



Understanding the Digital Services Act package

The competitive practices of BigTech platforms and their influence on the public debate

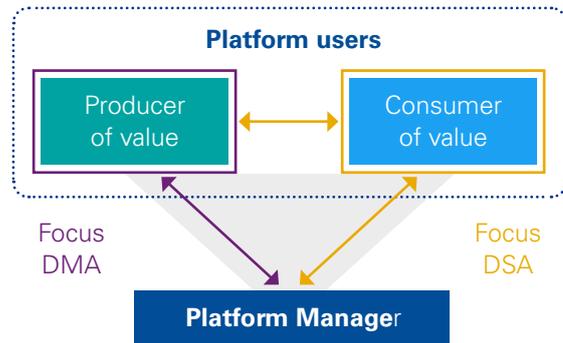


While the role of digital platforms in our social and economic lives still keeps growing under the lead of the 'BigTech' companies, so does the scrutiny from regulators and law-makers across the world on their conduct, impact and power.

As part of the Digital Single Market initiative, in December 2020 the EC put forward a proposal to address multiple possible solution for issues related to their conduct, impact and power: the Digital Services Act (DSA) and the Digital Markets Act (DMA), together forming the "Digital Services Act package". This proposal has followed a series of investigations (both inside and outside of the EU) into the competitive practices of BigTech platforms and their influence on the public debate.

The Digital Services Act and Digital Markets Act encompass a single set of new rules (Digital Services Act package) applicable across the whole EU. The DSA and DMA have two main goals:

- to create a safer digital space in which the fundamental rights of all users of digital services are protected,
- to establish a level playing field to foster innovation, growth, and competitiveness, both in the European Single Market and globally.



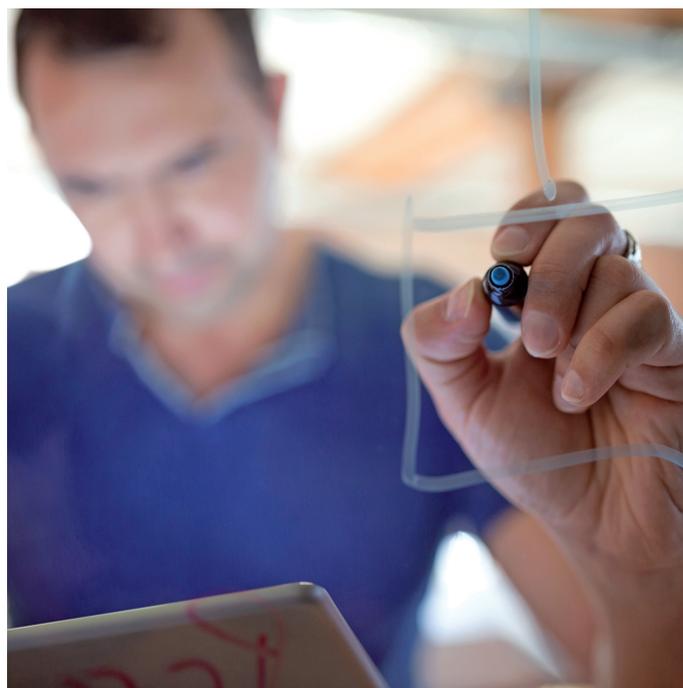
Digital services include a large category of online services, from simple websites to internet infrastructure services and online platforms.

The rules specified in the DSA primarily concern the protection of the interests of consumers of value on online intermediaries and platforms. For example, online marketplaces, social networks, content-sharing platforms, app stores as well as online travel and accommodation platforms.

The Digital Markets Act includes rules that govern gatekeeper online platforms and are primarily focused on protecting the interests of producers of value on the platform. Gatekeeper platforms are digital platforms with a systemic role in the internal market that function as bottlenecks between businesses and consumers for important digital services¹.

Objective: mastering the bad and the ugly of the platform economy

In the 2018 KPMG publication ‘Unlocking the value of the Platform Economy – Mastering the good, the bad and the ugly’, we highlighted the good, the bad and the ugly side of the platform economy and provided an overview of possible solutions to address these:



 <h3>Stimulate the good</h3> <p>People-driven platforms</p> <ul style="list-style-type: none"> — Strengthen collective knowledge on platforms — Broad approach towards regulation — Incumbents to cooperate in consortia on sector / industry platforms — Improve pre-conditions to grow EU-based platforms to scale (e.g. scale-up financing) 	 <h3>Fix the bad</h3> <p>Dampen negative side-effects</p> <ul style="list-style-type: none"> — Legal and regulatory update process to reflect new economic relations <ul style="list-style-type: none"> - Balance interests - Proportionality - Continuous process — Establish ownership rights over data (also non-personal) — Multi-stakeholder approach to platforms based on public values 	 <h3>Control the ugly</h3> <p>Level playing field</p> <ul style="list-style-type: none"> — (Layered) data portability via APIs to dampen ‘winners take all’ — Shared platform governance model — Collective bargaining power of platform producers to restore power balance — ‘Platform neutrality’ regimes to avoid abuse of power — Improve transparency and auditability
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Solution directions for the platform economy from ‘Unlocking the Value of the Platform Economy’ (KPMG, 2018)

The regulatory package now proposed by the EC is actually covering the majority of the recommendations put forward in our publication to ‘fix the bad’ and ‘control the ugly’, which indicates that the EC is at least aiming to address root causes of signaled issues rather than symptoms.

Once adopted, it is expected these acts together will change not only how digital platforms are allowed to operate, but even more importantly how they are allowed to develop and defend their power over the ecosystems they orchestrate.

1 Some of these services are also covered in the Digital Services Act, but for different reasons and with different types of provisions).



Digital Markets Act (DMA) explained

The Digital Markets Act (DMA) establishes a set of narrowly defined objective criteria for qualifying a large online platform as a so-called “gatekeeper”. This allows the DMA to remain well targeted to the problem that it aims to tackle as regards large, systemic online platforms.

These criteria will be met if a company:

- has a strong economic position, significant impact on the internal market and is active in multiple EU countries
- has a strong intermediation position, meaning that it links a large user base to a large number of businesses
- has (or is about to have) an entrenched and durable position in the market, meaning that it is stable over time

Gatekeeper platforms will have to:

- allow third parties to inter-operate with the gatekeeper’s own services in certain specific situations
- allow their business users to access the data that they generate in their use of the gatekeeper’s platform
- provide companies advertising on their platform with the tools and information necessary for advertisers and publishers to carry out their own independent verification of their advertisements hosted by the gatekeeper
- allow their business users to promote their offer and conclude contracts with their customers outside the gatekeeper’s platform

Gatekeeper platforms may no longer:

- treat services and products offered by the gatekeeper itself more favorably in ranking than similar services or products offered by third parties on the gatekeeper’s platform
- prevent consumers from linking up to businesses outside their platforms
- prevent users from un-installing any pre-installed software or app if they wish so



Digital Services Act (DSA) explained

The Digital Services Act includes rules for online intermediary services. The obligations of different online players are proportional to their role, size and impact in the online ecosystem:

- intermediary services offering network infrastructure: internet access providers, domain name registrars.
- hosting services such as cloud and webhosting services, including also:
- online platforms bringing together sellers and consumers such as online marketplaces, app stores, collaborative economy platforms and social media platforms.
- very large online platforms, these pose particular risks in the dissemination of illegal content and societal harms. Specific rules are foreseen for platforms reaching more than 10% of the 450 million consumers in Europe.

All online intermediaries offering their services in the single market, whether they are established in the EU or outside, will have to comply with the new rules. Micro and small companies will have obligations proportionate to their ability and size while ensuring they remain accountable regarding:

- transparency reporting
- requirements on terms of service taking due account of fundamental rights
- cooperation with national authorities following orders
- points of contact and, where necessary, legal representative
- notice and action and obligation to provide information to users
- complaint and redress mechanism and out of court dispute settlement
- trusted flaggers
- measures against abusive notices and counter-notices
- vetting credentials of third party suppliers (“KYBC”)
- user-facing transparency of online advertising
- reporting criminal offences
- risk management obligations and compliance officer
- external risk auditing and public accountability
- transparency of recommender systems and user choice for access to information
- data sharing with authorities and researchers
- codes of conduct
- crisis response cooperation



The DSA improves the mechanisms for the removal of illegal content and for the effective protection of users’ fundamental rights online, including the freedom of speech. It also creates a stronger public oversight of online platforms, in particular for platforms that reach more than 10% of the EU’s population.

Specifically this means:

- measures to counter illegal goods, services or content online, such as a mechanism for users to flag such content and for platforms to cooperate with “trusted flaggers”
- new obligations on traceability of business users in online market places, to help identify sellers of illegal goods.

- effective safeguards for users, including the possibility to challenge platforms’ content moderation decisions
- transparency measures for online platforms on a variety of issues, including on the algorithms used for recommendations
- obligations for very large platforms to prevent the misuse of their systems by taking risk-based action and by independent audits of their risk management systems
- access for researchers to key data of the largest platforms, in order to understand how online risks evolve
- oversight structure to address the complexity of the online space: EU countries will have the primary role, supported by a new European Board for Digital Services; for very large platforms, enhanced supervision and enforcement by the Commission

Digital Services Act package		
	Digital Services Act	Digital Markets Act
Why	Protect consumers (users) and foster competitiveness between platform organisations	Ensure competitive and fair digital markets for businesses (ie merchants) that are dependent on gatekeeper-platforms
Who	Online platforms , obligations proportional to size and type	Gatekeepers , selected by European authorities based on economic position, intermediation position and entrenchment in the market
Key Obligations	<ul style="list-style-type: none"> — Transparency, e.g. on recommendation algorithms — Measures to counter illegal activity, e.g. enable flagging and help identify sellers of illegal goods/services — Safeguards for users e.g. to challenge platforms’ decisions in moderating content — Access to data for researchers — Codes of conduct and technical standards — Clarification on liability and interaction with authorities 	<ul style="list-style-type: none"> — Merchants can promote their offer and may conclude contracts outside the gatekeeper’s platform (platform circumvention and exclusivity clauses become prohibited) — Third parties to inter-operate with gatekeeper’s own services — Business users regarding access the data they generate — Enable tools and access to advertisers and publishers to independently verify treatment of advertisements on the platform — Fair ranking in the offers of users and that of the gatekeeper
Enforcement	<ul style="list-style-type: none"> — Fines of up to 10% of the company’s total worldwide annual turnover — Periodic penalty payments of up to 5% of the average daily turnover — Additional remedies, including non-financial measures (last resort), in case of systematic infringements 	
When	<ul style="list-style-type: none"> — December 15, 2020: Proposal published — 2021 – 2022*: First reading; potential to get adopted by European Parliament — 2022 – 2024*: Second reading; higher potential for adopted by European Parliament — Booking.com does not meet all thresholds for a ‘gatekeeper’, it may only be classified as such after a market investigation 	

* broad estimate, duration of legislative procedures vary greatly



Questions to evaluate business and operating model impact for platforms

For platforms that are considered ‘gatekeepers’ under the DMA Impact Assessment (IA), the DSA package will likely not only impact their operating model, but even their business model. Some key questions to address regarding compliance and which should be considered:

O. Applicable regime:

- According to the current criteria, are we likely to be defined as a ‘very large online platform’ (DSA) and/or a ‘gatekeeper’ platform (DMA)?

A. Transparency in recommendation algorithms

- How will user-facing transparency of recommendation algorithms impact revenue from advertising and user behavior?
- To what extent are strategic and ethical principles embedded in algorithms?
- How to balance transparency and IP protection in algorithms?

B. Obligation: External access to data

- What data is generated by business users (producers of value on a platform) and how to enable data accessibility for business users at scale?
- To what extent do the data models and analytics products derived from data of business users need to be made available to them?
- How will data portability of business users (increased multi-homing, lower switching costs) impact the competitive position of the platform?
- How does the sharing of data to specific parties affect the information architecture and security of personal data of users?
- How to turn the external access to data of our business users into an opportunity to service them better?

C. Obligation: Third parties to inter-operate with the platform

- Are current API’s and/or integration platforms sufficient to enable secure and compliant interoperability with third parties?
- Where in the customer journey can disintermediation impact the current business model?

D. Obligation: Counter illegal activity

- How and where should KYC / KYBP processes be implemented within the organization? Per label or on holding level?
- How can users (‘trusted flaggers’) be identified, enabled and incentivized to help counter illegal activity?



KPMG’s Regulatory Driven Transformation towards a Trusted Platform

KPMG is turning this growing complexity into an opportunity with its Regulatory-driven Transformation solution. KPMG’s multidisciplinary, holistic approach helps clients to deal with regulatory changes, so that they can reduce costs, strengthen their compliance and deliver an excellent customer experience. Regulation is an inevitable challenge for the digital market and for some even a necessary evil.

However, KPMG sees it as an opportunity to facilitate a complete transformation towards a Trusted Platform. Over the last decade many platforms have primarily focused on achieving growth and ending on top of winner-take-most markets by knowing everything about their users. We believe that in the coming decade the winners in the platform economy will be those who embrace becoming a (or even the most) Trusted Platform within their domain. This will extend far beyond embracing external audits and dispute settlement processes. Indeed, many well-known platforms are already taking steps into this direction, such as Uber introducing additional safety measures (pre-COVID) to better protect drivers and (female) passengers.

Creating a holistic view of regulatory change can help to understand it as a real driver for such a transformation. KPMG’s Regulatory-driven Transformation solution is designed to help organizations better manage regulatory change. It used to be enough to know the regulations well. Nowadays, a good knowledge of regulations is only the bare minimum. Due to the increased complexity, it has become almost impossible to tackle a regulatory problem from one perspective alone. Using a holistic approach, KPMG helps solve this with its multidisciplinary ‘Regulatory-driven Transformation’ solution, an overarching layer that is fundamentally needed for successful transformation.

Successful transformation within the digital market includes cultural change, rapid and complete adoption of new technologies and IT infrastructure, and a clearly defined data policy. KPMG has built a multidisciplinary team to support clients throughout their transformation journey, powerfully combining industry specialists, with strong technical profiles with expertise in data science, intelligent automation and change management.

The relevance of data

Regulatory driven transformation supports your organization in making strategic choices. Making the right choices starts with a thorough knowledge of your data. Today, technological developments and data make it possible to optimize processes, to comply with relevant regulations faster and more efficiently, and to improve the relationship with customers.

A successful regulatory driven transformation

For leaders with an eye on the future, regulatory change is not the constraint, but an opportunity. With our regulatory-driven solution, we offer a complete, wide-ranging approach that enables your organization to better deal with those regulatory changes.

Our team starts with a holistic view of the challenges and opportunities on the regulatory horizon. We help you to stop thinking in silos and start connecting the dots, so that you can embark on a real transformation journey. We help you develop an overall strategy that's tailor-made to your business, so that you can then focus only the transformation tactics that are relevant, reduce your costs, strengthen your compliance, and offer an excellent client experience.

A successful transformation includes cultural change, rapid and complete adoption of new technologies and IT infrastructure, and a clearly defined data policy. That's why we offer a multidisciplinary team to support you on your transformation journey, powerfully combining industry specialists, with strong technical profiles with expertise in data science, intelligent automation and change management.

Our aim is to blend high compliance expertise with pragmatic, cost-efficient and wide-ranging solutions, based on a profound understanding of your business.

Required actions

Most of the regulatory questions will require multi-disciplinary teams to develop solutions to become compliant in the most efficient and scalable way. Furthermore, measures to be implemented will likely cross throughout the entire organization, and will not be limited to the legal / risk department. Although final adoption of the Digital Services Act package will take multiple years, timely preparations will become critical to maintain a license to operate.

More information?

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<https://ec.europa.eu/digital-single-market/en/digital-services-act-package>



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