

# Navigating The DMA

Application Across National Jurisdictions

Gabriella Muscolo,  
Alessandro Massolo (eds.)

Forewords by Oreste Pollicino  
and Andreas Schwab

Epilogue by Alberto Bacchiega

Concurrences

Antitrust Publications & Events

# Estonia and the Digital Markets Act: A Minimalist Yet Proactive Approach

## Estonia

ELO TAMM\*

Cobalt Law Firm

### Abstract

*Estonia is recognized as a pioneer in digital innovation, with initiatives such as the e-Estonia program and e-Residency, which have fostered a strong digital infrastructure and attracted tech entrepreneurs. Estonia has also been at the forefront of cryptocurrency regulation, balancing a lean regulatory approach with swift action when necessary. The Estonian National Competition Authority has been vigilant in monitoring digital markets, addressing various specific cases involving digital services. The Digital Markets Act (DMA) has been supported by Estonia, though the country has opted for minimal national regulation, preferring EU-wide governance to avoid market fragmentation. Estonia's approach to the DMA emphasizes ensuring fundamental procedural rights and appropriate enforcement mechanisms. While the Estonian NCA is preparing to align with DMA requirements, practical implementation has been limited due to the lack of significant gatekeeper presence in the country. The broader implications of the DMA for Estonia's digital market, particularly for startups, remain to be fully realized. The author supports Estonia's stance of relying on EU-level regulation rather than introducing additional national rules.*

---

\* Partner, Cobalt Law Firm, located at Pärnu mnt 15, Tallinn, Estonia.

## **I. Introduction: General Overview from Estonia**

### **1. E-Estonia Initiatives**

1. Estonia is often acknowledged as a pioneer in building up a digital society and a hub for the start-up world. International and domestic, larger and smaller players of the digital economy are welcome to provide their services in Estonia or to use the Estonian digital hub to build new services with global impact.
2. The initiatives of the government have been primarily directed at creating national digital infrastructure. There have been many important building blocks for the creation of e-Estonia, and one of the most important has been the digital identification of all Estonian residents based on mandatory ID cards in 2002. Currently 98% of Estonians have an ID card and thus a digital identity. In 2014 Estonian e-Residency was launched to global citizens to attract tech-savvy entrepreneurs to use Estonia as the digital headquarter country for their businesses.<sup>1</sup>
3. Though not directly relevant to the regulation of digital giants under DMA, the boom and regulation of cryptocurrencies in Estonia provides interesting experiences in regulating novel sectors. Estonia is one of the pioneers in blockchain technology and was one of the first countries to offer cryptocurrency business licenses in 2017. This followed by a boom of more than 1000 global cryptocurrency companies applying and receiving licenses in Estonia by 2019 and the subsequent tightening of financial and anti-money-laundering regulations ensuring Estonia continued as a sustainable hub for cryptocurrency businesses. This example demonstrates Estonia's generally lean approach towards regulating, but also its readiness to react swiftly and set regulatory measures in place, once needed.
4. The Estonian National Competition Authority (Estonian NCA) has been watchful of the new digital market players emerging, however so far there have been no major interventions in their activities.

### **2. Estonian NCA Interferences in the Digital Realm**

5. The Estonian NCA noted in its 2021 Yearbook that more and more competition concerns are emerging in different digital markets, both in Estonia and in many other countries. The Estonian NCA referred to the threat of high market concentration in digital markets and the need to tackle these concerns both with the traditional monopoly approach to competition law as well as evolving EU regulatory competition law in digital markets, in particular in relation to the global digital giants.<sup>2</sup>
6. The year 2021 was marked by a number of Estonian NCA decisions in local digital markets and services.

---

<sup>1</sup> More information on the creation of e-Estonia available here: <<https://e-estonia.com/story/>> accessed 9 July 2024.

<sup>2</sup> Estonian Competition Authority, 'Annual Report 2021' (2021) <<https://aastaraamat.konkurentsiamet.ee/index.php/en/annual-report-2021/competition-supervision>> accessed 9 July 2024.

7. With regard to narrow price parity clauses, the Estonian Competition Authority took a preliminary view that they required individual exemption analysis in two cases – by a food courier app Wolt<sup>3</sup> and insurance mediator IIZI.<sup>4</sup> Both companies removed price parity clauses from their terms and thus the clauses were not reviewed in great detail by the Authority.
8. The Estonian NCA has also handled several cases concerning access to online classifieds portals. In real estate classifieds cases (*kv.ee* and *city24.ee*<sup>5</sup>) the conditions for the automatic exchange of data by the real estate portals were under investigation based on a complaint from real estate agencies. The Estonian NCA considered the availability of automatic exchange necessary to ease the use by real estate agencies and thus viability of multiple classifieds portals in a small market like Estonia. As a result of the investigation several restrictions for the data exchange were removed, including the restrictions on the free use of the XML service for automatic data exchange (initially this service was available only to larger real estate agencies); restriction of export of advertisements via XML; export of data to competing portals via XML; inclusion of portal trade mark on customers photos that prevented the use of such photos in competing portals. The case was closed by the Estonian NCA following compliance by the real estate portals.<sup>6</sup>
9. In the car classifieds case (*auto24.ee*) the restriction of transmission of data and advertisement in XML format was under investigation. The service was not available to all interested parties due to claimed technical and commercial limitations of the existing technical platform. The case was closed following the investments by the car classifieds portal enabling the extension of the XML service to all interested parties.<sup>7</sup>
10. The Estonian NCA has assessed the market position of leading local digital learning materials portal OPIQ which offers almost the entire curriculum in all subjects and classes for Estonian basic education using modern information technology opportunities. The case was initiated based on the complaint by Tartu municipality, who alleged that there were no substitutes for the local digital learning materials for schools after OPIQ had reached wide use during the COVID-19 e-schooling period. The Estonian NCA however did not establish dominance by the portal and thus there was also no need to look into claims of infringement since after the pandemic the use of learning materials on paper resumed.<sup>8</sup>

---

<sup>3</sup> Estonian Competition Authority 19 March 2021, Decision No 5-5/2021-023 *Wolt Eesti OÜ* in Estonian: <[https://www.konkurentsiamet.ee/sites/default/files/juhtumid/2021/teade\\_menetluse\\_lopetamisesest\\_wolt\\_eesti\\_ou\\_19.03.2021\\_ilma\\_ak.pdf](https://www.konkurentsiamet.ee/sites/default/files/juhtumid/2021/teade_menetluse_lopetamisesest_wolt_eesti_ou_19.03.2021_ilma_ak.pdf)> accessed 9 July 2024

<sup>4</sup> Estonian Competition Authority 9 September 2021, Decision No 5-5/2021-056 *Iizi Kindlustusmaakler AS* in Estonian: <[https://www.konkurentsiamet.ee/sites/default/files/juhtumid/2021/as-ta\\_teade\\_menetluse\\_lopetamisesest\\_iizi\\_kindlustusmaakler\\_09\\_09\\_2021.pdf](https://www.konkurentsiamet.ee/sites/default/files/juhtumid/2021/as-ta_teade_menetluse_lopetamisesest_iizi_kindlustusmaakler_09_09_2021.pdf)> accessed 9 July 2024.

<sup>5</sup> Estonian Competition Authority 18 April 2024, Decision No 5-5/2024-021, *Allepal OÜ and Kinnisvaraportaal OÜ*, in Estonian: <<https://www.konkurentsiamet.ee/media/786/download>> accessed 5 August 2024.

<sup>6</sup> More details of the case are published in the Estonian Competition Authority Annual Report 2021 (n 2).

<sup>7</sup> Estonian Competition Authority 11 March 2021, Decision No 5-5/2021-021 *Allepal OÜ (Auto24)* in Estonian: <[https://www.konkurentsiamet.ee/sites/default/files/juhtumid/2021/teade\\_menetluse\\_lopetamisesest\\_allepal\\_ou\\_auto24\\_11.03.21\\_arakiri.pdf](https://www.konkurentsiamet.ee/sites/default/files/juhtumid/2021/teade_menetluse_lopetamisesest_allepal_ou_auto24_11.03.21_arakiri.pdf)> accessed 9 July 2024.

<sup>8</sup> Estonian Competition Authority 30 December 2021, Decision No 5-5/2021-075 *Star Cloud OÜ* in Estonian <[https://www.konkurentsiamet.ee/sites/default/files/juhtumid/2021/teade\\_menetluse\\_lopetamisesest\\_30.12.21\\_star\\_cloud\\_ou\\_arakiri.pdf](https://www.konkurentsiamet.ee/sites/default/files/juhtumid/2021/teade_menetluse_lopetamisesest_30.12.21_star_cloud_ou_arakiri.pdf)> accessed 9 July 2024.

11. The following years of 2022–23 did not see as active engagement by the Estonian NCA in the digital sector. Interestingly, the Estonian Competition Authority decided not to join its Baltic neighbours, when Latvia and Lithuanian initiated a sector inquiry into online marketplaces to learn more about its mechanisms, as well as identifying any competition risks. Based on informal discussions, the Estonian NCA decided to pass this opportunity since it had gained sufficient knowledge of the operation of these markets through its own practice.

## II. Use of DMA at the Domestic Level

### 1. Position of Estonia in Relation to Draft Digital Markets Act Prior to its Adoption

12. The discussion around the enforcement of Digital Markets Act (DMA) in Estonia has been rather lean. The Estonian Government prepared its position in relation to the draft Digital Markets Act prior to its adoption, on 1 April 2021. Estonia supported the draft Digital Markets Act in most of its substance and only noted with regard to concentrations in the digital sector that there should be no special procedure and referred to a need to ensure that penalties for non-compliance can only be imposed based on *ultima ratio* principle and that fundamental procedural rights need to be ensured to the market players subject to DMA.<sup>9</sup>

### 2. Enforcement of DMA in Estonia

13. As always with EU regulations, there is no need to take legislative action by a Member State to give legal force to the provisions of the DMA on a national level. In relation to the DMA however, it has been noted by the Ministry of Justice that certain implementing provisions will need to be added to Estonian legislation to enable Estonian authorities to issue requests for information, conduct inspections and other measures, which are to a large extent similar to the powers that the Estonian NCA has in competition proceedings. The Ministry of Justice is planning amendments to Estonian Competition Act to provide the Estonian NCA with the proper tools, however such draft amendments of local legislation have not yet been prepared. The authorities appear to have an understanding that there is no immediate rush with granting the Estonian NCA such tools, since it is unlikely that there would be a need to conduct such measures in relation to gatekeepers in Estonia. This is probably an accurate understanding since the gatekeepers that have been designated so far, do not have their headquarters in Estonia.
14. The Estonian Competition Authority has indicated its willingness to act as the Estonian representative to the Digital Markets Advisory Committee, so far Estonia has been represented by the Ministry of Justice. Amendments to the Estonian Competition Act are further needed in order to empower the Estonian NCA with this task.

---

<sup>9</sup> Republic of Estonia Government Office, Estonian position on the draft EU Digital Markets Act (1 April 2021) in Estonian: <<https://www.riigikogu.ee/tegevus/dokumendiregister/dokument/9f1372ba-f13d-4d44-9f78-8a130d6d042c/eeesti-seisukohad-euroopa-liidu-digiturgude-oigusakti-eelnou-kohta-com2020-842/>> accessed 9 July 2024.

15. Due to the novelty of the DMA and the small number of gatekeepers, we are not yet aware of any practical local implementation of the DMA in Estonia, including the use of DMA Articles 1(5), 1(6), 38(7) and 39. Also we are not aware of any challenges or disputes in relation to the implementation of the DMA.

### **III. Conclusion: the DMA as a Piece of a Wider Cosmos of EU and National Legislative Initiatives for Digital Transformation?**

16. The opportunities arising from the DMA to the Estonian start-up business community have not yet been well recognised. DMA can ensure smaller digital market players better opportunities to be competitive alongside larger companies. When preparing the Estonian position in relation to the draft DMA, it was acknowledged that the adoption of the DMA can result in smaller companies using the services of the gatekeepers to gain better access to the data generated on the gatekeepers' platforms. This, in turn can foster the development and marketing of new products and services. Companies can also start communicating with their customers in ways that are currently hindered by contractual or technical restrictions imposed by gatekeepers. Increasing business freedom in the digital environment is certainly important for Estonian companies, and the DMA also provides them with the opportunity to contribute to start-up businesses.<sup>10</sup>
17. The author supports the position of Estonia not to initiate specific country-level regulation of digital markets. One of the aims of the DMA is to avert the fragmentation of the internal market by preventing Member States from applying national rules which are within the scope of the DMA and to pursue the same objectives. Digital markets are global and thus regulating it at EU level is appropriate and should not be complicated with additional national layers.

---

<sup>10</sup> *Ibid* Explanatory memorandum 8.

# Navigating The DMA

Application Across National Jurisdictions

Gabriella Muscolo,  
Alessandro Massolo (eds.)

The Digital Markets Act (DMA) marks a pivotal shift in the EU's approach to regulating the digital economy, targeting powerful gatekeepers to foster fairness and contestability on digital markets. While the European Commission plays a central role in its enforcement, EU Member States are vital contributors, adding layers of complexity and nuance to the regulation's implementation.

This book offers a twofold approach: an insightful, detailed overview by the Editors, providing a cohesive analysis of the DMA's role and its interaction with broader EU and national policies, followed by expert contributions from key European jurisdictions. These national perspectives provide an exhaustive exploration of legislative initiatives, landmark cases, and enforcement practices, offering a comprehensive understanding of the DMA's implementation across the EU.

Through this structured and collaborative format, the book not only highlights the challenges of harmonizing EU and national regulatory efforts but also offers practical insights into how Member States are navigating the DMA's integration. Essential for policymakers, legal practitioners, academics and industry stakeholders, this volume serves as a definitive guide to the DMA and its transformative impact on Europe's digital markets.



Gabriella Muscolo is Of Counsel at Rucellai & Raffaelli and a former Commissioner of the Italian Competition Authority.



Alessandro Massolo is a DMA team member at DG Competition, European Commission.

**Concurrences**  
Antitrust Publications & Events

ISBN 979-10-94201-13-8



9 791094 201138

185 € - 190 \$ - 155 £

