital for the proper functioning of the free-market economy in the West. It seeks to foster opportunities for new market entrants and preserve entrepreneurial potential in sectors dominated by gatekeepers. These goals and the strategies to achieve them have been the subject of extensive debate for years. However, a deeper analysis suggests that the DMA also serves as a strategic instrument for the EU to address the dominance of gatekeepers, often associated with major U.S.-based companies, and to reinforce its regulatory sovereignty in the digital economy, thereby exerting influence over the U.S.'s leadership.

U.S.-based companies, while global in reach, are deeply rooted in American traditions and culture, serving as extensions of its economic and cultural influence.

***Primarily headquartered and generating most of their revenue in the U.S., these gatekeepers operate within a political system shaped by lobbying and economic interests. This structure, driven by power dynamics rather than formal principles, positions gatekeeper firms as pivotal actors in advancing the U.S.'s global agenda.***

Over the past two decades, the United States, building on Reagan-era economic policies, has fostered the rise of the world's largest and most influential corporations. Unlike traditional firms in the real economy, these tech giants extend beyond selling products or targeting consumers—they integrate into daily life, leveraging personalized data to shape behaviors, influence elections, and intervene in decision-making processes. This unprecedented power, which transcends geographical boundaries, particularly within the Western world, has not only drawn the attention of EU authorities but has also directly impacted the EU's regulatory landscape, prompting actions like the DMA to address such far-reaching influence.



The EU's political influence is deeply rooted in its legislative power, exemplified by the success of the GDPR. Initially applicable only within the EU, the GDPR's impact extended globally, including to jurisdictions like the U.S., where regulatory frameworks are often less stringent. This demonstrated the "Brussels effect," compelling global tech companies to adapt to EU-imposed standards and setting a precedent for international regulatory alignment. The regulatory standards established by the EU, independent of the tech giant ecosystem, are likely to play a crucial role in shaping the intellectual and legal foundation of legal actions in the U.S. Principles defined by the EU in areas such as GDPR, human rights and environmental regulations, antitrust cases, cartel rules, and digital markets are already demonstrating significant influence.

***The DMA could also make the EU a global standard-setter, but different priorities in the EU and U.S. may lead to various reactions.***

When examining the DMA from the EU's perspective, it is essential to consider the challenges highlighted in the Draghi Report, which identifies overregulation as a significant issue for start-ups within the Union. This regulatory burden often drives European start-ups to seek growth opportunities in the U.S., where the ecosystem is perceived as more conducive to innovation. While the DMA aims to foster opportunities for new entrants and support entrepreneurship, the underlying problems in the EU's ecosystem extend beyond the dominance of gatekeepers. Bureaucratic hurdles, heavy tax systems, and substantial personnel costs continue to stifle start-up growth, which limits the DMA's potential benefits for the EU's entrepreneurial environment. While the expectation from the DMA seems to be the support of small start-ups and the creation of space for their growth in Europe, I do not believe this will be sufficient to revitalize the entrepreneurial ecosystem.





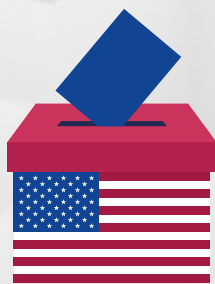
Nonetheless, the EU has long been engaged in a legal battle against gatekeeper companies, conducting extensive investigations into their practices. However, the ex-post nature of these measures reduces their deterrent effect due to the prolonged timelines of regulatory actions. To address this, the DMA proposes an ex-ante approach, establishing foundational principles to regulate gatekeepers proactively. This shift not only strengthens the EU's capacity to manage gatekeepers within its borders but, as discussed earlier, also enhances its potential to influence the U.S. regulatory landscape through the "Brussels effect." By adopting such proactive measures, the EU can position itself as a global regulatory leader while addressing systemic imbalances in the digital economy.

While start-ups grow faster in the U.S. compared to the EU, they face significant challenges due to anti-competitive behaviors by Big Tech companies. Numerous cases have already been initiated, highlighting the pervasive nature of these issues. The Federal Trade Commission ("FTC") has pursued cases against Facebook<sup>4</sup> and Google<sup>5</sup>, imposing substantial fines for anti-competitive conduct, including early acquisitions that eliminate potential competitors and create "kill zones" where start-ups struggle to grow independently. These cases underscore that anti-competitive behaviors are a pressing problem in the U.S. as well.

***The political climate under Trump further exacerbates this challenge. The Trump administration, with its close ties to tech giants like Elon Musk and other industry leaders, has shown a willingness to leverage these relationships to***

***advance its international agenda, often prioritizing corporate interests over regulatory oversight. This dynamic makes it highly unlikely that a regulation akin to the DMA could gain traction in the U.S. over the next four years.***

Nonetheless, while the Trump administration may not directly interfere with ongoing legal proceedings, the EU's legislative influence could serve as a critical factor in shaping the regulatory discourse. The interconnected nature of the Western world's cultural and social structures makes it plausible that the DMA could raise awareness of such regulatory gaps within the U.S. If public demand aligns with the right political will, the DMA might become a reference point for future regulatory initiatives.



In 2019, Spotify filed an antitrust complaint with the European Commission<sup>6</sup>, alleging that Apple's App Store policies—such as mandatory in-app purchase commissions and restrictions on alternative payment systems—constituted anti-competitive behavior. The European Commission's subsequent decision to impose a €2 billion fine on Apple marked a significant regulatory intervention, targeting practices that hinder market competition. This ruling resonated across the Atlantic, influencing the United States, where similar concerns over Apple's practices were already under scrutiny. U.S. regulators, including the Department of Justice<sup>7</sup> and state attorneys general, have cited the EU's decision as a reference point in their ongoing investigations into Apple's market behavior. While the U.S. regulatory framework remains more fragmented, the EU's action has provided a compelling case study for addressing monopolistic practices.

***The Spotify case demonstrates that the Brussels effect is not limited to legislative influence. It extends to judicial interpretations, shaping the application of antitrust principles globally and reinforcing the EU's role as a standard-setter in competition law.***

As outlined above, it is evident that the U.S. and its tech giants will inevitably be influenced by these developments, whether through regulatory decisions or judicial outcomes. Considering the U.S.'s rapidly evolving start-up ecosystem and juxtaposing it with the EU's current regulatory challenges, the potential impact on American start-ups could prove more constructive than in Europe. However, given the historical and cultural trajectory of the U.S., expecting the implementation of an ex-ante regulatory framework similar to the DMA would be unrealistic. At best, we may foresee the establishment of stricter principles to guide the ecosystem while maintaining the U.S.'s emphasis on innovation and market-driven growth.

The DMA symbolizes the EU's ambition to establish itself as a global regulatory leader, addressing the unchecked power of gatekeepers while striving to balance innovation and competition. Through the "Brussels effect," the EU's regulatory frameworks have demonstrated a far-reaching impact, influencing not only legislation but also judicial interpretations in other jurisdictions, including the United States. While the U.S. remains constrained by its fragmented regulatory approach and cultural emphasis on market-driven growth, the EU's proactive measures set a benchmark for addressing systemic challenges in the digital economy. Ultimately, the DMA's success will determine whether the EU can solidify its role as a global standard-setter in digital governance.



4 Federal Trade Commission v. Meta Platforms, Inc., Mark Zuckerberg, and Within Unlimited, Inc., Case No. 3:22-CV-04325 (N.D. Cal. filed July 27, 2022).

5 United States v. Google LLC, Case No. 1:20-cv-03010 (D.D.C. filed Oct. 20, 2020).

6 European Commission, Case AT.40437: Apple – App Store Rules for Music Streaming Providers (4 March 2024)

7 Inno Flores, 'DOJ's Antitrust Suit Against Apple Draws Support from Spotify, Deezer' (Tech Times, 21 March 2024)