



The Daily Dish

The Digital Markets Act

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Eakinomics: The Digital Markets Act

The Digital Markets Act (DMA) is one of the Unholy Three (not to be confused with the Lon Chaney movie featuring a ventriloquist, a strongman, and a dwarf) of European Union (EU) actions, along with the [Digital Services Act](#) and the [Digital Services Tax](#). As nicely [exposed](#) by Jennifer Huddleston, the DMA is part of an increasingly protectionist policy on the part of European regulators that appears intentionally designed to punish U.S.-based tech companies.

The DMA would classify certain tech companies such as Google, Apple, Facebook, and Amazon as “gatekeepers” and subject them to additional regulations. Per Huddleston: “To be classified as a gatekeeper, a tech company must have a large size in the EU market, be important in businesses’ attempts to reach end-users, and have entrenched and durable control of these gateways. The [DMA creates a regulatory presumption](#) a company is a gatekeeper and subject to the DMA’s regulations if for three consecutive years it reaches a threshold in turnover or market capitalization, provides its service in at least three EU countries, and has 10 percent of the EU population as monthly active users and at least 10,000 active annual business users.”

While the notion is to impose regulations in advance so as to enable increased competition in these markets, the DMA is a regulatory misstep. Huddleston notes, “Under the DMA, regulators would have significant powers to impose additional obligations on gatekeepers to ensure these markets remain fair and contestable for competitors rather than focusing on the experience of consumers as a result of the competition and market dynamics. Competitors may often feel that certain actions are unfair, but this shift in regulatory focus means that a successful company could be penalized for popularity that occurs from its superior product rather than for purposefully engaging in behavior that harms consumers. Because these terms are not narrowly defined, regulators could abuse this authority to favor certain industries or competitors by determining the impact of gatekeepers’ actions [on competitors rather than consumers](#).”

While some may argue we should “let Europe be Europe,” all three of these proposals have risks when it comes to U.S. businesses and consumers. Some of the components of these bad policies are starting to show up on this side of the Atlantic, but even when they don’t, the global nature of the impact and the success of U.S. tech companies mean the impact will be felt here as well. These changes risk a shift to a more pro-regulatory approach led by Europe rather than the light-touch American approach that has yielded so many innovative companies and benefits to consumers.

In the end, effective competition regulation should be focused on consumer welfare. Always. And it is essential to identify markets and examine competition in those markets. The DMA misses both by focusing on the actions of competitors (not consumers) and focusing on firms (and not particular markets).