



**G7 GERMANY**

2022

# G7 inventory of new rules for digital markets

OECD submission to the G7 Joint Competition  
Policy Makers and Enforcers Summit

- October 2022 -

## Reform status

Jurisdiction	Status of implementation	Comments / legal reference / source
Germany	enacted	Act against Restraints of Competition (Competition Act – GWB), in particular Section 19a
European Union	enacted	Digital Markets Act
Japan	enacted	Act on Improving Transparency and Fairness of Digital Platforms (called as “TFDPA”) was established on May 27, 2020, promulgated on June 3, 2020, and enforced on February 1, 2021.
United Kingdom	preliminary	Advice of the Digital Markets Taskforce for “A new pro-competition regime for digital markets”. Government response to the consultation on “A new pro-competition regime for digital markets”. Legislation will be enacted to put the UK’s new pro-competition regime for digital markets and the regulator (the Digital Markets Unit (DMU)) on a statutory footing as soon as parliamentary time allows. Draft legislation on the reforms was announced during the state opening of parliament in May 2022. The draft legislation will set out new competition rules for digital markets and the largest digital firms [Draft Digital Markets, Competition and Consumer Bill]. In the meantime, the Government will continue to work with the DMU to ensure operational readiness of the regime ahead of legislation being passed.
United States	proposal under discussion	Proposals summarized in this inventory are (1) the American Choice and Innovation Online Act S.2992, as reported by the Senate Judiciary Committee <a href="https://www.congress.gov/bill/117th-congress/senate-bill/2992/text">https://www.congress.gov/bill/117th-congress/senate-bill/2992/text</a> , and (2) the Open App Markets Act, as reported by the Senate Judiciary Committee.
Jurisdiction	Instruments to ensure fast update of regulation	Comments / legal reference / source
Germany	yes	The Federal Ministry for Economic Affairs and Climate Action shall report to the legislative bodies on its experience with this rule after a period of four years. It can suggest amendments to change the Act against Restraints of Competition, including Sec. 19a
European Union	yes	The Commission has the power to adopt delegated acts (pursuant to Article 290 TFEU) in order to update certain provisions of the DMA. This covers the methodology contained in the Annex for whether quantitative thresholds are met (active end users, active business users) and the possibility to supplement existing obligations. These acts can be adopted following a market investigation in which the Commission concludes that there is a need to update the obligations addressing practices that limit the contestability of core platform services or are unfair (Articles 3(6 ff) and 12). The Commission should periodically evaluate the DMA and closely monitor its effects on the contestability and fairness of commercial relationships in the online platform economy, in particular with a view to determining the need for amendments in light of relevant technological or commercial developments (recital 105).
Japan	yes	This Cabinet Order stipulates the provisions based on the category and scale of the business in order to designate specified digital platform providers. That means that cabinet can add business category subject to regulation without amending the act.
United Kingdom	yes	The government is exploring options for how key aspects of the regime can be updated periodically in response to fast-moving digital markets.
United States	yes	American Choice and Innovation Online Act, Section 4(b) requires the FTC and DOJ to update the joint guidelines governing enforcement “as needed to reflect current agency policies and practices, but not less frequently than once every 4 years beginning on the date of enactment of this Act.”

## Regulated entity

Jurisdiction	Use of definition/ Concept of firm with particular level of mkt power (e.g. with bottleneck power, gatekeeper or equivalent) ( <i>ratione personae</i> )	Comments / legal reference / source
Germany	yes	Section 19a applies to undertakings “of paramount significance for competition across markets” (Art. 19a – introduced by the 10th Amendment to the German Act against Restraints of Competition (the “GWB”). The firm must be active to a significant extent on multi-sided markets or networks, as defined in Section 18 (3a) GWB.
European Union	yes	Gatekeeper, as defined in the Digital Markets Act proposal.
Japan	yes	Japan’s Act on Improving Transparency and Fairness of Digital Platforms designates digital platform providers whose transparency and fairness must be significantly improved in particular compared to other digital platforms as “specified digital platform providers” (SDPP) and it makes such providers subject to specific regulations. <a href="https://www.meti.go.jp/english/policy/mono_info_service/information_economy/digital_platforms/tfdpa.html">https://www.meti.go.jp/english/policy/mono_info_service/information_economy/digital_platforms/tfdpa.html</a>
United Kingdom	yes	The regime applies to firms which the Digital Markets Unit designates with Strategic Market Status (SMS). To designate a firm with SMS, the Digital Markets Unit will be required to test and conclude that a firm has substantial and entrenched market power in at least one activity, providing it with a strategic position. The precise relevance of each factor could vary from case to case and not all factors need be relevant to a designation assessment.
United States	yes	Covered platform operator, as defined in the American Choice and Innovation Online Act (Section 2(a)(5)). “Covered company”, as defined in the Open App Markets Act Sec. 2(3).
Jurisdiction	Use of quantitative criteria to identify firms with particular level of mkt power (e.g. gatekeepers or equivalent)	Comments / legal reference / source
Germany	no	
European Union	yes	Digital Markets Act, Art. 3 defines in detail the quantitative requirements. Meeting the quantitative criteria creates a presumption that the qualitative criteria for being designated as a gatekeeper are met. However, the firm can demonstrate that, exceptionally, although it meets such quantitative criteria, due to the circumstances in which the relevant core platform service operates, it does not satisfy the qualitative requirements (Article 3(5)). Even if the quantitative criteria are not met, the Commission can still designate a firm as a gatekeeper if it does meet qualitative requirements under Article 3(1). This must be done following a market investigation conducted in accordance with the procedure laid down in Article 17 (Article 3(8) DMA).
Japan	yes	The Specified digital platform providers (SDPP) will be designated by the Minister of Economy Trade and Industry (METI) among digital platform providers that meet the thresholds of business size (e.g., total sales and/or number of users). Such thresholds will be provided by type of business in the Cabinet Order. The Cabinet Order is to stipulate the provisions as below in terms of the business category and scale in order to designate “specified digital platform providers” (SDPP) as businesses subject to TFDPA: 1. Businesses operating comprehensive online shopping malls selling goods: Those having sales of 300 billion yen or more per fiscal year in Japan; and 2. Businesses operating application stores: Those having sales of 200 billion yen or more per fiscal year in Japan. <a href="https://www.meti.go.jp/english/press/2021/0126_003.html">https://www.meti.go.jp/english/press/2021/0126_003.html</a> (Notice) Currently, under legal consideration toward making the digital advertising market subject to the TFDPA.
United Kingdom	yes	The regime will be targeted at a small number of firms with substantial and entrenched market power, which gives them a strategic position (“Strategic Market Status”) in one or more activities. Recommendation 3b of the Taskforce’s advice suggests setting a minimum revenue threshold to make it clearer which firms are out of scope of designation. In its response to the public consultation, the government took this recommendation on board.
United States	yes	American Choice and Innovation Online Act, Section 2(a)(5) defines quantitative criteria: 1) at least 50,000,000 US-based monthly active users on the online platform; or 100,000 US-based monthly active business users; and 2) owned or controlled by a person with net annual sales or market capitalisation greater than USD 600 billion; and 3) critical trading partner for sale or provision of products/services. Open App Markets Act, Sec. 2(3) defines “covered company” as “any person that owns or controls an app store for which users in the United States exceed 50,000,000.”

## Regulated entity

Jurisdiction	Use of qualitative criteria to identify firms with particular level of mkt power (e.g. gatekeepers or equivalent)	Comments / legal reference / source
Germany	yes	Holistic assessment of undertaking's business activities ("digital ecosystem"), accounting in particular for the (non-exhaustive, non-cumulative) factors listed in 19a(1) GWB taking a "across markets perspective: (1) its dominant position on one or several market(s), (2) its financial strength or its access to other resources, (3) its vertical integration and its activities on otherwise related markets, (4) its access to data relevant for competition, (5) the relevance of its activities for third party access to supply and sales markets and its related influence on the business activities of third parties."
European Union	yes	Digital Markets Act, Art. 3: A provider of core platform services shall be designated as gatekeeper if: (a) it has a significant impact on the internal market; (b) it provides a core platform service which is an important gateway for business users to reach end users; and (c) it enjoys an entrenched and durable position in its operations or it is foreseeable that it will enjoy such a position in the near future.
Japan	yes	The specified digital platform providers need to belong to either of two specified business categories: (i) business of providing products to consumers by the Merchandise Providers <sup>5</sup> and (ii) business of providing software or rights in software to consumers by the Merchandise Providers. (The Merchandise Provider is defined as a person or business that uses digital platforms for the purpose of providing products or services under Article 2, Paragraph 3 of the DP Act). The business categories and size of the specified digital platform providers (SDPP) are stipulated in the Cabinet Order, considering conditions below: 1) Circumstances where digital platforms in that business category are widely used in the lives of the citizenry 2) Degree of concentration of use of certain digital platforms in that business category. 3) Necessity to protect the interests of business users of certain digital platforms based on the actual conditions and trends of trading between the digital platform providers and the business users. 4) Current situation of other regulations or measures and policies. (Art. 4 (3) of the TFDPA)
United Kingdom	yes	Substantial and entrenched market power in at least one digital activity, providing firms with a strategic position. The DMU will need to establish a UK nexus, ensuring a focus on competition in the UK.
United States	yes	American Choice and Innovation Online Act, Section 2(g)(6): critical trading partner that has the ability to restrict or impede A) access of a business user to its users or customers; B) access of a business user to a tool or service that it needs to effectively serve its users or customers
Jurisdiction	Designation process for firms with particular level of mkt power (e.g. gatekeepers or equivalent)	Comments / legal reference / source
Germany	by the authority	
European Union	firm's duty to self-assess and notify	Digital Markets Act, Art. 3: Where a provider of core platform services meets all the thresholds in paragraph 2, it shall notify the Commission thereof within three months after those thresholds are satisfied and provide it with the relevant information identified in paragraph 2. A failure by a relevant provider of core platform services to notify the required information pursuant to this paragraph shall not prevent the Commission from designating these providers as gatekeepers pursuant to paragraph 4 at any time.
Japan	firm's duty to self-assess and notify	Ministry of Economy, Trade and Industry (METI) designates the SDPP after submission of notification from the digital platform provider which meets the business category and the thresholds of business size. <a href="https://www.meti.go.jp/english/press/2021/0401_001.html">https://www.meti.go.jp/english/press/2021/0401_001.html</a>
United Kingdom	by the authority	Evidence-based economic assessment by the Digital Markets Unit (DMU) within the Competition and Markets Authority
United States	by the authority	When operator meets criteria set in Section (f)(4)(i) – (iii) of the American Choice and Innovation Online Act, FTC or DoJ shall issue designation in writing published in Federal Register.

## Regulated entity

Jurisdiction	Terms for re-assessment of the designated firm position	Comments / legal reference / source
Germany	yes – fixed	A finding is limited to 5 years (Section 19a(1))
European Union	yes – flexible	The Commission may, upon request or on its own initiative, reconsider, amend or repeal at any moment a designation decision for the reasons listed under Article 4(1) DMA. The Commission shall regularly, and at least every three years, review whether the gatekeepers continue to satisfy the qualitative requirements laid down in Article 3(1) (Article 4(2) DMA).
Japan	yes – flexible	The Act does not provide specific “set terms” for the re-assessment. The SDPP can however request the METI to cancel the SDPP designation, pursuant to Art. 11 of the Act.
United Kingdom	yes – fixed	It is proposed that SMS designation should last for 5 years before being reviewed (Recommendation 3d of the Taskforce’s advice).
United States	yes – fixed	7 years, Section 2(d) of the American Choice and Innovation Online Act. Operator can file a request to be removed before expiry showing that it is no longer a critical trading partner or no longer meets the quantitative criteria.

## Type of (proposed) reform

Jurisdiction	Changes to existing competition law enforcement instruments	Comments / legal reference / source
Germany	yes	10th amendment to the German Act against Restraints of Competition (GWB), aimed in particular at modernising abuse control in light of the challenges associated with protecting competition in the digital economy (GWB Digitalisation Act, January 2021).
European Union	no	
Japan	no	
United Kingdom	no	<p>However, separately from ex ante regulations, the UK is also proposing reforms to the UK's competition and consumer protection system, to ensure that the framework supports growth and productivity for both businesses and consumers.</p> <p>Consultation and response: <a href="https://www.gov.uk/government/consultations/reforming-competition-and-consumer-policy/outcome/reforming-competition-and-consumer-policy-government-response">https://www.gov.uk/government/consultations/reforming-competition-and-consumer-policy/outcome/reforming-competition-and-consumer-policy-government-response</a>.</p> <p>The objective of this reform is to benefit consumers by tackling subscription traps, improving the consumer experience in online shopping, and better prepayment protections.</p>
United States	no	
Jurisdiction	Introduction of principles-based regulation (e.g. code of conduct) for firms with particular level of mkt power (e.g. gatekeepers or equivalent)	Comments / legal reference / source
Germany	no	
European Union	no	
Japan	yes	<p>The TFDPA stipulates that the government should secure the minimally-necessary commitments from, and enforce regulations on, digital platform providers, on the basis that such providers must take voluntary and proactive efforts toward improving the transparency and fairness of their digital platforms (this adopts a “co-regulation” approach that stipulates the general framework under laws and leaves details to businesses’ voluntary efforts).</p> <p>For example, SDPP are required to take necessary measures to develop fair procedures and systems in accordance with the guidelines under the Act (“Guidelines for Measures Taken by Specified Digital Platform Providers to Facilitate Mutual Understanding with Platform Users”). The Guidelines stipulate 1) direction of desirable measures as “principles” and 2) examples of specific reference measures as “references” that specified digital platform providers should take to facilitate mutual understanding with their customers. (As one of examples of specific reference measures, the guidelines describe establishment and implementation of code of conducts).</p> <p>“Monitoring Review” is important part of the TFDPA. TFDPA specifies that the Minister of METI will review the transparency and fairness of the specified digital platforms and make the results of the review public. In preparations for the review, METI hold a Monitoring Meeting in order to hear opinions from stakeholders, such as academic experts, business users, consumers, and others.</p> <p>The Guidelines are to be taken into consideration in monitoring reviews. TFDPA requests that SDPP must make efforts to voluntary improvements based on evaluation result by METI.</p>
United Kingdom	yes	<p>The Digital Markets Unit will hold the discretion to design conduct requirements to the particular behaviours associated with the firm and its activities. Legislation will only specify categories of requirements and the DMU will then determine the precise Conduct Requirements for each firm with Strategic Market Status. These conduct requirements will be legally binding on firms with SMS.</p> <p>Objectives (the DMU will design Conduct Requirements in pursuit of these objectives):</p> <ol style="list-style-type: none"> <li>1) Fair trading: users are treated fairly and are able to trade on reasonable terms with firms with SMS</li> <li>2) Open choices: users are able to choose freely and easily between services provided by firms with SMS and other firms, without facing unreasonable barriers</li> <li>3) Trust and transparency: users have clear and relevant information to understand what services firms with SMS are providing, and to make informed decisions about how they interact with the firm</li> </ol>
United States	no	

## Type of (proposed) reform

Jurisdiction	Introduction of rules-based regulation for firms with particular level of mkt power (e.g. gatekeepers or equivalent)	Comments / legal reference / source
Germany	yes	A new tool to prohibit certain types of conduct (§ 19a), deeply rooted in competition law (case-by-case-analysis, justification possible). It entitles the BKartA to intervene below the dominance threshold. Furthermore, another provision (§ 20(3a)) was introduced that, in essence, prohibits conduct that may amount to a tipping of the market as “unfair impediment of competitors”.
European Union	yes	Digital Markets Act proposal
Japan	yes	There are examples of reference measures but further measures can be laid down in codes of conduct.
United Kingdom	no	There are no rules set in legislation that will apply to all firms designated with SMS. Obligations upon firms will be elaborated in a case-by-case basis based on the harms (e.g. Adverse Effect on Competition for Pro-Competitive Interventions) observed by the Digital Markets Unit.
United States	yes	Section 2 of the American Choice and Innovation Online Act lists specific unlawful conducts.
Jurisdiction	Possibility for firms to submit objective justification of their conducts	Comments / legal reference / source
Germany	yes	According to the 2nd and 3rd sentence of Art. 19a(2) GWB the respective conduct can be objectively justified by the undertaking. The burden of demonstration and proof shall lie with the undertaking (Section 19a).
European Union	no (i.e. per se prohibition)	
Japan	yes	The “order” of compliance referred to in Art. 6(4) is issued if the SDPP does not follow the METI’s advice without objective justification. Internal interpretation of the law by Japanese authorities is that in the process leading to a fine (i.e., advice->order->fine), there should be exchanges with the SDPP and the METI where the SDPP can raise an objective justification. However such a possibility is not specifically provided for in the Act. Art. 13 of Administrative Procedure Act makes the administrative agencies in Japan to establish procedures for hearing statements of opinion of persons who will become the subject parties of the Adverse Dispositions.
United Kingdom	yes	In setting principles, the DMU should be able to allow for ‘exemptions’ to principles. This would mean it has the power to adopt principles which prohibit SMS firms from prescribed conduct, except where specified conditions apply – for example that the conduct is necessary, or objectively justified, based on the efficiency, innovation, or other competition benefits it brings. Indeed conduct which may in some circumstances be harmful, in others may be permissible or desirable as it produces sufficient countervailing benefits. Firms with Strategic Market Status will be able to put forward evidence that particular conduct that would otherwise breach a Conduct Requirement brings about benefits to consumers. The DMU will need to be satisfied that these arguments prove that the conduct is indispensable to achieving the benefits and that the benefits outweigh the potential harm.
United States	yes	Section 2(c) of the American Choice and Innovation Online Act allows affirmative defence. Operator can prove that its conduct would not result in harm to competition or it was necessary and proportionate (“narrowly tailored” and there was no “less discriminatory means”).

## Type of (proposed) reform

Jurisdiction	Existence of list of services/activities to which the new rules apply (ratione materiae)	Comments / legal reference / source
Germany	no	
European Union	yes	<p>To be designated as a gatekeeper, the firm must provide a “core platform service”, amongst other criteria. Article 2(2) defines “core platform service” and includes a list of specific activities that are included under such definition. These are the following:</p> <ul style="list-style-type: none"> <li>(a) online intermediation services;</li> <li>(b) online search engines;</li> <li>(c) online social networking services;</li> <li>(d) video-sharing platform services;</li> <li>(e) number-independent interpersonal communications services;</li> <li>(f) operating systems;</li> <li>(g) web browsers;</li> <li>(h) virtual assistants;</li> <li>(i) cloud computing services;</li> <li>(j) online advertising services, including any advertising networks, advertising exchanges and any other advertising intermediation services, provided by an undertaking that provides any of the core platform services listed in points (a) to (i).</li> </ul>
Japan	yes	<p>The Cabinet Order stipulates businesses subject to TFDPA as below:</p> <ol style="list-style-type: none"> <li>1. Businesses operating comprehensive online shopping malls selling goods</li> <li>2. Businesses operating application stores</li> </ol> <p><a href="https://www.meti.go.jp/english/press/2021/0126_003.html">https://www.meti.go.jp/english/press/2021/0126_003.html</a> (Notice) Currently, under legal consideration toward making the digital advertising market subject to the TFDPA.</p>
United Kingdom	yes	<p>The scope of the regime will be limited to digital activities, and the assessment of Strategic Market Status will focus on particular activities rather than all of a firm’s activities. There is ongoing work to develop a definition of the activities in scope which is clear and easy to apply, and the DMU will be required to publish guidance on digital activities, detailing how this definition will be applied in practice.</p>
United States	yes	<p>Section 3(a)(9) of the American Choice and Innovation Online Act defines “online platform” as a website, online or mobile application, operating system, digital assistant, or online service that (A) enables a user to generate content that can be viewed by other users on the platform or to interact with other content on the platform; (B) facilitates the offering, advertising, sale, purchase, payment, or shipping of products or services, including software applications, between and among consumers or businesses not controlled by the platform operator; or (C) enables user searches or queries that access or display a large volume of information.</p> <p>Section 3 of the Open App Markets Act enumerates obligations of “covered companies” with respect to mobile operating systems, operating system configurations, and app stores.</p>



## Institutional setting and powers

Jurisdiction	Ad hoc digital expertise	Comments / legal reference / source
Germany	yes	In August 2019 the independent unit “Digital Economy” was established under the Bundeskartellamt’s General Policy Division to deal with conceptual projects and especially the work of the decision divisions relating to the digital sector. <a href="https://www.bundeskartellamt.de/EN/Economicsectors/Digital_economy/digital_economy_node.html">https://www.bundeskartellamt.de/EN/Economicsectors/Digital_economy/digital_economy_node.html</a>
European Union	yes	
Japan	no	
United Kingdom	yes	DMU has been established to deal with this new regime. More broadly, as an independent regulator, the CMA resources its investigations as it sees fit – this can include the procurement of ad hoc expertise as necessary. This principle will apply to the new regime.
United States	yes	Section 4 of the American Choice and Innovation Online Act provides that the FTC shall establish a bureau of digital markets. It will have legal, technology, economic, research and service staff. Section 7 of the “Augmenting Compatibility and Competition by Enabling Service Switching Act” provides for establishment of advisory committee on portability and interoperability technical aspects.
Jurisdiction	Body in charge of the new (proposed) regulation	Comments / legal reference / source
Germany	competition authority	
European Union	other	European Commission – the primary application of the DMA by DG COMP and DG CNECT to be confirmed + role for Member States to be confirmed (Article 32 of the DMA provides that the Commission will be assisted by a Digital Markets Advisory Committee).
Japan	ministry	METI
United Kingdom	competition authority – digital unit	The new regime will be overseen by the UK’s independent regulator, the Competition and Markets Authority (CMA), who will deliver it through their new Digital Markets Unit. The regime sits alongside the CMA’s existing powers for cases, market studies and market investigations outside the scope of the SMS regime. The Digital Markets Unit within the CMA was established in April 2021 in non-statutory form. Powers for the DMU and for the new regulatory regime will be provided via legislation.
United States	competition authority	Section 3(c) of the American Choice and Innovation Online Act states that the FTC and DoJ may jointly designate a covered platform. The FTC, DoJ and any attorney general of a State may then enforce the act in the same manner, by the same means and with the same jurisdiction, powers and duties as the antitrust laws generally, except that the FTC shall also have independent litigating authority. Section 5 of the Open App Markets Act allows for enforcement of the Act by the FTC, DOJ, any state attorney general, or through a private suit by “developers” injured by prohibited conduct.

## Institutional setting and powers

Jurisdiction	Cooperation with other domestic regulators	Comments / legal reference / source
Germany	no	No specific provisions under the new tool, but general options to exchange and cooperate with other regulators.
European Union	yes	The Commission will cooperate with Member States, national authorities, national courts (articles 37 – 39). A high level group will be established, comprising different European bodies and networks (Article 40), namely: (a) Body of the European Regulators for Electronic Communications, (b) European Data Protection Supervisor and European Data Protection Board, (c) European Competition Network, (d) Consumer Protection Cooperation Network, and (e) European Regulatory Group of Audiovisual Media Regulators.
Japan	yes	The METI is authorized to request the JFTC to take appropriate measures under the Antimonopoly Act if it is found that digital platform provider may be involved in any cases which are suspected of being violations of the Antimonopoly Act. <a href="https://www.meti.go.jp/english/policy/mono_info_service/information_economy/digital_platforms/pdf/0401_001b.pdf">https://www.meti.go.jp/english/policy/mono_info_service/information_economy/digital_platforms/pdf/0401_001b.pdf</a>
United Kingdom	yes	There will be a statutory obligation for the DMU to consult with other UK regulators (the Financial Conduct Authority, Ofcom, the Information Commissioner's Office, the Bank of England and the Prudential Regulation Authority) where proportionate and relevant, and notify them when opening an SMS designation assessment. This will manage any overlaps in regulatory remits and ensure that the work of the pro-competition regime is appropriately informed by the expertise of these regulators. The CMA and other regulators will set out the detail of how they will implement this obligation through memoranda of understanding. The Financial Conduct Authority and Ofcom will also be given a formal route to raise and hand over competition concerns that they identify in their sector if the DMU is better placed to address them through its new powers. Mechanisms will be put in place to ensure information flows effectively between the relevant regulators.
United States	no	
Jurisdiction	Rules on the relationship/coordination between the new regulation and existing competition law enforcement	Comments / legal reference / source
Germany	yes	In Art. 19a(3) GWB it is stated that Art.19 and 20 GWB shall remain unaffected.
European Union	no	
Japan	yes	The METI Minister is authorized to request the JFTC to take appropriate measures under the Antimonopoly Act if it is found that digital platform provider may be involved in any cases which are suspected of being violations of the Antimonopoly Act. <a href="https://www.meti.go.jp/english/policy/mono_info_service/information_economy/digital_platforms/pdf/0401_001b.pdf">https://www.meti.go.jp/english/policy/mono_info_service/information_economy/digital_platforms/pdf/0401_001b.pdf</a>
United Kingdom	no	The DMU is part of the CMA. The CMA will determine the appropriate tool to use in order to tackle a given issue.
United States	no	

## Institutional setting and powers

Jurisdiction	Increase competition agency capacities/ powers	Comments / legal reference / source
Germany	yes	Extended review powers for the Bundeskartellamt (BKartA) to intervene vis-à-vis companies in the digital economy, including possibility for accelerated intervention through interim measures.
European Union	no	The DMA will complement the enforcement of competition law. DG COMP and DG CNECT will likely jointly enforce the DMA.
Japan	no	
United Kingdom	yes	<p>Increasing Powers: DMU will have new ex-ante powers to implement conduct requirements (CRs) and pro-competitive interventions (PCI) in order to address, respectively, the effects and the source of an SMS firm's market power in a particular activity. SMS merger reforms will provide the CMA with greater scope to scrutinise mergers by these firms.</p> <p>Increasing capacity: The government has established the DMU in non-statutory form within the CMA so it can ensure operational readiness for the new regime, including building its capacity and expertise. The CMA has also built up digital expertise through digital investigations. This includes the market study into online platforms and digital advertising, the Digital Markets Taskforce, and the establishment of its Data Unit. It is now further developing these skills by launching additional digital market studies.</p>
United States	yes	<p>Section 3(c)(2) of the American Choice and Innovation Online Act gives the FTC independent authority to bring suit for civil monetary penalties and other relief.</p> <p>Section 5(a)(2) of the Open App Markets Act gives the FTC independent authority to bring suit for civil monetary penalties and other relief.</p>

## Merger control

Jurisdiction	Reporting obligation for all transactions by firms with particular level of mkt power (e.g. gatekeepers or equivalent)	Comments / legal reference / source
Germany	no	However, the BKartA may obligate a company (art.39a), for a limited three-year-period, to notify every acquisition in a given industry, even if the domestic turnover thresholds are not met. This provision is perceived to also target “killer acquisitions” of small companies. The expansion of the company’s formal obligation to notify is subject to further requirements, most prominently a sector inquiry with findings of competitive concerns in the respective industry. Precondition for this provision is that the target company generates two-thirds of its turnover in Germany.
European Union	yes	Art. 14 DMA requires gatekeepers to inform the Commission of any intended concentration where the merging entities or the target of the concentration provide core platform services or any other services in the digital sector or enable the collection of data.
Japan	no	
United Kingdom	yes	SMS firms will only have to report their most significant transactions prior to completion. This is likely to be when: <ul style="list-style-type: none"> <li>· the SMS firm acquires over a 15% equity or voting share after the transaction</li> <li>· the value of the SMS firm’s holding is over £25m and</li> <li>· the transaction meets a UK nexus test.</li> </ul> This will provide the CMA with visibility of SMS transactions which are more likely to raise competition concerns for UK businesses and consumers, before integration between the firms has occurred. The CMA will undertake an initial assessment of the merger to determine whether to look into it further, for example by requesting further information, launching a merger investigation, or both.
United States	no	
Jurisdiction	Change in standard of proof for in-depth assessment (or phase 2)	Comments / legal reference / source
Germany	no	
European Union	no	
Japan	no	
United Kingdom	no	The government does not intend to take forward the changes suggested by the Taskforce to the Phase 2 threshold for merger intervention. Government has highlighted to be conscious that this would represent a significant change for the merger regime, and does not believe there is sufficient evidence to take forward these changes at this time.
United States	no	

## Merger control

Jurisdiction	Change in type of thresholds used for transaction notification	Comments / legal reference / source
Germany	yes	In 2017, the 9th amendment of the German Competition Act (GWB) introduced a value-based threshold (in addition to the turnover thresholds). It was designed to expand the scope of merger review to include transactions which involve companies of the digital economy that do not generate a particularly high turnover at the time of the transaction but should nevertheless come under scrutiny because of the target's competitive potential on the relevant markets.
European Union	no	
Japan	no	
United Kingdom	no	However, specific thresholds will be introduced for SMS firms' acquisitions that will be subject to mandatory notification. This will also include the transaction value.
United States	no	
Jurisdiction	Change in value of thresholds used for transaction notification	Comments / legal reference / source
Germany	yes	In 2021, the Digitalization Act (10th amendment of the German Competition Act) increased the domestic turnover threshold of at least one company concerned to more than €50 million and that of another company concerned to more than €17.5 million (§ 35(1) no. 2, rather than previously €25 million and €5 million). However, this specific amendment aimed at a general reduction of the BKartA's workloads, so that it can focus on more complex cases.
European Union	no	
Japan	no	
United Kingdom	no	
United States	no	
Jurisdiction	Reversal of burden of proof	Comments / legal reference / source
Germany	no	
European Union	no	
Japan	no	
United Kingdom	no	
United States	no	
Jurisdiction	Reversal of burden of proof	Comments / legal reference / source
Germany	no	
European Union	no	
Japan	no	
United Kingdom	no	
United States	no	

## Conduct | Commercial interaction between platforms and their business users

Jurisdiction	Self preferencing prohibition	Comments / legal reference / source
Germany	yes	Self preferencing practices are addressed in Art. 19a(2), 1st sentence, Nr. 1 and 2 GWB.
European Union	yes	Art. 6 DMA (obligations susceptible of being further specified)
Japan	no	TFDPA does not include self preferencing prohibition. TFDPA requires SDPP in online shopping malls and app stores to disclose the details and reasons when giving preferential treatment to their own and their affiliated companies.
United Kingdom	yes	The regime will allow the authority to set a requirement on firms not to self-preference. The DMU will be able to set tailored rules that govern how firms with SMS behave, to manage the effects of their market power.
United States	yes	Section 3(a)(1 – 3) of the American Choice and Innovation Online Act: prohibits conduct that (1) preferences the products, services, or lines of business of the covered platform operator over those of another business user on the covered platform, (2) limits the ability of the products, services, or lines of business of another business user to compete on the covered platform relative to the products, services, or lines of business of the covered platform operator, or (3) discriminates in the application or enforcement of the terms of service of the covered platform among similarly situated business users, in each case in a manner that would materially harm competition; Section 3(a)(9) prohibits conduct by means of which, in connection with any user interfaces, including search or ranking functionality, offered by the designated firm, the firm treats its own products more favourably than those of other business users. Section 3(e) of the Open App Markets Act prohibits unreasonable preferencing of the covered company's apps or those of its business partners over other apps in organic search results.
Jurisdiction	Fair and transparent terms & conditions	Comments / legal reference / source
Germany	yes	EU P2B Regulation + Section 19a(2) provision Nr. 6 on creating information deficits vis-à-vis providers of services (providing the companies with insufficient information on the scope, quality, or success of services)
European Union	yes	Art. 6 DMA (obligations susceptible of being further specified) + P2B regulation
Japan	yes	The Act requires specified platform providers to disclose terms and conditions of trading and other information, to give advance notification of any changes to their terms and conditions, disclose the scope of use of the data obtained from digital platform users, develop systems to ensure fair transactions, and submit a report to METI every fiscal year with an overview of the measures they have taken, along with self-assessments. <a href="https://www.meti.go.jp/english/mobile/2021/20210423001en.html">https://www.meti.go.jp/english/mobile/2021/20210423001en.html</a>
United Kingdom	yes	The regime will allow the DMU to set a number of requirements on firms around the objectives of 'fair trading' and 'trust and transparency'. These will be based on the list of categories of conduct requirements. The DMU will be able to set tailored rules that govern how firms with SMS behave, to manage the effects of their market power. The specific prohibitions will be set by the authority in due course so they are not available.
United States	yes	Section 3(a)(3) of the American Choice and Innovation Online Act prohibits covered firms from “discriminat[ing] in the application or enforcement of the terms of service of the covered platform among similarly situated business users in a manner that may materially harm competition”.

## Conduct | Commercial interaction between platforms and their business users

Jurisdiction	Selected bundling and tying practices prohibition	Comments / legal reference / source
Germany	yes	Bundling/tying practices are addressed in Art. 19a(2), 1st sentence, Nr. 3 GWB.
European Union	yes	Art. 5 DMA
Japan	no	
United Kingdom	yes	The regime will allow the authority to set a requirement on firms not tie or bundle products/services. Legislation is being finalised with specific wording for the scope of the authority's power, but these will be based on conduct requirements. The specific prohibitions will be set by the authority so they are not available.
United States	yes	Section 3(a)(5) of the American Choice and Innovation Online Act forbids covered firms from “condition[ing] access to the covered platform or preferred status or placement on the covered platform on the purchase or use of other products or services offered by the covered platform operator that are not part of or intrinsic to the covered platform.”
Jurisdiction	Anti steering practices prohibition (including MFN clauses)	Comments / legal reference / source
Germany	yes	Anti steering practices are addressed in Art. 19a(2), 1st sentence, Nr. 2 and Nr. 2 lit.b) GWB.
European Union	yes	Art. 5 DMA, e.g. MFN clauses prohibition; allow business users to promote offers and conclude contracts with end users regardless of whether they use the gatekeepers' core platform service (CPS) and allow end users to access and use content without using the gatekeeper's CPS.
Japan	no	TFDPA does not include anti steering practices prohibition (including MFN clauses). TFDPA requires SDPP in online shopping malls and app stores to disclose the details and reasons when their terms and conditions include MFN clauses.
United Kingdom	yes	The regime will allow the authority to set a requirement on firms to ensure that choices and defaults are presented in a way that facilitates informed and effective customer choice. The DMU will develop tailored rules to govern the behaviour of SMS firms. These rules will fall under categories that will be set in legislation. The specific prohibitions will be set by the authority so they are not available.
United States	yes	Section 3(a) of the Open App Markets Act prohibits covered companies imposing MFNs or requiring use of a first-party In-App Purchase system. Section 3(b) of the Open App Markets Act prohibits “restrictions on communications of developers with the users of an app of the developer through the app or direct outreach to a user concerning legitimate business offers, such as pricing terms and product or service offerings.”
Jurisdiction	Lock in strategies prohibition	Comments / legal reference / source
Germany	yes	Since there are many possible practices that might give rise to lock-in-effects, there is no specific provision on lock in strategies in Art. 19a, but several relevant behavioural patterns are addressed, for example in Art. 19a(2), 1st sentence, Nr. 1-3 GWB. This issue is also addressed in Art. 20(3a) GWB.
European Union	yes	Art. 6 DMA (obligations susceptible of being further specified) E.g. allow end users to un-install any pre-installed software applications; allow the use of third-party software application and systems; refrain from technically restricting customer switching.
Japan	no	
United Kingdom	yes	The regime will allow the authority to set a number of requirements on firms around the objective of 'open choices', including prohibitions on restrictions to use competing services. Wording of the legislation is being finalised for the scope of the authority's power, but these will be based on the categories of conduct requirements provided in the consultation. The specific prohibitions will be set by the authority in due course so they are not available.
United States	yes	Section 3(a)(8) of the American Choice and Innovation Online Act prohibits conduct that may “materially restrict or impede covered platform users from uninstalling software applications that have been preinstalled on the covered platform or changing default settings that direct or steer covered platform users to products or services offered by the covered platform operator” unless necessary for security, functionality, or prevention of data transfer to foreign adversaries of the United States. Section 3(d)(3) of the Open App Markets Act requires covered companies to allow users to “hide or delete apps or app stores provided or preinstalled by the app store owner or any of its business partners.”

## Conduct | Commercial interaction between platforms and their business users

Jurisdiction	Other	Comments / legal reference / source
Germany	yes	Art. 19a(2), 1st sentence, Nr. 4b GWB addresses exuberant processing of data in B2B relations. Art. 19a(2), 1st sentence, Nr. 7 GWB prohibits requesting a disproportionate advantage for the treatment of another company's offers.
European Union	no	
Japan	no	
United Kingdom	to confirm	<p>These rules will be at the discretion of the Digital Markets Unit to apply where it considers appropriate and will not necessarily apply to all firms and activities. It is important to balance the ability of the DMU to adapt conduct requirements to different circumstances against the need to ensure the regime is transparent and brings certainty both to firms with Strategic Market Status and users. Legislation will therefore set out categories of conduct requirements, and allow the DMU to develop specific requirements within these categories for each firm with Strategic Market Status where appropriate. These specific requirements will be binding. Failure to comply could result in the DMU making orders to force firms with Strategic Market Status to comply or issuing financial penalties.</p> <p>It is important that the DMU can respond to changes in the market and associated harms, as they evolve – including as a result of interventions made through this regime. Thus, the DMU will have the ability to remove or amend conduct requirements, under specific circumstances defined in legislation.</p> <p>The categories of potential conduct requirements will be based on fair trading; open choices; and trust and transparency. Examples of categories include:</p> <ul style="list-style-type: none"> <li>· requiring Strategic Market Status firms not to apply discriminatory terms, conditions or policies to certain users or categories of users, compared to equivalent transactions</li> <li>· providing clear, relevant, accurate and accessible information to users.</li> </ul> <p>The DMU will be required to publish guidance on how each firm's conduct requirements will operate in practice, in line with the general approach of ensuring transparency and openness. Conduct requirements will be developed in parallel to the Strategic Market Status designation assessment.</p> <p>There will be no statutory deadline for their development, but the DMU will normally issue the conduct requirements alongside a final Strategic Market Status designation decision.</p> <p>Firms with Strategic Market Status will be able to put forward evidence that particular conduct that would otherwise breach a Conduct Requirement brings about benefits to consumers. The DMU will need to be satisfied that these arguments prove that the conduct is indispensable to achieving the benefits and that the benefits outweigh the potential harm.</p> <p>These will be based on conduct requirements, which may include (not complete list):</p> <ul style="list-style-type: none"> <li>· trade on fair and reasonable terms</li> <li>· not to apply unduly discriminatory terms, conditions or policies to certain users</li> <li>· not to unreasonably restrict how users can use a firm's services</li> <li>· not to unduly influence competitive processes or outcomes in a way that self-preferences or entrenches the firm's position</li> <li>· not to bundle or tie services in a way which has an adverse effect on users</li> <li>· to take reasonable steps to support interoperability with third party technologies where not doing so would have an adverse effect on customers</li> <li>· not to impose undue restrictions on competitors or on the ability of users to use competing providers</li> <li>· not to make changes to non-designated activities that further entrench the firm's position in its designated activity/activities unless the change can be shown to benefit users</li> <li>· provide clear, relevant, accurate and accessible information to users</li> <li>· give fair warning of and explain changes that are likely to have a material impact on users</li> <li>· ensure that choices and defaults are presented in a way that facilitates informed and effective customer choice and ensures that decisions are taken in users' best interests</li> </ul>
United States	yes	Section 3(a)(10) of the American Choice and Innovation Online Act prohibits retaliation against a business user or another user that raises concerns with any law enforcement authority about violations of State or Federal law.



## Access to data

Jurisdiction	Mandatory access to data	Comments / legal reference / source
Germany	no	However, the 10th amendment introduced data access claims for private enforcement (Sec. 20(1a) ARC).
European Union	yes	Gatekeepers shall provide business users with access to the data generated by their activities on the gatekeeper's platform. See art. 6(i) DMA proposal.
Japan	no	TFDPA does not include mandatory access to data. TFDPA requires SDPP in online shopping malls and app stores to disclose the details when SDPP can provide business users with data such as sales data.
United Kingdom	yes	If required by the DMU. The DMU will have the power to implement data-related interventions such as mandating third-party access to data, e.g. in search advertising to even out the data imbalances between SMS firms and smaller firms.
United States	yes	Section 3(a)(7) of the American Choice and Innovation Online Act prohibits conduct that may "materially restrict or impede a business user from accessing data generated on the covered platform by the activities of the business user, or through an interaction of a covered platform user with the products or services of the business user".
Jurisdiction	Interoperability	Comments / legal reference / source
Germany	yes	According to Art. 19a(2), 1st sentence, Nr. 5, the BKartA may prohibit undertakings with paramount significance for competition across markets from refusing the interoperability of products or services, or making it more difficult, and in this way impeding competition.
European Union	yes	Art. 6 DMA (obligations susceptible of being further specified)
Japan	no	
United Kingdom	yes	If required by the DMU. The regime will allow the authority to decide whether to act on interoperability in two ways: 1) conduct requirements to prevent restrictions on interoperability. Legislation is being finalised for the scope of the authority's power, but these will be based on the list of 'principles' provided in the consultation. The specific prohibitions will be set by the authority so they are not available. 2) The DMU will be able to introduce pro-competitive interventions to tackle the underlying causes of SMS firms' market power. These could include improvements to data access, interoperability and consumer choice.
United States	yes	Section 3(a)(4) of the American Choice and Innovation Online Act prohibits conduct that would "materially restrict, impede, or unreasonably delay the capacity of a business user to access or interoperate with the same platform, operating system, or hardware or software features that are available to the products, services, or lines of business of the covered platform operator that compete or would compete with products or services offered by business users on the covered platform". Section 3(d) of the Open App Markets Act requires covered firms to "allow and provide readily accessible means for users of that operating system to— (1) choose third-party apps or app stores as defaults for categories appropriate to the app or app store; (2) install third-party apps or app stores through means other than its app store; and (3) hide or delete apps or app stores provided or preinstalled by the app store owner or any of its business partners". Section 3(f) of the Open App Markets Act requires covered firms to "provide access to operating system interfaces, development information, and hardware and software features to developers on a timely basis and on terms that are equivalent or functionally equivalent to the terms for access by similar apps or functions provided by the covered company or to its business partners."

## Access to data

Jurisdiction	Portability	Comments / legal reference / source
Germany	yes	According to Art. 19a(2), 1st sentence, Nr. 5, the BKartA may prohibit undertakings with paramount significance for competition across markets from refusing data portability, or making it more difficult, and in this way impeding competition.
European Union	yes	Art. 6 DMA (obligations susceptible of being further specified)
Japan	no	TFDPA does not include data portability. TFDPA requires SDPP in online shopping malls and app stores to disclose the details when SDPP can allow business users to provide third-party with data obtained from SDPP.
United Kingdom	yes	If required by the DMU. The DMU will be able, if it chooses, to implement data-related remedies as part of the pro-competitive intervention tool to support to support personal data mobility and encourage switching (e.g. data portability and interoperability).
United States	yes	Section 3(a)(7) of the American Choice and Innovation Online Act prohibits conduct that would “materially restrict or impede ...the portability of such data by the business user to other systems or applications.”
Jurisdiction	Standardised Application Programming Interfaces (APIs)	Comments / legal reference / source
Germany	no	
European Union	no	
Japan	no	
United Kingdom	yes	If required by the DMU. Amongst its pro-competitive interventions the DMU will be able, if it so chooses, to implement open-standards remedies which will include requiring systems and devices to ‘talk’ to each other using open, standardised formats.
United States	no	
Jurisdiction	Data trustees	Comments / legal reference / source
Germany	no	
European Union	no	
Japan	no	
United Kingdom	yes	If required by the DMU. There is no language on this in the categories of conduct requirements, but it may be possible for the DMU to set requirements to this effect.
United States	no	

## Access to data

Jurisdiction	Data sandboxes	Comments / legal reference / source
Germany	no	
European Union	no	
Japan	no	
United Kingdom	yes	If required by the DMU. There is no language on this in the categories of conduct requirements, but it may be possible for the DMU to set requirements to this effect.
United States	no	
Jurisdiction	Other	Comments / legal reference / source
Germany	no	
European Union	no	
Japan	no	
United Kingdom	to confirm	As digital markets evolve, other remedies may be necessary and the DMU will have the flexibility to impose these (subject to proportionality and reasonableness).
United States	no	

## Limits to gatekeepers' use of data

Jurisdiction	Prohibition to combine data from different sources	Comments / legal reference / source
Germany	yes	Art. 19a(2), 1st sentence, Nr. 4a) (particularly with view to B2C relations) and Nr. 4b) GWB (B2B relations)
European Union	yes	Art. 5 DMA
Japan	no	
United Kingdom	yes	If required by the DMU. This could be implemented as part of data silos type PCI remedies. (see column BY).
United States	no	
Jurisdiction	Data silos	Comments / legal reference / source
Germany	yes	Art. 19a(2), 1st sentence, Nr. 4b) GWB: the Bundeskartellamt may prohibit designated firms to process data relevant for competition received from other undertakings for purposes other than those necessary for the provision of its own services to these undertakings without giving these undertakings sufficient choice as to whether, how and for what purpose such data are processed.
European Union	yes	As possible remedy to tackle systematic infringements of the Digital Markets Act rules (Article 18 DMA).
Japan	no	
United Kingdom	yes	If required by the DMU. The DMU will be able to implement data-related interventions such as data silo remedies, which limit how data can be shared and used between different business units within an SMS firm.
United States	no	
Jurisdiction	Short data retention periods	Comments / legal reference / source
Germany	no	
European Union	no	
Japan	no	
United Kingdom	yes	If required by the DMU.
United States	no	
Jurisdiction	Line of business restrictions	Comments / legal reference / source
Germany	no	
European Union	yes	As possible remedy to tackle systematic infringements of the Digital Markets Act rules.
Japan	no	
United Kingdom	yes	If required by the DMU. The DMU will be able to impose separation remedies. If it considers that full ownership separation is likely to be the only effective remedy, the DMU should possess the right to make or recommend a market investigation reference. The power to impose full ownership separation, however, will only remain available to the CMA, following a market.
United States	yes	Section 3(a)(6) of the American Choice and Innovation Online Act prohibits “use [of] nonpublic data that are obtained from or generated on the covered platform by the activities of a business user or by the interaction of a covered platform user with the products or services of a business user to offer, or support the offering of the products or services of the covered platform operator that compete or would compete with products or services offered by business users on the covered platform.” Section 3(c) of the Open App Markets Act states that “A covered company shall not use nonpublic business information derived from a third-party app for the purpose of competing with that app.”

## Limits to gatekeepers' use of data

Jurisdiction	Other	Comments / legal reference / source
Germany	no	
European Union	yes	Art. 6(a): gatekeepers shall refrain from using, in competition with business users, any data not publicly available, which is generated through activities by those business users (including by the end users) of its CPS or provided by those business users (or their end users) of its CPS.
Japan	no	
United Kingdom	to confirm	As digital markets evolve, other remedies may become necessary and the DMU will have the flexibility to impose these (subject to proportionality and reasonableness).
United States	no	

## Compliance and remedies

Jurisdiction	Possibility to impose sanctions	Comments / legal reference / source
Germany	yes	An administrative offence is committed by whoever intentionally or negligently acts contrary to an enforceable order pursuant to Art. 19a(2) GWB (i.e. in cases where an undertaking does not comply with a prohibition decision taken by the BKartA). Fine up to EUR 1 million, which can be increased to up to 10% of the total turnover.
European Union	yes	Fine of up to 10% of the gatekeeper's total turnover if it fails to comply with Articles 5 and 6. Fine up to 20% of its total worldwide turnover where the Commission finds that the gatekeeper has committed the same or a similar infringement in relation to the same core platform service as it was found to have committed in a non-compliance decision adopted in the 8 preceding years. Fine not exceeding 1% of the total turnover if the firm does not provide correct and complete information required to assess its possible designation as gatekeeper.
Japan	yes	METI has authority to issue a warning notice ("kankoku") to a SDPP when it finds a violation of the TFDDPA. For example, regarding disclosure obligations, METI can first "advise" ("kankoku") the SDPP to comply with the regulation (Art. 6(1)). If the SDPP does not follow the advice, the METI can then "order" the compliance (Art. 6(4)). If the SDPP still does not comply with the order, the METI can then impose a fine (Art. 23). In the case of issuing advice or order to SDPP, METI must announce that fact (Art. 6(3) and 8(2)). If and when there is any suspect of violating the Anti-Monopoly Act, METI will refer it to the Japan Fair Trade Commission. METI must announce when they advise or order (Art. 6(3) and 8(2)).
United Kingdom	yes	The focus of the regime will be on resolving concerns through constructive engagement with firms, without the need for formal investigations However, the DMU will have robust powers to deter and tackle non-compliance, including fines of up to a maximum of 10% of the annual worldwide turnover for serious regulatory breaches and up to 1% for information offences. Additional daily penalties will be available for continued non-compliance. The DMU will also be able to apply to the courts to require SMS firms to change their behaviour, and to prevent a director whose conduct makes them unfit to have such a role from doing so again in the UK. There will be further powers to apply civil penalties to named senior managers who fail to ensure that their firm complies with requests for information. It will be a criminal offence if anyone knowingly or recklessly provides false information to the DMU, and there will also be the option for civil penalties for these offences. The DMU will be able to request compliance reports from SMS firms to assist their monitoring of compliance with the regime.
United States	yes	Section 3(c)(5) of the American Choice and Innovation Online Act provides violations may be punished by civil monetary penalties up to 15% of total U.S. revenue of the person for the period of time the violation occurred, with further sanctions possible for corporate officers of repeat offenders. Section 5 of the Open App Markets Act allows the FTC, DOJ, or any state AG to obtain civil penalties and other appropriate relief.

## Compliance and remedies

Jurisdiction	Possibility to impose remedies	Comments / legal reference / source
Germany	both	However the GWB limits to possibility to impose structural remedies only to situations in which there is no behavioural remedy that would be equally effective or the behavioural remedy would entail a greater burden for the undertakings (Section 32(2) GWB).
European Union	both	In case the gatekeeper has systematically infringed the obligations in the DMA and has maintained, strengthened or extended its gatekeeper position, the Commission may adopt an implementing act imposing on such gatekeeper any behavioural or structural remedies which are proportionate and necessary to ensure effective compliance with the DMA (Article 18 DMA).  The remedy may include, to the extent that such remedy is proportionate and necessary in order to maintain or restore fairness and contestability as affected by the systematic non-compliance, the prohibition, during a limited period, for the gatekeeper to enter into a concentration within the meaning of the EUMR regarding the core platform services or the other services provided in the digital sector or enabling the collection of data that are affected by the systematic non-compliance.
Japan	behavioural	For example, METI can advise SDPP to take necessary measures in addition to complying with the regulation when it finds a violation of disclosure obligations under the TFDPA.
United Kingdom	both	The DMU will take an iterative approach to intervention, and will be empowered to implement robust pro-competitive intervention remedies – such as the ability to enforce interoperability between platforms or services. The DMU will be able to implement ownership separation remedies, but this will only be used in circumstances where it is appropriate and other remedies are insufficient.
United States	both	Section 3(c)(5) of the American Choice and Innovation Online Act S.2992 provides that enforcers may seek “relief in equity as necessary to prevent, restrain, or prohibit violations of [the] Act.” Pursuant to Section 2(f) of the American Choice and Innovation Online Act H.R.3816, in case of violation arising from a conflict of interest, the court can require divestiture of the line of business that gives rise to the conflict.  Section 5 of the Open App Markets Act allows for any affected developer to sue for injunctive relief, including, if successful, attorneys’ fees.
Jurisdiction	Relation with existing provisions	Comments / legal reference / source
Germany	powers under existing competition law provisions	
European Union	new powers	The power to issue sanctions or impose remedies is autonomous from similar powers under competition law provisions (Article 30 DMA).
Japan	new powers	
United Kingdom	new powers	The focus of the regime will be on resolving concerns through constructive engagement with firms, without the need for formal investigations.  However, the DMU will have robust powers to deter and tackle non-compliance, including fines of up to a maximum of 10% of the annual worldwide turnover for serious regulatory breaches and up to 1% for information offences. Additional daily penalties will be available for continued non-compliance.  The DMU will also be able to apply to the courts to require SMS firms to change their behaviour, and to prevent a director whose conduct makes them unfit to have such a role from doing so again in the UK. There will be further powers to apply civil penalties to named senior managers who fail to ensure that their firm complies with requests for information.  It will be a criminal offence if anyone knowingly or recklessly provides false information to the DMU, and there will also be the option for civil penalties for these offences. The DMU will be able to request compliance reports from SMS firms to assist their monitoring of compliance with the regime.
United States	new powers	Section 5 of the American Choice and Innovation Online Act provides that “Nothing in this Act may be construed to limit – (1) any authority of the Attorney General or the Commission under the antitrust laws, section 5 of the Federal Trade Commission Act (15 U.S.C. 45), or any other provision of law.”  Section 7 of the Open App Markets Act: “Nothing in this Act may be construed to limit any authority of the Attorney General or the Federal Trade Commission under the antitrust laws (as defined in the first section of the Clayton Act (15 U.S.C. 12), the Federal Trade Commission Act (15 U.S.C. 41 et seq.), or any other provision of law.”