COMPETITION LAW IN THE DIGITAL AGE

JULY 2025

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FOLLOWING 13 MONTHS OF GRADUAL ENFORCEMENT OF THE DMA, THE COMMISSION HAS ISSUED ITS FIRST FINES

As of March 2024, the six gatekeepers - initially **designated** six months prior, are required to comply with the obligations set out in the Digital Markets Act (DMA). These obligations apply when the gatekeepers offer certain digital services which have been designated as 'core platform services' by the European Commission. The Commission has also taken several steps to enforce the DMA with regard to several gatekeepers. These efforts have gradually intensified. The Commission started by organising workshops in which the gatekeepers presented their plans for complying with the DMA obligations. It then also started regulatory dialogues called specification proceedings. Most recently, the Commission issued its first fines for non-compliance with the DMA and organised another round of workshops.

Types of DMA obligations

The DMA imposes two types of obligation on gatekeepers. Article 5 of the DMA contains obligations that are directly applicable or self-executing, and these are also referred to as 'blacklist' obligations. Articles 6 and 7 contain obligations that may require further specification depending on the context, also referred to as 'grey list' obligations. The DMA provides for non-compliance investigations and decisions which may result in a fine on gatekeepers for failing to comply with its obligations. This is similar to infringement decisions under 'regular' EU competition law. Additionally, the enforcement of grey listed obligations is also subject to a new enforcement tool introduced by the DMA: the specification proceeding of Article 8(2) DMA.

First specification proceedings

The specification proceeding provides for formal regulatory dialogue between a designated gatekeeper and the Commission. During this dialogue, discussions take place about how the gatekeeper can comply with the DMA's grey listed obligations and the concrete steps they need to take to meet these obligations. The Commission must conclude these proceedings within six months. It does so by adopting a decision containing binding measures for the gatekeeper.

Apple has been designated a 'gatekeeper' for four core platform services, including iOS and iPadOS. In September 2024, the Commission **began** its first two specification proceedings, aiming to clarify how Apple should fulfil the interoperability requirements set out in the DMA. Six months later, this resulted in the **adoption** of two decisions setting out these requirements. The first decision relates to nine iOS connectivity features used by connected devices such as smartwatches, headphones and TVs. The measures specified in the decision aim to improve access for device manufacturers and app developers to iPhone features, facilitating better interaction, faster data transfers and easier device setup. The second decision enhances the transparency and efficiency of Apple's process for developers seeking to make their apps interoperable with iPhone and iPad features. It provides improved access to technical documentation, regular updates, and clearer timelines for reviewing interoperability requests.

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First non-compliance investigations, decisions and fines

In parallel with the specification proceedings, the Commission investigated three gatekeepers for non-compliance with the blacklisted obligations set out in Article 5 of the DMA.

Alphabet

Alphabet has been designated a 'gatekeeper' for seven core platform services, including the Google Play app store, Google Search, YouTube and Android Mobile. On 19 March 2025, the European Commission **issued** Alphabet with two sets of preliminary findings regarding Google Search and Google Play. These preliminary findings are similar to a statement of objections under 'regular' EU competition law. Regarding Google Search, the Commission preliminarily found that Alphabet may be favouring its own services over those of third parties. This relates to shopping, hotel booking and transport services, among others. Regarding Google Play, the Commission's preliminary findings suggest that Alphabet is failing to meet the DMA's steering obligations. The Commission alleges that Alphabet technically prevents certain aspects of steering, for instance, by preventing app developers from directing users of their app to other distribution channels outside of Google Play. Additionally, the Commission has formed the preliminary opinion that Alphabet charges developers an unduly high fee. Any purchase of digital goods and services by users within the app incurs a fee that the developer must pay to Alphabet. In addition to the amount of the fee, the Commission believes that this obligation may be unduly long.

Apple

The other two of Apple's core platform services are the App Store and Safari. The Commission opened non-compliance investigations into the App Store in March 2024, shortly after Apple had to meet all obligations under the DMA. Apple's anti-steering terms for use of the App Store prevent app developers from directing users of their app away from the App Store for payment purposes. The Commission found that these terms restrict developers from informing users about alternative purchasing options, thereby denying consumers access to potentially cheaper or better offers. On 23 April 2025, the Commission issued its first non-compliance decisions under the DMA. It **found** that Apple had violated the anti-steering obligation, resulting in a €500 million fine for non-compliance with the DMA. Earlier, this conduct was **characterised** by the Commission as an abuse of dominance and an infringement of Art. 102 TFEU in March 2024, for which Apple was fined €1.8 billion. Apple has lodged an appeal at the EU General Court against the Commission's DMA non-compliance decision.

Another issue concerning the App Store relates to distribution terms. Developers interested in using alternative app distribution channels on iOS are discouraged from doing so because they must agree to business terms involving a new fee: Apple's Core Technology Fee. In April 2025, the Commission preliminarily found that this was also non-compliant, as Apple must allow app distribution outside the App Store under the DMA.

Regarding Safari, the Commission closed its investigation into Apple's user choice obligations on 23 April 2025 following constructive dialogue with Apple. Apple responded by updating its browser choice screen and simplifying the process for users to change the default settings for various functions, such as calling and messaging. Furthermore, Apple now permits users to uninstall several pre-installed Apple apps, including Safari.

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Meta

Meta Platforms, Inc. has been designated a 'gatekeeper' for five core platform services, including Facebook, Instagram, and WhatsApp. The DMA requires consent of individuals to combine their personal data gathered through different core platform services. For those who do not consent, equivalent, less personalised core platform services must be made available. Following the **German** case against it, Meta introduced a 'pay or consent' model in November 2023. Shortly after, in March 2024, the Commission began a DMA non-compliance investigation into this 'pay or consent' model. In November 2024, Meta changed its model in response to the Commission's non-compliance investigation. Although the Commission is still investigating the new model, it has concluded that Meta's 'pay or consent' model, used between March and November 2024, was not compliant with the DMA. Meta was fined €200 million for this non-compliance in April 2025. Like Apple, Meta has also filed an appeal at the EU General Court against the Commission's DMA non-compliance decision.

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COURT OF JUSTICE RULING ON INTEROPERABILITY AND INDISPENSABILITY

In its **judgment** of 25 February 2025, the Court of Justice of the European Union (CJEU) provided key guidance on the interpretation of Article 102 TFEU (which prohibits the abuse of a dominant position) in relation to digital markets.

Background

In 2018, Enel X launched JuicePass, an app to help drivers locate and book charging stations for electric vehicles in Italy. Google declined a request from Enel X to take the action necessary to ensure that JuicePass would be interoperable with Android Auto – the platform that enables access to mobile apps via in-vehicle displays. The Italian Competition Authority (ICA) found this refusal to constitute an abuse of dominance. According to the ICA, interoperability with Android Auto was essential for users to access the app safely and conveniently while driving. Google was fined €102 million. The case was challenged before the first instance Administrative Court (TAR Lazio), and then before the Court of last instance (Consiglio di Stato), which referred questions to the CJEU for a preliminary ruling.

The CJEU's judgment: redrawing the boundaries

The CJEU first clarified that the Bronner test – typically applied in cases of refusal to supply – does not apply when the platform was not developed exclusively for the dominant firm's own use but was instead designed to host third-party apps. In such cases, a refusal to ensure interoperability may constitute an abuse of dominance not only when the platform is necessary for the commercial exploitation of the third-party app but also when interoperability merely enhances the app's attractiveness to consumers.

The CJEU then clarified the circumstances under which a dominant firm may legitimately refuse to ensure interoperability: a refusal may be objectively justified when it is technically impossible to guarantee interoperability or doing so would compromise the integrity or security of the platform.

Lastly, the CJEU addressed the obligations that may be imposed on dominant firms when an abuse is found. Notably, a business may be required to create technical solutions from scratch to enable interoperability – if this is achievable within a reasonable timeframe and subject to adequate remuneration.

Interoperability vs innovation: a new chapter for Article 102 TFEU

The *Android Auto* judgment marks a potential shift in the application of Article 102 TFEU to digital markets. The CJEU moved beyond Bronner's traditional essential facility test and established that interoperability obligations can arise not only when access is essential for market participation.

This broadened approach brings with it a risk of increased legal uncertainty. The Bronner framework, though strict, provided legal predictability. By contrast, the CJEU's more flexible standard – based on qualitative assessments of consumer appeal – may prove harder to apply consistently. This could deter investment and innovation, as businesses may become hesitant to invest in new technologies or business models due to the fear of falling foul of antitrust regulations, a concern further amplified by the stringent *ex ante* obligations already imposed by the Digital Market Act and the Digital Service Act.

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At stake is a fundamental tension in modern competition law: is this a recalibration to address the realities of digital markets or a shift that risks stifling innovation under the guise of fairness? On one hand, digital markets often involve platform-based ecosystems where traditional definitions of dominance and access fail to capture market dynamics. A broader standard may better serve consumer interests and prevent entrenched gatekeeping. On the other hand, the spectre of over-enforcement could discourage legitimate business autonomy and technological advancement.

The *Android Auto* judgment thus raises broader questions for regulators: how to strike a fair balance between preventing anti-competitive practices and fostering an environment conducive to innovation and investment. The challenge lies in ensuring that the new antitrust standard emerging from the CJEU's ruling is applied carefully, taking into account the unique dynamics of digital markets, to avoid unintended consequences that could hinder technological progress and economic growth.

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APPLE APPEALS FRENCH COMPETITION AUTHORITY APP TRACKING TRANSPARENCY FINE

Apple has filed an appeal, before the Paris Court of Appeal, against the French Competition Authority (FCA) **decision of 31 March 2025**, imposing a €150 million fine for abuse of dominance in connection with the implementation of its App Tracking Transparency (ATT) feature on iPhones.

Apple introduced the ATT framework in April 2021, requiring publishers to collect explicit user consent for tracking users across third-party apps and websites for the purpose of targeted advertising. While Apple presented the ATT framework as a key customer-empowerment feature, designed to give users more control over the collection and use of their personal data, complainants across the online advertising industry expressed concerns that this significantly impeded their ability to carry out targeted online advertising and finance their activity.

The FCA's final decision in March 2025 followed its prior rejection, in March 2021, of an application for interim measures. The FCA's decision is the first among several parallel ongoing investigations in Europe: competition authorities in Germany (see below), Italy, Poland and Romania are also carrying out similar probes into Apple's privacy feature.

Unfair and Discriminatory Trading Conditions

Having found that Apple was dominant on the market for the distribution of mobile apps on iOS, the FCA found that the requirement to collect user consent under the ATT framework amounted to an unfair trading condition within the meaning of Article 102 TFEU, based on the following reasons in particular:

- Unnecessary additional complexity compared with GDPR, leading to user "consent fatigue": The ATT framework requires publishers to display an additional consent window for tracking users across third-party apps for advertising purposes, without enabling them to comply with their legal obligations of obtaining user consent under GDPR. Thus, publishers wishing to track users are required to display two separate consent windows. The FCA found that this multiplication of consent windows unnecessarily complicates user experience and in particular risks leading to user "consent fatigue".
- Operating rules that undermine the neutrality of the framework: the FCA notes in particular that the interplay between the various consent windows means that acceptance must be confirmed twice, whereas any refusal of consent only needs to be expressed once.
- Asymmetry between Apple and third-party publishers: the FCA also found that the ATT framework created a difference in treatment between Apple and publishers, in that the ATT framework only applies to the collection of data on third-party apps and websites, such that Apple itself does not display the ATT prompt for its own data collection within its ecosystem. Although Apple does display a separate consent window in this respect – the Apple Personalized Advertising prompt – the FCA found that the distinction between first-party and third-party data in this context and the difference between the two prompts were not justified and ultimately gave Apple more favourable conditions of access to data for advertising purposes.

Smaller publishers particularly impacted

In its decision, the FCA found that Apple's implementation of the ATT framework significantly reduced ad tracking consent rates, compared to higher acceptance rates under the GDPR consent windows – thereby negatively impacting the revenues of app publishers and limiting the ability of intermediaries to offer targeting and attribution services. The FCA found that smaller publishers – who are typically more reliant on the collection of third-party data to finance their activities - were particularly impacted, while by contrast, players with significant amounts of proprietary data, including Apple and certain major social networks, had been less affected, increasing competitive imbalances.

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Competition Law and Privacy

The case is noteworthy as one of the first examples of the interaction between competition and data protection law in France. The FCA consulted with the French Data Protection Authority twice in the context of the investigation, and in December 2023, while the investigation was still ongoing, the two authorities issued a **joint declaration** on future cooperation.

In its final decision, while the FCA acknowledges the protection of privacy as a legitimate objective, it takes the view that the ATT prompt as implemented was "neither necessary nor proportionate" to Apple's stated objective of protecting personal data.

Implications and Appeal

Aside from the monetary fine, the FCA's decision stopped short of issuing any injunctions, leaving it up to Apple to decide how to comply, pending the outcome of the present appeal. In addition to the ongoing probes by other European national competition authorities, it is likely that any changes will also need to be squared with Apple's obligations under the DMA, which the European Commission is also monitoring closely.

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GERMANY: UPDATE ON SECTION 19A PROCEEDINGS AND THE RECENT APPLE CASE

In January 2021, Section 19a of the German Competition Act (GWB) was introduced to provide the German Federal Cartel Office (FCO) with a tool to more effectively regulate companies that operate on multi-sided markets or networks and hold "paramount significance for competition across markets" (read: Big Tech companies). This article provides a status update of Section 19a proceedings and a look at the recent Apple case.

Section 19a establishes a two-step process. First, the FCO determines that a company is in such a position. Secondly, the FCO may prohibit the company from taking certain measures, such as self-preferencing. Thus, Section 19a allows the FCO to intervene ex ante without having to conduct – and defend before the judiciary – a lengthy abuse of market power investigation.

Overview of 19a cases

Over the last four and a half years, the FCO has designated five companies under Section 19a. The latest designation decision, on Microsoft, was issued in September 2024 (case no. B6 26/23). Microsoft did not challenge the FCO's decision. Nor did Alphabet or Meta. Amazon and Apple appealed the FCO's designation decisions before the German Federal Court of Justice (the Federal Court of Justice decides on such appeals as a first and final instance.)

Company	FCO 19a Designation	Federal Court of Justice Decision
Alphabet/Google	December 2021	Not appealed
Amazon	July 2022	Designation confirmed (April 2024)
Apple	April 2023	Designation confirmed (March 2025)
Meta/Facebook	May 2022	Not appealed
Microsoft	September 2024	Not appealed

Federal Court of Justice confirms FCO's Section 19a designation of Apple

The FCO designated Apple as a company subject to Section 19a in April 2023 (case no. B9 67/21). Apple appealed the decision before the Federal Court of Justice. On 18 March 2025, the court sided with the FCO, rejecting Apple's appeal (case no. BGH, KVB 61/23).

In its decision, the Federal Court of Justice explains that multi-sided markets encompass not only platforms on which transactions between different users take place or are brokered. Rather, for a platform to constitute a multi-sided market, it only needs to draw one user group's attention to another or technically enable interaction between various user groups. The court finds that, with Apple's App Store and its operating systems for the iPhone (iOS) and iPad (iPadOS), the company is active to a substantial degree on multi-sided markets.

Further, the Federal Court of Justice underlines that Section 19a is supposed to enable the FCO to

"…more effectively control those large digital companies whose resources and strategic positioning potentially allows them to exert significant influence on the business activities of third parties, to distort the competitive process to their own advantage, and to transfer their existing market power to ever new markets and sectors."

Therefore, according to the Court, it is sufficient for a Section 19a designation that the relevant company has access to the strategic and competitive options whose abstract risk potential is addressed by Section 19a. By contrast, a concrete risk to, or even a restriction of, competition is not a requirement. The Court found that Apple, as one of the largest and most profitable companies in the world, meets these criteria. The judgment specifically refers to the fact that Apple, with the hardware and the operating systems it offers, "*extends its business activities into several further areas*", and to the "*Apple ecosystem*", that is, the high degree of vertical integration and interconnectedness of the company's products and services. Further, the Court emphasised the impact Apple has on the access of other companies, e.g., app developers, to procurement and sales markets.

Finally, the Federal Court of Justice held that a Section 19a designation is not in conflict with a parallel gatekeeper designation under the DMA (which the European Commission adopted during the proceedings). Rejecting to submit the question to the CJEU, the German court continues to take its notoriously hesitant approach to preliminary ruling requests.

FCO's assessment of Apple's ATTF

Even before the Federal Court of Justice confirmed Apple's designation as a company under Section 19a, the FCO had launched an examination into Apple's App Tracking Transparency Framework (ATTF). In February 2025, the FCO sent Apple a preliminary legal assessment, raising concerns about whether the ATTF, under which external app developers – but not Apple itself – need to obtain additional consent from users before gaining access to certain data for advertising purposes, violate Apple's obligations as a 19a-designated company, and Article 102 TFEU (see the article above in relation to the French decision on Apple's ATTF).

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THE CMA LAUNCHED DMCCA'S DESIGNATION INVESTIGATIONS AGAINST APPLE AND GOOGLE

Following the entry into force of the Digital Markets, Competition and Consumers Act 2024 (DMCCA), the UK Competition and Markets Authority (CMA) has the power to designate tech firms as having "Strategic Market Status" (SMS) in respect of one or more digital activities. Undertakings designated as having SMS can be subject to a range of behavioural and structural remedies in the form of "pro-competition interventions" (PCIs) and "conduct requirements" (CRs) (see a previous version of this newsletter **here** for a more detailed analysis of the DMCAA provisions).

The investigations

On 14 January 2025, the CMA **launched** its first designation investigation, assessing whether Google has SMS in search and search advertising activities. On 23 January 2025, the CMA **launched** its second and third designation investigations to determine whether Google and Apple have SMS in the provision of mobile ecosystem services.

Search and search advertising activities

According to the CMA, general search and search advertising services comprise Google's general search engine (excluding Google's dedicated specialised search interfaces such as Google Flights) and its search advertising products. The CMA consulted on a range of issues and potential CRs in its invitation to comment, including: competition and barriers to entry and innovation within the search market; whether Google is leveraging its position to stifle innovation; potential leveraging of market power to self-preference Google's own services; potential exploitative conduct related to the collection and use of extensive consumer data without informed consent; and the use of publisher content under unfair terms and conditions.

On 24 June 2025, the CMA **published** its proposed decision to designate Google as having SMS in general search and search advertising. The proposed designation is subject to public consultation until 22 July 2025. The CMA also **published** a "roadmap" outlining potential CRs and PCIs in case a final SMS decision is adopted. The proposed measures include the introduction of choice screens for search services and giving publishers more control over how their data is used including in Google's AI services.

Mobile ecosystems

According to the CMA, mobile ecosystems comprise mobile operating systems, native app distribution and mobile browsers. The CMA consulted on a range of issues and potential CRs in its invitation to comment, including: the level of competition within and between Apple's and Google's mobile ecosystems, potential barriers hindering rival products and services; whether Apple and Google unfairly favour their own pre-installed and prominently featured apps and services; and potential exploitative conduct, such as unfair terms and conditions imposed on app developers for app store distribution. Potential CRs could include requiring Apple or Google to allow users to download apps and pay for in-app content more easily outside of Apple's and Google's own app stores.

The CMA is currently gathering evidence and engaging with Apple, Google, and third parties before consulting on any proposed SMS designations decisions and relevant roadmaps for possible future interventions to be published in July 2025.

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