

# DIGITAL MARKETS ACT

## Enforcement in Practice

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\* Views are my own and do not necessarily represent the official position of the European Commission

# What is the DMA ?



# Contestability and Fairness

- Recital 32: [...] This Regulation should therefore ban certain practices by gatekeepers that are liable to increase barriers to entry or expansion, and impose certain obligations on gatekeepers that tend to lower those barriers. The obligations should also address situations where the position of the gatekeeper may be entrenched to such an extent that inter-platform competition is not effective in the short term, meaning that intraplatform competition needs to be created or increased.
- Recital 33: [...] For the purpose of this Regulation, unfairness should relate to an imbalance between the rights and obligations of business users where the gatekeeper obtains a disproportionate advantage. [...]

# Interplay with other Laws

- Article 1(5): [...] Nothing in this Regulation precludes Member States from imposing obligations on undertakings, including undertakings providing core platform services, for matters falling outside the scope of this Regulation, provided that those obligations are compatible with Union law and do not result from the fact that the relevant undertakings have the status of a gatekeeper within the meaning of this Regulation.
- AG Rantos in Case C-252/21, Meta v Bundeskartellamt

# Complementarity with Competition Law

- Recital 11: [...] This Regulation pursues an objective that is complementary to, but different from that of protecting undistorted competition on any given market, as defined in competition-law terms, which is to ensure that markets where gatekeepers are present are and remain contestable and fair, independently from the actual, potential or presumed effects of the conduct of a given gatekeeper covered by this Regulation on competition on a given market. This Regulation therefore aims to protect a different legal interest from that protected by those rules and it should apply without prejudice to their application.
- C-721/20, DB Station, sincere cooperation Art 4(3) TEU

# Ne bis in idem - Bpost C-117/20

- Article 50 of the Charter of Fundamental Rights of the European Union, read in conjunction with Article 52(1) thereof, must be interpreted as not precluding a legal person from being fined for an infringement of EU competition law where, on the same facts, that person has already been the subject of a final decision following proceedings relating to an infringement of sectoral rules concerning the liberalisation of the relevant market, provided that there are clear and precise rules making it possible to predict which acts or omissions are liable to be subject to a duplication of proceedings and penalties, and also to predict that there will be coordination between the two competent authorities; that the two sets of proceedings have been conducted in a sufficiently coordinated manner within a proximate timeframe; and that the overall penalties imposed correspond to the seriousness of the offences committed.

# Interplay with national competition law

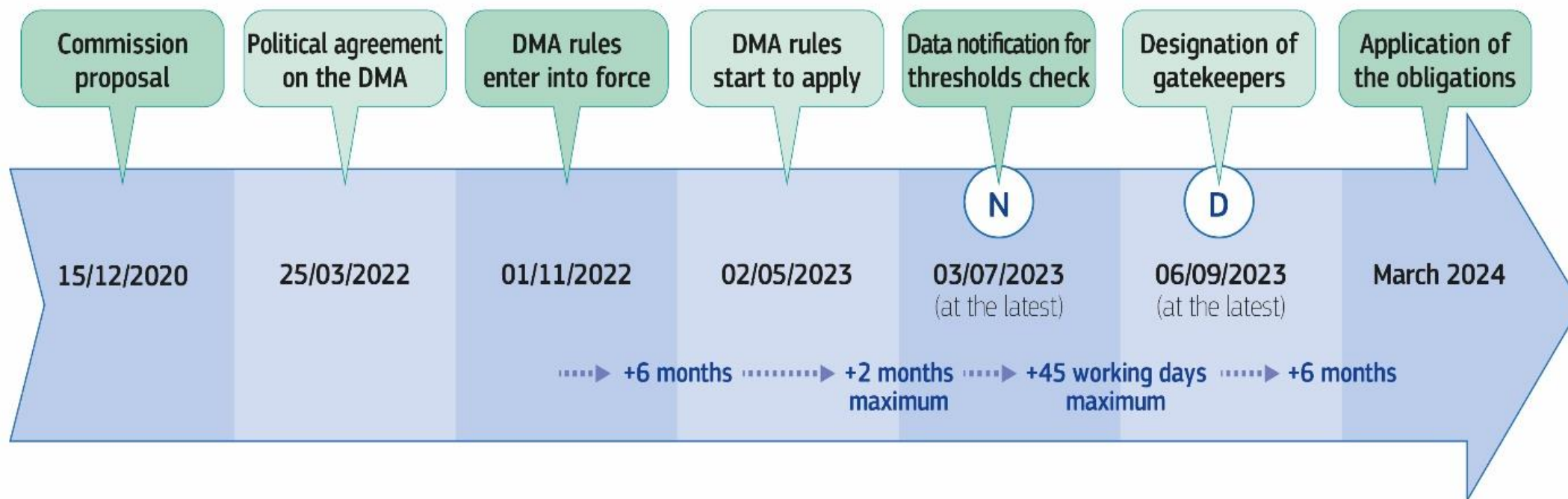
➤ Article 1(6): This Regulation is without prejudice to the application of Articles 101 and 102 TFEU. It is also without prejudice to the application of:

(a) national competition rules prohibiting anti-competitive agreements, decisions of associations of undertakings, concerted practices and abuses of dominant positions;

(b) national competition rules prohibiting other forms of unilateral conduct insofar as they are applied to undertakings other than gatekeepers or amount to the imposition of further obligations [weitere Verpflichtungen, obligations supplémentaires, obligaciones adicionales] on gatekeepers; [...]

# Timeline

## Timeline for Digital Markets Act







Thank you!