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DIGITAL MARKETS ACT – A NEW PARADIGM OF EUROPEAN COMPETITION LAW. DOCTRINAL PERSPECTIVES AND IMPLICATIONS FOR ROMANIA

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Abstract: *The adoption of Regulation (EU) 2022/1925 on digital markets, commonly known as the Digital Markets Act (DMA), marks a turning point in the development of European competition law. Faced with the challenges posed by the digital economy and the rise of global technology giants, traditional ex post competition law has proven insufficient to ensure the maintenance of effective competition. The DMA introduces an ex ante regulatory mechanism applicable to "gatekeepers" – digital platforms that hold a structurally dominant position and can distort competition before the occurrence of an actual abuse. This article analyzes the theoretical foundations of this new paradigm, the normative content of the DMA, and its implications for the Romanian legal order, addressing the relationship between regulation and competition, as well as the institutional challenges arising from its practical implementation.*

Keywords: *Digital Markets Act, competition law, gatekeeper, ex ante regulation, European Union, digital platforms, Romania.*

Introduction

The accelerated technological evolution of the past decade has generated a structural transformation of economic markets, requiring a profound reassessment of traditional legal instruments for the protection of competition. The economic dominance of major digital platforms – Google, Apple, Meta, Amazon, Microsoft, and ByteDance – has created an interconnected economic ecosystem in which control over data, algorithms, and digital infrastructure has become a decisive factor of market power.

In this context, the classical intervention mechanisms provided by Articles 101 and 102 of the Treaty on the Functioning of the European Union (TFEU) have proven insufficient to ensure the maintenance of effective competition. Investigation and sanctioning procedures, characterized by excessive duration and high evidentiary standards, have prompted a substantial legislative response: the adoption in 2022 of Regulation (EU) 2022/1925 of the European Parliament and of the Council on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act).

Through this legislative act, the European Union established a new approach to competition regulation: an ex-ante intervention aimed at preventing structural imbalances, as opposed to the traditional ex post intervention, specific to sanctioning abuses of dominant positions (European Commission, 2023). The DMA directly targets digital platforms functioning as "gatekeepers" – indispensable intermediaries between businesses and

consumers, whose economic power enables them to unilaterally determine market access conditions.

The purpose of this study is to examine the implications of this normative shift on European competition law through a doctrinal and comparative analysis. In particular, it seeks to determine whether the DMA represents a logical extension of classical competition principles or, conversely, a new legal paradigm inaugurating a distinct stage in the architecture of European economic law. Furthermore, the effects on the Romanian legal order will be evaluated, particularly regarding the competencies of the Competition Council, as well as the institutional and legislative challenges arising from the direct application of the DMA in national law.

1. Theoretical and Normative Foundations of Ex Ante Intervention in the Digital Economy

General Premises on the Transformation of Competition in the Digital Economy

The digital economy has caused a profound structural shift in classical competitive mechanisms, affecting both market functioning and the legal instruments used to ensure effective competition. Multifunctional digital platforms, characterized by strong network effects, extreme economies of scale, and massive data accumulation, have generated forms of economic power that can no longer be evaluated solely through traditional competition law criteria, which are built around the concepts of relevant market, dominant position, and proven ex post abuse (Ibáñez Colomo, 2018).

In this context, European Union competition law has faced a structural tension between, on the one hand, the necessity of maintaining a legal framework based on economic freedom and minimal state intervention, and, on the other hand, the imperative to correct systemic dysfunctions in digital markets, which tend to self-consolidate in the absence of timely regulatory intervention (Ezrachi, 2016). Recent doctrinal analyses have highlighted that classic anti-trust interventions, even when accompanied by significant financial sanctions, fail to restore lost competition because market-locking effects become irreversible before administrative procedures are concluded (Monti, 2022). This economic reality explains the emergence of a new regulatory logic centered on prevention and structural control of dominant platform behaviors. The Digital Markets Act fits within this logic, establishing a methodological break from the exclusively repressive paradigm of traditional competition law.

Genesis of the Digital Markets Act and its European Normative Context

The adoption of Regulation (EU) 2022/1925 does not represent an isolated legislative act but is the result of a complex process of institutional and doctrinal reflection initiated within the European Union more than a decade ago. Documents such as the report Competition Policy for the Digital Era (Crémer, de Montjoye, Schweitzer, 2019), prepared at the request of the European Commission, explicitly signaled the need for a differentiated approach for digital markets, distinct from the classical antitrust toolkit.

In parallel, experience gained from major antitrust cases against global digital platforms highlighted the limitations of ex post intervention. Although the Commission's decisions (European Commission Decision AT.39740) in cases such as Google Search (Shopping), Google Android, or Amazon Marketplace established important precedents, they were criticized for the tardiness of remedies and the inability to prevent the irreversible consolidation of dominant positions.

Thus, the Digital Markets Act emerges as a normative response to a structural problem, rather than a mere extension of competition law. The regulation seeks to ensure the functioning of the EU digital internal market by imposing clear and uniform obligations on platforms controlling essential points of access between business users and consumers. From this perspective, the DMA may be characterized as a constitutional economic law instrument for the European digital market (Odudu, 2006).

The Concept of "Gatekeeper" as an Autonomous Legal Notion

One of the most innovative elements of the DMA is the introduction of the concept of "gatekeeper," which does not fully overlap with the classical notion of a dominant undertaking under Article 102 TFEU. A gatekeeper is defined not only by its current economic power but also by its structural role as an unavoidable intermediary in digital ecosystems (Article 3 of Regulation (EU) 2022/1925).

The criteria for designating gatekeepers are formulated predominantly in quantitative terms, reflecting the European legislator's choice for a normative presumption of economic power. This legislative technique aims to reduce legal uncertainty and accelerate public intervention, avoiding the complex economic disputes that characterize classical antitrust investigations (Jones, Sufrin, 2020).

From a doctrinal perspective, this approach has been interpreted as a form of objectification of market power, where the focus shifts from behavioral analysis to structural analysis. The gatekeeper is not sanctioned for what it has done, but is subject to a special legal regime because of its position within the structure of the digital market (Jenny, 2022).

Methodological Break with Classical Competition Law

The Digital Markets Act establishes a fundamental methodological shift, replacing the repressive paradigm with a preventive one. Instead of investigating whether a specific behavior produced anticompetitive effects, the DMA predefines which behaviors are incompatible with the fair functioning of digital markets (Articles 5–7 of the DMA).

This shift raises significant doctrinal questions regarding the legal nature of the DMA. Part of the doctrine argues that the regulation departs from competition law per se and approaches sector-specific regulation. Other authors, however, maintain that the DMA represents an internal evolution of competition law, adapted to a new economic context (Kosta, 2023). Regardless of the doctrinal classification adopted, it is indisputable that the DMA redefines the role of the state in the digital economy, establishing the principle that certain markets require permanent oversight and predetermined rules of conduct to prevent their capture by dominant actors.

2. The Regime of Obligations and Prohibitions Established by the Digital Markets Act: Legal Basis and Implications for Economic Freedom

The Normative Logic of Obligations Imposed on Gatekeepers

The legal regime established by the Digital Markets Act is distinguished by its imperative character and by the direct applicability of the obligations imposed, without the need for prior determination of a specific anticompetitive behavior. This legislative choice reflects the European legislator's explicit intention to correct the structural asymmetries of digital markets and to prevent practices that, although seemingly neutral or even efficient in the short term, produce significant restrictive effects in the medium and long term.

The obligations imposed on gatekeepers are not designed as sanctions but as general conduct norms aimed at rebalancing economic relationships between platforms and business users. From a legal perspective, these can be characterized as special legal obligations, limiting the exercise of economic freedom in consideration of a major public interest, namely the maintenance of contestable and fair digital markets in the European Union (Monti, 2022).

The Prohibition of Self-Preferencing and the Principle of Platform Neutrality

One of the most relevant obligations imposed by the DMA is the prohibition of applying preferential treatment to a gatekeeper's own services or products on its operated platform. This rule targets practices whereby dominant platforms advantage their own ancillary services to the detriment of third-party offerings, distorting competition and affecting effective market access. Doctrinally, the prohibition of self-preferencing represents a normative extension of the case law developed under Article 102 TFEU, yet without imposing the burden of proving anticompetitive effects. The European legislator presumes that such behaviors are, by their nature, incompatible with the fair functioning of a digital market, particularly in the context of platforms with structural intermediary power (Ezrachi, 2022b).

This approach has generated intense debates regarding the compatibility of the DMA with the principle of freedom to organize economic activity. However, a systematic analysis of the regulation demonstrates that the restriction of economic freedom is proportional and justified by the necessity to prevent market capture by dominant actors, in a context where spontaneous competitive mechanisms are insufficient (Odudu, 2021).

Obligations Regarding Interoperability and Data Access

Another central pillar of the DMA consists of obligations concerning the interoperability of services and access to data generated by activity on gatekeeper platforms. These provisions aim to reduce user lock-in effects and facilitate migration to alternative services, thereby enhancing the contestability of digital markets.

From a legal standpoint, the interoperability obligation constitutes one of the most intrusive interventions of European law into the internal organization of private platforms. It requires not only significant technical adjustments but also a reassessment of intellectual property rights and trade secrets. Nevertheless, the DMA provides explicit safeguards designed to protect the security and integrity of services, as well as the confidentiality of personal data (Kosta, 2023). Doctrinal commentary has emphasized that these obligations reflect a functional conception of data, considered not exclusively as private economic assets but also as essential resources for maintaining competition in the digital economy (Ibáñez Colomo, 2018). In this sense, the DMA approaches the logic of "digital infrastructure regulation," analogous to regimes applied to public utility networks.

Freedom of Commercial Users and Combating "Lock-In" Practices

The DMA also enshrines the right of commercial users to promote and provide their products or services through alternative channels without being constrained by restrictive contractual clauses imposed by gatekeepers. This provision directly targets "lock-in" practices, which limit the economic autonomy of business partners and reduce competitive pressure on dominant platforms.

Legally, these norms can be interpreted as a concretization of the principle of contractual freedom within a context of structural power imbalance. The European legislator

implicitly recognizes that, in relationships between gatekeepers and commercial users, autonomy of will is often illusory, necessitating normative intervention to restore a minimal contractual equilibrium (Piperea, 2023).

This approach has significant implications for private law, as it relativizes the absolute character of contractual freedom in the digital environment, subjecting it to imperatives of economic public order.

Compatibility of the DMA with Fundamental Principles of EU Law

An essential aspect of the legal analysis of the DMA concerns its compatibility with the fundamental principles of EU law, particularly the freedom to conduct a business, enshrined in Article 16 of the Charter of Fundamental Rights of the European Union. The restrictions imposed on gatekeepers must be assessed in light of the principles of proportionality and necessity of intervention.

Analysis of these principles leads to the conclusion that the DMA establishes a reasonable balance between private economic interests and the public interest in maintaining a functional internal market. The regulation does not prohibit gatekeepers' economic activity but sets clear boundaries for its exercise, considering the systemic impact these actors have on the European digital economy (Jones, Sufrin, 2020).

3. Mechanisms for the Implementation and Control of the Digital Markets Act: The Role of the European Commission and Interaction with National Competition Law

Exclusive Competence of the European Commission and the Rationale for Centralized Enforcement of the DMA

A defining feature of the institutional architecture of the Digital Markets Act is the assignment of exclusive competence for its implementation and oversight to the European Commission (Article 1(5) of Regulation (EU) 2022/1925). This legislative choice represents a significant departure from the classical model of competition law, characterized by a decentralized enforcement system in which national competition authorities possess direct powers to apply EU law.

The centralization of DMA enforcement is justified by the inherently cross-border nature of core platform services and the risk of fragmentation of the internal market in the event of divergent national interpretations (Jones, Sufrin, 2020). The gatekeepers targeted by the regulation operate integrated digital ecosystems, and inconsistent application of ex ante obligations could generate additional distortions and legal uncertainty.

Doctrinally, this institutional solution reflects the transformation of the European Commission from a traditional antitrust authority into a true regulator of essential digital infrastructures (Monti, 2022). The Commission is no longer called solely to sanction individual violations but to exercise a continuous function of supervision, guidance, and correction of economic behaviors with systemic impact on the EU digital internal market.

Gatekeeper Designation Procedure and the Obligation of Compliance

The procedure for designating gatekeepers constitutes the premise for the effective application of the Digital Markets Act. Enterprises meeting the quantitative criteria set out in the regulation are required to notify the European Commission, which then assesses the legal conditions and adopts a formal designation decision (Articles 3–4 of the DMA).

This procedure is distinguished by its accelerated nature and by a significant reduction of economic discretion compared with investigations conducted under Article 102 TFEU (Ibáñez Colomo, 2018). Once designated, a gatekeeper is obliged to adopt concrete compliance measures and submit to the Commission a detailed report on the implementation of DMA obligations within a strictly defined timeframe (Article 11 of the DMA). Legally, this reporting obligation establishes a mechanism of supervised self-regulation, wherein primary responsibility for compliance is placed on the designated enterprise. Although this approach has been criticized for its potential impact on the right of defense, the regulation provides sufficient procedural safeguards, including the right to contest Commission decisions before the Court of Justice of the European Union (Article 263 of the TFEU).

Investigative Powers and Sanctioning Regime

The DMA grants the European Commission extensive investigative powers, including the right to request information, conduct inspections, and interview representatives of designated gatekeepers (Articles 21–23 of the DMA). These powers are exercised within a normative framework distinct from classical competition law, as the object of the investigation is the compliance with ex ante obligations, rather than the existence of a proven anticompetitive behavior. The sanctioning regime provided by the DMA is particularly severe, allowing fines of up to 10% of the undertaking's global turnover, and up to 20% in the case of repeated infringements (Article 30 of the DMA). In exceptional situations, characterized by systematic violations, the regulation permits the imposition of structural corrective measures, including the divestiture of certain economic activities (Article 18 of the DMA). Doctrinally, these measures mark an unprecedented intensification of public intervention in the digital economy. They raise fundamental questions regarding the limits of proportionality and the risk of transforming competition regulation into a coercive industrial policy instrument (Jenny, 2023).

Relationship Between the DMA and National Competition Law

Although the application of the DMA is centralized, the regulation does not exclude the role of national competition authorities, which may assist the Commission by providing information, expertise, and reporting potential infringements (Article 38 of the DMA). Furthermore, the DMA does not affect the application of national or EU competition law outside its specific regulatory scope.

This normative coexistence, however, generates risks of overlap and incoherence, particularly concerning the delineation between the ex-ante obligations under the DMA and the ex post analysis of anticompetitive behaviors (Ezrachi, 2022a). Administrative practice and case law of the Court of Justice will play a crucial role in clarifying these relationships.

Institutional Implications for Romania

For Romania, the Digital Markets Act entails a redefinition of the role of national authorities in the field of digital competition. The Competition Council is called upon to strengthen its analytical capacity and develop specialized skills in assessing digital markets, even though it does not have direct decision-making authority in the enforcement of the DMA (Competition Council, 2023). At the same time, national courts will be indirectly involved in applying the regulation, either by resolving related civil litigation or by interpreting and applying European norms within domestic legal relationships. This reality requires significant doctrinal and jurisprudential adaptation at the national level (Nițu, 2022).

4. Implications of the Digital Markets Act for Romania: Institutional Challenges and Prospects for Adapting National Law

Integration of the Digital Markets Act into the Romanian Legal Order

The application of Regulation (EU) 2022/1925 on digital markets does not, formally, require its transposition into national law, given the direct applicability of European regulations. Nevertheless, the effective integration of the DMA into the Romanian legal order demands substantial institutional and normative adaptation to ensure coherence between national competition law and the new ex ante European framework.

First, it is necessary to clarify the relationship between the DMA and Competition Law no. 21/1996, particularly regarding the competencies of the Romanian Competition Council. Although the DMA establishes a centralized enforcement mechanism under the exclusive authority of the European Commission, the role of national authorities is not merely marginal. On the contrary, they can provide relevant information, support the Commission's investigations, and ensure complementarity with the application of national rules in cases outside the scope of the DMA (Articles 38–39 of Regulation (EU) 2022/1925 on cooperation with national competition authorities).

In this context, Romanian law must avoid both the risk of unjustified overlapping of competencies and gaps in protection. A coherent approach requires recognizing the autonomous character of the DMA while leveraging the expertise of the Competition Council in analyzing digital markets, including through the development of specialized structures in platform economy and algorithmic analysis.

Impact on the Practice of the Competition Council

The application of the DMA will have an indirect but significant impact on the administrative and jurisprudential practice of the Romanian Competition Council. Even if the national authority is not competent to designate gatekeepers or impose DMA sanctions, it will need to calibrate its interventions under Articles 5 and 6 of Competition Law in light of the new obligations imposed at the European level.

In particular, concepts such as self-preferencing, discriminatory access to platforms, or abusive use of data will be reinterpreted in light of the standards set by the DMA. This leads to a marked trend of "Europeanization" of national practice, where the Romanian authority will need to take into account Commission decisions adopted under the DMA, even in cases not directly concerning gatekeepers (Chiriță, 2023).

This evolution raises the question of harmonizing methodologies for economic and legal analysis, as well as the professional training of personnel involved in competition law enforcement. Without adequate adaptation, there is a risk that national law could become either excessively dependent on EU law or insufficiently aligned with the realities of the digital economy.

Effects on the Business Environment in Romania

From the perspective of Romanian economic operators, the DMA can be seen both as a protective instrument and as a source of challenges. On one hand, small and medium-sized enterprises, as well as digital start-ups, could benefit from more equitable access to markets dominated by major online platforms, given that gatekeepers will be obliged to comply with strict rules on interoperability, transparency, and non-discrimination (Săvescu, 2023).

On the other hand, for Romanian enterprises operating as providers of complementary services on global digital platforms, compliance with new rules imposed on gatekeepers may generate indirect costs and legal uncertainties, particularly during the initial phase of regulation implementation. Additionally, some benefits of the DMA may be experienced with delay in Member States with lower levels of digital economy development, including Romania.

In this context, the Romanian state is called upon to adopt coherent public policies to support the capitalization of opportunities generated by the DMA, including through information, advisory, and institutional support measures for domestic enterprises.

Digital Markets Act and the Evolution of Romanian Competition Law: Future Law Perspectives

From a future law perspective, the DMA acts as a catalyst for a broader reconsideration of Romanian competition law in the digital context. Although a substantial amendment of Law no. 21/1996 is not required, updating analytical tools and the conceptual framework used by authorities and courts is advisable.

A possible direction for evolution is the strengthening of cooperation between the Competition Council, the National Authority for Management and Regulation in Communications, and other relevant authorities to address the challenges posed by digital platforms in an integrated manner. Furthermore, an in-depth doctrinal reflection is necessary on the relationship between ex ante regulation and ex post sanctioning, as well as on the compatibility of the DMA with traditional principles of economic freedom and autonomy of will. Ultimately, the impact of the DMA on Romanian law should not be assessed solely in terms of normative constraint but also as an opportunity to modernize competition law in accordance with the demands of a dynamic and interconnected digital economy.

Conclusions

The Digital Markets Act represents a profound structural shift in the architecture of European competition law, establishing a new normative paradigm oriented toward preventing competitive imbalances in the digital economy. By introducing an ex ante regime applicable to gatekeepers, the regulation transcends the traditional limits of ex post intervention and proposes a proactive approach aimed at ensuring contestability and fairness in digital markets.

From a doctrinal perspective, the DMA raises numerous conceptual challenges, including the redefinition of economic power, the relationship between regulation and competition, and the compatibility with classical principles of competition law. At the same time, the regulation reflects a clear political choice by the European Union to assert digital sovereignty and limit the economic power of major global platforms.

For Romania, the application of the DMA constitutes both an institutional challenge and a strategic opportunity. Adapting the practices of national authorities, supporting the business environment, and stimulating doctrinal reflection are essential conditions for harnessing the potential of this new legal instrument. In this respect, the Digital Markets Act can become a vector for modernizing Romanian competition law and for achieving deeper integration into the European legal dynamic.

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