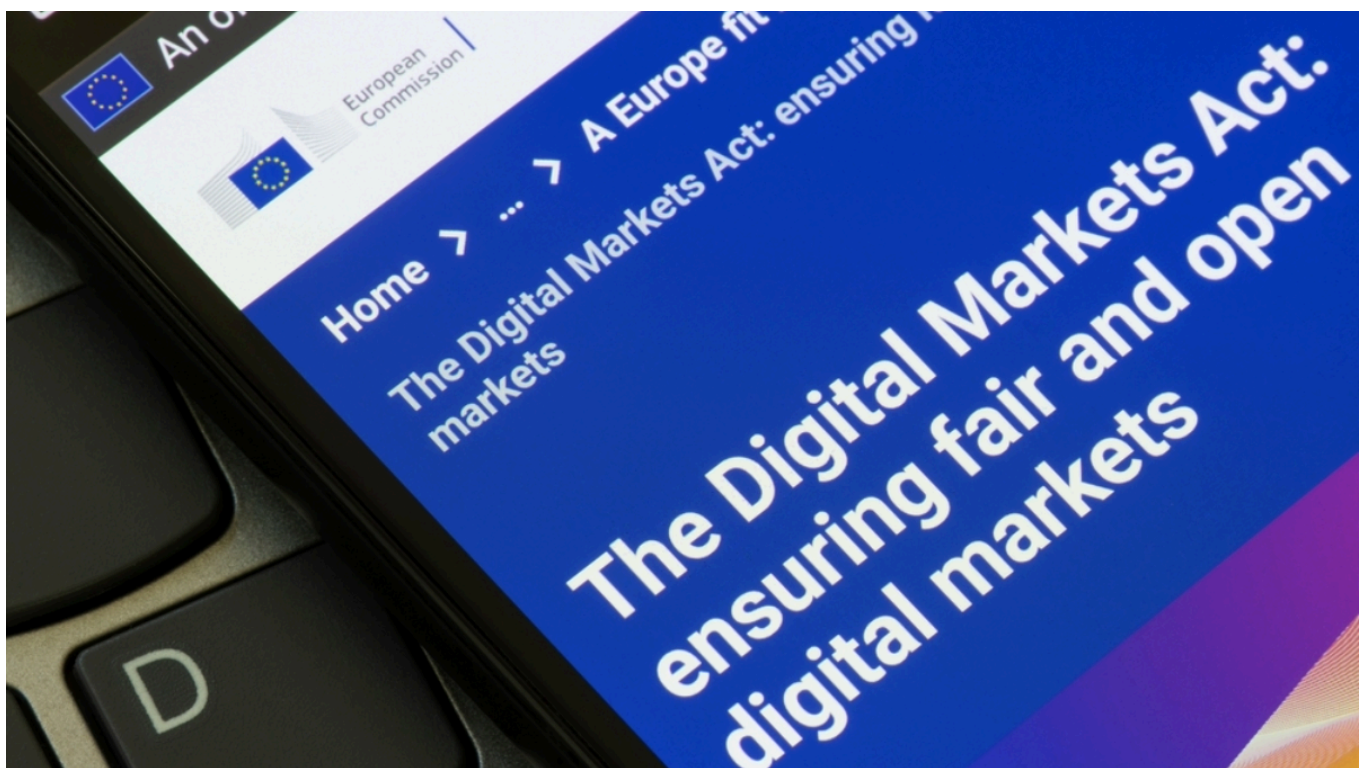


# Digital Markets Act Roundup: December 2024 - January 2025

MEGAN KIRKWOOD / FEB 4, 2025

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## President Trump, Big Tech, and Questions about DMA Enforcement

January 2025 was marked by regulatory uncertainty around the future of the Digital Services Act Package, comprising the Digital Services Act and Digital Markets Act (DMA), and more generally, Europe's ability to enforce its digital laws. According to Javier Espinoza and Henry Foy for the *Financial Times*, Brussels regulators are reassessing current investigations against companies like Apple, Meta, and Google. Espinoza and Foy report that the shift comes "just as the US companies urge [President] Donald Trump to intervene against what they characterise as overzealous EU enforcement" and could lead to potentially scaling back probes covering "all cases launched since March last year under the EU's digital markets regulations."

Espinoza and Foy also reported that a Commission spokesperson had publicly stated that there “is no such review taking place.” Two days later, Samuel Stoltz and John Ainger reported for *Bloomberg* that Teresa Ribera, the new Executive Vice-President of the European Commission for Clean, Just and Competitive Transition and Commissioner for Competitiveness, denied claims that enforcement was slowing. She later delivered a speech at the Forum Europa emphasizing the importance of competition law in general and the DMA in particular.

“In a world where platforms and big tech companies play a central role in our economy and the everyday lives of our citizens, we need to make sure that Europe’s digital markets stay open for new players, new ideas, and new investment. This is why the Digital Markets Act is so important. To ensure that platforms create opportunities for start-ups and innovators, not shut them out. And to safeguard the rights of EU consumers when it comes to their data, their purchasing decisions and their freedom of choice.”

At the same time, Big Tech has been busy making nice with the new US President, scrapping fact-checking rules, and generally shifting its company policies to meet Trump’s “anti-woke” ideology. In return, Trump is paying heed to its complaints regarding EU law enforcement. At the January 2025 World Economic Forum in Davos, Trump officially “blasted European Union regulators for targeting Apple Inc., Alphabet Inc.’s Google and Meta Platforms Inc., describing their cases against American companies as ‘a form of taxation.’”

President Trump has also threatened to wage trade wars against nations that he deems to be treating the US badly, including the EU. As Katrin Bennhold points out for *The New York Times* the “United States remains the main guarantor of European security as the war in Ukraine has shown. It is also Europe’s biggest export market, making the prospect of tariffs a powerful threat for European economies.”

That said, as Professor Anu Bradford illustrates for *The Economist*, “ensuring dominant companies do not profit unduly from their market power is not some fad: it is enshrined in the treaties that govern the EU. Limiting big tech’s sway over users is a matter of human rights, not easily circumvented.” Bradford writes that she does not see the EU backing down from enforcing its rules, particularly now that Big Tech is wielding more political influence. However, the consequences of the EU doling out fines against American tech firms could spur strong reactions from the President.

For the moment, EU regulators are reportedly not backing down, and there appears to be strong support among some members of the European Parliament and civil society for enforcing the law. Reacting to reports such as Espinoza and Foy’s, Sarah Wheaton reported for *Politico* that “key European Parliament lawmakers are urging the Commission not to cave in to pressure from Washington and to enforce the DMA.” Stéphanie Yon-Courtin, a Member of the European Parliament, posted a public letter addressed to Commission President Ursula von der Leyen urging against delayed enforcement of both the DMA and Digital Services Act.

Johnny Ryan, director of Enforce, wrote in *The Guardian* similarly urging von der Leyen and Executive Vice-President of the European Commission for Tech Sovereignty, Security and Democracy, Henna

Virkkunen, to enforce digital laws. Max von Thun, Open Markets Institute, and Varg Folkman, European Policy Centre, wrote in the Observer that “the EU should be doubling down on its digital rulebook” in order to create a digitally sovereign EU.

Ribera has responded to Trump’s comments from Davos, reinstating that “this is not a tax. This is not something against any nationality. This is the law.” In December 2024, Ribera interviewed with Bloomberg TV, making it clear not only that she intends “to build on the ‘legacy’” of her predecessor, Margrethe Vestager, who had a reputation for strong antitrust enforcement against Big Tech, but also that structural remedies were on the table regarding the competition case against Google’s advertising business.

In addition, on January 16, 2025, Club de Madrid, a non-profit forum of democratic former Presidents and Prime Ministers of the EU, penned an open letter to von der Leyen urging for a break up of Google’s ad tech business. The letter also called for “resourcing and enforcing the DSA and DMA,” as well as investing in a “European Tech Deal” to help start-ups build a more sovereign tech ecosystem in the EU, removing dependencies from Big Tech.

Therefore, while there is reason to worry about the future of antitrust enforcement in a difficult geopolitical environment, it is not a foregone conclusion that the EU completely cedes to Trump’s demands. The first tests for the DMA are expected in March when the outcome of the first non-compliance investigations against Alphabet, Apple and Meta are due.

## Enforcing Interoperability with Apple

In December 2024, the Commission opened two consultations seeking views on the Commission’s proposed measures to bring Apple into compliance with Article 6(7) of the DMA, which calls for free and effective interoperability with the same hardware and software features controlled by the gatekeeper’s operating system. One consultation focused on feedback for measures proposed for requesting interoperability with Apple’s iOS and iPadOS operating systems, and the other for interoperability with Apple’s iOS operating system and connected devices. These consultations relate to the Commission’s specification proceedings to assist Apple in complying with its interoperability obligations, which were opened on September 19, 2024. The proceedings will conclude with the Commission explaining the measures Apple should take to effectively comply with 6(7).

The suggestions include ensuring developers can access high-level descriptions of iOS and iPadOS components so developers know about available features and functionalities; ensuring developers can obtain an adequately documented process setting out how requests will be received, acknowledged, assessed, and responded to; establishing a contact point for developers to communicate with Apple regarding interoperability requests; increased transparency into why requests for interoperability were rejected; and provide effective interoperability with the AirDrop, Airplay, iOS notifications, and close-range wireless file transfer services features.

Apple responded to the consultation by warning that DMA interoperability mandates are illustrative of “a new approach to interoperability in the EU would put users at risk, requiring them to open their

devices—and their most sensitive data—to companies with a track record of violating their privacy.” The company named here is Meta, who, according to Apple, “has made 15 requests (and counting) for potentially far-reaching access to Apple’s technology stack that, if granted as sought, would reduce the protections around personal data that our users have come to expect from their devices.”

Specifically, the company argues that if they are forced to grant Meta access to iOS features, Meta would be enabled “to read on a user’s device all of their messages and emails, see every phone call they make or receive, track every app that they use, scan all of their photos, look at their files and calendar events, log all of their passwords, and more.”

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Meta has continuously been at the center of data leak scandals, such as the [record-breaking fine](#) of \$1.3 billion by the European Data Protection Board for violating the General Data Protection Regulation by transferring the personal data of Facebook users to the United States, issued in 2023. Meta also was infamously involved in the [Cambridge Analytica](#) scandal of 2018 after the two firms were accused of massive personal data collection to attempt to sway the outcome of the US 2016 presidential election and the UK Brexit referendum. Using this company as an example of bad data practices is a persuasive move by Apple.

That said, it is unreasonable that the actions of a fellow gatekeeper should be used to block other companies and developers from gaining legitimate access to interoperability functions. I participated in a [consultation response](#), along with the civil society organizations ARTICLE 19, Free Software Foundation Europe, Data Rights, European Digital Rights (EDRI), and independent researchers Ian Brown and Benjamin Erhart.

## Epic Games v. Apple

Epic Games continues its battle against the gatekeepers of app stores. In a [blog post](#), the popular game developer announced its “first batch of third-party mobile games to the Epic Games Store, including 17 new games on Android globally and 15 new games on iOS in the European Union.” However, Epic Games went on to say that the development of their independent games app store is continuing to be hindered due to non-compliance by Apple and Google. As it argued:

“Even in places like the European Union where policy makers have passed laws, Apple and Google’s non-compliance continues to undermine competition and developer and consumer choice. So far none of the 100 highest grossing mobile game developers are willing to distribute their games on the Epic Games Store because of the Core Technology Fee and Apple and Google’s onerous restrictions and scare screens.”

Epic’s main concern is Apple’s core technology fee, a €0.50 fee that Apple charges for every app install once the app has been downloaded one million times. Unsurprisingly, successful developers are put off from offering apps outside the Apple App Store, where they do not face such a fee. To sway developers, Epic announced that while the Commission investigates, they will be covering the core technology fee for “all titles for developers that participate in the Epic Games Store’s free games program on iOS or iPadOS devices, regardless of where the featured title is downloaded from.”

The investigation referred to here is the [non-compliance investigation](#) opened on June 24, 2024, which must be concluded within 12 months, meaning we will not know the outcome until June 2025. Apple will also be able to appeal any non-compliance decisions, potentially delaying any final decisions. While it might be a financial undertaking for Epic Games, without being able to offer popular games at competitive rates, it will be difficult to lure users to their store when they are accustomed to the Apple App Store.

The other issue that Epic points out is the onerous multi-step journey users must undergo to be able to download third-party stores. Epic [illustrates](#) Apple’s 15 steps that users must navigate, as well as Google’s Android 12 steps. They have found that “more than 50% of the time a player tries to install the Epic Games Store on Android or iOS, they are unsuccessful due to onerous scare screens. In the European Union, an additional 5 million attempts to install the Epic Games Store were blocked by Apple’s browser and operating system ‘Eligibility Requirements’.”

These findings have broad implications for any developer aiming to launch a third-party app store, pointing out that “scare screens” do indeed put users off from downloading stores that have already undergone security verification by the gatekeepers. The multistep user journey is also included in the non-compliance investigation, with an outcome due June 2025.

## Other Updates

### Belgium’s DMA Guide

The Belgian Competition Authority has [published](#) its final DMA “short guide for tech challengers.” It explains what the DMA is, who the gatekeepers are, and what opportunities are presented to smaller business players. For example, it points out that gatekeepers must provide business users with free, effective, high-quality, continuous, and real-time access to data generated on their services that advertisers can take advantage of, and it also points out the ban on price parity rules, which has consequences, particularly for [hotels on Booking.com](#).

### Meta’s Marketplace Test



In November, the European Commission issued Meta the company's first EU antitrust fine of €797.72 million for breach of the competition law regulating abuse of dominance. The Commission found that Meta abused its dominance in social networks and online display advertising on social media by "tying its online classified ads service Facebook Marketplace to its personal social network Facebook." The Commission found that "competitors of Facebook Marketplace may be foreclosed as the tie gives Facebook Marketplace a substantial distribution advantage which competitors cannot match."

Meta immediately responded with its intention to appeal but added on January 8, 2025, that they are "working quickly and constructively to build a solution which addresses the points raised." They announced the launch of a test to allow users to see listings from "eBay directly on Facebook Marketplace while completing their transaction on eBay." This would allow sellers listed on eBay to access Facebook's audience while users can access eBay listings when looking for items on Marketplace. The test will run in Germany, France, and the US.

The test is intended to appease the findings by the Commission that Facebook maintains an unfair advantage over advertising competitors who cannot reach Facebook audiences. Meta will be sharing information with eBay on how its listings do during the test, which does not appear to have an end date. eBay said in a statement that they intend "to expand the number of eBay listings that can appear on Facebook Marketplace." It is assumed the outcome of the test will be used to support Meta's appeal.

## Google's Final Appeal of Android Fine

Google made its final appeal to overturn a fine imposed on the company by the Commission in 2018 where it found that Google violated Article 102 of the Treaty on the Functioning of the European Union as the company "imposed illegal restrictions on Android device manufacturers and mobile network operators to cement its dominant position in general internet search." Google's appeal to the European Court of Justice (ECJ), held on January 28, 2025, comes after the lower court upheld the Commission's fine in 2022, though the fine was trimmed from €4.3 to €4.1 billion. Google argued before the ECJ that the EU "punished Google for its superior merits, attractiveness and innovation." The decision is due to be made in the next few months.

On top of the €4.1 billion fine, the company faces a potential DMA non-compliance decision in March, which can incur fines of up to 10% of its total worldwide turnover in the preceding financial year, and faces a decision regarding the European antitrust case against its advertising business which is "likely" due this year. However, the DMA only forces gatekeepers to allow for app uninstallation and change of defaults, illustrating the role of antitrust law in tackling more complex and structural anticompetitive behavior.

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