ICC Response to the consultation on the first review of the Digital Markets Act (DMA)

The International Chamber of Commerce (**ICC**) represents global business and brings diverse perspectives on digital regulation. The following responses reflect the views and experiences of some ICC members and are intended to provide constructive input to the consultation. They are not exhaustive and should not be interpreted as representing the unanimous position of all ICC members.

List of Core Platform Services and designation of gatekeepers

1. **Do you have any comments or observations on the current list of core platform services?**
- **Should the DMA be modified, including (i) the list of core platform services; (ii) the list of obligations under Articles 5, 6 and 7 DMA; and their enforcement.**

The Digital Markets Act (**DMA**) represents a significant regulatory intervention in digital markets, yet its real-world impact is still emerging. It would be prudent to assess the effectiveness of the current regime before considering any expansion of the DMA's scope - whether by modifying the list of core platform services (**CPS**), altering the obligations under Articles 5-7, or changing enforcement mechanisms - particularly in light of some unintended consequences that have come to light (see further below). The DMA's primary objective is to foster contestable and fair markets, and any changes should be evidence-based and proportionate.

Effectiveness and Scope of the current DMA

The current list of CPS is calibrated to address the DMA's objectives for intermediary platforms. The compliance process for the current set of designated gatekeepers remains ongoing. Any evidence to justify expanding the scope of CPS at this stage must be compelling. To ensure the DMA's effectiveness, a period of observation is necessary to evaluate its impact on competition, innovation and consumer welfare, notably to avoid any expansion creating unintended consequences and undermining the EU's broader competitiveness objectives.

Artificial Intelligence (AI) and the DMA

There is ongoing debate about whether AI solutions should be designated as a CPS under the DMA. AI is not a standalone service or intermediary platform; rather, it is a set of enabling technologies embedded in and powering a wide range of applications and services, including existing platforms, and deployed heterogeneously across many markets and use cases. As the DMA High-Level Group clarified in its May 2024 statement: *"Gatekeepers of core platform services must comply with the DMA obligations … also when gatekeepers deploy AI in the context of their designated core platform services."* The existing regime is therefore sufficiently flexible to address AI-related scenarios within the scope of regulated services, and a separate CPS category for AI is not necessary at this stage.

Regulating AI through the DMA would be challenging given that the AI sector is highly dynamic, with rapid innovation at all levels. In addition, the EU has already introduced comprehensive obligations through regulations such as the AI Act, and further regulation under the DMA would risk undermining Europe's competitiveness and attractiveness as an investment destination.[1] While the competition community is still developing a comprehensive understanding of AI's impact,[2] additional regulation would therefore appear premature.

Cloud computing services

While cloud computing services are on the current list of CPS, cloud providers do not act as intermediaries between businesses and end users in the same way as other CPS. Moreover, the sector is characterised by rapid innovation and significant ongoing investment, which argues against *ex ante* regulation while it is still evolving. Key DMA objectives such as data portability, interoperability and transparency are already addressed in the cloud sector through existing regulations (notably the EU Data Act) and industry-led initiatives such as the CISPE Cloud Switching Framework and SWIPO Codes of Conduct. Additional regulatory layers would likely run counter to the Commission's efforts to simplify regulation and promote growth.

Review and potential removal of CPS

The DMA should remain responsive to market realities. In addition to considering whether the scope of CPS should be expanded, where there is sufficient evidence that a relevant market is fair and contestable without the need for ex ante regulation, the corresponding CPS should be considered for removal from the DMA's scope. Regular and rigorous assessment of market dynamics is essential to ensure that regulation remains targeted and proportionate and does not impose unnecessary burdens on sectors where competition is already effective. This approach would help maintain the DMA's focus on addressing genuine market failures while supporting innovation and competitiveness across the digital economy.

2. Do you have any comments or observations on the designation process (e.g. quantitative and qualitative designations, and rebuttals) as outlined in the DMA, including on the applicable thresholds?

[1] At a time where the EU is the only jurisdiction in the world to have introduced far-reaching obligations on the AI sector through the AI Act, and when the United States and China double down on AI investments, imposing new regulatory obligations through the DMA would likely hamper the EU's AI competitiveness objectives. As AI is not a service or a business model, but a technology, regulating it as a CPS under the DMA would also violate the EU's commitment to technological neutrality to the detriment of Europe's AI ambitions.

[2] See, for example, the ongoing OECD Competition Committee discussions to build a common understanding of AI technologies, including the upcoming OECD Global Forum on Competition session on and roundtable on Competition in Artificial Intelligence Infrastructure, both scheduled for December 2025.

The designation process under the DMA is a critical mechanism for ensuring that regulation targets genuinely systemic digital platforms. However, some commentators perceive the designation thresholds as arbitrary and potentially disproportionately affecting companies from outside the EU, particularly US-based firms. For example, in sectors such as retail, significant European and Chinese companies with substantial market positions in certain Member States remain outside the DMA's scope. To address this perception, greater transparency could demonstrate that the criteria are applied objectively and consistently, irrespective of a company's origin. While the DMA is based on objective criteria and the Commission has generally acted with caution, further efforts to clarify the rationale and application of thresholds would help build trust in the process (see further below).

Obligations

3. **Do you have any comments or observations on the current list of obligations (notably Articles 5 to 7, 11, 14 and 15 DMA) that gatekeepers have to respect?**

The DMA's obligations are central to its effectiveness, yet certain aspects of their design and implementation could benefit from greater proportionality and a more practical focus.

Proportionality and sector-specific application

The blanket application of all obligations to every designated CPS, regardless of sectoral differences, creates regulatory inefficiencies and unnecessary compliance costs. For example, the data portability obligation, while relevant for messaging or social media services, is ill-suited to the retail sector, where customers rarely seek to transfer personal data such as order histories between marketplaces. Imposing uniform requirements across fundamentally different services can lead to significant engineering investments without delivering meaningful benefits for users or competition. The Commission should adopt a more tailored approach, guided by proportionality and the specific characteristics of each CPS, in line with its 'Better Regulation' and regulatory simplification principles.

Compliance reporting and oversight (Article 11 DMA)

The compliance and profiling report templates required under Article 11 of the DMA are overly complex and burdensome, sometimes requesting information that is not directly relevant to demonstrating compliance. This creates significant administrative overhead and diverts resources from substantive compliance efforts. Simplifying these templates to focus on new measures and information directly relevant to compliance would reduce complexity and operational costs while ensuring appropriate regulatory oversight.

At the same time, the absence of regular independent audits and a centralised repository for compliance documentation undermines transparency and accountability. Establishing such mechanisms would enhance oversight and ensure that gatekeepers are held to the highest standards. Involving third parties – particularly business users and potential competitors – at all stages of the enforcement process would further strengthen compliance, as their insights can contribute to more effective and balanced outcomes.

Approach to enforcement

Recent enforcement actions by the Commission indicate a tendency to interpret DMA provisions broadly, at times explicitly discounting arguments based on proportionality. Such an enforcement-led approach – where expansive interpretations are adopted and left to the courts to refine - appears at odds with the DMA's stated purpose as an *ex ante* regulatory instrument distinct from competition law. For the DMA to be effective and fair, enforcement should be guided by proportionality and focus on the circumstances that matter, rather than pursuing the most expansive reading of obligations.

4. Do you have any other comments in relation to the DMA obligations?

The DMA should be implemented in a way that supports regulatory simplification and coherence across the EU's digital framework. Mechanisms are needed to address overlaps and potential conflicts between the DMA and other legislation, such as the Data Act and the GDPR, to reduce unnecessary complexity, legal uncertainty and compliance burdens for businesses. The DMA review should be fully integrated into ongoing EU initiatives on regulatory streamlining, including those highlighted by the former Polish Presidency of the Council and the Commission's Digital Omnibus Package.[3]

Sector-specific relevance and the need for a de-obligation mechanism

As noted in the response to Question 3 above, certain DMA obligations may not be relevant or may even prove counterproductive in specific sectors or for certain designated gatekeepers. For example, the data portability requirement in the retail sector imposes significant compliance costs without delivering clear benefits to consumers or competition (see response to Question 3 for further detail). A formal procedure to review and, where appropriate, lift such obligations would enable more efficient and targeted regulation, ensuring that the DMA remains focused and effective and does not impose unnecessary burdens where

[3] See the non-paper of the Polish presidency of the Council of 2 June 2025, circulated to the Telecoms Council on simplification in the digital field to address regulatory overlap and potential streamlining options given "*Potentially conflicting compliance requirements for actors subject to various legal frameworks*", including the DMA, Data Act, GDPR, cybersecurity legislation etc. The Commission has launched various initiatives on regulatory overlap to which the DMA review should be an integral part and reflected in the upcoming Digital Omnibus Package and Digital Fitness Check.

inappropriate. This would also align with the EU's commitment to regulatory simplification and better regulation.

Addressing Overlapping Obligations

Regulatory overlap between the DMA and other EU legislation, such as the Data Act, the GDPR and cybersecurity laws, creates potential conflicts and redundancies. For example, the Data Act prevents designated gatekeepers under the DMA from accessing certain data as third parties, while the DMA imposes data portability requirements that may duplicate or conflict with these provisions. Such overlaps increase the regulatory burden and create legal uncertainty for businesses. A more coordinated approach, including joint guidelines and regular reviews, would help ensure that obligations are coherent and proportionate, and do not undermine the effectiveness of the EU's digital regulatory framework.

Enforcement

5. **Do you have any comments or observations on the tools available to the Commission for enforcing the DMA (for example, whether they are suitable and effective)?**

The effectiveness of the DMA depends not only on the substance of its obligations but also on the suitability and consistency of the Commission's enforcement tools. Legal certainty, efficiency and proportionality in enforcement could be strengthened in several areas, as set out below.

Requests for information (RFIs)

The efficiency and effectiveness of RFIs could be improved through a more structured and collaborative approach.[4] At present, RFIs can be broad and sometimes lack clear focus, creating unnecessary administrative burdens and yielding less useful responses. Preliminary discussions on the scope, purpose and format of requested information would help ensure that RFIs are appropriately targeted and that companies can provide relevant information efficiently. More comprehensive RFIs should be reserved for formal non-compliance investigations, which should be subject to clear timelines.

Distinction between informal inquiries and formal investigations

There should be a clear distinction between informal inquiries and formal non-compliance investigations, as the legal implications for companies differ significantly. Informal inquiries should not serve as a vehicle for protracted investigations without clear endpoints or formal

[4] For best practices, see also ICC, Report and recommendations on the effective and efficient use of Requests for Information in competition investigation and studies, 2023.

safeguards. Like formal investigations - which should be concluded within a defined timeframe (e.g. 12 months) - informal inquiries should also be time-limited (unless evolving into formal investigations) to avoid prolonged uncertainty and ensure procedural fairness.

Transparency and regulatory dialogue

The effectiveness of regulatory dialogues could be enhanced if the Commission shared concerns identified during informal inquiries more openly. This would enable designated companies to address potential issues proactively. Greater transparency regarding the Commission's interactions with other regulatory bodies, such as the European Data Protection Board, would also be beneficial and help ensure coherent enforcement across the EU's digital regulatory landscape.

Proportionality of fines

Fines imposed under the DMA should be proportionate and effective. The Commission should also take into account factors such as the novel nature of DMA obligations, the current lack of judicial clarity on their scope and the level of constructive engagement from designated companies. This would help ensure that enforcement actions are fair and reflect both the intention to comply and the actual impact of any non-compliance.

Targeted document requests

When making document requests, the Commission should ensure they are as targeted as possible to avoid overly broad or burdensome demands. For example, requesting documents from an entire list of employees subject to retention orders may inadvertently encourage companies to limit the number of employees included in such orders. A more focused approach would support efficient and effective information gathering.[5]

6. Do you have any comments in relation to the enforcement to the DMA?

Effective enforcement of the DMA requires not only robust tools and procedures but also legal certainty, clear guidance and a harmonised approach across the EU. Several areas require attention to ensure that the DMA's objectives are achieved without unnecessary regulatory fragmentation or uncertainty for market participants.

[5] For best practices, see also ICC, *Report and recommendations on the effective and efficient use of Requests for Information in competition investigation and studies*, 2023.

Need for Clear Guidance on Compliance

There is currently a lack of clear guidance or metrics from the Commission on what constitutes effective compliance with the DMA. Such guidance would assist gatekeepers, business users and other stakeholders. Given the significant resources required for compliance and the novel, *ex ante* nature of the regime, more concrete direction on the standards and outcomes expected is essential.[6] Without such clarity, it is difficult for companies to assess whether their substantial investments in compliance measures are achieving the desired regulatory outcomes.

Interpretation of Article 1(6)(b) and Avoiding Regulatory Fragmentation

The provision in Article 1(6)(b) of the DMA allowing National Competition Authorities (**NCAs**) to apply national competition rules requires further clarification. While NCAs can provide valuable support to the Commission, the DMA's harmonisation objective must be preserved. *Further obligations* should be interpreted narrowly to avoid Member States introducing supplementary requirements that lead to regulatory fragmentation. This risk is already materialising, as seen in recent proceedings by the German Federal Cartel Office that overlap with areas covered by the DMA.[7] To ensure a coherent and unified European regime, the Commission should issue clear guidance on the scope of Article 1(6)(b), clarifying that any such further obligations should address only conduct not already covered by the DMA. This approach is consistent with the EU's broader competitiveness and regulatory-simplification agenda, as highlighted in the Draghi and Letta reports and endorsed by the Commission.

Implementing Regulation and procedure

7. Do you have any comments or observations on the DMA's procedural framework (for instance, protection of confidential information, procedure for access to file)?

Transparency and Public Consultation

To improve transparency in DMA proceedings, the European Commission should systematically announce and conduct public consultations in the context of specification proceedings and market investigations, particularly those concerning systematic non-compliance or the potential designation of new services. While third parties can provide

[6] EC officials have stated repeatedly that specific outcomes from the DMA are not expected, but rather that the impact of the DMA will depend on how business users capitalise on the new opportunities generated through gatekeepers' compliance with the DMA. See e.g. Olivier Guersent, Director General of DG COMP, Keynote Speech at the Annual CRA Brussels Conference, 2023.

[7] See e.g. the German Federal Cartel Office investigation of Amazon under Section 19a of the German Competition Act. The statement of objections is specifically aimed at requiring Amazon to promote on the marketplace those higher priced independent sellers' offers yet covering features that are already covered by the DMA.

valuable market insight, it is often unclear when and how the Commission seeks such input. A more structured and transparent approach to consultation would enhance the legitimacy and quality of the Commission's decision-making.

Procedural Safeguards and Fairness

Compared with the procedural checks and balances provided under Regulation 1/2003 and its accompanying guidance, including rights of third parties, the DMA's procedural framework is less robust. For example, the DMA does not currently grant designated companies the right to request an oral hearing as part of their response in non-compliance proceedings. Introducing this right would strengthen procedural fairness and ensure that companies have an effective opportunity to present their case.

Given the volume of information submitted under the DMA and the associated issues of confidentiality, legal privilege and access to file, there should also be recourse to an independent hearing officer to resolve disputes arising in these areas. The absence of such safeguards may undermine the legitimacy of non-compliance decisions, particularly under judicial scrutiny.

Access to File and Protection of Confidential Information

The procedures for access to file and the protection of confidential information should be clarified and strengthened. Clear and consistent rules are needed to ensure that designated companies can effectively exercise their rights of defence while safeguarding the confidentiality of sensitive business information.

8. Do you have any comments in relation to the Implementing Regulation and other DMA procedures?

Please refer to the responses to Questions 3, 5 and 7 above regarding the need for flexibility, proportionality, clarity and enhanced procedural safeguards in DMA procedures.

To ensure effective implementation and facilitate both public and private enforcement of the DMA, it is essential that the Commission provides ongoing, detailed and practical guidance. This should include clarifications on the interpretation of key provisions, practical examples and regular updates based on real-life enforcement experience. Systematically sharing lessons learned from past cases and enforcement actions would assist stakeholders in better understanding their rights and obligations, promote legal certainty, encourage compliance and reduce the risk of inadvertent violations.

Effectiveness and impact on business users and end users of the DMA

9. Do you have any comments or observations on how the gatekeepers are demonstrating their effective compliance with the DMA, notably via the explanations provided in their compliance reports (for example, quality, detail, length), their dedicated websites, their other communication channels and during DMA compliance workshops?

DMA compliance imposes substantial and ongoing costs on designated companies, significantly exceeding the Commission's initial annual estimate of €10–20 million across all such entities. These costs are likely to increase further should the scope of CPS be expanded. Industry analyses indicate that annual compliance expenses may reach several hundred million euros per company, with the cumulative burden across major firms amounting to billions.[8]

These expenditures encompass not only substantive compliance measures but also extensive reporting obligations, participation in workshops, and responses to numerous detailed Requests for Information issued by the Commission. Following the initial implementation period, the frequency and volume of these reporting requirements could be reassessed and streamlined to mitigate unnecessary administrative burden (refer also to responses to Questions 3 and 5 above).

The substantial resources allocated to compliance represent *opportunity costs*, as these funds could otherwise support job creation, innovation, or other investments within Europe. Streamlining compliance obligations and enhancing access to relevant documentation would help alleviate these burdens and better align with the EU's objectives of regulatory simplification and economic competitiveness.

Additionally, establishing a centralised and user-friendly platform for accessing compliance documentation could significantly enhance information accessibility for stakeholders. At present, users must navigate multiple steps and downloads to obtain relevant materials, which creates unnecessary friction and inefficiency.

10. Do you have any concrete examples on how the DMA has positively and/or negatively affected you/your organisation?

The DMA has not directly impacted ICC itself, but rather its members, who remain free to submit individual responses to the consultation. While the DMA is broadly recognised as a valuable regulatory instrument, its effectiveness depends on consistent compliance,

[8] According to Computer and Communications Industry Association estimates, the average annual cost of complying with the DMA for a large US company is $430M annually per designated company, amounting to $2.2 billion across the five largest US tech companies.

demonstrable improvements in fairness and contestability, and, where necessary, robust enforcement to serve as a deterrent.

11. Do you have any comments in relation to the impact and effectiveness of the DMA?

The DMA's effectiveness remains mixed and warrants a thorough, independent review - ideally involving the Court of Auditors - to determine whether it is meeting its intended objectives. Particular attention should be given to areas such as interoperability and information asymmetry, where progress has been uneven.

The DMA's restrictions on data use have had unintended consequences for SMEs, particularly in digital advertising. Many smaller businesses now find it more difficult to reach customers with relevant advertisements, thereby reducing their competitiveness and growth prospects.

Enforcement has, at times, been inconsistent and slow, undermining the DMA's credibility and deterrent effect. Recent high-profile cases have been criticised for delays or incomplete enforcement, with limited practical changes despite findings of non-compliance. If such patterns take hold, they risk enabling gatekeepers to delay meaningful changes and weaken the regulation's impact.

Finally, the risk of regulatory fragmentation remains a concern. The Commission should provide clear guidance on Article 1(6)(b) to prevent Member States from introducing overlapping or supplementary obligations that undermine harmonisation.

A robust cost-benefit analysis, in line with the EU's 'Better Regulation' principles, is essential to ensure that the DMA delivers on its promises without imposing excessive burdens on businesses or consumers, and to identify pragmatic ways to limit negative impacts while supporting innovation and competitiveness in the digital economy.

12. Do you have any further comments or observations concrete examples on how the DMA has positively and/or negatively affected you/your organisation?

The DMA has not directly affected ICC itself, and it cannot comment on the experience of individual members. That said, it is important that the Commission and national competition authorities take DMA compliance into account when assessing similar conduct in other competition investigations, including merger reviews. Companies that have made significant investments and operational changes to comply with the DMA should have these efforts recognised, to ensure consistency in regulatory approach and to avoid duplicative or conflicting requirements.

There is also a trend of legislative proposals at both EU and Member State level that introduce discriminatory provisions specifically targeting DMA-designated companies, even for services outside the scope of CPS. These proposals contravene Article 1(5) of the DMA and the principles of the EU Internal Market, and risk further regulatory fragmentation, increased legal uncertainty, and higher compliance costs. The Commission should actively oppose such proposals to uphold the DMA's harmonisation objective and maintain a single European rulebook for digital markets.