



The Danish Government's response to the public consultation for the Implementing Regulation to the Digital Markets Act (DMA)

12. January 2023

The Danish Government welcomes the opportunity to comment on the Commission's public consultation regarding the draft *Implementing Regulation on detailed arrangements for the conduct of certain proceedings by the Commission pursuant to Reg. (EU) 2022/1925* (the Digital Markets Act, "DMA").

The Danish Government supports the introduction of clear procedural rules to ensure a rapid and effective enforcement process in the context of the DMA. The draft Implementing Regulation is capable to clarify several important aspects, especially in relation to the notification and submission of information to be provided during the designation process. These procedural rules will prove crucial for the Commission to carry out its tasks in a timely manner, but also provide companies and their advisers with the necessary guidance for complying with the DMA.

The Danish Government particularly welcomes those provisions, which will streamline the enforcement process. This includes the possibility for an undertaking providing core platform services to engage in pre-notification contacts with the Commission, as well as the introduction of detailed rules in relation to time limits, transmission and receipt of documents. In our view, all these provisions may save time and administrative resources, thus contributing to the expediency of the proceedings.

The Danish Government would however like to highlight the importance of ensuring procedural fairness in proceedings under the DMA. In this sense, the Danish Government has noticed a series of provisions concerning a gatekeeper's right to defense, which differ from antitrust proceedings. This includes the absence of an oral hearing following the issuance of the Commission's preliminary findings, as well as a restriction of the files that a gatekeeper can be granted access to, and which is limited to documents cited by the Commission in the preliminary findings. Access to other documents listed in the Commission's file can only be granted following a reasoned request and under certain limitations.

Finally, the draft Implementing Regulation establishes a 25-page limit for submissions made to the Commission aimed at rebutting the quantitative threshold presumption established in Article 3(2) DMA. Such a limitation may not afford a gatekeeper with the opportunity to present "*sufficiently substantiated arguments*" to rebut the presumption.

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The Danish Government understands that certain limitations may be necessary in order to streamline proceedings and ensure a more rapid and effective enforcement process. However, when finalizing its initiative, the Commission should take into account whether procedural efficiencies may be outweighed by a risk of compromising fundamental rights and general principles of EU law (e.g. proportionality).

We hope these comments will be useful for your further work. The Danish Ministry of Industry, Business and Financial Affairs would be at your disposal for further elaboration or any follow-up questions you may have.