WRITTEN SUBMISSION OF THE NATIONAL FOREIGN TRADE COUNCIL

Consultation on the Review of the Digital Markets Act (Article 53 of the DMA)

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The National Foreign Trade Council (NFTC) appreciates the opportunity to provide input as part of the European Commission's first triennial review of the implementation of the Digital Markets Act (DMA). NFTC strongly supports free and undistorted competition that promotes innovation and enhances consumer welfare. We are pleased to provide our views as part of the Commission's consultation in hopes that the review will result in a more balanced approach under the DMA to promote innovation, ensure fair competition, and maintain key user protections.

About NFTC

The NFTC, organized in 1914, is an association of U.S. business enterprises engaged in all aspects of international trade and investment. Our membership covers the full spectrum of industrial, commercial, financial, and service activities. Our members support establishing and maintaining international trade norms that reflect the critical role that an open, rules-based international economy plays in the success of American businesses, entrepreneurs, and workers, and shared global prosperity. The NFTC also supports the effective enforcement of those rules.

I. INTRODUCTION

The DMA established a novel and unprecedented *ex ante* approach to regulation of digital markets. Large digital companies that operate "core platform services" (CPS) (e.g., search engines, app stores, social networks, and operating systems), meet high financial thresholds, and are deemed to have a significant impact in the EU may be designated as "gatekeepers" that are obligated to comply with certain "do's" and "don'ts" in their daily operations. Examples of DMA rules include forcing companies to share data with rivals, promoting rival products and services, restricting the beneficial cross-product usage of data, prohibiting competing in adjacent markets, mandating redesign and re-engineering of products, and limiting business offerings in Europe.[1]

Article 53 of the DMA requires the European Commission ("the Commission") to conduct a review by May 3, 2026, and every 3 years thereafter to evaluate whether the DMA has achieved

[1] European Commission, "About the DMA," (accessed September 13, 2025).

its objective of ensuring open and fair markets and assess its impact on users, especially SMEs. The review will also consider whether potential modifications to DMA rules, including updates to the list of core platform services and enforcement practices, are necessary. The DMA review provides an important opportunity to revisit elements of the DMA, especially in light of the Commission's current emphasis on regulatory simplification and increasing efficiency.

II. PERSPECTIVES ON DMA IMPLEMENTATION

A. Regulatory Fragmentation

As the DMA was being developed, Margrethe Vestager, former Executive Vice President of the European Commission, indicated the Commission's intent was to create a single, uniform rulebook through the DMA that would apply across all member states to level the playing field and promote innovation.

The DMA designates the Commission as the sole enforcement arm to reduce duplicative proceedings and avoid jurisdictional disputes. Yet, this is not proving to be how the DMA works in practice, with companies facing multiple, overlapping, contradictory investigations and compliance demands. First, there is a growing overlap between the DMA and enforcement through traditional competition law. The DMA currently allows Member States to apply national competition law to the same conduct regulated by the DMA, creating the occasion for parallel enforcement, forum shopping, and conflicting legal standards. Second, there are parallel national DMA proceedings, with some national authorities having begun preliminary investigations and private litigants bringing cases in national courts. These proceedings are developing in parallel to the Commission's enforcement process, increasing the risk of duplication or contradiction, and creating unnecessary compliance costs. Finally, while the DMA is a regulation which should preclude overlapping national laws, we observe an increasing trend of legislative proposals specific to companies designated under the DMA.

These parallel national actions clearly contravene the clear obligation in DMA Art.1(5) prohibiting Member States from imposing further obligations on gatekeepers "by way of laws, regulations or administrative measures for the purpose of ensuring contestable and fair markets."

The Commission should object to competing proposals but thus far has not reigned in Member States that have parallel, overlapping digital regulatory or competition regimes. Germany is a case in point, as its competition law has a parallel national regime on top of the DMA, with rules for "companies with paramount significance across markets."

The proliferation of additional national regulations on top of the DMA leads to precisely the kind of inefficient fragmentation that former Commissioner Vestager and the Draghi report have warned against, potentially undermining the effectiveness of both EU-level and national regulatory frameworks.

B. **The DMA *De Facto* Discriminates Against U.S. Companies**

The DMA imposes revenue thresholds and other criteria (e.g., EUR 75bn market capitalization or 45 million monthly active users) to designate gatekeepers and defines core platform services in ways that appear designed to single out American technology companies. To date, no European companies have been designated as gatekeepers, even though in many markets there are European platforms that hold greater market share than U.S. companies. Third-country platforms with a significant share in EU markets have likewise not been designated. For example, AliExpress (Alibaba) leads marketplace services in Lithuania, Bulgaria, Portugal, Latvia, Croatia, and Estonia. Temu is the largest player in the Czech Republic and Hungary, and has a significant presence in Denmark, Finland, and Sweden. European marketplaces like Bol.com in the Netherlands and Allegro in Poland are the largest players in their respective countries.

As a general matter, regulations that are deemed to be necessary in a given sector should be applied in a neutral manner to all entities operating in that sector. The creation of a regime in which only some market participants are subject to regulation creates the potential for market distortion at the hands of the government. In the DMA context, allowing European and third-country platforms—including major players such as Tencent, Baidu, Alibaba, and Huawei—to engage in identical activities that U.S. companies cannot (e.g., offering interlinked services, prioritizing their own services, operating closed ecosystems, and safeguarding their data) results in *de facto* discrimination against U.S. companies providing the same CPS.

To ensure fair and non-discriminatory operation of the DMA and create a level playing field, the Commission should ensure that European, Chinese, and other third-country rivals providing the same CPS as U.S. companies are also subject to DMA obligations.

C. **High Compliance Costs Stifle Innovation and Competition**

DMA implementation is costly to the Commission, to designated companies, and—indirectly—to European businesses and consumers. The Commission initially estimated that total aggregated DMA annual compliance costs for all designated companies would be around 10-20 million euros. In reality, actual compliance costs have far exceeded these projections. According to one estimate, DMA compliance costs $200M per year for the average large U.S. technology company for a total of $1B per year across five covered U.S. technology companies.[2] Moreover, DMA compliance accounts for only a portion of the overall EU digital regulatory regime. The same study estimates the overall EU digital compliance cost for a large U.S. company is $430M annually, amounting to $2.2 billion across the five largest U.S. tech companies.[3] These resources that U.S. companies must spend on DMA compliance could have been used for creating jobs or making investments with broad beneficial impact.

In some instances, these costs come with little benefit for consumers. For example, the data portability obligation has little application in the retail sector, where customers rarely seek to

[2] CCIA Research Center, "Costs to U.S. Companies From EU Digital Regulation," (March 2025), p. 2. ("CCIA Research")
[3] CCIA Research, p. 4.

transfer personal data such as their order history – and where such requirements can introduce new data security risks without clear upside for contestability.

The DMA has also created unintended costs for EU consumers, businesses, growth, and productivity without yielding the pro-European, pro-innovation outcomes advertised at the DMA's inception. For example, the DMA's restrictions on data combination and use have had unintended harmful consequences for small and medium-sized businesses relying on targeted advertising or search features to reach potential customers.

In addition to direct compliance costs, the DMA forces regulated companies to undertake practices that stifle their ability to innovate, including mandates to share data with rivals, promote rival products and services, restrict the beneficial cross-product usage of data, prohibit competing in adjacent markets, and compulsorily redesign and re-engineer their products, In several cases, these strictures or the anticipation of DMA constraints and mandates has led companies to withdraw or limit business offerings in Europe, resulting in European users having slower or no access to innovative new services offered to users in other parts of the world..

The DMA's heavy compliance burden and related drag on competition and innovation run counter to the recommendations of the Draghi report, especially with respect to the balance between innovation and regulation.

D. **Procedural Issues and Improvements**

Lack of Transparency/ Guidance: Neither the Commission nor the text of the DMA provides sufficient, clear metrics or indicators for what constitutes successful DMA compliance, making it difficult for companies to assess their efforts. Instead, the DMA grants the Commission unprecedented discretion and power to redesign and re-engineer American digital services without objective criteria. There is no opportunity to request an oral hearing or have recourse to an independent hearing officer. This process leads to biased claims and never-ending investigations, creating uncertainty and an unyielding burden on U.S. companies subject to the DMA.

DMA implementation and compliance procedures could be improved through the use of structured regulatory dialogue with the Commission, based on clear principles and time parameters, and emphasizing the need to protect trade secrets. Given the outsized impact of the DMA on U.S. companies, and in effort to avoid friction in the transatlantic economic relationship, the Commission also should consult with the U.S. government before adopting final measures under the DMA.

Fines: To compel compliance, the DMA provides for extraordinarily high fines of up to 10% of a company's total global revenue (up to 20% for repeated violations), as well as a daily penalty of up to 5% of the average daily worldwide turnover. At the same time, the DMA and the Commission have given scant guidelines on acceptable compliance measures. The end result is that companies subject to an investigation must make extensive and repeated attempts to find a compliance solution that the Commission finds acceptable, with limited to no guidance from the regulator. A legal challenge can take years. There should be a moratorium on fines during compliance negotiations and during any appeals process. At a minimum, any fine imposed under the DMA should be based on European (not global) turnover, assessed on the basis of

clear and objective criteria, provide companies with robust procedural safeguards, and be grounded in evidence of actual harm.

Regulatory Audit: The Commission, or the European Court of Auditors, should undertake a thorough review of the effectiveness of the DMA, following the 'better regulation' principles to identify crucial gaps in enforcement capabilities, monitor effectiveness, and provide evidence-based recommendations for improving regulatory impact. It would be premature to suggest any scope expansion without evidence that the DMA has yielded actual benefits for competition and consumers in the sectors already regulated, and that any such benefits have exceeded costs.

Independent Regulator: To provide a greater degree of confidence and sense of fairness in decision-making, the DMA should ultimately be enforced by a fully independent body. Doing so would not only help create greater legal certainty but would also avoid the risk of politicization of enforcement decisions.

E. **No Justification for Adding AI and Cloud as Core Platform Services**

Cloud and AI are critical technologies that enable innovation, new business development, and competition in the marketplace. Notably, the cloud computing and AI sectors are nascent and extremely dynamic, with no justification for *ex-ante* regulation on top of the regulatory approaches that already exist in the EU.

No AI in the DMA: Elevated levels of investment, a constant stream of new entrants and rapid technological breakthroughs all point to an AI market defined by vigorous, sustained competition. Europe's AI landscape is thriving, marked by a surge in innovative startups, widespread adoption of AI solutions across businesses of all sizes, and a robust network of specialized AI service providers backed by active venture capital funding. This dynamic environment demonstrates the sector's inherent vitality. Applying the DMA to this rapidly evolving field would stifle innovation and jeopardize the EU's flourishing AI industry. It is unclear what AI as a CPS would mean since AI is not a separate service; rather, it is a technology embedded within many digital services. Finally, adding AI as a core platform would run counter to the U.S. government's stated objectives in its AI Action Plan, which is likely to add additional trade friction to the trans-Atlantic relationship. A more constructive approach would be for the EU to cooperate with the United States to ensure AI operates securely and safely in Europe..

No Cloud in the DMA: Although cloud computing services were referenced as a core platform service in the DMA, the Commission has yet to designate any cloud platforms officially. Cloud platforms themselves are rarely a direct intermediary to consumers; instead, they serve as a platform to enable millions of businesses, which in fact compete with the covered platforms. There is a large body of evidence demonstrating that the cloud market is extremely dynamic and competitive, as evidenced by increased investments in the sector, a rapid pace of innovation, declining prices, and disruption from new and existing businesses.

Any potential issues that may emerge with AI and cloud are best addressed via existing competition law, which can investigate specific anticompetitive practices and is better suited to

address the most pressing cloud concerns. Trying to address specific and discrete competition concerns using the one-size-fits-all approach under the DMA would create significant regulatory overhead for designated companies and create unnecessarily disproportionate outcomes. In NFTC's view, the Commission should not designate AI and cloud services as core platforms as part of this review or in the future.

III. CONCLUSION

NFTC appreciates the opportunity to share our perspective on the DMA. We look forward to working with you to make progress on these issues. If you have questions, need additional information, or would like to discuss our input further, please contact Tiffany Smith at NFTC at tsmith@nftc.org.