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DIGITAL GATEKEEPERS AND COMPETITION LAW: TOWARDS NEW RULES FOR PLATFORM DOMINANCE

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Abstract:
This article examines the growing influence of digital gatekeepers—large online platforms that control access to digital markets—and the challenges they pose to existing competition law frameworks. It explores how traditional antitrust principles struggle to address new forms of market power rooted in data concentration, network effects and algorithmic control. Drawing on recent policy developments such as the EU's Digital Markets Act (DMA) and proposals in the United States, the paper highlights the emergence of ex-ante regulatory approaches aimed at preventing the abuse of platform dominance. The study also discusses implications for global competition policy and suggests directions for crafting more effective legal rules to maintain fair competition in digital ecosystems.

Keywords: digital gatekeepers, platform dominance, competition law, antitrust, Digital Markets Act, data-driven markets, regulatory frameworks.

INTRODUCTION. The rapid expansion of the digital economy has fundamentally transformed global markets and reshaped the traditional principles of competition. Digital platforms—often referred to as digital gatekeepers—have become indispensable intermediaries in sectors ranging from e-commerce and online advertising to app ecosystems and cloud services. Their ability to control access to vast networks of users, combined with dominance over critical data flows and algorithmic decision-making, has enabled them to accumulate unprecedented market power. While the advantages of platform-driven innovation are undeniable, the concentration of economic power in the hands of a few digital giants poses serious challenges to established competition law frameworks. Traditional antitrust tools, historically designed to address issues such as price fixing and output restrictions, often fall short when dealing with the unique characteristics of data-driven markets. Network effects, multi-sided market dynamics and the opacity of algorithmic processes have allowed dominant platforms to entrench their positions and, in some cases, engage in practices that risk harming competitors, consumers, and innovation itself. In response to these concerns, policymakers and regulatory authorities worldwide are rethinking the adequacy of existing legal standards. The European Union's landmark Digital Markets Act (DMA) exemplifies a shift towards ex-ante regulation, imposing proactive obligations on designated gatekeepers to prevent abuses before they occur. Similarly, debates in the United States, the United Kingdom and other jurisdictions highlight a growing consensus on the need for new legal instruments tailored to the digital context. Against this backdrop, this paper explores the evolving concept of platform dominance and examines how modern competition law must adapt to effectively regulate digital gatekeepers. It aims to analyze emerging regulatory models, identify common challenges and offer insights into crafting more robust legal rules that safeguard fair competition and foster innovation in the digital era.

Table 1. Comparative overview of digital market regulations

Jurisdiction	Regulatory Act	Key Features
EU	Digital Markets Act (DMA)	Ex-ante obligations for gatekeepers
US	FTC initiatives & bills	Data & algorithm focus
UK	Digital Markets Unit (DMU)	Tailored oversight for platforms

MAIN BODY. The Digital Markets Act (DMA) enters into force this week. It sets out new, strict rules for a select number of online platforms of which businesses

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and consumers should be aware. These platform companies are known as gatekeepers (see also our earlier blog on the DMA).

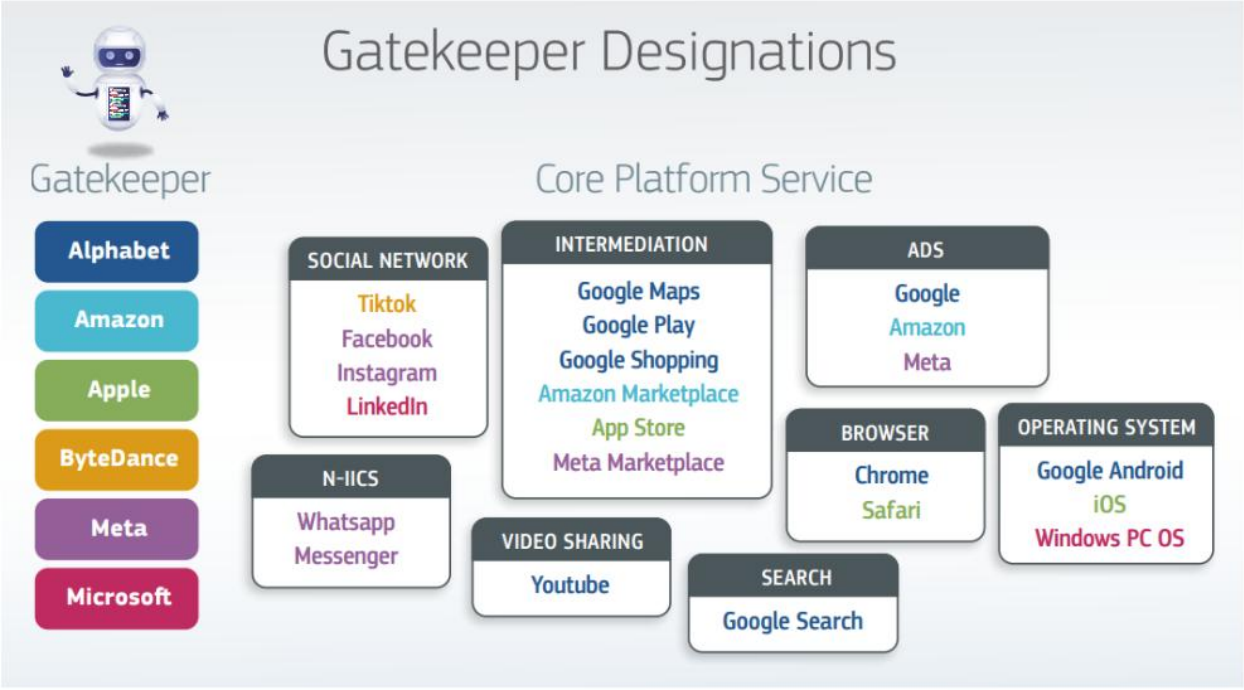
Who are the gatekeepers?

In sum, gatekeepers are companies that provide a platform service so large that consumers and business users are dependent on it. The legislature therefore considers stricter rules necessary. The characteristics of gatekeepers mean that many cases may involve:

"serious imbalances in bargaining power and, consequently, to unfair practices and conditions for business users, as well as for end users of core platform services provided by gatekeepers, to the detriment of prices, quality, fair competition, choice and innovation in the digital sector."

The European Commission (Commission) has identified six gatekeepers: Alphabet (Google), Amazon, Apple, Byte Dance, Meta and Microsoft. Not all the services offered by these gatekeepers are regulated by the DMA – only what is known as 'core platform services'. In total, the Commission has identified 20 core platform services, shown in the Commission's illustration below.

The core platform services of the six gatekeepers must comply with the DMA by 7 March 2024 at the latest. This also means that businesses using these platforms (known as 'business users') can benefit as from that date from the extra protection that the DMA offers them. However, we see in practice that many businesses that deal with gatekeepers are wondering how they can use the DMA to their advantage.



The Netherlands Authority for Consumers and Markets (ACM) noted back in December 2023, at the CRA Congress, that so far few businesses were contacting it about the benefits of the DMA. According to the ACM, smaller players might fear a protracted legal battle with a multinational, or possible retaliation by large platforms. But businesses might also simply be in the dark, according to the ACM.

The rules in the DMA appear complex at first glance. This is partly because the DMA sets out a wide range of rules. Some obligations, for instance, are relevant to advertisers, while other provisions are relevant to app developers, hardware manufacturers or webshops. Moreover, some rules relate to the relationship between the gatekeeper and end users, rather than to the relationship with business users (e.g. webshops). In our upcoming blogs, we will focus on the rights that various groups of business users can base on the DMA.

Obligations from which webshops can benefit. In Articles 5, 6 and 7, the DMA imposes obligations on gatekeepers. Articles 5 and 6 are particularly relevant to webshops. Article 5 contains a set of predetermined, relatively defined rules. Article 6 contains obligations that may be further specified by the Commission. The Commission may determine, for instance, how a gatekeeper should implement the obligations in Article

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6 (known as 'delegated acts'). Both articles aim to ensure that markets on which gatekeepers operate are and remain 'contestable' and fair.

Below, we address five DMA obligations from which webshops (i.e. business users of sales platforms such as Amazon, Google Shopping or Meta Marketplace) may specifically benefit.

I. Possibility of making a better offer outside the platform – Article 5(3) DMA. Many webshops offer their products or services through different channels: through their own website, on the platform of a gatekeeper (such as Amazon, Google Shopping or Meta Marketplace) and through alternative platforms of companies that are not designated as gatekeepers, such as Bol.com. Some platforms require that webshops do not charge better prices through these other channels. This may stem from the idea that webshops would otherwise benefit from being found through the platform but would then make the transaction through another channel, as a result of which the platform would not earn from it. These are also known as parity clauses. Article 5(3) DMA prohibits this. Webshops using core platform services must be free to apply different prices and conditions when selling their products or services through their own webshop or on another platform. This means that Amazon, for instance, therefore may not prohibit webshops from also offering their products on Bol.com or eBay; nor may Amazon prohibit webshops from offering lower prices or better terms and conditions on other platforms or in its own webshop.

II. Possibility of promoting and concluding transactions outside the platform – Article 5(4) DMA. A gatekeeper may not prevent webshops and end users from dealing directly with each other outside the gatekeeper's platform. Before this obligation, business users of platforms were often contractually obligated to use the platform's services for e.g. communication, identification, promotion and payment. From now on, webshops may directly approach customers, also if they were initially recruited through the platform, with offers and enter into contracts with them – also outside the platform.

III. No competition based on confidential information from webshops – Article 6(2) DMA. Gatekeepers may continue to compete with webshops. Amazon, for instance, may offer products similar to those of its business users. In doing so, however, gatekeepers may not use data that (a) is non-public; and (b) is generated or provided by webshops in using the core platform service (or related services). This includes data generated or provided by the customers of webshops (typically consumers). Non-public data means all aggregated and non-aggregated data generated by webshops that can be derived or collected from the commercial activities of webshops or their customers. This includes click, search, display and voice data on/via the platform (or related services). A case in which a similar issue previously arose is the Amazon Marketplace case.

IV. Prohibition of self-preferencing – Article 6(5) DMA. Platforms – such as Amazon, Google Shopping and Meta Marketplace – offer a ranking of search results. Within these rankings (and associated website indexing and web crawling), they may from now no longer treat their own services and products more favourably than similar services or products of webshops. A platform may not reserve a better position for its own offering on an online marketplace, for instance. Moreover, the ranking conditions must be transparent, fair and non-discriminatory. A case in which a similar issue previously arose is the Google Shopping case.

V. Free access to data of a webshop and its customers – Article 6(10) DMA. When webshops use core platform services such as Amazon, Google Shopping or Meta Marketplace (or related services), they and their end users provide and generate a great deal of data, such as data provided when making transactions via Amazon or Google Shopping. This may include personal data. Gatekeepers must provide webshops with effective, high-quality and continuous real-time access to such data on request and free of charge. In the case of personal data, it must be directly related to the products or services offered by the webshop on the core platform service in question. End users must also consent to the provision of the data.

Contact the ACM if a gatekeeper acts in breach of the rules.

Apple, Amazon, Meta and Google have now adjusted their services in a manner that they believe to be compliant with the DMA. The question is whether this suffices in practice. If webshops are hindered by gatekeepers that do not comply with the DMA, a number of options are available to them.

First, webshops can complain directly to the Commission (Article 27 DMA). They may do so in the form of an enforcement request, but also by sharing informal signals. A more accessible way of raising concerns is at the DMA workshops organised by the Commission for stakeholders. The workshops of potential interest to webshops, namely those of Meta, Amazon and Alphabet (Google), will take place on 19, 20 and 21 March 2024. The workshops will give webshops the opportunity to ask questions and provide

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feedback on the compliance measures proposed by the gatekeepers. Following signals, the Commission may opt to initiate enforcement proceedings (Article 20 DMA).

Closer to home, webshops may also contact the ACM. The ACM sets great store by business users taking advantage of the opportunities offered by the DMA. It will provide business owners and consumers with additional information on their rights and obligations under the DMA later this year and has called on other NCAs to do the same. To this end, the ACM will organise a conference for businesses in June 2024 on the positive effects of the DMA. The ACM has also expressed the hope that businesses will contact them in the event of violations of the DMA. Webshops and other business users that wish to report to the ACM are well-advised to prepare their reports thoroughly in order to increase their chances of success. The complaints that the ACM receives may be used in its investigation of possible violations. The ACM transfers that information to the Commission (Article 27 DMA), which may use it in taking enforcement action against gatekeepers.

Finally, webshops may apply to civil courts. But if the Commission has not first established that a gatekeeper has violated the DMA, this is a potentially costly and time-consuming process. However, the Commission may play a supporting role in this regard, for instance by submitting written observations on its own initiative in civil proceedings (Article 39(3)). Conversely, national courts may ask the Commission for advice on the application of the DMA (Article 39(1)).

Importantly, gatekeepers may not restrict or prevent companies from bringing a violation of the DMA to the attention of the ACM, the Commission or a civil court. This expressly follows from the DMA itself (Article 5(6) DMA). If they do so nevertheless, that too is grounds for a report to the ACM or the Commission.

Digital platforms have emerged as a unique economic phenomenon, with their dominance largely driven by three key factors:

- **Network effects:** The value of a platform increases as more users join. This is typical for social networks and online marketplaces, where the growth of consumers and sellers reinforces the platform's attractiveness and market grip.
- **Control over data assets:** Platforms continuously collect and process user behavior, preferences and transaction histories. This data-centric advantage allows them to optimize services, personalize offerings and outpace competitors.
- **Multi-sided market structures:** Platforms simultaneously connect multiple groups of users (e.g., consumers and advertisers), making their economic models more complex and often harder to regulate using traditional tools.

In addition, **algorithms** play a crucial role by influencing user decisions based on processed data. However, these processes often lack transparency, complicating regulatory oversight.

Conventional antitrust principles have historically targeted practices such as:

- price fixing,
- output restrictions,
- cartel formation or market monopolization.

However, digital platforms often provide services to end-users **free of charge**, monetizing instead through advertising and ancillary services. As a result, classic price-based competition models become less relevant, replaced by battles over data dominance and algorithmic leverage. This highlights the inadequacy of traditional antitrust approaches for data-driven markets.

Moreover, digital platforms frequently erect sophisticated, subtle barriers to market entry that may appear lawful on the surface. For example:

- manipulating algorithmic rankings to disadvantage rivals' products,
- favoring their own services within ecosystems (**self-preferencing**),
- restricting interoperability or access to critical user data needed by competing services.

Amid these challenges, various countries are pioneering new legal frameworks to specifically address digital gatekeepers' market power.

- **European Union:** Through the **Digital Markets Act (DMA)**, the EU formally designates certain large platforms as "gatekeepers," imposing proactive obligations (ex-ante rules) to curb anti-competitive practices. These include prohibitions on self-preferencing and requirements to enable data portability and interoperability.
- **United States:** The Federal Trade Commission (FTC) has intensified scrutiny of digital platforms' dominance and algorithmic discrimination, with new legislative proposals underway to bolster enforcement tools.
- **United Kingdom:** The creation of the **Digital Markets Unit (DMU)** exemplifies a tailored regulatory body focused on monitoring

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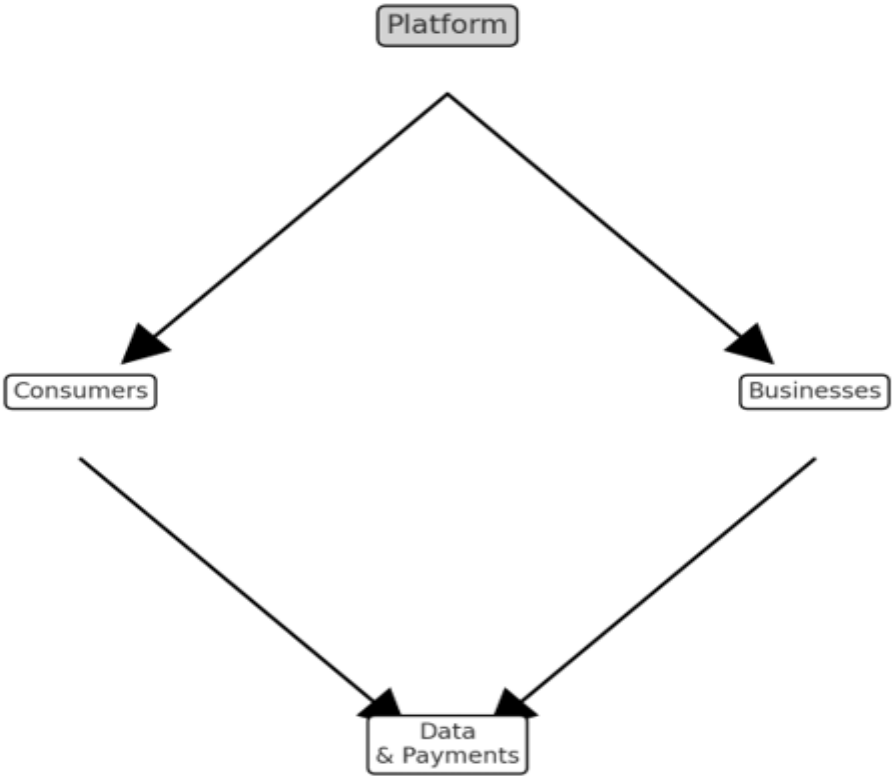
and ensuring fair conduct by dominant digital platforms.

Globally, there is a clear trend toward either updating classic antitrust doctrines or developing specialized rules to better fit the distinct dynamics of digital markets.

Uzbekistan cannot afford to stay on the sidelines of these global regulatory developments. Failure to adapt risks allowing foreign digital giants to consolidate power, potentially stifling local innovation and new business formation. Therefore, policy priorities might include:

- developing specialized metrics for identifying platform dominance, incorporating factors such as user base size, data flows, and network effects;
- explicitly incorporating misuse of data and algorithmic conduct as grounds for antitrust intervention;
- enhancing the capacity of competition regulators by employing automated digital market monitoring tools (regtech solutions).

Figure 1. Simplified platform ecosystem



Thus, the analysis clearly demonstrates that the dominance of digital gatekeepers arises through mechanisms fundamentally different from traditional market power. Their activities are not only driven by network effects and multi-sided business models but also heavily rely on complete control over data flows and algorithmic decision-making.

This creates significant methodological challenges for applying classical competition principles. Identifying and legally substantiating new forms of market power—emerging not from prices or output restrictions, but from data dominance and the manipulation of user behavior—has become one of the most pressing issues in modern antitrust oversight.

The emergence of new regulatory frameworks in other jurisdictions, such as the European Union's **Digital Markets Act (DMA)**, initiatives by the United States Federal Trade Commission, and the operations of the United Kingdom's **Digital Markets Unit (DMU)**, indicates the formation of a broader global trend. This,

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in turn, underscores the need for Uzbekistan to modernize its national competition legislation and introduce specialized norms that account for the distinctive characteristics of digital markets.

Conclusion. The analysis underscores that digital platforms, acting as gatekeepers, have established dominant positions in modern markets primarily through leveraging network effects, vast control over user data and multi-sided business models. These features allow them to entrench their market power in ways that traditional competition law frameworks, originally designed to combat price collusion or production constraints, often fail to address effectively. Moreover, the opaque nature of algorithmic decision-making and the subtlety of platform conduct—such as self-preferencing or restricting data access—pose additional regulatory challenges. This reality necessitates a paradigm shift in how competition authorities conceptualize and enforce rules against potential abuses of dominance in digital markets.

International experiences, particularly the EU's **Digital Markets Act (DMA)**, the initiatives of the US Federal Trade Commission (FTC), and the UK's Digital Markets Unit (DMU), illustrate a global movement towards crafting proactive, ex-ante regulatory regimes specifically targeted at digital gatekeepers. These approaches aim not only to curb existing abuses but to prevent anti-competitive conduct before it can distort the market.

RECOMMENDATIONS.

Based on these findings, several key recommendations emerge:

1. **Update competition law frameworks:** National regulatory regimes should integrate provisions that explicitly address the unique dynamics of data-driven, multi-sided digital markets, moving beyond traditional price-based criteria.
2. **Develop clear dominance indicators:** Authorities should adopt methodologies that consider factors like data control, network effects and ecosystem dependency when determining platform dominance.
3. **Strengthen regulatory oversight:** Invest in technological tools (regtech) that enable real-time monitoring of digital market behavior, including algorithmic outcomes and data usage patterns.
4. **Promote data portability and interoperability:** Implement legal requirements that empower users to easily transfer their data across platforms, reducing lock-in effects and fostering competition.
5. **Encourage international cooperation:** Given the cross-border nature of digital platforms, collaborative efforts among competition authorities will be crucial to ensure coherent and effective enforcement.

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