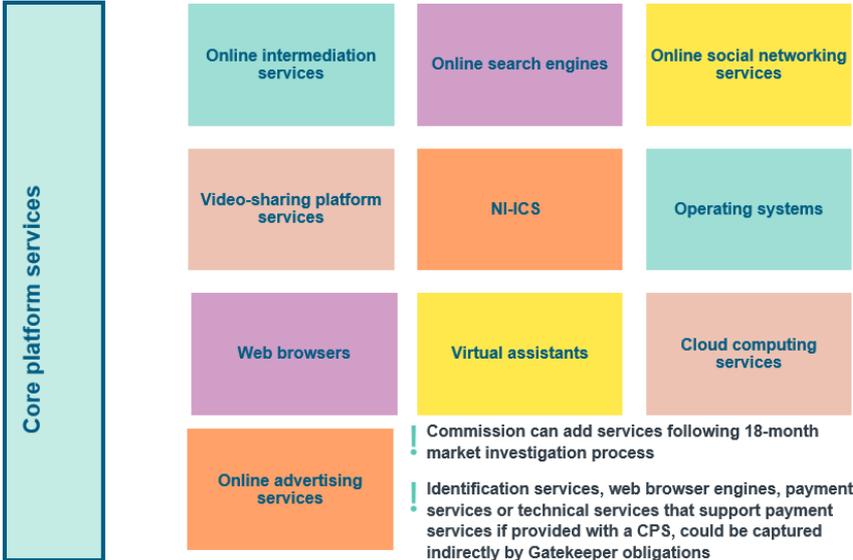


# Digital Markets Act

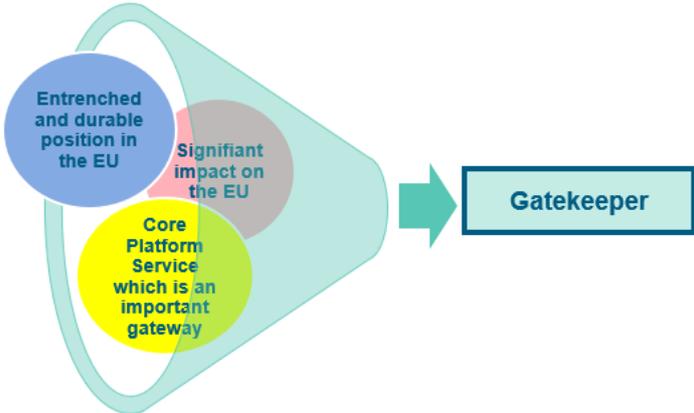
February 2024

### Range of Core Platform Services

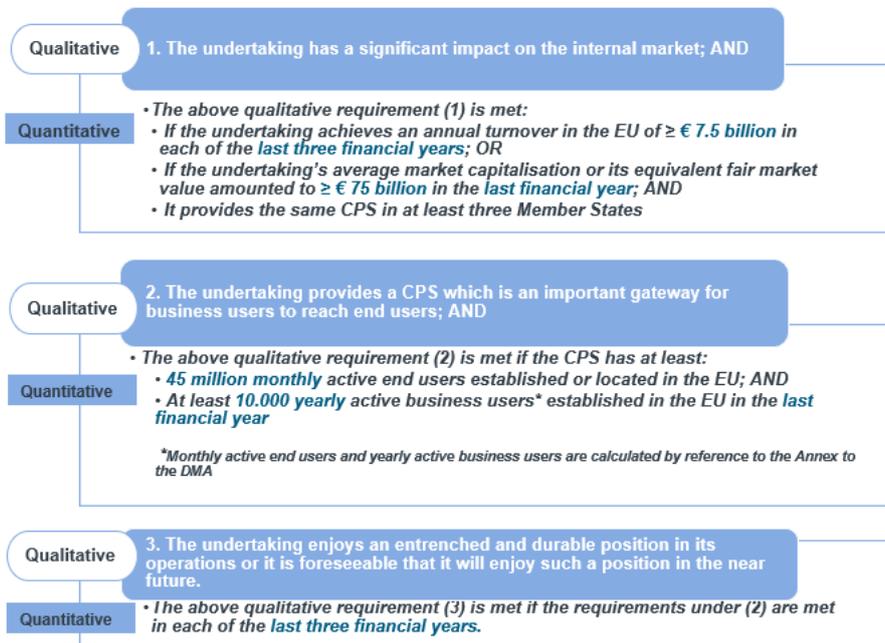


Providers of CPS with “Gatekeeper” Status will fall under the DMA regime.

### 3 Gatekeeper Criteria:



There is a presumption of Gatekeeper status, if the below quantitative criteria are met.



Please note that the Commission has a **residual ability** to designate a company as a Gatekeeper even if it does not meet the quantitative criteria (for example, if a company is close to the “tipping point”), pursuant to a market review procedure. In exceptional circumstances, an undertaking providing CPS can seek to **rebut the presumption** that it has a significant impact on the internal market by demonstrating that it does not fulfil the (qualitative) requirements for designation as a gatekeeper.

### Key Obligations

The DMA establishes a range of dos and don'ts which designated Gatekeepers must comply with within 6 months after designation, including:

#### Obligations

- Default applications and settings
- NI-ICS interoperability
- Services and hardware interoperability
- Advertising transparency
- Third-party software and side loading
- Lock-in
- Data portability and access
- FRND T&Cs

#### Prohibitions

- Self-preferencing
- Re-use of personal data
- Price parity
- Tying (identification, web browsers or payments)
- CPS bundling
- Switching
- Termination provisions
- Whistleblowing

# What's Next?

The DMA regime applied from 2 May 2023 and companies that satisfy the qualitative “Gatekeeper” criteria needed to **notify** their CPS to the Commission within two months.

Within **45 working days** upon receiving the complete information, the Commission will designate the undertaking as a Gatekeeper if the relevant thresholds are met.

Within **six months** after a CPS of the Gatekeeper has been included in the Commission’s designation decision, the Gatekeeper must comply with the obligations for Gatekeepers set out in the DMA.

In exceptional circumstances, companies can seek to rebut the presumption of Gatekeeper status. If the arguments submitted are **insufficiently substantiated**, the Commission can reject the arguments. Where the undertaking puts forward **sufficiently substantiated** arguments, the Commission may commence a **(five month) market investigation** to inform its decision on whether to designate the undertaking as a gatekeeper.

The Commission may impose on a Gatekeeper a **fine** up to a **maximum of 10%** of its total worldwide turnover in the preceding financial year for failure to comply with core DMA obligations. If the Gatekeeper commits the same or a similar infringement (repeated infringement) in relation to the same CPS the Commission may impose a **fine** up to a **maximum of 20%** of the total worldwide turnover in the preceding financial year. There are other penalties for procedural irregularities and failure to comply with information requests. The Commission may also impose on a Gatekeeper **behavioural** or **structural remedies**, including a **temporary merger ban**.

The Commission has issued an **implementing regulation** which addresses **procedural aspects of the notification**, such as the format of notification and the rebuttal of a gatekeeper presumption (as well as provisions covering confidentiality, access to the file, information gathering and other matters).



For more information, please speak to your usual Bird & Bird contact or other contacts listed overleaf.

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Developments tool guide



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