



The Daily Dish

U.S. Risks from European Regulation

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The [Digital Markets Act](#) (DMA) has been on the radar screen for about a year. This March, however, European Union (EU) lawmakers [agreed on a framework](#) for the DMA that would, in principle, target “gatekeepers” of the digital economy—such as Amazon, Apple, Google, Meta, and Microsoft. They would be forced to open their services to competitors and limit their ability to favor their own products. As noted by Jeff Westling in his latest [paper](#): “The practices that the DMA would likely target could produce some anticompetitive harms—such as a closed system limiting consumer choice in applications or an online store narrowing options to ensure the stores’ own products outcompete rivals—and these harms could outweigh any benefits to consumers. Thus far, however, the opaque process and limited information with which the DMA has been crafted sheds little insight into whether European policymakers considered this balance at all.”

The concern is that when it finally sees the light of day, the DMA will be a regulatory misstep. Competitors may often feel that certain actions by rivals are unfair, but focusing on these complaints could lead to a successful company being penalized for creating a more popular product rather than for purposely engaging in behavior that harms consumers. Because these terms are not narrowly defined, regulators could abuse this authority to favor certain competitors by determining the impact of gatekeepers’ actions [on competitors rather than consumers](#). (Note, the DMA is one of a trio of EU initiatives, along with the [Digital Services Act](#) and the [Digital Services Tax](#), that target U.S. firms).

Therein lies the risk. Indeed, a bipartisan group of national security leaders issued a [letter](#) calling on Congress to closely scrutinize tech-targeted antitrust legislation to avoid damaging America’s national security as foreign cybersecurity threats grow. It specifically noted that “It is imperative that the United States avoid the pitfalls of its key allies and partners, such as the European Union, whose Digital Markets Act passed without any consideration of national security repercussions.”

The DMA has been developed in an opaque environment. While it is clear that the DMA abandons the consumer welfare standard for competition policy and demonstrates a disregard for security and privacy concerns, it is not possible to do a genuine evaluation of any benefits that it might generate. Whatever the ultimate balance of benefits and costs, the global nature of the DMA and the success of U.S. tech companies mean the impact will be felt here as well. The DMA accordingly imposes a large risk to the United States that Congress and the administration need to manage.