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The Digital Markets Act

A procedural journey towards effective compliance

Submitted on behalf of:

CCIA Computer & Communications Industry Association
Open Markets. Open Systems. Open Networks.

Dr. Salomé Cisnal de Ugarte, **Raphaël Fleischer** and **Eógan Hickey**

King & Spalding LLP
Bastion Tower
5 Place du Champ de Mars
1050 Brussels, Belgium

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For more information, contact:

Dr. Salomé Cisnal de Ugarte
+32 2 898 0205
scisnaldeugarte@kslaw.com

Raphaël Fleischer
+32 2 898 0210
rfleischer@kslaw.com

Eógan Hickey
+32 2 898 0231
ehickey@kslaw.com

King & Spalding

Brussels
Bastion Tower
5 Place du Champ de Mars
1050 Brussels, Belgium
T: +32 2 898 0200

kslaw.com

Executive Summary

As the EU Digital Markets Act ("**DMA**") approaches its three-year legislative review in 2026, regulatory attention has focused primarily on the substantive obligations imposed on designated gatekeepers under Articles 5, 6, and 7 DMA[1]. However, the procedural framework underpinning these obligations is equally important to the DMA's regulatory success.

The present study provides a comprehensive legal and practical evaluation of the DMA's procedural mechanisms. Drawing on the text of the Regulation, relevant case law, and stakeholder insights, it identifies systemic deficiencies and proposes actionable solutions. The findings reveal that the current procedural framework presents significant challenges for gatekeepers in fulfilling their obligation of effective compliance with the DMA, resulting in broader consequences for third-party business users, end users, and the effectiveness of DMA enforcement.

A key difficulty stems from the DMA's model of "legally imposed self-regulation," which requires gatekeepers to "ensure and demonstrate" compliance. Unlike traditional competition law, the DMA's substantive obligations are not self-executing (even though some were precisely intended as such, especially those in Article 5) and often require contextual interpretation based on each gatekeeper's unique business model. Several procedural mechanisms – including informal dialogue, specification proceedings, and non-compliance proceedings – aim to support this compliance process. However, these mechanisms are often constrained by tight timelines and broad Commission discretion, creating procedural burdens not just for gatekeepers, but also for third-party users and the Commission itself.

An assessment of how these procedures operate in practice, based on input from gatekeepers and third-parties as well as publicly available information,

suggests that the current regulatory environment is opaque and administratively complex. From a legal standpoint, the study identifies several risks arising from procedural deficiencies, including the potential for legal action and violations of fundamental rights and general EU law principles in light of EU Court jurisprudence. Specific concerns include risks to the right to be heard, the duty of care, equal treatment, the right to a decision within a reasonable time, proportionality, legitimate expectations, legal certainty, and institutional balance.

To address these concerns, this study proposes eight key recommendations:

1. **Improve enforcement proceedings by extending timelines**, introducing a "stop-the-clock" mechanism for example for specification proceedings (given their tight statutory timeframes), or ensuring earlier access to preliminary findings and case files.

2. **Enhance regulatory dialogue** through non-binding best practices that clarify expectations without excessive formalisation.

3. **Increase transparency** in **third-party consultation** by developing consultation guidelines concerning criteria, procedures, and the use of third-party input.

4. **Introduce hearing officers and procedural guidelines** to ensure that gatekeepers' procedural rights are respected to the fullest extent (including the right to an oral hearing before a decision).

5. **Introduce compliance presumptions** (which would take the form of Commission guidelines setting out specific criteria and situations that are clearly DMA-compliant, or a "statute of limitations" whereby practices are presumed compliant if the Commission fails to take enforcement action after a certain period) and/or a compliance certification regime (in the form of broadening the proceedings that can be resolved with commitments) to ensure greater legal certainty to gatekeepers and third parties alike.

6. **Introduce institutional tools for resolving regulatory conflicts** involving data protection, cybersecurity, and telecommunications law by creating a formal role for the High Level Group, expanding its mandate and membership and setting out guidelines for procurement of external technical expertise.

7. **Avoid regulatory duplication and streamline processes involving multiple regulators**, both internally between Commission DGs and externally vis-à-vis national competition authorities.

8. **In appropriate cases and following consultation, introduce substantive guidelines**, taking into account the diversity of gatekeeper business models and technical constraints, following comprehensive consultations with gatekeepers and other stakeholders.

These recommendations offer a clear roadmap to move closer to ensuring the DMA's effectiveness in achieving its objectives. By improving procedural fairness, mitigating legal risks, and fostering a more collaborative enforcement environment, the European Commission can enhance the effectiveness of the DMA while safeguarding the rights of gatekeepers and third-party users.

A. Structure and Methodology

1. The present report, commissioned by the Computer & Communications Industry Association (CCIA Europe), is structured into four parts. First, a description of the background to the study and an assessment of the legal framework and the procedural status quo of the DMA for gatekeepers and other stakeholders from the point of view of the DMA's text and the Commission's discretion to prioritise cases under CJEU case law (**Sections B and C**).

2. Second, the study will examine how these procedures operate in practice (**Section D**). In this regard, it draws on practical insights gathered from consultations conducted with a sample of gatekeepers and non-gatekeeper tech platforms between 2024 and 2025, as well as publicly available information.

3. Third, the study will appraise this input from a legal point of view, looking in particular at their compliance with fundamental rights and general principles of EU law (**Section E**), especially procedural risks to the rights of the defence.

4. The final section will offer actionable recommendations to improve the DMA's procedures and address the issues identified in the preceding sections to ensure the DMA is a regulatory success (**Section F**).

B. Background

5. As the EU Digital Markets Act (the "**DMA**" or the "**Regulation**") approaches its pivotal three-year legislative review in 2026, regulatory discussions have concentrated on the substantive gatekeeper obligations under Articles 5, 6, and 7. Industry stakeholders, policymakers, and legal practitioners are actively debating how these obligations should be interpreted, whether they effectively serve their purpose, and whether the DMA is achieving its core objectives of digital market contestability and fairness. However, a critical dimension of the DMA's effectiveness remains largely overlooked: its procedural framework.

6. The DMA's procedures play a crucial role in ensuring effective compliance. First, while the Regulation's substantive obligations are demanding, their application to each gatekeeper's unique service, business, operational, and technical model is not always straightforward. Consequently, dialogue and formal proceedings before the European Commission ("**Commission**") serve as the primary avenue for gatekeepers to obtain clarity on how to meet their compliance obligations effectively[2]. While many of the DMA's obligations were initially conceived of as a straightforward list of "dos and don'ts", this has proven not to be the case. Accordingly, its procedures, especially informal dialogue, have ended up playing a major role.

7. Second, procedural justice, respect for fundamental rights and general principles of EU law are cornerstones of the European Union's ("**EU**") legal order. It is well established that all acts of EU institutions (the Commission included) must uphold these principles or risk being annulled by the Court of Justice of the European Union (the "**CJEU**" or the "**Court**"). Therefore, ensuring sound procedures that align with these principles is essential for the Commission's effective enforcement of the DMA, preventing constant legal disputes before the CJEU and reinforcing its effectiveness.

8. Third, from a practical point of view, transparent procedures that allow interested parties fair opportunities to effectively contribute are more

likely to result in good regulatory outcomes and assist the Commission in meeting major challenges at this crucial early point in the DMA's lifecycle. It will ensure that any solutions imposed by the Commission both meet the DMA's aims of contestability and fairness in digital markets, while also respecting technical limitations and competing considerations (including fundamental rights).

9. Finally, fair procedures are essential to the DMA's reputational success, ensuring that Europe continues to be seen as "open for business" and a place to innovate.

10. This study aims to describe and evaluate the DMA's procedures from a legal and practical point of view, examining issues for both designated gatekeeper platforms and the smaller technology platforms the DMA is designed to benefit. Having completed this evaluation, it will then propose recommendations for improvements with the DMA's three-year review on the horizon in 2026.

C. The Procedural Status Quo

11. Understanding the DMA's procedural framework requires us to first examine how compliance obligations are structured under the Regulation. Since procedural mechanisms directly determine gatekeepers' ability to meet their substantive obligations, this section will first outline the DMA's compliance architecture before examining specific procedural tools and their practical application.

C-1. The DMA's Compliance Architecture

12. The DMA's compliance framework represents a significant departure from conventional EU enforcement mechanisms, particularly those employed in EU competition laws.[3] Unlike traditional ex-post enforcement regimes that place the burden of proof on regulatory authorities, the DMA establishes a system of ex ante regulation that requires gatekeepers to proactively demonstrate adherence to prescribed obligations.

13. This approach is characterised by several distinctive features that collectively create a novel regulatory paradigm. First, the Regulation mandates that gatekeepers comply with specified prohibitions and obligations "*fully and effectively*", establishing a standard that extends beyond mere formal compliance to encompass substantive effectiveness.[4] Second, gatekeepers bear the explicit obligation to "*ensure and demonstrate*" compliance, effectively inverting the traditional burden of proof. This obligation encompasses the implementation of remedial measures that must be "*effective in achieving the objectives of [the DMA] and of the relevant obligation [under Articles 5 – 7]*".[5]

14. Third, this regulatory framework requires systematic documentation and oversight mechanisms. A gatekeeper must submit compliance reports within six months of designation and annually thereafter, describing "*in a detailed and transparent manner the measures it has implemented to ensure compliance*".[6] These reports, whose non-confidential versions are publicly accessible,[7] serve both as accountability mechanisms and sources of regulatory intelligence. Additionally, the DMA mandates the establishment of independent internal compliance functions, institutionalising compliance oversight within gatekeeper organisations.[8] This compliance architecture creates what may be characterised as a system of "regulated self-regulation," wherein gatekeepers assume primary

responsibility for both achieving and evidencing compliance with regulatory objectives.

15. These arrangements produce two important consequences for the DMA's operational framework, with direct implications for dialogue and enforcement procedures:

    a) Burden of proof: The responsibility for proving compliance rests entirely on gatekeepers, who must positively demonstrate full and effective adherence to DMA obligations.

    b) Compliance solutions: The onus of designing and implementing effective compliance measures lies with gatekeepers, who must ensure these measures satisfy DMA objectives.

16. This configuration has been characterised as "*legally imposed self-regulation*" which both reverses the burden of proof and the "*burden of intervention*" onto gatekeepers.[9] However, a fundamental tension emerges: while gatekeepers bear responsibility for proving and implementing effective compliance, the ultimate interpretive authority remains with the Commission and, on appeal, the CJEU.

C-2. The Interpretation Challenge

17. This tension would prove manageable if the DMA's substantive obligations were relatively clear, with minimal interpretative gaps. The obligations contained in Articles 5 – 7 were conceived as self-executing (the Article 5 obligations so self-executing that they were not even included in the ambit of the Article 8 specification process – explained further in the next subsection).[10] Yet, over a year after the original compliance deadline and almost three years since the DMA's enactment, it has become evident that few, if any, of these substantive obligations are genuinely self-executing.

18. This interpretative complexity appears to stem largely from the Regulation's general, "one-size-fits-all" obligations, which, according to both gatekeepers and third-party technology platforms, do not readily translate to individual gatekeepers' diverse technical architectures, business models, customer requirements, or the specific needs of business users and other third-parties – the very constituencies the DMA is designed to benefit.[11]

19. Consequently, gatekeepers are heavily dependent on their interactions with the Commission – and therefore on the DMA's dialogue practices and enforcement procedures – to obtain some clarity on effective compliance pathways. Yet, the DMA's text grants the Commission considerable discretion in engaging in dialogue and initiating proceedings, creating a regulatory environment where compliance certainty depends substantially on Commission action.

C-3. Dialogue and Enforcement Procedures

20. The Regulation provides for various ways through which gatekeepers can obtain regulatory clarity to effectively comply with the substantive obligations:

    a) **Dialogue with the Commission**, either on a non-statutory basis, or on a statutory basis under Article 8(3) DMA[12] with a view to launching specification proceedings. Regarding non-statutory dialogue, the Commission expects gatekeepers "*to engage in a regular compliance dialogue with […] the Commission, including an ongoing reporting to the Commission, in*

particular when new compliance measures are elaborated and put into place and/or when events impact gatekeepers' compliance….";[13]

b) A procedure under Articles 8(2) and 20 DMA whereby the Commission specifies measures which the gatekeeper is to implement to effectively comply with Articles 6 and 7 DMA (the "**Specification Procedure" or "Specification Proceedings**"). In accordance with Article 13(7) DMA, the Commission may also open such proceedings where it believes a gatekeeper is attempting to circumvent the Articles 5 – 7 obligations (so-called "circumvention proceedings"). Otherwise, the Commission may open Specification Proceedings either on its own initiative under Article 8(2) DMA or at a gatekeeper's request following dialogue under Article 8(3) DMA; and

c) A procedure under Articles 29 and 20 DMA whereby the Commission investigates suspected non-compliance by the gatekeeper of the Articles 5 – 7 obligations, or other measures imposed by the Commission (the "**Non-Compliance Procedure**" or "**Non-Compliance Proceedings**").[14]

21. In practice, dialogue has had a prominent role for all gatekeepers thus far.[15] Some gatekeepers report frequent meetings with the Commission, while others have engaged in a large number of compliance workshops.[16]

22. The above mechanisms reveal several shortcomings. First, they underestimate the complexity inherent in implementing the DMA's substantive obligations within the specific context of each gatekeeper's business. This is particularly evident in the treatment of Article 5 obligations, which were thought to be so self-executing that they did not require formal specification decisions and were therefore excluded from the Specification Procedure. However, this assumption has proven fundamentally flawed. Article 5 obligations frequently present significant implementation challenges when applied to individual gatekeepers' specific technical architectures and business models, in clear contrast to the legislature's expectation of straightforward execution.

23. Second, the procedural timelines governing the Specification Procedure have proven to be unrealistic and insufficient for purposes of adding clarity for effective compliance. The current framework imposes a maximum six-month duration from opening of proceedings to the final decision of the Commission (the "**Specification Decision**").[17] However, the Commission is only obliged to communicate its preliminary findings to the gatekeeper within three months of opening proceedings,[18] at which point the gatekeeper may also gain access the proceedings' file.[19] This compressed timeline creates a fundamental structural problem: gatekeepers have merely three months to analyse preliminary findings, review case materials, and formulate comprehensive responses to complex technical and legal questions. As evidenced by publicly available information concerning the sole concluded Specification Proceeding at the time of writing, these timelines have proven insufficient for ensuring effective compliance.

24. By contrast, timelines are more flexible in respect of Non-Compliance Proceedings, with Article 29(2) providing that the Commission "***shall endeavour*** *to adopt its non-compliance*

decision within 12 months from the opening of proceedings […]" (emphasis added). Accordingly, the Commission is not bound to issue a decision within one year of commencing Non-Compliance Proceedings but must strive to do so. Indeed, in the three sets of Non-Compliance Proceedings concluded thus far, the Commission issued its decisions approximately one year and one month after proceedings were opened.[20]

25. Moreover, it is notable that the DMA omits any provision for the appointment of a hearing officer. Hearing officers play an important role in Commission antitrust and merger control investigations,[21] ensuring that parties' and complainants' procedural rights are respected[22] including the right to a fair, careful, and objective examination, as well as the right to be heard.[23] However, despite the clear similarities between DMA enforcement and antitrust investigations, neither the DMA nor the Implementing Regulation provides for the appointment of a hearing officer or an equivalent mechanism.[24]

26. Likewise, at no point does the DMA provide for an automatic right to an oral hearing, a common feature in extended merger control and antitrust investigations, generally overseen by a hearing officer.

C-4. Regulatory Division of Competences

27. An interesting feature of the DMA's administrative architecture is that it is enforced jointly by two directorates general ("**DGs**") within the Commission: the DG for Communications Networks, Content and Technology ("**DG Connect**") and the DG for Competition ("**DG COMP**").

28. Moreover, the DMA applies without prejudice to EU and national competition rules, bar a requirement that the application of those rules cannot affect gatekeepers' obligations under the DMA.[25] National competition authorities ("NCAs") may also, in accordance with national rules, be empowered to conduct investigations into non-compliance with Articles 5 – 7 DMA.[26] In practice, it is likely that the different units within DG COMP responsible for enforcing both DMA and competition rules in the digital sphere will cooperate closely to avoid investigative duplication. At national level, to avoid overlapping investigations,[27] the DMA requires NCAs to inform the Commission of the first formal investigative measure before or immediately after the investigation starts.[28] NCAs must also communicate any draft measures/remedies to the Commission no later than 30 days before they are adopted.[29] However, the Commission's opening of Non-Compliance Proceedings removes the NCAs' ability to conduct their own investigations into gatekeeper conduct for failure to comply with national competition rules and/or compliance with Articles 5 – 7 DMA.[30]

C-5. The Commission's Procedural Discretion

29. While dialogue and formal proceedings represent gatekeepers' only avenues for obtaining compliance clarity, the Commission still retains broad discretion over both mechanisms, creating significant uncertainty for gatekeepers and third-party business users.

30. Although regulatory dialogue is central to the DMA's practical operation,[31] it is only explicitly mentioned in the context of gatekeeper requests for Specification Proceedings under Article 8.[32] Even in this context, the Commission "*shall have discretion to engage in such a process.*"[33] Since dialogue typically occurs informally, the Commission operates without explicit procedural constraints, subject only to general

principles of "*equal treatment, proportionality and good administration.*"[34] Moreover, the initiation of Specification Proceedings is entirely within the Commission's discretion.[35] Although the gatekeeper during dialogue may request the Commission to initiate Specification Proceedings, the Commission is not obliged to act on such a request.[36] Likewise, the DMA is silent as to any criteria the Commission must meet in order to commence Specification Proceedings on its own initiative.

31. The DMA's wording is less explicit as to the level of the Commission's discretion to open Non-Compliance Proceedings. Article 29 is silent as to the conditions to be met before opening a Non-Compliance Investigation, while Article 20 simply states that "*[w]here the Commission intends to open proceedings with a view to the possible adoption of decisions pursuant to … [Article 29] … it shall adopt a decision opening proceedings*". In practice, it is understood that the Commission has the power to set its own priorities and is not obliged to commence Non-Compliance Proceedings within a particular timeframe.[37]

32. The Article 29 procedure must culminate in one of two decisions. Either the Commission issues a non-compliance decision under Article 29(1) or a decision closing proceedings under Article 29(7), although the effect of an Article 29(7) decision is unclear. Article 29(7) provides that "*[w]here the Commission* ***decides not to adopt a non-compliance decision****, it shall close the proceedings by a decision*" (emphasis added). On a literal reading, this falls short of a confirmation that the gatekeeper is compliant.[38]

33. Moreover, one interpretation of the DMA would permit the Commission to adopt an Article 29(7) decision where, for instance, the gatekeeper was non-compliant when the Commission commenced Proceedings but has since remedied the situation. Article 29(1) provides that the Commission "***shall*** *adopt … a non-compliance decision … where it finds that the gatekeeper* ***does not*** *comply….*" (emphasis added). The use of the words "*shall*" and "*does not*" (present tense) appear to indicate that the Commission is only obliged to issue a finding of non-compliance where the gatekeeper is currently non-compliant but also seem to grant the Commission discretion to issue an Article 29(7) decision in other situations such as where a gatekeeper was previously non-compliant but has since rectified this. In such circumstances however, the Commission would not be able to make commitments binding.[39]

34. It follows that the Commission has wide procedural discretion to provide clarity to gatekeepers via informal means; initiate formal proceedings; and conclude those proceedings in a way which grants clarity to gatekeepers.

35. However, this wide procedural discretion may also raise concerns from a policy perspective. The reliance on informal mechanisms and flexible procedures can lead to legal uncertainty for gatekeepers and other stakeholders. Moreover, such discretion could risk perceptions of inconsistent or politicised enforcement, potentially undermining trust in the regulatory process and the predictability of outcomes.

C-6. Discretion to Issue Guidelines

36. A further regulatory tool available to the Commission under the DMA is the issuance of guidelines and other soft law instruments, which can provide welcome clarity and certainty on the conduct of the various formal and informal procedures detailed above.

37. Article 47 DMA establishes that the Commission "may adopt guidelines on any of the aspects of this Regulation in order to facilitate its effective implementation and enforcement". The preamble moreover provides that "it should be possible for the Commission to develop guidelines to provide further guidance on different aspects" of the DMA "or to assist [gatekeepers] in the implementation of the obligations under [the DMA]".[40] However, the Regulation is explicit that the Commission should have wide (if not absolute) discretion on whether and how to issue such guidelines, stating that "issuing of any guidelines … is a prerogative and at the sole discretion of the Commission".[41]

38. Based on the foregoing, the Commission could address some of the procedural uncertainties through guidelines, particularly regarding dialogue processes and proceeding timelines. However, the issuance of such guidance remains a discretionary rather than a mandatory Commission function.

C-7. Third-Party Involvement

39. Third-parties, such as non-gatekeeper business users, manufacturers of connected devices, browsers, or consumer organisations, are involved in the regulatory process in a number of largely *ad-hoc*, discretionary and informal ways. For instance, the Commission organises annual compliance/technical workshops to gather stakeholders' views on issues and answer questions regarding each gatekeeper's implementing measures.[42] Any interested stakeholder may attend these. Moreover, the Commission regularly solicits views of third-parties on an ongoing basis as part of the compliance dialogue process to inform its discussions with gatekeepers. In addition, it consults non-gatekeeper business users, e.g., through requests for information ("**RFIs**"), questionnaires and public consultations as part of its formal proceedings.

40. However, under the DMA's text, the formal rights and roles of third-parties are not as expansive as their role in Commission practice would suggest. The DMA provides for third-parties' involvement in a number of ways:

a) In **non-compliance** decisions[43] the Commission "*may*" consult third-parties).

b) In **Specification** Proceedings, the Commission is obliged to publish non-confidential versions of its preliminary findings and proposed remedies to enable third-parties to comment.[44] It must provide the gatekeeper with such preliminary findings within three months of opening proceedings[45] and publish the non-confidential versions as soon as possible thereafter, if not concurrently.[46] The DMA does not oblige the Commission however to take third parties' comments into account, although it is in the Commission's interest to do so in order to test whether and to what extent the measures make digital markets fairer and more contestable.

c) Third-parties may also "*provide information*" about any practice or behaviour by gatekeepers to the Commission or national competent authorities under Article 27 DMA and the Commission has set up a **whistleblower tool** to this effect.[47] However, there is so far no formalised complaints mechanism. This contrasts with other fields such as State aid, where interested third-parties have a right to make

a complaint which the Commission must examine without undue delay.[48]

d) Article 22 DMA grants the Commission a general **power to interview** "any natural or legal person which consents to being interviewed, for the purpose of collecting information relating to the subject matter of an investigation."

41. In all instances, the DMA is silent as to the criteria for identifying which third-parties to involve, which can result in an imbalance in the selection of third-parties, any timeframe in which those third-parties should be consulted, and how information submitted by third-parties should be factored in and communicated to gatekeepers.

C-8. The Commission's Discretion in the light of EU Case Law

42. The Commission's discretion to clarify the DMA's substantive obligations through dialogue, to initiate proceedings and to take on board the views of third-parties is not only confirmed by the DMA's text, but also by the EU case law in analogous areas. For instance, such discretion can be inferred from the Commission's power to prioritise certain complaints over others in antitrust regulation.

43. The CJEU has repeatedly recognised that the Commission is entitled to establish its own enforcement priorities and give differing degrees of priority to complaints. In *Masterfoods*, the Court held that:

"It is for the Commission to adopt individual decisions in accordance with the procedural rules in force and to adopt exemption regulations. In order ***effectively to perform that task****, which necessarily entails complex economic assessments, it is* ***entitled to give differing degrees of priority to the complaints*** *brought before it."*[49] (emphasis added).

44. Moreover, in the context of enforcement by national competition authorities under the ECN+ Directive,[50] the CJEU recognised that this prioritisation discretion is intended to enable authorities to make efficient and effective use of their resources and to adequately deal with cases.[51] In this regard, it is worth highlighting that the DMA provides that the Commission should have sufficient resources to effectively perform its duties and exercise its powers under the Regulation.[52]

45. More generally, in *Automec*, the Court recognised that such prioritisation power is an inherent feature of the regulatory state:

"…in the case of an authority entrusted with a public service task, the power to take all the organizational measures necessary for the performance of that task, including setting priorities within the limits prescribed by the law – where those priorities have not been determined by the legislature – is an inherent feature of administrative activity. This must be the case in particular where an authority has been entrusted with a supervisory and regulatory task as extensive and general as that which has been assigned to the Commission in the field of competition."[53]

46. However, the case law equally makes clear that this discretion is not limitless, because, **as will be explained in detail in Section E below**, the Commission is bound by CJEU jurisprudence to respect general principles of EU law including fundamental rights, proportionality, legal certainty, legitimate expectations and institutional balance.

D. How DMA Procedures Work in Practice: Stakeholder Insights and Challenges

47. This Section will consider how the procedures under the DMA operate in practice. Such a practical understanding is crucial to appreciating the real-world impact that the DMA's procedural setup is having on gatekeepers and third-party technology platforms. To this end, the study has taken into account the input gathered from gatekeepers and other interested stakeholders through a survey (referred to as the "**Q&A**"), as well as publicly available information.[54]

48. Respondents provided their views and experiences of the procedural aspects of the DMA insofar as they were relevant to their businesses. Responses were received from gatekeepers, non-gatekeeper technology platforms who had participated in DMA proceedings as third-parties, and industry associations representing such third-parties.[55]

D-1. On the Commission's Discretion to Open Proceedings and Engage in Dialogue

49. Gatekeepers' sole means of clarifying how to effectively comply with the obligations in Articles 5 – 7 in the particular context of the gatekeeper's individual business are the informal dialogue mechanisms with the Commission, as well as the DMA's enforcement procedures. Yet, these opportunities largely remain subject to the Commission's wide discretion around engaging in dialogue and initiating such proceedings.

50. The lack of clarity around the DMA's substantive obligations has led to concerns that gatekeepers would be forced to engage in "overcompliance", i.e., going beyond what is necessary and proportionate to achieve the DMA's aims of effective compliance, with the consequent impact on the business.[56] Since the DMA passed into law, these concerns have been corroborated by gatekeepers. For instance, one Q&A respondent stated that lack of clarity forced it to:

"engage frequently with the Commission through multiple channels to seek feedback and clarification […]. Given the significant penalties for non-compliance and the uncertainty around certain implementation requirements, we have taken an expansive approach in certain areas that may result in overcompliance to ensure we meet our DMA obligations."

51. Some commentators have previously expressed concern that the Commission can tacitly accept gatekeepers' "overcompliance" measures without having to clarify what effective compliance with a particular obligation actually means.[57] This implies that gatekeepers do not know whether a particular obligation can be met by less restrictive means, with the added impact that the CJEU cannot correct the situation as there is no Commission decision to challenge.[58]

52. Q&A responses reported that commercial decisions had been delayed, deprioritised or slowed down due to uncertainty regarding the meaning of substantive obligations (which carry likely knock-on impacts for innovation and investment). While one respondent was less concerned about "overcompliance", it did however flag that the Commission frequently asks for new changes after many rounds of engagement. It noted that this practice had knock-on impacts for third-party business users, with whom that gatekeeper had to repeatedly consult on new proposed arrangements, which created "*confusion and fatigue*" for those users.

53. Indeed, confusion and fatigue among business users are not the only problems that result from the Commission's dialogue practices. One non-

gatekeeper respondent noted that "*ongoing uncertainty on what compliance looks like […] is negatively impacting [smaller platforms'] ability to plan their business and product development.*"[59] A gatekeeper similarly reported that ongoing engagement and uncertainty negatively impacts third-party technology providers, who are reluctant to change their own business models until they can get comfort that a gatekeeper's proposed changes meet the Commission's requirements.[60] Difficulties for third-party business users are especially notable because they are the very group for which the DMA aims to ensure contestability and fairness.

54. Gatekeepers further report that the Commission currently exercises broad procedural discretion when engaging in regulatory dialogue, with somewhat mixed views on the Commission's exercise of this discretion. One experience was that the Commission's current approach to dialogue had evolved. It noted that early in the process the Commission was reluctant to provide specific guidance on how provisions needed to be defined and implemented, taking the position that compliance was solely the gatekeeper's responsibility. While this stance seems to have evolved to allow more dialogue, greater openness from the Commission to engage on some implementation details would help achieve more effective compliance, particularly regarding how obligations apply to the gatekeeper's specific business model. The same respondent also felt that the Commission could give more context on implementation in some areas where it was looking closely at compliance designs.

55. Others had more negative experiences of the Commission's dialogue, with one explaining that the Commission's feedback was more limited than the respondent would like, with the Commission generally only pointing out practices it felt were non-compliant. Prolonged periods of silence on specific issues were also flagged. However, it was reported that the Commission would then sometimes revisit these issues unexpectedly after a prolonged period, raising previously unexpressed concerns without prior warning. Accordingly, such silence could not, apparently, be read as implicit approval. Further specific concerns included lack of recurrent feedback, short response timeframes and limited guidance on implementing specific obligations as well as expansive document requests where the Commission's compliance concern was not necessarily evident.

56. Gatekeepers also had mixed views on the compliance reporting process under Article 11 DMA. One found the process productive when coupled with broader dialogue, as it enabled stock taking meetings. By contrast, others reported that any dialogue arising from the compliance report had focused mainly on format and detail of the report rather than substance, and that the report was not a trigger for dialogue, but rather the result of it. One view was that the current reporting system was overly complex and burdensome, placing a significant administrative burden on gatekeepers by seeking a large amount of information and data which is not always necessary to demonstrate compliance with DMA obligations. It was also felt that it was inefficient for future compliance reports to restate all compliance measures given that they have already been outlined in previous compliance reports.

57. One gatekeeper complained that the Article 11 reporting process required information and data beyond what the DMA explicitly requires,

creating an unnecessary burden with no clear benefit for achieving compliance. In this regard, parallels may be drawn with the Commission's practices around RFIs, which, as noted above, often entail expansive document requests with no evident relation to the Commission's compliance concerns.

58. Q&A feedback also suggested that the dialogue process would benefit from a clearer and more formalised procedural framework setting the parameters for when the Commission would engage in dialogue, requesting information, the type of information/documents, response timelines and feedback mechanisms. Such an approach would allow for a structured yet flexible framework, one participant noted.

59. Moreover, a number of gatekeepers felt that informal dialogue could benefit from a greater degree of guidance and structure. They suggested that this could be done by more reasonable response timelines, clearer feedback mechanisms and documentation. An alternative view was that some flexibility was needed in regulatory dialogue to create a rapport with the regulator and avoid too many procedural wrangles, meaning the process should not be overly proceduralised.

60. At least some of the problems above in relation to dialogue may flow from the division of regulatory competences between DG COMP and DG Connect. Experiences on this aspect are detailed further below in Section D.5.

D-2. On the Inclusion of Third-Parties

61. Two major concerns were identified in the Q&A responses regarding inclusion of third-parties. First, both gatekeepers and non-gatekeepers alike expressed concern that the process lacked sufficient transparency, especially in identifying which third-parties to consult. Second, some respondents flagged the undue administrative burden for consultees, with unrealistic timelines repeatedly cited.

62. On the former concern, it was argued that the third-party consultation process was a "*black box*", with little clarity on how the Commission interacts with third-parties. Accordingly, there may be a danger that the Commission could end up consulting an insufficiently balanced cohort of players to the benefit of only the most activist business users. In this regard, it was noted that a small number of third-parties appear to have outsize impact at compliance workshops. Seemingly linked to this, gatekeepers have pointed to the fact that the Commission seeks compliance solutions which are unduly burdensome to gatekeepers' businesses or require high compliance costs despite limited demand (except, possibly, from a small number of third-party consultees).

63. Other feedback concluded that there had been circumstances where potential complaints raised by third-parties had been relayed to the gatekeeper without adequate context to enable the gatekeeper to respond effectively. To remedy the so-called "black box" problem, it was suggested that the Commission should adopt a more structured approach with clear parameters for third-party involvement and influence, which would thereby balance diverse perspectives with procedural efficiency and help gatekeepers better understand how third-party views may impact obligation interpretations.

64. As for the administrative burden, the same gatekeeper expressed concerns that third-party RFIs required considerable efforts to understand the data requested and identify the necessary information. Another respondent flagged that it

was often expected to respond to third-party RFIs "*on unduly short timelines.*"

65. One Q&A response cited an anecdote in which the Commission had launched a questionnaire as part of a Non-Compliance investigation but failed to send this questionnaire to any of one particular industry association's members. When contacted by the industry association asking the Commission to permit its members to participate, the Commission requested the association to share its members' email addresses by the end of the day if they wished to participate, something which was described as "*an unexpectedly tight deadline*". Further requests for clarification on the selection criteria for third-party consultation and additional time went unanswered. The authors submit that this anecdote, albeit potentially isolated, is particularly concerning and highlights the need to better structure the process for inclusion of third-parties to ensure transparency and equal treatment in the process.

66. The issues described above may lead to various negative knock-on effects for the DMA's regulatory success. First, the DMA is designed to ensure contestable and fair digital markets for the benefit of both business users and end users. Absent proper consultation with interested third-parties, the Commission may struggle to accurately assess the impact of both gatekeepers' pre-enforcement practices and proposed remedies on users.

67. Moreover, proposed changes to gatekeepers' businesses in order to comply with the DMA can have unintended negative consequences for third-parties' businesses, potentially putting them in a worse position than they were pre-DMA enforcement. Indeed, as one non-gatekeeper respondent flagged, consultation is important to assess the possible consequences, including unintended ones, of compliance plans for business users. This can have a particular impact on small and medium enterprises.

68. Some of these concerns are also corroborated by other third-party studies and surveys. A survey conducted by the Centre on Regulation in Europe ("**CERRE**") found that the Commission had been far more proactive in soliciting the views of one business user when compared to others CERRE surveyed.[61] Otherwise, most third-parties' interactions with the Commission had been initiated by the third-parties themselves.[62]

69. In light of the above, clear procedures detailing how the Commission will select third-parties for consultation and the timeline for consultations and responses would be welcome. Moreover, the Commission should commit to seeking a diversity of voices when consulting third-parties. In its annual report it should also cover measures it has taken to increase such diversity in its third-party consultations and produce statistics to document its progress in this regard. This will be further developed in Section F.3.

D-3. Practical Challenges Arising from the Procedures under the DMA

70. In response to the Q&A, a number of gatekeepers flagged that the framework for initiating proceedings lacked transparency on when and how the Commission decides to initiate proceedings, which, according to those respondents, creates uncertainty. Further procedural difficulties are evident from public information about the sole set Specification Proceedings which have concluded at the time of writing.[63]

71. As set out above, Specification Proceedings last six months from the date of initiation. However, the Commission must issue its preliminary findings only three months into this process, and only at this point may the gatekeeper also gain access to the file. The gatekeeper is left with an unrealistically short time in which to respond to the preliminary findings and supporting evidence. It will need to give the Commission adequate time to take its response fully on board and, ideally, engage in further rounds of discussions to ensure the decision respects technical limitations and other important constraints. The gatekeeper has thus as little as a few weeks to try to properly respond to the Commission's preliminary findings, which is basically impossible and, as will be discussed in Section E below, has seriously negative consequences for the rights of the defence.

72. Indeed, in the sole set Specification Proceedings which have concluded at the time of writing, the Commission opened proceedings on 19 September 2024,[64] issuing preliminary findings on 18 December 2024[65] and a final decision on 19 March 2025.[66]

73. It is worth noting that while other commentators have speculated that they "*expect that the opening of proceedings is likely to be preceded by extensive engagement between the Commission and gatekeeper*",[67] there is no legal requirement under the DMA for the Commission to engage in such a process. Nor has the Commission committed under publicly available statements or guidance to engaging in extensive engagement before opening proceedings. Such a process would, as further discussed below, alleviate many of these difficulties surrounding the Specification Procedure.

74. It was further reported in response to the Q&A that Specification Decisions have thus far tended to go beyond the letter of the DMA's text, especially the obligations envisaged in Article 6(3). Concern was thus expressed that the Commission was using the Specification Procedure to effectively rewrite the DMA's substantive obligations, without having to go through the normal legislative process.

75. Moreover, the Commission's Specification Decisions can cause serious problems for matters such as data access and interoperability. As further explained in Section D.5, the Commission lacks the technical expertise (and, in Specification Proceedings, the time to seek such expertise) to properly assess the impact of its proposed measures on these important competing goals.

D-4. On other Procedural Aspects

76. Finally, some respondents flagged that the DMA grants no specific right to an oral hearing, which might allow gatekeepers to make their views heard before a decision (such as a Specification Decision) is imposed. Relatedly, respondents expressed concerns with the absence of a hearing officer, both in the DMA and in the Implementing Regulation. As mentioned, in analogous proceedings such as competition and merger control investigations, such an officer's role is to ensure that the procedural rights of all parties involved are respected.

77. Respondents felt that this absence amounted to a serious curtailment of the right of defense, especially given the significant penalties potentially imposed by the Commission. Commentators have echoed this gatekeeper concern, especially in relation to the lack of a neutral third party who could balance different interests in matters such as:[68]

a) Time limits for complying with RFIs and responding to preliminary findings;

b) The exercise of the right to be informed of a matter's procedural status; and

c) Access to file and determinations on confidentiality of information submitted.

78. These commentators argue that not only does the exclusion of hearing officers from DMA proceedings remove a strong safeguard for the right of defence, but also for objective decision making and the trust of the parties in the procedure.[69]

D-5. Experiences of the Regulatory Division of Competences

79. Q&A responses seem to suggest that a number of the problems around RFIs described above stem from the regulatory division of competences. For instance, it was noted that while DG COMP follows traditional antitrust-inspired procedures, DG Connect does not, resulting in divergent approaches. In particular, a larger volume of RFIs typically originates from DG Connect, often issued without prior in-depth discussions on substance, in contrast to the more structured approach followed by DG COMP. This division is likely to result in duplication of workload for the Commission, as well as for gatekeepers.

80. Moreover, concerns were expressed that parallel investigations by the Commission and NCAs under national competition rules can undermine the uniform application of the DMA, resulting in regulatory fragmentation in the internal market. In this regard (as explained in Section C.4), it is worth noting that only when the Commission intends to commence Non-Compliance Proceedings can it prevent NCAs from taking further investigative action. This also drastically increases the regulatory burden on gatekeepers, who, in addition to responding to RFIs and engaging in dialogue with two separate Commission DGs, may also have to engage with multiple NCAs regarding the same matters.

D-6. Further Challenges Identified in the Q&A

81. Some gatekeepers proposed a "compliance presumption" as a way to ensure greater legal certainty. It was suggested that this could be somewhat inspired by block exemption regulations in analogous areas (namely Articles 101 and 107 TFEU). This is dealt with further in Sections E.6 and F.5 below.

82. Similarly, the possibility of a formal commitments or settlements procedure (as in EU competition law) was seen as beneficial by some gatekeepers. One highlighted the following benefits: 1) allowing gatekeepers to proactively address compliance through negotiated solutions; 2) enabling more flexible and practical implementation approaches while maintaining regulatory oversight; and 3) reducing administrative burden through streamlined resolution compared to formal enforcement proceedings. That respondent flagged that the current lack of such mechanisms can lead to prolonged uncertainty and less efficient compliance outcomes, which are open to challenge.

83. Additionally, a number of gatekeepers echoed concerns that DMA compliance may come at the expense of complying with other regulatory obligations,[70] but that the Commission lacks the appropriate technical knowledge and procedural and institutional tools to resolve such conflicts. In particular, the Commission's technical expertise is seriously limited when it comes to, e.g., data access and interoperability. While it

was noted that the Commission has in the past tendered for external studies on technical aspects of the DMA, it is not clear what the outcome of those studies had been and how they influenced the Commission's decision making.

E. Fundamental Rights and Fair Process Under the DMA: A Legal Analysis

E-1. Introduction

84. Current enforcement practices suggest that the Commission risks falling afoul of important legal limits to its discretion. This threatens the DMA's effectiveness by increasing the possibility of annulment actions and reducing the quality of substantive decisions (which are likely to improve if good procedures are followed). This in turn undermines the Commission's credibility with both current gatekeepers and the broader digital ecosystem.

85. The Commission's obligation to respect fundamental rights and general principles is well established in EU law, with case law recognising a wide procedural discretion. In Caronte, the CJEU held that in exercising its prioritisation discretion, a competition enforcer "*must ensure not only that EU competition law and the prosecution and punishment of infringements thereof are fully effective, but* ***also that fundamental rights are observed*** *[…].*"[71] (emphasis added). It is thus clear from the case law that, when applying its administrative discretion, the Commission must respect the rights of the defence of those under investigation. Moreover, it is also constrained by other general principles of EU law and fundamental rights such as legal certainty and legitimate expectations, proportionality, institutional balance, effective judicial protection, equal treatment and non-discrimination.

86. The DMA's text contains important acknowledgements of these fundamental rights in several places. For instance, Recital 80 provides that "*the Commission should have strong investigative and enforcement powers, to allow it to investigate, enforce and monitor the rules laid down in this Regulation, while at the same time ensuring the respect for the fundamental right to be heard and to have access to the file [...].*" Likewise, Article 8(3) stipulates that in considering whether and when to open Specification Proceedings, the Commission must respect the principles of equal treatment, proportionality and good administration as well as the duty to state reasons.[72] In addition, the right to be heard and access to file are specifically protected by Article 34 DMA, which provides that gatekeepers have a right to be heard on preliminary findings and any intended final measures.[73]

87. The following subsections assess some of the legal risks associated with the Commission's current procedural approach to enforcing the DMA, especially from the perspective of fundamental rights of the relevant stakeholders. In particular:

a) Gatekeepers' process rights in the conduct of DMA proceedings;

b) The impact of the Commission's current practices on conferral, institutional balance and proportionality;

c) Third-parties' right to equal treatment vis-à-vis one another in DMA proceedings, as well as the Commission's duty of openness when procuring insights from third-parties;

d) The interrelationship between, on one hand, the DMA and its current enforcement practices, and, on the other, competing

regulatory obligations and associated fundamental rights; and

e) The Commission's discretion to commence DMA proceedings and certainty for gatekeepers and third-parties.

E-2. Gatekeepers' Process Rights in the Conduct of DMA Proceedings

88. One concern identified in the previous sections is the extremely tight timelines involved in the Specification Procedure (and, to a lesser extent, the Non-Compliance Procedure) described above in Sections C.2 and D.3. These tight deadlines have an impact on gatekeepers' rights to be heard and the Commission's duty of care in conducting proceedings under the DMA.

The Right to be Heard from the Point of View of Gatekeepers

89. The right to be heard of individuals in proceedings which adversely affect them is of fundamental importance in EU administrative law and a long-recognised general principle under EU case law.[74] It is also protected under Article 41(2) of the EU Charter of Fundamental Rights (the "**Charter**"), which provides that every person has a right "*to be heard, before any individual measure which would affect him or her adversely is taken.*" Relatedly, Article 41(2) of the Charter also includes a right of access to file and a duty on administrative decision makers to state the reasons for their decisions. Pursuant to Article 6 of the Treaty on European Union ("**TEU**"), the Charter has the same legal value as the EU Treaties.

90. The right to be heard includes a right to "an exact and complete statement of the objections which the Commission [intends] to raise."[75] Moreover, the subject of administrative proceedings must "be placed in a position in which it may effectively make known its views on the observations submitted by interested third-parties"[76] and any other matters forming the basis for measures imposed by the Commission.[77]

91. Gatekeepers are entitled to be heard in Specification Proceedings in accordance with Article 41(2) of the Charter given that specification decisions are measures which directly and individually concern the gatekeeper and can affect the gatekeeper adversely. The tight timelines set out above in respect of Specification Proceedings may however significantly restrict gatekeepers' right to be heard. This is particularly the case where the Commission initiates Specification Proceedings ex officio under Article 8(2), rather than at the request of the gatekeeper under Article 8(3). In such a scenario, the gatekeeper may have little visibility of the Commission's concerns or the measures it is considering. It will only gain a comprehensive insight when the Commission issues its preliminary findings (with as little as three months left on the clock before the final decision must be issued). Moreover, a gatekeeper may have had little or no advance warning that the Commission intended to initiate such proceedings as there is no obligation under the DMA for the Commission to, e.g., enter into discussions before initiating Article 8(2) proceedings.

92. This is especially problematic as measures contemplated by the Commission in preliminary findings may not fully account for the technical and operational limits inherent in a gatekeeper's business, as well as their impact on competing regulatory obligations. By the time the Commission issues preliminary findings, with only three months left before it must adopt a final decision, the gatekeeper is left with a very short

period to: a) assess the impact of the proposed measures on business and end users, competing regulatory obligations and its own business model; b) assess the technical feasibility of the proposed measures, which the gatekeeper is in a unique position to do given its unparalleled familiarity with its own business; c) assess all the information and conclusions in the file; d) brainstorm changes to the proposed measures; and e) advocate convincingly for those changes and refute any adverse information contained in the file. The gatekeeper must complete all of this in sufficient time to allow the Commission to take the gatekeeper's views into account and approve changes to the proposed remedies, meaning in reality that the gatekeeper only has a few weeks to assess the proposals and advocate amendments. This is especially problematic when considered in light of the fact that, as set out above in Section C, the DMA's substantive obligations are generally not self-executing in the way the legislature conceived they would be.

93. This arrangement has serious implications for gatekeepers' right to be heard in Specification Proceedings. The right to be heard is not merely the right to make one's views known, but to make them **effectively known**.[78] Absent legislative amendments or changes in administrative practice (as proposed in Section F.1 below), Specification Proceedings, especially those conducted at the Commission's initiative under Article 8(2) DMA, risk breaching gatekeepers' right to be heard. This substantially increases the risk of an annulment action as well as suboptimal substantive regulatory outcomes.

The Duty of Care from the Point of View of Gatekeepers

94. The situation described above in respect of Article 8(2) also has knock-on effects for the Commission's duty of care (also called the "duty of careful and impartial examination" or "diligent and impartial examination"). Even though the Commission will usually strive to carefully examine any set of proceedings that come before it, the tight timelines involved in Specification Proceedings may simply make it impossible for the Commission to acquit itself of its duty of care.

95. The duty of care has deep roots in EU administrative law. The CJEU has, since its earliest jurisprudence, held that the Commission must exercise care in administrative proceedings, especially when making discretionary determinations in individual cases. For instance, in an early European Coal and Steel Community case concerning authorisation of coal selling agreements, the Court found that the then-High Authority was obliged to conduct a "*thorough examination*" when assessing an application for such authorisation.[79]

96. The duty of care requires the Commission to "*examine carefully and impartially all relevant aspects of the case in point…*"[80] and to ensure that all information submitted as part of an administrative procedure is "*considered with all the care required….*"[81] The duty can include an obligation to consult with experts having sufficient technical expertise to assess the merits of a case[82] and the Commission must ensure that it has the "*most complete and reliable information possible*" for its assessment.[83] In complex economic assessments (especially those involving forward looking analysis such as merger control), the principle requires that any evidence the Commission relies on is accurate, reliable and consistent and also contains all the evidence which must be taken into account in order to assess such a complex situation.[84]

97. Moreover, at least in the context of legislative (if not also administrative) measures, the duty of care may also entail an obligation to examine a measure's impact on collateral/competing rights and obligations by means of an impact assessment which entails an assessment of future effects and "*presupposes the taking into consideration of all the relevant factors and circumstances of the situation the act was intended to regulate.*"[85]

98. The current procedural and administrative setup of the Specification Procedure may make it very difficult for the Commission to discharge its duty of carefully considering all aspects of the case, especially where it initiates such proceedings of its own motion under Article 8(2). In particular, the Commission is able to initiate such proceedings with few or no prior discussions with the gatekeeper, meaning it is likely to lack complete information and insight into important aspects of the case, potentially until after the gatekeeper gives its views on the Commission's preliminary findings. It is only at this point that the Commission might be said to have the "*most complete and reliable information possible*".[86] Yet, even then, given the difficulties set out above that gatekeepers may experience in effectively exercising their right to be heard, as well as the fact that the DMA's substantive obligations are not as self-executing, the evidence available to the Commission may still fall short of this bar. For instance, the gatekeeper might raise technical points which the Commission is unable to properly assess unless it procures outside scientific expertise, which is likely to be extremely difficult in the short time available.

99. In any event, after receipt of the gatekeeper's views on its preliminary findings, there are likely to be only a few weeks left before the Commission must take its final decision. While the Commission may do its utmost to carefully examine all aspects of the information available to it, its ability to do is seriously constrained by the limited time available. At very least, this is likely to lead to flawed decisions, if not an increased risk of successful annulment action.

100. For these reasons, Section F.1 below proposes some improvements to the Specification Proceedings which the authors hope will ensure that gatekeepers' right to be heard is better respected and all ensure the Commission can carefully examine all matters with the full benefit of all relevant information. In doing so, the Commission may also arrive at better regulatory outcomes and reduce the risk of an annulment action.

E-3. Institutional Balance, Conferral and Proportionality in the Context of Specification Proceedings

101. Q&A feedback expressed concern that Specification Decisions may go way beyond the scope of the DMA's obligations, effectively rewriting the Regulation's text without going through the legislative process. Such a misuse of the Specification Process by the Commission has the potential to infringe core constitutional principles of EU law, and in particular those listed below.

Institutional Balance and Conferral

102. The principle of conferral is set out in Article 13(2) TEU, which provides that "each institution shall act within the limits of the powers conferred on it in the Treaties, and in conformity with the procedures, conditions and objectives set out in them […]." This, in turn, gives rise to the principle of institutional balance, "a key characteristic of the institutional structure of the EU" which "requires that each of the institutions exercise its

powers with due regard for the powers of the other institutions" which, if invoked, means that a matter is "of constitutional significance".[87]

103. In this respect, any attempt by the Commission to use the Specification Procedure as a "back door" amendment tool, risks breaching Article 13(2) TEU and the principle of institutional balance, as it goes counter the political agreement found between Commission, Council and Parliament, in accordance with the "ordinary legislative procedure" of Articles 289 and 294 TFEU.

104. Such behavior could lead to an **annulment action against Commission Specification Decisions** for breach of institutional balance, similarly to last year's landmark *Illumina/Grail* case, where the Court struck down a novel and expansive interpretation of the jurisdictional provisions of the EU's merger control rules, in large part for failing to respect the principle of institutional balance.[88]

Proportionality

105. The proportionality principle has gained explicit constitutional recognition via the EU Treaties, which provide that "*[u]nder the principle of proportionality, the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties*"[89] and require the EU Institutions to "*ensure constant respect*" for the principle.[90] Respect for the principle is central to the DMA's text, which specifically provides that the Commission must ensure that Specification measures are "proportionate in the specific circumstances of the gatekeeper and the relevant service."[91]

106. EU acts that fail to meet a proportionality test are liable to be struck down by the CJEU. A proportionality test is composed of up to three criteria:[92]

a) The measure in question is **appropriate** or **suitable** to achieve a **legitimate objective**;

b) In a choice between appropriate measures capable of achieving the objective, the measure constitutes the **least restrictive means** of achieving this objective (i.e., it "**does not go beyond what is necessary**"); and

c) The measure is not manifestly disproportionate (or sometimes "manifestly inappropriate") to the aims pursued.

107. Admittedly, the Court rarely applies the second criterion to acts of the EU institutions (especially where the institutions enjoy wide discretion).[93] However, this is not always the case,[94] and the Court has also applied this second limb to Commission decisions in the competition law sphere.[95]

108. Specification Decisions which "push the limits" of the letter of the law are likely to breach the proportionality principle, as they may go beyond what is necessary to achieve the Regulation's objectives. In taking an expansive approach to defining gatekeepers' obligations as part of the Specification Process therefore, the Commission substantially increases its legal exposure.

E-4. Third-parties in DMA Proceedings and General Principles of EU Law

109. As explained in Section D.2, the process for consulting third-parties in the DMA's procedures has been criticised for lacking sufficient transparency in terms of how the Commission identifies which third-parties to consult, with the Commission appearing to be more proactive in

consulting certain third-parties over others. Where third-parties do wish to make their views known, there is some anecdotal evidence of the Commission making it difficult (although not impossible) for certain third parties to do so.[96]

110. This "black box", where certain third-parties may be favoured over others when it comes to Commission consultations, may have implications for important principles such as equal treatment, non-discrimination, transparency and openness.

Equal Treatment and Non-Discrimination

111. The Commission's current practices when including third-parties risk falling afoul of the principle of equal treatment and non-discrimination,[97] as established under Articles 20 and 21 of the Charter, as well as in the Charter's preamble.[98] According to long-settled case law, the principles of equal treatment and non-discrimination require simply that "*comparable situations must not be treated differently and that different situations must not be treated in the same way unless such treatment is objectively justified*".[99] Thus, otherwise-potentially discriminatory practices can be upheld if they can be objectively justified.

112. The Commission's current procedural approach to consulting third-parties, in particular its apparent practices of consulting certain third-parties more intensively than others, risk breaching the principle of equal treatment. Moreover, the evidence set out in Section D.2 of the Commission's failure to answer requests for clarification on selection criteria for consulting third-parties as well as an extension of time further adds to this risk.

113. As set out in Section F.3, the Commission could substantially reduce this risk by adopting procedures (including procedural guidelines) to make the process for third-party consultation clearer and more well-defined.

Transparency and Openness

114. The Commission's consultation practices may also be criticised from the point of view of administrative openness as established in the EU Treaties. Article 1 TEU refers to decisions being "*taken as openly as possible and as closely as possible to the citizen*" while Article 10(3) TEU reiterates this, providing that decisions "*shall be taken as openly and as closely as possible to the citizen.*" In addition, Article 15(1) TFEU requires that the EU's "*institutions, bodies, offices and agencies shall conduct their work as openly as possible.*"

115. The CJEU has recognised on a number of occasions that the principle applies in EU administrative matters involving the Commission and EU agencies.[100] The Court has repeatedly emphasised that openness enables the EU institutions to have greater legitimacy and to be more effective and accountable in a democratic system.[101]

116. As explained above, the Commission's practice of choosing which third-parties to consult and how intensively to consult them has been described as something of a "black box", with third-parties in the dark as to how the Commission makes such decisions. Moreover, it is unclear how third-party feedback factors into the Commission's conclusions on substantive issues. Therefore, the Commission's current practices in its dealings with gatekeepers seem to be falling short of the ideal of openness under the Treaty.

117. The Commission could remedy this substantially by adopting procedures and guidance on the

role of third-parties in DMA regulatory dialogue and proceedings, as set out in Section F.3 below.

E-5. Competing Regulatory Obligations and Associated Fundamental Rights

118. While this study focuses on procedural rather than substantive aspects of DMA enforcement, regulatory conflicts merit brief consideration. One survey respondent raised concerns that Commission-proposed solutions may conflict with other EU regulatory obligations, including data protection, telecommunications, and cybersecurity requirements. This concern has also been noted by public commentators, particularly regarding cybersecurity tensions.[102] It is therefore appropriate to consider whether the Commission has the adequate procedural and institutional tools for resolving such conflicts under the DMA.

119. Conflicting regulatory obligations are nothing new in the EU regulatory landscape. In fact, such conflicts were explicitly considered by the EU legislature in drafting the DMA. For instance, Article 8(1) requires gatekeepers to ensure that their compliance measures do not conflict with applicable EU data protection, privacy, cyber security, consumer protection, product safety and access laws. The DMA provides that, in facilitating interoperability, **gatekeepers** should ensure that any measures they take do not undermine a high level of security and data protection.[103] Moreover, the DMA provides that gatekeepers may implement certain measures to protect security in relation to third-party apps and app stores, provided they are strictly necessary and justified.[104]

120. Despite these provisions, there is no corresponding obligation on the Commission case teams to factor these competing obligations into their assessments and the DMA lacks any regulatory mechanism for resolving conflicts that may arise in specific cases. This is important as there is no guarantee that Commission case teams responsible for enforcing the DMA will be sufficiently familiar with competing regulatory obligations to resolve conflicts. Moreover, they may, quite understandably, see enforcement of the DMA and its regulatory objectives (contestability and fairness in digital markets) as their priority. Similarly, case teams may also lack appropriate scientific expertise to assess the consequences of their proposed measures for, e.g., cybersecurity at the technical level. Consequently, there is a risk that conflicting regulatory obligations and technical constraints may not be sufficiently factored into their assessment.

121. It is true that the DMA High-Level Group (the "**High-Level Group**") established under Article 40 DMA[105] may "*identify and assess the current and potential interactions*" between the DMA and certain sector-specific regulations including data protection, telecommunications, competition, consumer protection and audiovisual media regulation.[106] The High-Level Group comprises representatives from EU agencies as well as pan-EU bodies representing national regulators in spheres such as telecommunications regulation,[107] data protection,[108] competition enforcement,[109] consumer protection,[110] and audiovisual media regulation,[111] but notably not specifically cybersecurity.[112]

122. However, the High-Level Group currently has no direct role in DMA procedures. Rather, its primary role is to provide general advice and recommendations (including a report to the Commission, Parliament and Council) for

consistent interdisciplinary approaches to regulation insofar as those concern the DMA.[113]

123. The lack of a robust mechanism for solving such conflicts increases the Commission's exposure to legal action. In particular, some potentially competing regulatory obligations protect important fundamental rights under the Charter, such as protection of personal data,[114] right to respect for private life [115]and the right to a high level of consumer protection.[116] For this reason, a new role for the High-Level Group in resolving conflicts between regulatory obligations in specific cases will be proposed and discussed in Section F.6. In addition, Section F.6 will propose a number of other ways to increase and improve the range of technical expertise the Commission has at its disposal when making decisions that impact matters such as cybersecurity and data protection.

E-6. The Commission's Discretion to Commence Proceedings and Legal Certainty for Gatekeepers

124. As described above, the Commission's wide discretion to open proceedings is a matter of some concern to gatekeepers, especially those who wish to avoid a scenario in which the Commission can, e.g., fail to raise any concerns for several years about a gatekeeper practice of which the Commission is aware, only to take issue with it some years down the line and commence proceedings, considered further in Section F.5.

125. However, the authors submit that general principles of EU law (especially the right to a decision within reasonable time – see below) may nonetheless limit the Commission's discretion to open proceedings over practices of which it has been aware for several years. However, how exactly this could apply in the context of the DMA will not be clear until the matter is litigated before the CJEU. The substantial uncertainty brought here could be remedied significantly by recognising a procedural compliance presumption and/or adopting a compliance certification process, as further set out in Section F.5.

126. The right to a decision within a reasonable time is guaranteed both as part of the right to good administration, and as a corollary of the principles of legal certainty and legitimate expectations. Article 41 of the Charter, which guarantees the right to good administration, provides that "*[e]veryone has the right to have his or her affairs handled […] within a reasonable time by the institutions and bodies of the Union.*"

127. Moreover, the CJEU's case law makes clear that the right to a decision within a reasonable time is also grounded in the principles of legal certainty and protection of legitimate expectations.[117] In the early case of Geigy, the Court held that "*in the absence of any [statutory time limits] … the fundamental requirement of legal certainty has the effect of preventing the Commission from indefinitely delaying the exercise of its power…*"[118] (in that case, the power to impose antitrust fines). Later case law broadened the obligation to a requirement to act within a reasonable time. The Court has therefore repeatedly held that:

"there is an obligation to act within a reasonable time in all cases where, in the absence of any statutory rule, the principles of legal certainty or the protection of legitimate expectations preclude the EU institutions and natural or legal persons from acting without any time limits, thereby threatening, inter alia, to undermine the

stability of legal positions already acquired […].”[119]

128. The Court has however made clear that this right only applies absent a statutory time limit. Where the Commission acts within the relevant statutory time limit, a person cannot claim that their right to have their affairs handled within a reasonable time was disregarded.[120] In determining whether a particular period was reasonable or unreasonable, the Court will consider a number of factors including “*the **background** to the case, the various **procedural stages** followed, the **complexity** of the case and its **importance** for the various parties involved.*”[121] (Emphasis added.)

129. Failure to take decisions within a reasonable time can create a legitimate expectation which may be sufficient to annul Commission acts. For instance, in RSV, the Court found that an unjustified delay of 26 months was sufficient to give rise to a legitimate expectation that the Commission would not order a refund of certain unlawfully granted State aid.[122] It accordingly annulled the Commission’s decision.

130. Neither the DMA nor its procedural implementing regulation[123] contain statutory time limits for the initiation of any types of proceedings under the DMA, the exception being the procedure for designating gatekeepers.[124] The DMA’s peculiar enforcement setup could create particular risks from the point of view of the requirement to take decisions within a reasonable period. As detailed above, once designated as a gatekeeper, some commentators argue that a gatekeeper can be seen as procedurally akin to a person under investigation in traditional enforcement proceedings (e.g., in the same position as an undertaking in receipt of a statement of objections in an antitrust investigation).[125] There is an argument therefore that the Commission’s obligation to take certain decisions within a reasonable period could apply from the moment of designation onwards. Moreover, it is worth noting that, in antitrust, the duration of an infringement is a key parameter for assessing the amount of a fine.[126] Accordingly, gatekeepers could be unfairly penalised for the Commission’s own failure to commence proceedings within a reasonable period, a situation which might increase litigation risk for the Commission and strengthen the gatekeeper’s case before the CJEU that the Commission had breached its obligation to commence proceedings within a reasonable period.

131. To take a hypothetical example, suppose a gatekeeper has included in its annual compliance report a particular practice which it believes is DMA-compliant. This practice does not change over several years. Sometime after the third compliance report, the Commission decides to initiate Non-Compliance Proceedings regarding this particular practice. A gatekeeper could make a plausible case that the Commission’s failure to initiate Non-Compliance Proceedings gave rise to a legitimate expectation that its practice was compliant with the DMA in accordance with the CJEU’s *RSV* decision, and that the launch of Non-Compliance Proceedings at a late stage would breach the principle of legal certainty and the right to good administration, while doubly penalising it for allowing the infringement to last longer than it could have, thereby increasing the amount of any fine.

132. The Commission could eliminate this uncertainty through two mechanisms: recognising a

compliance presumption for gatekeepers who meet specified criteria and/or establishing a formal compliance certification process (detailed in Section F.5). Either approach would provide much-needed certainty to both gatekeepers and the Commission rather than relying on eventual CJEU interpretation to determine what constitutes a "reasonable period" – a determination that may emerge only after years of litigation.

F. Recommendations

133. This section presents concrete recommendations to address the procedural shortcomings identified above and thereby ensure the respect for principles such as right of defence,, legal certainty, proportionality, legitimate expectations and institutional balance. While these proposals will benefit all stakeholders – gatekeepers, third-parties, and the Commission – their primary purpose extends beyond stakeholder interests. Procedural safeguards exist fundamentally to uphold the rule of law and protect institutional legitimacy. For the Commission, robust procedural frameworks will strengthen the legal foundation of DMA enforcement, reduce litigation risks, and ensure more defensible regulatory outcomes.

134. The Commission would particularly benefit through reduced annulment risks and enhanced reputation as a rigorous, fair enforcer. Gatekeepers would gain greater procedural certainty and stronger protection of fundamental rights. More fundamentally, improved procedures are likely to yield better substantive decisions and facilitate effective compliance, ultimately ensuring the DMA's regulatory success.

135. The following section presents eight specific recommendations to address these challenges, along with proposed implementation mechanisms – whether through legislative amendments to the DMA, delegated or implementing acts, formal guidance in the Official Journal, or informal Commission guidance.

F-1. Recommendation 1: Improve Enforcement Proceedings

136. The above legal analysis reveals significant procedural shortcomings in the Commission's DMA enforcement powers and practices. The Specification Process operates under unrealistically compressed timelines that undermine gatekeepers' fundamental procedural rights while increasing the risk of suboptimal substantive outcomes. These problems stem from a critical timing defect: the Commission issues preliminary findings with only three months remaining before the final decision deadline, simultaneously granting gatekeepers their first access to the file and the opportunity to respond to its preliminary findings. This compressed timeline proves particularly problematic in Article 8(2) proceedings initiated solely at the Commission's discretion.

137. This situation can be improved in several ways. For instance, the EU legislature could amend Article 8 to either extend statutory timelines or introduce a "stop-the-clock" mechanism enabling the Commission to suspend deadlines when circumstances warrant. We recommend that gatekeepers should have the right to request such suspension where compelling reasons exist – for instance, when proposed Commission solutions prove technically unworkable within the gatekeeper's operational framework. A "stop-the-clock" mechanism would be particularly useful where the Commission requires outside scientific and technical expertise, e.g., to assess the impact of proposed

changes on data access and interoperability obligations at the technical level.

138. Alternatively, the Commission could address these issues by issuing procedural guidelines around the use of the Specification Procedure. Such guidelines could establish commitments to engage in comprehensive dialogue with gatekeepers and third-parties before initiating proceedings, and to ensure issues are sufficiently crystallized so that the Specification Process begins with clear parameters.

139. This approach would enable the Commission to issue preliminary findings and grant file access much earlier – potentially within days of opening proceedings. The Commission could commit to initiating proceedings only when it has developed clear preliminary findings, which could then be issued immediately upon commencing the Specification Procedure. This approach would effectively double the available time for both parties to develop feasible solutions that meet the Commission's objectives while respecting gatekeepers' business, technical, and regulatory constraints.

140. Beyond timing reforms, greater transparency regarding the factors triggering both Specification and Non-Compliance Proceedings would benefit all stakeholders by reducing uncertainty. Such clarity might also encourage gatekeepers to proactively request Specification Proceedings – an option most have thus far avoided.[127]

141. If there is a choice between instruments, guidelines offer certain advantages over legislative amendments. The Commission could craft and implement changes swiftly without risking unexpected modifications during the legislative process. Guidelines provide flexibility for future revisions while still creating enforceable expectations. The CJEU has confirmed that Commission guidelines create binding obligations through the principles of equal treatment and legitimate expectations, preventing arbitrary departures from published standards.[128] This framework would provide gatekeepers and third-parties with reliable guidance while preserving necessary regulatory flexibility.

142. Separately, as discussed in Sections D.3 and E.3 above, Q&A respondents have expressed concerns that the Specification Procedure is being used to effectively amend the DMA's substantive obligations "by the back door". In doing so, the Commission risks breaching key constitutional principles of EU law including conferral, institutional balance, and proportionality, thereby increasing the legal risk of an annulment action. This could be remedied by setting out clear guidelines for case teams in drafting Specification Decisions. Under such guidelines, the Commission could commit to explaining (perhaps in its statement of reasons) how each Specification measure individually and specifically falls within the ambit of the obligations envisaged by the EU legislature in the DMA's text. This would have the dual effect of ensuring that Specification Decisions both respect the principles of institutional balance and conferral while simultaneously ensuring that they are proportionate to achieve the Regulation's objectives.

F-2. Recommendation 2: Develop Guidance on Dialogue with Gatekeepers

143. Regulatory dialogue seems the Commission's preferred enforcement tool,[129] and it is central to gatekeepers in understanding how to effectively comply with the DMA. Yet, as set out in Section D.1, gatekeepers face challenges including expansive information requests (where the

Commission's compliance concern is not apparent), coupled with unrealistic response deadlines and lengthy dialogue process, with no prior indication of the Commission's concerns, despite which the Commission declines to articulate clear legal positions, among other problems.

144. There are different aspects to consider in relation to formalising the dialogue process. A clear procedural framework establishing when the Commission would initiate dialogue, applicable timelines, and feedback mechanisms would create predictability while maintaining necessary flexibility.

145. A balanced approach would involve publishing Commission "best practices" addressing the elements outlined in paragraph 150. These would represent the Commission's standard approach without creating binding procedural obligations in every case. This framework would improve dialogue processes while minimising the risk of procedural litigation. Publishing such guidance on the Commission's website – rather than in the Official Journal – would strike an appropriate balance between providing useful direction and preserving operational flexibility.

F-3. Recommendation 3: Develop Procedural Guidelines on the Inclusion of Third-parties

146. As set out above, the Commission's practices around consulting third-parties have been described as something of a "black box" which lack transparency, both in terms of how the Commission chooses which third-parties to consult and how intensively to consult them, but also how those third-parties' feedback factors into the Commission's decision making. As set out in Section E.3, present practices risk breaching the right to equal treatment and the Commission's duty of openness. Instead, the Commission should aim for a structured and inclusive process which yields diverse perspectives.

147. This could be achieved (and the above risks could be substantially averted) if the Commission adopted clear guidance on the consultation of third-parties. Such practices could cover matters such as:

a) Factors for identifying which third-parties to consult;

b) Procedures for dealing with requests by third-parties to contribute to consultations to ensure that all third-parties are treated equally and fairly; and

c) Clear guidance on how third-parties' input is evaluated and incorporated into the Commission's regulatory decision-making.

148. In its guidance, the Commission could also commit to proactive measures to ensure diversity of third-party voices. The guidelines should also set out the factors indicating diversity. Such factors might include:

a) Size of the third-party organisation (small, medium or large);

b) The organisation's objectives (e.g. a business, civil society organisation representing businesses of a particular size, or a civil society organisation representing non-business interests); and

c) The organisation's footprint in the EU (e.g., has the Commission consulted potential competitors in the EU who are not yet majorly active).

149. The above changes would both reduce the risk of legal challenges to the Commission's

enforcement practices while also ensuring the equal treatment of all third-parties vis-à-vis one another (these parties being the very players for whom the DMA is designed to ensure contestability and fairness). In doing so, they would go some way to ensuring a diverse, open and collaborative regulatory process between the Commission, gatekeepers and third-parties which would ultimately result in good substantive outcomes.

F-4. Recommendation 4: Introduce Hearing Officers and Procedural Guidelines

150. As highlighted in Sections C.3 and D.4, the DMA differs from merger control and antitrust investigations, in that it offers neither access to a hearing officer nor the opportunity for an oral hearing.

151. Although the CJEU has held that oral hearings are not a mandatory component of the right to be heard,[130] a properly held oral hearing coupled with an objective and impartial hearing officer could be an important safeguard for the Commission against allegations that gatekeepers' (or third-parties') procedural rights had been breached. Moreover, an oral hearing might increase gatekeeper trust in the process and allow it to fully convey concerns around, e.g., implications for conflicting regulatory obligations (especially as officials from other interested DGs and EU agencies as well as member states often attend oral hearings).[131]

152. The authors recommend therefore that the Commission introduce a right to an oral hearing before it takes a final decision on substantive aspects of the DMA, including Specification and Non-Compliance Proceedings (as well as other such proceedings like systematic non-compliance proceedings under Article 18). The Commission should also consider whether a hearing officer may have a role to govern procedural aspects of the dialogue process (such as RFIs).

F-5. Recommendation 5: Introduce a Compliance Presumption, Commitments and/or Compliance Certification

Compliance Presumption

153. As noted above, it was suggested as part of the Q&A that the Commission should develop a compliance presumption regime. Under this approach, companies that align with pre-set Commission guidance on specific elements of the DMA's obligations would be deemed compliant (effectively shifting the burden of proof away from gatekeepers). This regime could possibly be modelled off the system of block exemptions in state aid (Article 107 TFEU) and antitrust (Article 101 TFEU) law. This section will recommend how such a compliance presumption could operate in practice, looking at both procedural and substantive aspects.

154. Block exemption regulations can be seen to form part of a corpus of substantive presumptions in competition law.[132] Legal presumptions are common features of EU administrative law, including in competition enforcement.[133] For instance, failure by the Commission to adopt a merger decision by the relevant deadline means a merger is deemed approved.[134]

155. Accordingly, a DMA compliance presumption regime could be two-pronged:

a) **Substantive presumption of compliance**: the Commission could provide guidelines setting out specific criteria and situations that are clearly DMA-compliant with respect to certain substantive obligations.. Such a system would be similar to its approach in

block exemption regulations under Articles 101 and 107 TFEU. This would reduce the likelihood of burdensome dialogue for both Commission and gatekeepers;

b) **Procedural presumption of compliance**: Such presumption would act like a "statute of limitations", whereby, if the Commission is aware of a particular gatekeeper practice for a particular number of years and raises no objections to it, it may not open Non-Compliance (and possibly Specification) Proceedings against that practice. In recognising such a procedural presumption, the Commission would ensure respect for the right to a decision within a reasonable period of time as set out in Section E.6 above, thereby reducing litigation risk. It would also create greater legal certainty for all given that, absent a specified statutory time limit, the concept of a "reasonable period" must be assessed case-by-case under the CJEU's case law.

Commitments/Compliance Certification

156. Relatedly, a formal commitments or compliance certification process (akin to remedies proposals in antitrust or merger control) could also serve the same purpose as a compliance presumption in bringing about greater legal certainty for gatekeepers. Such a mechanism would allow gatekeepers to proactively address compliance through negotiated solutions, enabling more flexible and practical implementation approaches while maintaining regulatory oversight and reducing the administrative burden compared to formal enforcement proceedings.

157. At present, the DMA provides for such commitments only in respect of proceedings for systematic non-compliance under Article 18 DMA, but not in respect of ordinary Non-Compliance Proceedings under Article 29.[135] This creates a scenario of procedural inconsistency, with implications also for the proportionality principle.

158. A broader commitments regime would thus be welcomed as it would provide the necessary certainty for gatekeepers and third-parties alike to make changes to their respective business models, thereby safeguarding innovation and investment. Indeed, as noted above, ongoing uncertainty around DMA compliance has made it difficult not just for gatekeepers, but also smaller technology platforms (for whom the DMA is intended to benefit) to make the necessary changes to their businesses.

159. Legislative amendment represents the optimal approach for expanding the commitments regime, providing explicit statutory authority and ensuring uniform treatment of all Commission-recognized commitments.

F-6. Recommendation 6: Introduce Institutional Tools for Solving Regulatory Conflicts

160. Finally, as noted above, although regulatory conflicts between the DMA and competing obligations under EU law such as data protection and cybersecurity are foreseen by the DMA's text, the Regulation essentially leaves the resolution of those to the gatekeeper alone at an individual level.[136] Where Commission case teams responsible for enforcing the DMA seek solutions which have a detrimental effect on competing obligations, the DMA lacks any mechanism for resolving such conflicts.

161. The role of the DMA High-Level Group could be expanded to help resolve such conflicts in individual cases. In particular, gatekeepers should be given the right to seek an opinion of

the High-Level Group in certain circumstances. For instance, where a gatekeeper is concerned that measures suggested during regulatory dialogue or contemplated by the Commission in preliminary findings (whether in Specification, Non-Compliance or other Proceedings) may conflict with other regulatory obligations, the gatekeeper could request an opinion from the High-Level Group. Such an opinion procedure would have to be accompanied by appropriate mechanisms for "stopping the clock" on any applicable enforcement proceedings. However, it is important that the High-Level Group be required to limit its assessment to the conflict in question and not introduce new issues which were not raised by the gatekeeper.

162. As suggested by some commentators,[137] the composition of the High-Level Group should also be expanded to include EU and national cybersecurity authorities, especially the EU Agency for Cybersecurity ("**ENISA**"). While telecommunications and data protection regulators are represented and may exercise certain functions in respect of cybersecurity enforcement, ENISA's particular expertise and pan-EU role in ensuring cybersecurity makes a compelling case for its inclusion in the High-Level Group to ensure that there is appropriate knowledge to resolve conflicts between cybersecurity laws and the DMA. This is in particular the case given that cybersecurity is one of the major challenges to implementing DMA measures.

163. Finally, to ensure that it has the appropriate resources and dedicated personnel with a clear mandate, the High-Level Group could set up a conflicts committee specifically for this purpose. This would also ensure that case-specific conflicts do not distract from its broader functions. This conflicts committee could be composed of seconded personnel from appropriate regulators, many of whom may already have sufficient expertise in dealing with different areas of law (for instance, many national and EU-level telecommunications regulators will have experience dealing with competition law concepts, especially in cases concerning significant market power).[138]

164. A procedure such as this could substantially reduce the risk of legal challenges based on conflict with other regulatory obligations and their associated fundamental rights. It would thereby assure the DMA's regulatory and reputational success while ensuring that the EU remains a good place to do business with a high level of protection of cybersecurity, privacy personal data and consumer protection, among other matters.

165. Relatedly, the Commission should take steps to increase and improve the technical expertise that forms part of its decision making, especially in relation to matters such as data access and interoperability. One way of doing this could be to adopt guidelines governing whether and how the Commission will seek external technical expertise, committing to publishing any expert reports and giving gatekeepers opportunities to make their views known on the content of these reports. In this regard, the Commission could commit to seeking advice in certain circumstances from the Commission's science and knowledge service, the Joint Research Centre ("**JRC**"), as well as national regulatory authorities (either directly or as part of the HLG) on matters concerning data protection and cybersecurity (in addition to tendering for reports from private sector external experts). In this regard, it is worth noting that the duty of careful examination can include a duty to consult experts, as mentioned in Section E.2.

Accordingly, such practices and procedures are liable to reduce the litigation risk to the Commission.

166. In terms of choice of instrument, most of these changes could again be made by guidelines which gatekeepers could rely on via the doctrine of legitimate expectations. Indeed, Article 40(5), which provides that the High-Level Group may give "advice and recommendations within their expertise relevant for any general matter of implementation or enforcement of [the DMA]" and "advice and expertise promoting a consistent regulatory approach across different regulatory instruments" seems to be broad enough to give it a sufficient mandate to give opinions on conflicts between different regulations and the DMA in specific cases. The Commission could supplement this by setting out the circumstances in which it will consult the High-Level Group on regulatory conflicts, as well as committing to taking the views of the High-Level Group on board in any final decision. Likewise, guidelines are an appropriate avenue for making the above changes in respect of seeking external technical expertise (including from the JRC), where the Commission can lay out the conditions under which it will seek such expertise, publish the expertise and give gatekeepers the chance to make their views known on the expert report.

F-7. Recommendation 7: Avoid Regulatory Duplication and Streamline Processes Involving Multiple Regulators

167. Regulatory duplication can arise in two contexts, both of which are covered in Sections C.4 and D.4 above:

a) Duplication between DG Connect and DG COMP (e.g., asking for the same information twice while taking different approaches to investigation structure); and

b) Duplication between the Commission and NCAs where they conduct parallel investigations into the same gatekeeper conduct.

168. It is worth noting that DG COMP's enforcement expertise appears to be well-reflected in technology platform experiences, as, according to the Q&A responses, DG Connect issues a higher volume of RFIs, often sent without prior in-depth discussions on substance, whereas DG COMP takes a more structured approach.

169. To remedy this, the Commission should carefully consider the roles of the two DGs and redesign current dialogue and enforcement practices accordingly, ideally by means of procedural guidelines.

170. Avoiding duplication vis-à-vis NCAs essentially boils down to adopting measures that can effectively prevent regulatory fragmentation (as mandated by Articles 1(5), (6) and (7) DMA). Consequently, duplication vis-à-vis NCA investigations could be reduced by expanding the Commission's powers under Article 38(7) DMA to remove NCAs' ability to conduct parallel investigations. At present, this only applies where the Commission decides to commence Non-Compliance Proceedings under Article 20. However, given the importance of alternatives such as Commission dialogue and Specification Proceedings for gatekeepers in achieving effective compliance, this status quo risks fragmentation in the internal market as gatekeepers may receive conflicting messages from different enforcers until the Commission commences Non-Compliance Proceedings. We therefore recommend that the Commission be given a discretionary power to order NCAs to

pause their investigations where the Commission intends to open Specification Proceedings or where it is in the process of agreeing compliance solutions with a gatekeeper via a process of dialogue. Additionally, providing clearer guidance to NCAs on Articles 1(5), (6) and (7) would help to avoid overlapping national investigations, for example into practices already addressed under the DMA. These measures would go a long way to ensuring consistency within the internal market, as well as ensuring the efficient use of regulatory resources by guarding against investigative duplication.

F-8. Recommendation 8: In appropriate cases and following consultation, introduce substantive guidelines, taking diversity of business models and technical constraints into account.

171. The DMA expressly contemplates Commission guidelines as a regulatory tool.[139] Such guidelines have been recognised as potentially valuable complements to the DMA's procedural framework, offering additional clarity and legal certainty regarding substantive obligations. However, these guidelines should only be issued to achieve concrete and helpful purposes.

172. It should be noted that – due to their nature – substantive guidelines risk becoming an instrument that fails to accommodate diverse business model realities and technical constraints, imposing requirements that are misaligned with gatekeeper-specific operational realities. Experience has already demonstrated that many DMA obligations have proven to be less self-executing than originally conceived.

173. For this reason, substantive guidelines should be issued once the appropriate enforcement experience has been gathered, and the Commission can guarantee that they:

a) Would be necessary and helpful to gatekeepers in achieving effective compliance;

b) Can respect divergent gatekeeper business models and technical constraints; and

c) Do not impose obligations going beyond those envisaged by the Regulation.

174. Should the Commission decide to issue such substantive guidelines, it should consult with gatekeepers and third parties on the topics that might benefit the most from guidelines, as well as their content. These three conditions, as well as the obligation of consultation, should be specified in the Regulation's text to ensure that substantive guidelines are only adopted where they are appropriate.

G. Conclusion

175. With the DMA's three-year legislative review approaching in 2026, public debate has focused on whether the Regulation's substantive obligations achieve their stated aims of contestability and fairness. Yet an evaluation of the procedural rights under the DMA – the focus of this study – remains largely neglected despite procedures being fundamental to effective DMA enforcement. This gap must be addressed as part of the upcoming review process.

176. The legal analysis in this study demonstrates that the procedural framework of the DMA is as critical to the DMA's success as substantive obligations. While the Regulation appropriately imposes significant gatekeeper responsibilities, it operates through procedural systems that currently lack adequate clarity, transparency,

and fairness. The Commission's expansive discretion, tight enforcement timelines, and opaque consultation practices undermine the effectiveness and legality of the DMA's enforcement.

177. Through a detailed legal analysis and stakeholder feedback, this study has identified several areas where the DMA's procedures fall short of respecting obligations of fundamental rights and general principles of EU law, including the right to be heard, the duty of care, equal treatment, legitimate expectations, legal certainty, proportionality, openness and institutional balance. These shortcomings expose the Commission to potential annulment actions but also hinder the ability of gatekeepers and third-parties to engage meaningfully with the regulatory process.

178. The eight recommendations proposed in this paper offer a roadmap for procedural reform. In each case, they aim to strike a balance between flexibility and structure, seeking to enhance legal certainty, reduce administrative burdens, and foster trust between the Commission, gatekeepers, and third-parties. Some of these reforms (such as procedural guidelines and best practices) can be implemented quickly and without legislative change. Others, like the expansion of the commitments regime, a power to order NCAs to pause their investigations, or changes to the High-Level Group's mandate, may require legislative action.

179. Strengthening the DMA's procedural architecture serves purposes beyond constitutional compliance – it is essential to achieving the Regulation's core objectives. Fair, transparent, and effective procedures will enable the DMA to deliver truly contestable and fair digital markets while reinforcing the EU's reputation as a principled, innovation-friendly regulator.

[1] The main legislative texts for the DMA are Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector, OJ L 265, 12.10.2022, p. 1–66, and the Procedural Implementing Regulation (EU) 2023/814 of 14 April 2023 on detailed arrangements for the conduct of certain proceedings by the Commission pursuant to Regulation (EU) 2022/1925 (the "Implementing Regulation"), OJ L 102, 17.4.2023, p. 6–19.
[2] See in particular the procedures under Articles 8(2) and 20 (specification), 29 and 20 (non-compliance) and 8(3) (dialogue) DMA.
[3] For an analysis on how the DMA interacts with national competition laws, see Van den Boom, "What does the Digital Markets Act harmonize? – exploring interactions between the DMA and national competition laws", 19(1) European Competition Law Journal (2023) 57.
[4] Article 13(3) DMA.
[5] Article 8(1) DMA.
[6] Article 11(1) DMA.
[7] Article 11(2) DMA. Non-confidential version of these reports are available on the Commission's website: https://digital-markets-act-cases.ec.europa.eu/reports/compliancereports.
[8] Article 28 DMA.
[9] See Körber, "Lessons from the hare and the tortoise: Legally imposed self-regulation, proportionality and the right to defence under the DMA" (SSRN, open access) 19 October 2021, pages 14 – 15: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3914669; and Pablo Ibáñez Colomo, "The Draft Digital Markets Act: a legal and institutional analysis" (SSRN, open access) 12 March 2021, pages 3 – 4 and 32: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3790276
[10] Article 3(10) DMA; see also Körber, "Lessons from the hare and the tortoise: Legally imposed self-regulation, proportionality and the right to defence under the DMA", ibid, page 11.
[11] Source: responses to Q&A, explained further in Section D below. Relatedly, see also: Colangelo and Ribera Martínez, "The Metrics of the DMA's Success", (2025) European Journal of Risk Regulation, online first view: doi:10.1017/err.2025.4, Section II.1/pages 5 – 6.
[12] See Recital 65, paragraph 2 DMA.
[13] See Recital 65, paragraph 2 DMA.
[14] European Commission, Template Form for Reporting Pursuant to Article 11 of the DMA (Compliance Report) (the "Template Compliance Report"), 9 October 2023, page 2: https://digital-markets-act.ec.europa.eu/legislation_en#templates
[15] In addition, the Commission has the power under Article 18 to open investigations into systematic non-compliance, in particular where it has been subject to three non-compliance decisions over eight years or maintained or strengthened its gatekeeper position. See Articles 18(1) and (3) DMA. In such circumstances the Commission may impose remedies and third-parties must also have the opportunity to comment.
[16] Source: Q&A response, dealt with further in Section E.
[17] Source: Q&A response, dealt with further in Section E. See also: https://digital-markets-act.ec.europa.eu/events/workshops_en
[18] Article 8(2) DMA.
[19] Article 8(5) DMA.

[19] Article 8(1), Implementing Regulation.
[20] Decisions of 23 April 2025 in DMA.100055; DMA.100109; and DMA.100185.
[21] See: Decision 2011/695/EU of the President of the European Commission of 13 October 2011 on the function and terms of reference of the Hearing Officer in competition proceedings, [2011] OJ L 275/29 (the "**Commission Decision on Hearing Officers**")
[22] Commission Decision on Hearing Officers, recital 3.
[23] Commission Decision on Hearing Officers, recital 2.
[24] See further: Pantelidis, "Quality control in the DMA procedure: the exclusion of the Hearing Officer", 21(1) European Competition Journal (2025), 25.
[25] Recital 10, DMA.
[26] Article 38(7) DMA.
[27] Recital 91 DMA.
[28] Article 38(2) DMA.
[29] Article 38(7) DMA.
[30] Article 38(7) DMA.
[31] MLex, "Regulatory dialogue preferred over DMA non-compliance probes, says EU's McCallum" (13 March 2025): https://content.mlex.com/#/content/1638495/regulatory-dialogue-preferred-over-dma-non-compliance-probes-says-eu-smccallum?referrer=search_linkclick
[32] Article 8(2) and Recital 65 DMA.
[33] Article 8(3) DMA.
[34] Article 8(3) DMA.
[35] See Article 8(3), 8(2) and 13(7) DMA, which provide, respectively, that the Commission: "may … open proceedings …" (Article 8(2)); "shall have discretion in deciding whether to engage in such a process …" (Article 8(3); and "may open proceedings …" (Article 13(7)).
[36] Article 8(2) DMA.
[37] Jasper van den Boom & Rupprecht Podzsun, "Procedures in the DMA: Non-Compliance Navigation - Exploring the European Commission's Space for Discretion and Informality in Procedure and Decision-making in the Digital Markets Act" (SSRN, open access) 17 January 2025, page 19: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5091649
[38] Van den Boom & Podzsun, "Procedures in the DMA: Non-Compliance Navigation - Exploring the European Commission's Space for Discretion and Informality in Procedure and Decision-making in the Digital Markets Act", ibid, page 6.
[39] Van den Boom and Podszun, ibid, pages 6 – 7.
[40] Recital 95 DMA.
[41] Ibid.
[42] https://digital-markets-act.ec.europa.eu/events/workshops_en
[43] Article 29(4).
[44] Article 8(6) DMA.
[45] Article 8(5) DMA.
[46] Article 8(6) DMA.
[47] See: https://digital-markets-act.ec.europa.eu/whistleblower-tool_en
[48] Regulation (EU) 2015/1589, Articles 24 and 12. See the complaint form at: https://competition-policy.ec.europa.eu/state-aid/complaints_en
[49] Case C-344/98 *Masterfoods* ECLI:EU:C:2000:689, paragraph 46.
[50] Directive 1/2019 to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market.
[51] Case C-511/23, Caronte & Tourist ECLI:EU:C:2025:42 ("***Caronte***"), paragraphs 58 – 61.
[52] Recital 106, DMA.
[53] Case T-24/90 Automec ECLI:EU:T:1992:97 ("***Automec***"), paragraph 77.
[54] The input for this Section was gathered through a limited survey or Q&A shared with gatekeepers and interested stakeholders.
[55] The authors acknowledge that the number of responses was limited. That said, they provided good and detailed practical insights into gatekeepers' and third parties' first-hand experiences with DMA enforcement, albeit they should not be taken as universal experiences given the small sample size.
[56] Körber, "Lessons from the hare and the tortoise: Legally imposed self-regulation, proportionality and the right to defence under the DMA", supra note 9, pages 15 – 16.
[57] Körber, "Lessons from the hare and the tortoise: Legally imposed self-regulation, proportionality and the right to defence under the DMA", ibid, pages 15 – 16 and Article 263(4) of the Treaty on the Functioning of the European Union ("**TFEU**").
[58] Körber, "Lessons from the hare and the tortoise: Legally imposed self-regulation, proportionality and the right to defence under the DMA", ibid, pages 15 – 16.
[59] Response to study Q&A.
[60] Response to study Q&A.
[61] Feasey and Monti, "Implementing the DMA: Early Feedback" in DMA@1: Looking Back and Ahead, DMA@1: Looking Back and Ahead (27 March 2025, CERRE Implementation Forum): https://cerre.eu/publications/dma-implementation-forum/, Section 2.2.
[62] Ibid.
[63] Cases DMA.100203 and DMA.100204.
[64] Decisions dated 19 September 2024 in Cases DMA.100203 and DMA.100204.
[65] Decisions dated 18 December 2024 in Cases DMA.100203 and DMA.100204.
[66] Decisions dated 19 March 2025 in Cases DMA.100203 and DMA.100204.
[67] Feasey and Monti, "Implementing the DMA: Early Feedback" in *DMA@1*: Looking Back and Ahead (27 March 2025, CERRE Implementation Forum), *supra* note 61, Section 3.2.
[68] Pantelidis, "Quality control in the DMA procedure: the exclusion of the Hearing Officer", *supra* note 24, pages 39 - 43
[69] Pantelidis, "Quality control in the DMA procedure: the exclusion of the Hearing Officer", ibid, page 43.
[70] Bauer and Pandya, "The EU's Digital Markets Act: A Gift to Hackers – and a Threat to Competition?", blogpost published February 2025 at https://ecipe.org/blog/dma-gift-to-hackers-threat-to-competition/. See also: Monti and De Streel, "Interplay between the DMA and other regulations" in *DMA@1: Looking Back and Ahead* (27 March 2025, CERRE Implementation Forum); see Colangelo and Ribera Martínez, "The Metrics of the DMA's Success", *supra* note 11, Section II.2/pages 15 – 16.
[71] *Caronte, supra* note 51, paragraph 62. See also: Case C-439/08 VEBIC ECLI:EU:C:2010:739, paragraph 63.
[72] Article 8(3) and Recital 65, paragraph 3, DMA.
[73] Article 34 DMA.
[74] See, for instance: Case C-49/88 *Al Jubail Fertilizer v Council* ECLI:EU:C:1991:276, paragraph 15.
[75] Case C-48/90 *Netherlands and PTT v Commission* ECLI:EU:C:1992:63 ("***PTT***"), paragraph 45.
[76] *PTT, ibid*, paragraph 46.
[77] Case C-135/92 *Fiskano v Commission* ECLI:EU:C:1994:267, paragraph 40.
[78] See, e.g., *PTT*, supra note 75, paragraph 46.
[79] Cases C-16/59 – 18/59 *Geitling Ruhrkohlen-Verkaufsgesellschaft and Others v High Authority* ECLI:EU:C:1960:5, page 25.
[80] See Case 269/90 *TU-München* ECLI:EU:C:1991:438, paragraph 14 ("***TU-München***").
[81] See Case C-16/90 *Nölle v Hauptzollamt Bremen-Freihafen* ECLI:EU:C:1991:402, paragraph 13.
[82] *TU-München*, paragraph 22.
[83] Case C-362/19 P *Commission v FC Barcelona and Spain* ECLI: EU:C:2021:169, paragraph 62 ("***FC Barcelona***"); and the case law cited.
[84] Case C-12/03 P, *Tetra Laval v Commission* ECLI: EU:C:2005:87, paragraph 39.
[85] See: Case C-310/04 *Spain v Council* ECLI:EU:C:2006:179, paragraph 120 and 122. The link between impact assessments,

proportionality and the duty of care is made explicit by AG Sharpston in her opinion in the same case (ECLI:EU:C:2006:179) at paragraphs 78 and 90. See further Hofmann, "Inquisitorial Procedures and General Principles of Law: The Duty of Care in the Case Law of the European Court of Justice" in Hofmann, Rowe and Türk (eds) *Administrative Law and Policy of the European Union* (Oxford University Press, 2011).

[86] As required under the case law. See FC Barcelona, supra note 83, paragraph 62.

[87] Opinion of Advocate General Emiliou, Case C-759/23 *PJ Carroll and Nicventures Trading* ECLI:EU:C:2025:44, paragraph 5. See also Case C-24/20, *Commission v Council* (Geneva Act) ECLI:EU:C:2022:911, paragraph 83 and the case law cited.

[88] Joined Cases C-611/22 P and C-625/22 P *Illumina/Grail v Commission* ECLI:EU:C:2024:677, paragraphs 215 – 216; see also Opinion of Advocate General Emiliou in the same case, ECLI:EU:C:2024:264, paragraphs 218 – 220.

[89] Article 5 TEU.

[90] Protocol 2 to the TFEU.

[91] Article 8(7) DMA.

[92] For a good statement of these, see: Case C-331/88 Fedesa ECLI:EU:C:1990:391, paragraph 13.

[93] For a further discussion see: Wolf Sauter, "Proportionality in EU Law: A Balancing Act?", Cambridge Yearbook of European Legal Studies, vol. 15, 2013, 439.

[94] See, for instance: Case C-62/14 *Gauweiler* ECLI:EU:C:2015:400, paragraph 67.

[95] See: Case T-747/17 *Union des ports de France – UPF* ECLI:EU:T:2019:271, paragraph 144.

[96] For instance, the anecdote received in response to the Q&A in which the trade association was asked to provide its members' email addresses by the end of the day when it inquired about contributing to a questionnaire which none of its members had received, but which had been circulated to other third-parties.

[97] See for instance, Case C-14/59 - *Société des fonderies de Pont-à-Mousson v High Authority* [1959] ECLI:EU:C:1959:31, page 231.

[98] The preamble to the Charter characterises the EU as "founded on the indivisible, universal values of … equality…." Article 20 of the Charter moreover provides that "everyone is equal before the law". Article 21 further provides a right to non-discrimination, though the language mostly deals with discrimination against natural persons based on certain characteristics (e.g. sex, language, age etc). However, despite the language of Article 21 of the Charter, undertakings are protected against discrimination as a general principle of EU law (see Case C-550/07 P Akzo Nobel ECLI:EU:C:2010:512, paragraph 54).

[99] See Case C-580/12 P Guardian Industries ECLI:EU:C:2014:2363, paragraph 51.

[100] See: Case T-716/14 *Tweedale v EFSA* ECLI:EU:T:2019:141 ("***Tweedale***"), paragraph 54; Case T-329/17 Hautala ECLI:EU:T:2019:142 ("***Hautala***"), paragraph 60; Case C-175/18 P, PTC *Therapeutics International v EMA* ECLI:EU:C:2019:709 ("***PTC***"), paragraphs 52 and 53; Case C-178/18 P *MSD Animal Health Innovation v EMA* ECLI:EU:C:2020:24 ("MSD"), paragraphs 49 and 50. For a full discussion of the principle of openness in EU law, see Alemanno, "Unpacking the principle of openness in EU law: Transparency, participation and democracy", (2014) 39(1) European Law Review, 72.

[101] *Tweedale, Hautala, PTC* and *MSD*, ibid.

[102] See: Bauer and Pandya "The EU's Digital Markets Act: A Gift to Hackers – and a Threat to Competition?", supra note 70. See also: Monti and De Streel, "Interplay between the DMA and other regulations", supra note 70; and Colangelo and Ribera Martínez, "The Metrics of the DMA's Success", *supra* note 11, Section II.2/pages 15 – 16.

[103] Recital 64, DMA.

[104] Article 6(4) DMA.

[105] https://digital-strategy.ec.europa.eu/en/news/digital-markets-act-commission-creates-high-level-group-provide-advice-and-expertiseimplementation

[106] Article 40(6) DMA.

[107] Body of the European Regulators for Electronic Communications (BEREC).

[108] European Data Protection Supervisor (EDPS) and European Data Protection Board (EDPB).

[109] European Competition Network (ECN).

[110] Consumer Protection Cooperation Network (CPC Network).

[111] European Regulatory Group of Audiovisual Media Regulators (ERGA).

[112] Albeit many national data protection and telecoms regulators may have cybersecurity competences.

[113] Articles 40(5) and (6) DMA.

[114] Article 8 of the Charter.

[115] Article 7 of the Charter.

[116] Article 38 of the Charter.

[117] See, among others, Case C-430/20 P *Klein v Commission* ECLI:EU:C:2022:377 ("***Klein***"), paragraph 91; Case T-309/21 *TC v Parliament* ECLI:EU:T:2023:315, paragraph 58 ("***TC***").

[118] Case C-52/69 *Geigy v Commission* ECLI:EU:C:1972:73, paragraph 21.

[119] *TC*, *supra* note 117, paragraph 58. See also Klein, *supra* note 117 and Case T-144/02 *Eagle v Commission* ECLI:EU:T:2007:222, paragraph 57.

[120] *TC*, ibid, paragraph 58.

[121] Case T-347/03 *Branco v Commission* ECLI:EU:T:2005:265, paragraph 114. See also: Case T-59/05 *Evropaïki Dynamiki v Commission* ECLI:EU:T:2008:326, paragraph 153.

[122] Case C-223/85 *RSV v Commission* ECLI:EU:C:1987:502, paragraphs 12 – 17.

[123] Commission Implementing Regulation (EU) 2023/814 on detailed arrangements for the conduct of certain proceedings by the Commission pursuant to Regulation (EU) 2022/1925 of the European Parliament and of the Council.

[124] Which must be taken within 45 days of receipt of certain information – see Article 3(4) DMA.

[125] See above and Körber, "Lessons from the hare and the tortoise: Legally imposed self-regulation, proportionality and the right to defence under the DMA", *supra* note 9, page 15.

[126] Article 30(4) DMA. This is also the position in antitrust fines. See, for instance: Case C-85/76 *Hoffmann-Laroche v Commission* ECLI:EU:C:1979:36, paragraph 140. See also: Commission Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation No 1/2003 (2006/C 210/02), paragraphs 2, 5, 6, 24 and 25.

[127] Feasey and Monti, "Implementing the DMA: Early Feedback" in *DMA@1: Looking Back and Ahead* (27 March 2025, CERRE Implementation Forum), supra note 61, 2.1 and 3.2.1.

[128] Case C-73/22 P and C-77/22 P *Grupa Azoty and others v Commission* ECLI:EU:C:2023:570, paragraph 59.

[129] MLex, "Regulatory dialogue preferred over DMA non-compliance probes, says EU's McCallum", supra note 31. See also: Global Competition Review, "Guersent: DMA enforcement is 'not about fines'" (8 April 2025): https://globalcompetitionreview.com/article/guersent-dma-enforcementnot-about-fines

[130] Joined Cases T-174/12 and T-80/13, Syrian Lebanese Commercial Bank v Council, EU:T:2014:52, paragraph 147; Case T-380/17, HeidelbergCement and Schwenk Zement v Commission, EU:T:2020:471, paragraph 634; and Case T-251/19, Wieland-Werke v Commission, EU:T:2022:296, paragraph 694.

[131] Pantelidis, "Quality control in the DMA procedure: the exclusion of the Hearing Officer", *supra* note 24, page 34.

[132] Although arguably, block exemptions go somewhat further than a mere "presumption" in that presumptions can normally be rebutted.

[133] Cyril Ritter, "Presumptions in EU competition law", 6(2) Journal of Antitrust Enforcement (2018), 189, Section 1.C.
[134] Article 10 of Regulation 139/2004, the EU Merger Regulation.
[135] Article 25 DMA.
[136] Article 8(1) DMA.
[137] Monti and De Streel, "Interplay between the DMA and other regulations", *supra* note 70, 4.3.
[138] See, *inter alia*, Article 63, 64, 67 and 68 of Directive 2018/1972 establishing the European Electronic Communications Code (Recast). These Articles deal with competition law concepts such as market definition, assessment of market power and imposition of remedies to ensure fair markets in telecommunications.
[139] Article 47 and Recital 95 DMA.

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About the Authors

Dr Salomé Cisnal de Ugarte, Partner, Brussels

Dr Salomé Cisnal de Ugarte is a Partner at King & Spalding and head of the firm's EU Antitrust & Competition practice. A Harvard-trained lawyer with a doctorate in law, she represents clients before the European Commission, national competition authorities and the European Courts, with a standout track record in merger control, cartel investigations, and complex antitrust matters across jurisdictions. Recognized by Chambers as a leading antitrust lawyer, Global Competition Review featured her as one of the world's leading antitrust practitioners in their "Women in Antitrust" report. In 2018, Politico Europe honoured her as one of the 20 “Women Who Shape Brussels,” acknowledging her significant influence in the competition law field.

Raphaël Fleischer, Senior Associate, Brussels

Raph Fleischer is a Belgian-qualified and US educated senior antitrust/competition lawyer. Raphael focuses his practice on a wide range of issues in global competition/antitrust law. Raphael has a particular focus on merger control, restrictive practices, compliance and cartel matters. He actively represents multinational clients across a wide range of industries.

Eógan Hickey, Associate, Brussels

Eógan Hickey is an Associate in the Brussels office of King & Spalding, where he works in the firm's EMEA Antitrust & Competition practice. He has advised clients across a range of industries on a wide spectrum of competition law issues, including merger control, restrictive agreements, abuse of dominance, state aid and related sectoral regulation.