



Attachment 3 – 1

G7 inventory of new rules for digital markets

Prepared by the OECD Competition Division for the
2023 G7 Joint Competition Policy Makers and Enforcers Summit



Reform status

| Jurisdiction | Status of implementation | Comments / legal reference / source |
|----------------|---|---|
| Germany | Enacted | Act against Restraints of Competition. (Competition Act – GWB), Section 19a. |
| European Union | Enacted | Digital Markets Act (DMA). |
| Japan | Enacted | Act on Improving Transparency and Fairness of Digital Platforms (TFDPA) promulgated on June 3, 2020, and enforced on February 1, 2021. Japan is also considering the legal framework necessary to ensure a fair and equitable competition environment in the mobile ecosystem based on the final report "Competition Assessment of the Mobile Ecosystem," a competition assessment of how the layered structure in the mobile ecosystem affects the competitive environment, published on June 16, 2023, by the Secretariat of the Headquarters for Digital Market Competition (HDMC), Cabinet Secretariat. |
| United Kingdom | Proposal under discussion | Advice of the Digital Markets Taskforce for "A new pro-competition regime for digital markets". UK Government consultation and response on "A new pro-competition regime for digital markets". The Digital Markets, Competition and Consumers Bill was introduced to the House of Commons (the UK's lower house) on 25 April 2023. The draft sets out new competition rules for the most powerful digital firms. The Bill establishes a new regime, empowering the Competition and Markets Authority to tackle both the sources and consequences firms' market power with a new toolkit. The bill will be later debated by the House of Commons, before progressing to the House of Lords (the UK's upper house). After both Houses have considered the draft legislation, the Bill receives Royal Assent to become an Act, followed by implementation. In the meantime, the Government will continue to work with the Competition and Markets Authority's new Digital Markets Unit, who will deliver the regime, to ensure operational readiness of the regime ahead of legislation being passed. |
| United States | Proposal under discussion | (1) the American Choice and Innovation Online Act S.2992, as reported by the Senate Judiciary Committee and (2) the Open App Markets Act, as reported by the Senate Judiciary Committee. |
| Korea | Proposal under discussion | Fair Online Platform Intermediary Transactions Act proposed by the Korea Fair Trade Commission, currently before the National Assembly for legislation. |
| Brazil | Proposal under discussion | PL 2768/22 provides for the organisation, functioning and operation of digital platforms that offer services to the Brazilian public. |
| 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 (recital 97; Art. 3(6) and Art. 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 | Section 6(2): The Secretary of State may by regulations amend this section so as to vary the conditions in subsection (1). These are the conditions to determine whether an undertaking has Strategic Market Status, such as its significant size or scale, the number of other undertakings using its digital activities, etc. Section 7(3): The Secretary of State may by regulations amend either of the sums mentioned in subsection (2). The latter refers to the total value of the global turnover and the total value of the UK turnover as laid down in the new act. Section 8(4): The Secretary of State may by regulations make provision about how the total value of the global turnover or UK turnover of an undertaking or group in a period is to be estimated for the purposes of the turnover condition. Section 20(4): The Secretary of State may by regulations amend this section so as to modify the permitted types of conduct requirement that can be imposed upon a designated undertaking. Section 40(4): The Secretary of State may by regulations amend this section so as to modify the length of the final offer period. |
| 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." |
| Korea | Yes | Presidential decree will lay down the detailed types of unfair trade practices under Article 9(1) (Article 9(5)). |
| Brazil | No | |

This inventory was compiled by the OECD and reflects the regulatory framework as of September 2023. An analytical note accompanying this inventory can be found at <https://oe.cd/deic>.

Regulated entity

| Jurisdiction | Use of definition/ Concept of firm with particular level of market power (e.g. with bottleneck power, gatekeeper or equivalent <i>l'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. |
| 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. |
| 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 investigate and conclude that a firm has substantial and entrenched market power and a position of strategic significance in at least one digital activity, (Chapter 2, Section 2), following quantitative and qualitative criteria. |
| 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). |
| Korea | Yes | Article 2(3). Platform operator providing online platform intermediary service and having superior bargaining power. Intermediary service is defined as "a service that intermediates the initiation of transactions of goods, etc. between online platform users and consumers in the manner prescribed by the Presidential Decree, such as providing information on goods or services through an online platform and receiving consumer subscriptions." |
| Brazil | Yes | Digital platforms with the power to control essential access (Art. 2 (§1) and the proposal's justification). The proposal does not provide a formal definition on what is the "the power to control essential access". |
| Jurisdiction | Use of quantitative criteria to identify firms with particular level of market power (e.g., gatekeepers or equivalent) | Comments / legal reference / source |
| Germany | No | |
| European Union | Yes | DMA 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 TFDP: <ol style="list-style-type: none"> 1. Businesses operating comprehensive online shopping malls selling goods: Those having sales of 300 billion yen or more per fiscal year in Japan. 2. Businesses operating application stores: Those having sales of 200 billion yen or more per fiscal year in Japan. 3. Businesses operating media-integrated digital advertisement platform (Platforms placing advertisers' ads on their own website such as search engines, portal sites, and SNS, by mainly using auctions): Those having sales of 100 billion yen or more per fiscal year in Japan. 4. Businesses operating advertisement intermediary digital platform (Platforms mediating between advertisers and website operators, by mainly using auctions): Those having sales of 50 billion yen or more per fiscal year in Japan. |
| United Kingdom | Yes | Undertakings can only be designated with SMS if they meet the turnover condition. Undertakings with (i) global turnovers above 25 billion pounds in the relevant period or with (ii) UK turnover above 1 billion pounds in the relevant period. The relevant period consists of the last 12 months (or the previous 12 months if the turnover is higher). (Chapter 2, Sections 7 and 8). Undertakings which meet the revenue criteria can only be designated with Strategic Market Status if they also meet the qualitative criteria: the undertaking performs a digital activity, holds substantial and entrenched market power and a strategic position in that digital activity and that digital activity has a UK nexus. |
| 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 US exceed 50,000,000." |
| Korea | Yes | Article 2(3). Quantitative criteria for businesses under the Proposed Bill: having annual turnover of more than KRW 10 billion or annual sales of more than KRW 100 billion and exceeding a threshold to be prescribed in the enforcement decree. |
| Brazil | Yes | Art. 9, digital platforms as defined in Art. 6 (II) are considered "platforms with the power to control essential access" when they earn an annual revenue equal or greater than R\$ 70 million with the services offered to the Brazilian public. |

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| Regulated entity | | |
|-------------------------|--|--|
| Jurisdiction | Use of qualitative criteria to identify firms with particular level of market 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 ⁵ 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. (Chapter 2, Section 45). An undertaking has a position of strategic significance in respect of a digital activity for the purposes of section 2(2)(b) where one or more of the following conditions is met— (a) the undertaking has achieved a position of significant size or scale in respect of the digital activity; (b) a significant number of other undertakings use the digital activity as carried out by the undertaking in carrying on their business; (c) the undertaking's position in respect of the digital activity would allow it to extend its market power to a range of other activities; (d) the undertaking's position in respect of the digital activity allows it to determine or substantially influence the ways in which other undertakings conduct themselves, in respect of the digital activity or otherwise (Chapter 2, Section 6). |
| 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. |
| Korea | Yes | Qualitative criteria: The Proposed Bill will be applicable to every business (a) acting as a product or service transaction intermediary between consumers and online platform business users (b) through the online platform. However, the provision which prohibits unfair business practices (Paragraph 1 of Article 9) will apply only where the online platform intermediary has "superior bargaining position" over online platform business users. |
| Brazil | To confirm | The digital platforms covered by this proposed regulation are those that hold a power to control essential access, as stated in Art. 2 (§1) and in the proposal's justification. However, the law does not define the concept of "power to control essential access" nor does it contain any non-quantitative criteria in this regard. |

| Regulated entity | | |
|-------------------------|--|--|
| Jurisdiction | Designation process for firms with particular level of market power (e.g., gatekeepers or equivalent) | <i>Comments / legal reference / source</i> |
| Germany | By the authority | |
| European Union | Firm's duty to self-assess and notify | DMA Art. 3: Where a provider of core platform services meets all the thresholds in paragraph 2, it shall notify the Commission thereof within two 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 | METI designates the SDPP after submission of notification from the digital platform provider which meets the business category and the thresholds of business size. |
| 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. |
| Korea | Firm's duty to self-assess and notify | There is no designation decision by the authority. Any business that meets the criteria laid down in the law and the presidential decree will be subject to it, without any formal designation decision by the authority. However, in process of investigating individual cases, KFTC may find that the platform has a superior bargaining power. |
| Brazil | Other | The process is not clearly specified in the law. The National Telecommunications Agency will be in charge to regulate, supervise and sanction digital platforms with the power to control essential access as defined in Art. 6 (II). Such digital platforms would have to pay an annual fee to an <i>ad hoc</i> Digital Platform Fund (FisDigi) in the amount of 2% of the gross operating revenue. Failure to pay this fee in due time would be subject to a payment of an interest of 1% calculated on the amount of the debt per month of delay (Art. 14 § 1 - § 3). |
| Jurisdiction | Terms for re-assessment of the designated firm position | <i>Comments / legal reference / source</i> |
| 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, a review of the designation must conclude before the conclusion of that period (Chapter 2, Section 5). The DMU may trigger an early review if they have grounds to believe it is appropriate. They can also open an initial SMS investigation into a different activity that an SMS firm performs. |
| 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. |
| Korea | No | N/A |
| Brazil | To confirm | |

Type of (proposed) reforms

| 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 | Yes | The new act amends existing provisions of the Enterprise Act 2002 or the Competition Act 1998 and introduces new provisions on co-ordination with other regulators (section 107), information sharing (section 109), agreements (section 117), investigations (sections 118-120), interim measures (section 121) and mergers (sections 125-129). |
| United States | No | |
| Korea | No | However, apart from the competition law applied to the general industry, a special law was enacted to apply only the online platform field. |
| Brazil | No | |
| Jurisdiction | Introduction of principles-based regulation (e.g., code of conduct) for firms with particular level of market 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). 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. 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. METI published first evaluation in December 2022.</p> |
| United Kingdom | Yes | <p>The Digital Markets Unit will have ability to design and impose conduct requirements tailored to the SMS firm and the designated digital activity. Legislation specifies that conduct requirements can only be imposed for the purposes of at least one of the objectives (chapter 3 section 19) and each conduct requirement must fall within one of the permitted types of conduct requirement (chapter 3 section 20). Conduct requirements will be legally binding on firms with SMS.</p> <p>1) The fair dealing objective is that users or potential users of the relevant digital activity are— (a) treated fairly, and (b) able to interact, whether directly or indirectly, with the undertaking on reasonable terms. (2) The open choices objective is that users or potential users of the relevant digital activity are able to choose freely and easily between the services or digital content provided by the undertaking and services or digital content provided by other undertakings. (3) The trust and transparency objective is that users or potential users of the relevant digital activity have the information they require to enable them to— (a) understand the services or digital content provided by the undertaking through the relevant digital activity, including the terms on which they are provided, and (b) make properly informed decisions about whether and how they interact with the undertaking in respect of the relevant digital activity.</p> |
| United States | No | |
| Korea | No | |
| Brazil | No | |

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Type of (proposed) reform

| Jurisdiction | Introduction of rules-based regulation for firms with particular level of market power (e.g., gatekeepers or equivalent) | <i>Comments / legal reference / source</i> |
|-----------------------|---|--|
| 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 |
| 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. The DMU will have the discretion to investigate and designate a firm with strategic market status. Once designated, the DMU may decide to impose conduct requirements or, where it identifies a competition problem, implement pro-competition interventions. |
| United States | Yes | Section 2 of the American Choice and Innovation Online Act lists specific unlawful conducts. |
| Korea | Yes | Indicates the obligation to issue a contract (Article6), the obligation to notify in advance when terminating the contract (Article7), and the criteria for unfair trade practice (Article 9) for which presidential decree will lay down details. |
| Brazil | Yes | Art. 10 defines a series of obligations imposed on digital platforms that hold a power to control essential access. Other obligations and mitigation measures can be imposed by the National Telecommunications Agency, including those related to data portability and interoperability. Art. 11 provides that specific obligations can be imposed for each type of digital platforms, according to their characteristics. |
| Jurisdiction | Possibility for firms to submit objective justification of their conducts | <i>Comments / legal reference / source</i> |
| 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 | Firms with Strategic Market Status will be able to put forward evidence that particular conduct that would otherwise breach a Conduct Requirement brings about countervailing benefits if it passes certain criteria. Clause 29(2) outlines that the countervailing benefits exemption applies where (a) the conduct to which the investigation relates gives rise to benefits to users or potential users of the digital activity in respect of which the conduct requirement in question applies, (b) those benefits outweigh any actual or likely detrimental impact on competition resulting from a breach of the conduct requirement, (c) the conduct is indispensable and proportionate to the realisation of those benefits, and (d) the conduct does not eliminate or prevent effective competition. |
| 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") |
| Korea | No (i.e., per se prohibition) | However, when the practice is unlawful under competition law, pursuant to Article 93 the business operator can claim and explain the legitimacy of actions at any time. It can be explained at any time during the KFTC's investigation, by submitting written opinions on it after the SO is issued, or by attending hearing. |
| Brazil | No (i.e., per se prohibition) | However, items III to V of article 11 state that, in assigning obligations, Anatel must consider "proportional intervention"; "the costs and benefits of impositions" and the "level of competition in the offer of each digital platform modality". |

Type of (proposed) reform

| Jurisdiction | Existence of list of services/activities to which the new rules apply (<i>ratione materiae</i>) | Comments / legal reference / source |
|----------------|---|--|
| Germany | No | |
| European Union | Yes | 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: (a) online intermediation services; (b) online search engines; (c) online social networking services; (d) video-sharing platform services; (e) number-independent interpersonal communications services; (f) operating systems; (g) web browsers; (h) virtual assistants; (i) cloud computing services; (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). |
| Japan | Yes | The Cabinet Order stipulates businesses subject to TFDPA as below: 1. Businesses operating comprehensive online shopping malls selling goods 2. Businesses operating application stores 3. Businesses operating media-integrated digital advertisement platform (Platforms placing advertisers' ads on their own website such as search engines, portal sites, and SNS, by mainly using auctions) : Those having sales of 100 billion yen or more per fiscal year in Japan. 4. Businesses operating advertisement intermediary digital platform (Platforms mediating between advertisers and website operators, by mainly using auctions): Those having sales of 50 billion yen or more per fiscal year in Japan. |
| United Kingdom | Yes | 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. The digital activities are defined as (a) the provision of a service by means of the internet, whether for consideration or otherwise; (b) the provision of one or more pieces of digital content, whether for consideration or otherwise; (c) any other activity carried out for the purposes of an activity within paragraph (a) or (b). (Part 1, Chapter 2, Section 3). A service is provided by means of the internet even where it is provided by means of a combination of (a) the internet, and (b) an electronic communications service (within the meaning given by Section 32(2) of the Communications Act 2003). The CMA may treat two or more activities that are carried out by a single undertaking as a single digital activity where (a) the activities have substantially the same or similar purposes, or (b) the activities can be carried out in combination with each other to fulfil a specific purpose. The CMA may describe a digital activity by reference to the nature of the activity, brand names, or both. (Chapter 2, Section 3). The DMU will be required to publish guidance on digital activities, detailing how this definition will be applied in practice. |
| United States | Yes | 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. 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. |
| Korea | Yes | "Services intermediating the initiation of exchanges of services and products between platform users and consumers." The specific types of intermediary services to be regulated are to be set forth in the Presidential Decree for the new statute (Article 2(5)). |
| Brazil | Yes | Art. 6 (II) defines that internet applications provided by digital platforms need to be executed in the following modalities: a) online intermediation services; b) online search tool; c) online social networks; d) video sharing platforms; e) interpersonal communication services; f) operating systems; g) cloud computing services; h) online advertising services offered by a network operator digital platforms provided for in paragraphs a) to g) of this section. |

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. |
| 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. |
| Korea | No | Not decided yet. |
| Brazil | Yes | Instead of creating a new regulatory body, the National Telecommunications Agency will be responsible for enforcing the proposed regulation, as it has already the required expertise to regulate digital platforms (proposal's justification). |
| 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 50 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 are provided by the Bill). |
| 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. |
| Korea | Competition authority | |
| Brazil | Regulator | National Telecommunications Agency (Anatel). |

Institutional setting and powers

| Jurisdiction | Co-operation 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). Under Article 40, the Commission adopted a decision on 23.3.2023 (C(2023) 1833 final) to establish a High-Level Group for the DMA, 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 |
| United Kingdom | Yes | There will be a statutory obligation for the CMA (and DMU within it) 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 (Part 1, Chapter 8 section 107). It will also notify those key regulators when opening an SMS designation assessment (Part 1, Chapter 2, Section 11). This approach 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 be able to make recommendations as to whether the CMA should exercise a regulatory digital markets function. The recommendations must be in writing and describe the undertaking, the digital activity, and the regulatory digital markets function to which it relates. CMA must answer to it in 90 days justifying the use, or not, of the recommendation. (Part 1, Chapter 8, section 108). |
| United States | No | |
| Korea | No | There are no explicit provisions in the Bill relating to cooperation with other regulators. |
| Brazil | No | |
| Jurisdiction | Rules on the relationship/co-ordination 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 |
| United Kingdom | No | The DMU is a unit within the CMA. The CMA will determine the appropriate tool to use in order to tackle a given competition issue. |
| United States | No | |
| Korea | Yes | Article 4 (relationship with other laws) provides that "regarding online platform brokerage transactions, Article 45(1), No. 6 of the Regulation and Fair Trade Act does not apply. Article 45(1), No. 6 prohibits "unreasonably taking advantage of one-s trading position to transact with the other party." |
| Brazil | Yes | Anatel being in charge of the proposed regulation is without prejudice to the Administrative Council for Economic Defense (CADE)'s power to control concentrations involving digital platforms, as stated in the proposal's justification. |

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-competition interventions (PCI) in order to address, respectively, the effects and the source of an SMS firm's market power in a particular activity. (Part 1, Chapters 3 and 4). The undertakings have the duty to report possible mergers to the CMA ex ante and only after CMA confirmation the parties might continue the merger (Part 1, Chapter 5).</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> |
| Korea | No | |
| Brazil | No | |

| Merger control | | |
|-----------------------|---|---|
| Jurisdiction | Reporting obligation for all transactions by firms with particular level of market power (e.g., gatekeepers or equivalent) | <i>Comments / legal reference / source</i> |
| 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 have a duty to report their most significant transactions prior to completion when: - the SMS firm crosses 15%, 25% or 50% thresholds in shares or voting rights in the target, where the value of consideration for the transaction is £25 million or more; and - 15% holdings in shares or voting rights, in UK joint ventures, where the value of consideration provided to the joint venture by the SMS firm is £25 million or more (Part 1, Chapter 5, Sections 56 and 57). |
| United States | No | |
| Korea | No | |
| Brazil | Yes | Art. 13 requires digital platforms that aim to form a concentration (merger or incorporation) to submit their transactions to the CADE. |
| Jurisdiction | Change in standard of proof for in-depth assessment (or phase 2) | <i>Comments / legal reference / source</i> |
| 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. The UK Government's view is 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 | |
| Korea | No | |
| Brazil | No | |
| Jurisdiction | Change in type of thresholds used for transaction notification | <i>Comments / legal reference / source</i> |
| 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 | With the exception of the new mandatory reporting requirement for SMS firms. |
| United States | No | |
| Korea | No | |
| Brazil | No | |

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Merger control

| 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 | |
| Korea | No | |
| Brazil | No | |
| Jurisdiction | Reversal of burden of proof | Comments / legal reference / source |
| Germany | No | |
| European Union | No | |
| Japan | No | |
| United Kingdom | No | |
| United States | No | |
| Korea | No | |
| Brazil | No | |
| Jurisdiction | Other | Comments / legal reference / source |
| Germany | No | |
| European Union | No | |
| Japan | No | |
| United Kingdom | No | |
| United States | No | |
| Korea | No | |
| Brazil | No | |

Conduct | Commercial interaction between platforms and 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 (5) DMA (obligations susceptible of being further specified under Article 8). |
| Japan | No | TFDPA does not include self preferencing prohibition. TFDPA requires SDPP to disclose the details and reasons when giving preferential treatment to their own and their affiliated companies. |
| United Kingdom | Yes | The DMU will be able to set tailored rules that govern how firms with SMS should behave, to manage the effects of their market power. This may include imposing a conduct requirement to prevent self-preferencing (Chapter 3, Section 20 (3) (b)). |
| 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. |
| Korea | Yes | According to Article 6, a platform business operator must issue a transaction contract without delay. The contract includes the order, criteria of exposure to the online platform of the goods being traded. However, the self preferencing could be judged to be an abuse of dominance (MRFTC article5) or unfair business conduct (MRFTC article45). |
| Brazil | Yes | Art. 10 (II) provides a general obligation of a non-discriminatory treatment in the offer of services to professional users and end users. Self-preferencing is expressly mentioned in the proposal's justification. |
| 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 under Article 8) + 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. |
| United Kingdom | Yes | Conduct requirements can only be imposed for the purposes of at least one of three objectives set out in legislation. These include 'fair dealing' and 'trust and transparency'. The first objective aims to guarantee that users are treated fairly and are able to interact with the undertaking on reasonable terms. (Chapter 3, Section 19) The second objective aims to guarantee that users have all the information they require to enable them to understand the services or digital content provided by the SMS firm and make properly informed decisions about whether and how they interact with the SMS firm. The DMU will also be able to impose conduct requirements to govern how firms with SMS behave, to manage the effects of their market power. This could include a conduct requirement to oblige an SMS firm to trade on fair and reasonable terms. (Chapter 3, Section 20(a)). A conduct requirement requiring an SMS firm to trade on fair and reasonable payment terms can also lead to the use of the Final Offer Mechanism. This is a backstop tool to resolve sustained breaches of conduct requirements relating to fair and reasonable payment terms where other DMU tools are unlikely to resolve the breach in a reasonable time frame. (Part 1, Chapter 3, section 38-44). |
| 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". |
| Korea | Yes | Mandatory written contract, notice obligation before amending any contract terms or restricting, suspending, or terminating any of sellers' services. |
| Brazil | Yes | Article 10, point IV, prohibits designated companies from refusing to "provide access" to professional users, suggesting a duty to contract with professional users, possibly to avoid unfair refusals. |

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Conduct | Commercial interaction between platforms and 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 DMU is able to impose a conduct requirement to prevent SMS firms from requiring or incentivising users or potential users to use the SMS firm's designated activity alongside another product or service offered by the SMS firm. (Chapter 3 Section 20 (3) (d)). |
| 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." |
| Korea | Yes | Article 9 (prohibition of unfair trade acts) prohibits the use of the intermediary's trading position to force users to purchase goods or services that they did not intend to purchase. However, bundling is regulated in accordance with Article 45(1), No. 5 of competition act (MRFTA). |
| Brazil | No | |
| 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 to disclose the details and reasons when their terms and conditions include MFN clauses. |
| United Kingdom | Yes | Conduct requirements can only be imposed for the purposes of at least one of three objectives set out in legislation. These include 'open choices' which aims to guarantee that users of the designated activity are able to choose freely and easily between products provided by the SMS firm and other firms (Chapter 3, Section 19). The DMU will also be able to impose conduct requirements to prohibit steering practices. This could include a conduct requirement to prevent an SMS firm from restricting interoperability or restricting the ability of users or potential users to use products of other firms (Chapter 3, Section 20 (3) (e) and (h)). |
| 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." |
| Korea | No | MFN could be judged to be an abuse of dominance (MRFTA article 5) or unfair business conduct (MRFTA article 45). |
| Brazil | No | |

Conduct | Commercial interaction between platforms and their business users

| 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 under article 8) 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 | Conduct requirements can only be imposed for the purposes of at least one of three objectives set out in legislation. These include 'open choices' which aims to guarantee that users of the designated activity are able to choose freely and easily between products provided by the SMS firm and other firms (Chapter 3, Section 19). The DMU will also be able to impose conduct requirements to prohibit lock-in strategies. This could include a conduct requirement to oblige an SMS firm to present any options or default settings to ensure users can make informed and effective decisions (Chapter 3, Section 20 (e)). |
| 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." |
| Korea | No | Lock on strategies could be judged to be an abuse of dominance (MRFTC article5) or unfair business conduct (MRFTC article45). |
| Brazil | No | |
| 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 | Yes | 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 permitted types of conduct requirement, and allow the DMU to develop specific obligations 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. 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 revoke or amend conduct requirements or apply transitional, transitory or saving provisions, under specific circumstances defined in legislation. The DMU will be required to publish guidance on how it will exercise its digital markets functions. Conduct requirements will be developed in parallel to the Strategic Market Status designation assessment. 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. |
| 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. |
| Korea | No | Unilateral conducts not directly mentioned in the bill can be regulated by MRFTA. Representative types of violation of the law by platform operators are multi-homing restrictions, self preferencing, MFN, and tying. In order to examine such violations under the MRFTA, KFTC is enacting the Platform Review Guidelines. |
| Brazil | No | |

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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(10) DMA. |
| Japan | No | TFDPA does not include mandatory access to data. TFDPA requires SDPP to disclose the details when SDPP can provide business users with data such as sales data. |
| United Kingdom | Yes | If the DMU identifies an adverse effect on competition in respect of a designated digital activity then it can implement pro-competition interventions (PCIs). The DMU will have discretion to design PCI remedies that are tailored to addressing a competition problem. Under a PCI remedy the DMU could compel an SMS firm to provide access to the firm's data, provided the data is linked to the adverse effect on competition and the DMU assesses that this would help to remedy it (Part 1, Chapter 4, Section 50). |
| 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". |
| Korea | No | |
| Brazil | No | However, among the obligations listed in Art. 10, n. III refers in general terms to a "proper use of data collected in the exercise of their activities". |
| 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 under article 8). |
| Japan | No | |
| United Kingdom | Yes | The DMU will be able to impose a conduct requirement to prevent an SMS firm from restricting interoperability or restricting the ability of users or potential users to use products of other firms (Chapter 3, Section 20 (3) (e) and (h)). The DMU will be able to introduce pro-competition interventions to tackle the underlying causes of SMS firms' market power. These could include improvements to data access, interoperability and consumer choice. A pro-competition order may include provision imposing requirements on an undertaking on a trial basis for the purpose of assisting the CMA in establishing requirements that would be effective in remedying, mitigating or preventing (a) the adverse effect on competition to which the order relates; (b) any detrimental effect on UK users or UK customers resulting from, or expected to result from, the adverse effect on competition. (Part 1, Chapter 4, Section 50). |
| 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." |
| Korea | No | |
| Brazil | To confirm | Encouraging interoperability is one of the objectives of the proposed regulation (Art. 5 IV). To highlight that this article contains the law's objectives and not the actual obligations that will be imposed on companies. Article 10 also clarifies that The National Telecommunications Agency, in its exercise of regulatory and inspection activities, may impose mitigation measures for possible abuse of economic power, including those related to interoperability and data portability. |

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 under article 8). |
| Japan | No | TFDPA does not include data portability. TFDPA requires SDPP to disclose the details when SDPP can allow business users to provide third-party with data obtained from SDPP. |
| United Kingdom | Yes | The DMU will be able, if it identifies a competition problem, to implement data-related remedies as part of the pro-competition interventions tool to support to support personal data mobility and encourage switching (e.g., data portability and interoperability). A pro-competition order may include provision imposing requirements on an undertaking on a trial basis for the purpose of assisting the CMA in establishing requirements that would be effective in remedying, mitigating or preventing (a) the adverse effect on competition to which the order relates; (b) any detrimental effect on UK users or UK customers resulting from, or expected to result from, the adverse effect on competition. (Part 1, Chapter 4, Section 50). |
| 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." |
| Korea | No | |
| Brazil | To confirm | Incentive and definition of mechanisms for data portability is one of the objectives of the proposed regulation (Art. 5 V). Article 10 also clarifies that The National Telecommunications Agency, in its exercise of regulatory and inspection activities, may impose mitigation measures for possible abuse of economic power, including those related to interoperability and data portability. |
| Jurisdiction | Standardised Application Programming Interfaces (APIs) | Comments / legal reference / source |
| Germany | Yes | 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 under article 8). |
| Japan | No | TFDPA does not include data portability. TFDPA requires SDPP to disclose the details when SDPP can allow business users to provide third-party with data obtained from SDPP. |
| United Kingdom | Yes | The DMU will be able, if it identifies a competition problem, to implement data-related remedies as part of the pro-competition interventions tool to support personal data mobility and encourage switching (e.g., data portability and interoperability). A pro-competition order may include provision imposing requirements on an undertaking on a trial basis that would be effective in remedying, mitigating or preventing (a) the adverse effect on competition to which the order relates; (b) any detrimental effect on UK users or UK customers resulting from, or expected to result from, the adverse effect on competition (Part 1, Chapter 4, Section 50). |
| 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." |
| Korea | No | |
| Brazil | To confirm | Incentive and definition of mechanisms for data portability is one of the objectives of the proposed regulation (Art. 5 V). Article 10 also clarifies that The National Telecommunications Agency, in its exercise of regulatory and inspection activities, may impose mitigation measures for possible abuse of economic power, including those related to interoperability and data portability. |
| Jurisdiction | Data trustees | Comments / legal reference / source |
| Germany | No | |
| European Union | No | |
| Japan | No | |
| United Kingdom | Yes | The DMU will be able to implement data-related remedies as part of the pro-competition interventions tool to support personal data mobility and encourage switching. A pro-competition order may include provision imposing requirements on an undertaking on a trial basis that would be effective in remedying, mitigating or preventing (a) the adverse effect on competition to which the order relates; (b) any detrimental effect on UK users or UK customers resulting from, or expected to result from, the adverse effect on competition (Part 1, Chapter 4, Section 50). |
| United States | No | |
| Korea | No | |
| Brazil | No | |

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Access to data

| Jurisdiction | Data sandboxes | Comments / legal reference / source |
|----------------|----------------|--|
| Germany | No | |
| European Union | No | |
| Japan | No | |
| United Kingdom | Yes | The DMU will be able, if it identifies a competition problem, to implement data-related remedies as part of the pro-competition intervention tool to support personal data mobility and encourage switching (e.g., data portability and interoperability). A pro-competition order may include provision imposing requirements on an undertaking on a trial basis that would be effective in remedying, mitigating or preventing (a) the adverse effect on competition to which the order relates; (b) any detrimental effect on UK users or UK customers resulting from, or expected to result from, the adverse effect on competition (Part 1, Chapter 4, Section 50). |
| United States | No | |
| Korea | No | |
| Brazil | No | |
| Jurisdiction | Other | Comments / legal reference / source |
| Germany | No | |
| European Union | No | |
| Japan | No | |
| United Kingdom | Yes | The DMU will be able, if it identifies a competition problem, to implement data-related remedies as part of the pro-competition intervention tool to support personal data mobility and encourage switching (e.g., data portability and interoperability). A pro-competition order may include provision imposing requirements on an undertaking on a trial basis that would be effective in remedying, mitigating or preventing (a) the adverse effect on competition to which the order relates; (b) any detrimental effect on UK users or UK customers resulting from, or expected to result from, the adverse effect on competition (Part 1, Chapter 4, Section 50). |
| United States | No | |
| Korea | No | |
| Brazil | 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 | The DMU will be able to impose a conduct requirement to prevent an SMS firm from using data unfairly (Chapter 3 section 20(3)(g)). Depending on the facts of the case, this could include prohibiting an SMS firm from combining data from different sources. The DMU will also be able, if it identifies a competition problem, to implement data-related remedies as part of the pro-competition interventions tool to support personal data mobility and encourage switching (e.g., data portability and interoperability). A pro-competition order may include provision imposing requirements on an undertaking on a trial basis for the purpose of assisting the CMA in establishing requirements that would be effective in remedying, mitigating or preventing (a) the adverse effect on competition to which the order relates; (b) any detrimental effect on UK users or UK customers resulting from, or expected to result from, the adverse effect on competition (Part 1, Chapter 4, Section 50). |
| United States | No | |
| Korea | No | |
| Brazil | To confirm | However, Article 10, item III states that Anatel will establish obligations regarding the "appropriate utilization of data". The extent of this obligation is ambiguous, but it may be enforced to restrict the integration of data from various sources. |
| 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 | The DMU will be able, if it identifies a competition problem, to implement data-related remedies as part of the pro-competition interventions tool to support to support personal data mobility and encourage switching (e.g. data portability and interoperability). A pro-competition order may include provision imposing requirements on an undertaking on a trial basis for the purpose of assisting the CMA in establishing requirements that would be effective in remedying, mitigating or preventing (a) the adverse effect on competition to which the order relates; (b) any detrimental effect on UK users or UK customers resulting from, or expected to result from, the adverse effect on competition (Part 1, Chapter 4, Section 50). |
| United States | No | |
| Korea | No | |
| Brazil | No | |

Limits to gatekeepers' use of data

| Jurisdiction | Short data retention periods | Comments / legal reference / source |
|----------------|-------------------------------|---|
| Germany | No | |
| European Union | No | |
| Japan | No | |
| United Kingdom | Yes | The DMU will be able, if it identifies a competition problem, to implement data-related remedies as part of the pro-competition interventions tool. A pro-competition order may include provision imposing requirements on an undertaking on a trial basis for the purpose of assisting the CMA in establishing requirements that would be effective in remedying, mitigating or preventing (a) the adverse effect on competition to which the order relates; (b) any detrimental effect on UK users or UK customers resulting from, or expected to result from, the adverse effect on competition (Part 1, Chapter 4, Section 50). |
| United States | No | |
| Korea | No | |
| Brazil | 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 as part of the pro-competition interventions tool. A pro-competition order may include provision imposing requirements on an undertaking on a trial basis for the purpose of assisting the CMA in establishing requirements that would be effective in remedying, mitigating or preventing (a) the adverse effect on competition to which the order relates; (b) any detrimental effect on UK users or UK customers resulting from, or expected to result from, the adverse effect on competition (Part 1, Chapter 4, Section 50). |
| United States | Yes | Section 3(a)(6) of the American Choice and Innovation Online Act prohibits "use [of] non-public 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 non-public business information derived from a third-party app for the purpose of competing with that app." |
| Korea | No | |
| Brazil | No | |
| Jurisdiction | Other | Comments / legal reference / source |
| Germany | No | |
| European Union | Yes | Art 6(2): The gatekeeper shall not use, in competition with business users, any data that is not publicly available that is generated or provided by those business users in the context of their use of the relevant core platform services or of the services provided together with, or in support of, the relevant core platform services, including data generated or provided by the customers of those business users. |
| Japan | No | |
| United Kingdom | Yes | If required by the DMU as part of the pro-competitive interventions tool. A pro-competition order may include provision imposing requirements on an undertaking on a trial basis for the purpose of assisting the CMA in establishing requirements that would be effective in remedying, mitigating or preventing (a) the adverse effect on competition to which the order relates; (b) any detrimental effect on UK users or UK customers resulting from, or expected to result from, the adverse effect on competition (Part 1, Chapter 4, Section 50). |
| United States | No | |
| Korea | No | |
| Brazil | No | |

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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 | Fines of up to 10% of the gatekeeper's total worldwide turnover if it fails to comply with among other the obligations set out in Articles 5, 6 and 7. Fines 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 etc (art. 30 DMA). |
| Japan | Yes | METI has authority to issue a warning notice ("kankoku") to a SDPP when it finds a violation of the TFDP. 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, where required, the DMU will have robust powers to deter and tackle non-compliance with orders and commitments including conduct requirements, pro-competition orders, enforcement orders (applied when conduct requirements are broken) and merger reporting requirements (Part 1, Chapter 7, Section 84). The DMU will be able to impose fixed penalties of up to 10% of annual worldwide turnover with daily penalties of up to 5% of daily worldwide turnover for each day of continued non-compliance, or a combination of both. (Part 1, Chapter 7, Section 85). For non-compliance with information requests or compliance reporting requirements, the DMU will be able to impose fixed penalties on firms of up to 1% of annual worldwide turnover and daily penalties of up to 5% of daily worldwide turnover for continued non-compliance, or a combination of both (Part 1, Chapter 7, Section 87). The DMU will be able to impose fixed penalties on individuals of up to £30,000 and daily penalties of up to £15,000, or a combination of both for: failure to comply with an information request, the provision of false or misleading information, destroying or falsifying information and obstructing an investigating officer (Part 1, Chapter 7, Sections 86-87). The DMU can impose individual penalties on named senior managers where firms fail to comply with relevant information requests, and nominated officers, where firms fail to comply with relevant compliance reporting requirements. (Part 1, Chapter 7, Section 86). The DMU can also impose criminal sanctions for certain types of conduct that are proven to have been committed intentionally or recklessly including the destruction of information, the provision of false or misleading information, and obstructing an officer (Part 1, Chapter 7, Sections 92-94). The DMU will be able to apply to the court to require a firm to comply with a specific requirement including: an enforcement order, a pro-competition order, a commitment made in lieu of an enforcement order, a commitment made in lieu of a pro-competition order, or a requirement imposed by virtue of a final offer order (Part 1, Chapter 7, Section 99). The DMU will have the power to apply to the courts to disqualify a director of a UK branch of an SMS firm where the firm has breached the digital markets regime and the DMU suspects the conduct of the director contributed to a breach of the regime (Part 1, Chapter 7, Section 98). |
| 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 percent 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. |
| Korea | Yes | The maximum amount of the administrative fine is twice the 'amount in violation of the law'. If that cannot be calculated, a fine up to KRW 1 billion may be imposed. In case of violation of the prohibition of retaliatory measures, and non-compliance with the Fair Trade Commission's corrective order, the firm or person shall be punished by imprisonment with labour for not more than two years or by a fine not exceeding 150 million won. |
| Brazil | Yes | According to Art. 16 (II) and § 3, Anatel can impose a fine up to 2% of the revenue of the last financial year, excluding taxes, and considering the economic condition of the offender and the principle of proportionality between the seriousness of the offence and the intensity of the sanction. The fine may be imposed on the revenue of the entire period in which the conduct was carried out, being limited up to 1% of this value. |

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Compliance and remedies

| Jurisdiction | Possibility to impose remedies (structural/behavioural) | 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 | If a breach of the conduct requirements is proven the DMU can issue an enforcement order imposing on the undertaking such obligations as the DMU considers appropriate for one or more of the following purposes: "(a) in a case where the breach is ongoing, stopping the breach; (b) preventing the breach from happening again; (c) addressing any damage caused by the breach". (Part I, Chapter 3, Section 31). Likewise under Clause 32 the DMU can issue interim enforcement orders that will temporarily remedy conduct if: "(a) the CMA has begun a conduct investigation in relation to the suspected breach, and (b) the CMA considers that it is necessary to act on an interim basis— (i) to prevent significant damage to a particular person or category of person, (ii) to prevent conduct which could reduce the effectiveness of any other steps the CMA might take in relation to the conduct requirement which it suspects the undertaking has breached or is breaching, or (iii) to protect the public interest". (Part I, Chapter 3, Section 32). Regardless of a breach of conduct requirements, the CMA will have the power to issue pro-competitive interventions (Part I, Chapter 4, Section 50) in relation to designated firms whenever it considers that certain factors relating to a digital activity is having an adverse effect on competition, and the PCI can likely contribute to remedying, mitigating or preventing it. Under a pro-competition order, the CMA can impose a range of behavioural and structural remedies that mirror those the CMA can already impose following a market investigation under the Enterprise Act 2002. In cases relating to fair and reasonable payment terms, the DMU can use the Final Offer Mechanism to resolve sustained breaches of conduct requirements, where its other tools are unlikely to resolve the breach in a reasonable time frame. This will require the SMS firm and the third party to each submit what they consider to be fair and reasonable payment terms. The DMU will then select one of the two final offers made (Part 1, Chapter 3, section 38-44). |
| 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. |
| Korea | Behavioural | However, the Proposed Bill provides for a consent decree system to allow companies to voluntarily address and correct any violations. |
| Brazil | Both | Anatel can impose additional remedies, separately or cumulative with the previous economic sanction (Art. 16): I - warning, with a deadline to adopt corrective measures; III - negative or positive obligations; IV - temporary suspension of activities; V - prohibition of carrying out activities. Anatel may also impose financial and functional separation obligations and mitigation measures against an abuse of economic power, including those related to data portability and interoperability (Art. 10). |

Compliance and remedies

| 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 | <p>The DMU will have robust powers to deter and tackle non-compliance of enforcement orders (applied when conduct requirements are broken); of pro-competition orders; commitments signed between undertakings and the CMA; of merger reports that fall within the obligatory report. (Part 1, Chapter 7, Section 84).</p> <p>Some enforcement powers are new to the digital market's regime including the power to require SMS firms to name senior managers to be responsible for information request and nominated officers, for compliance reports. However, other powers including court orders, director disqualification and criminal sanctions for certain types of conduct which is found to be committed intentionally/negligently are available to the CMA in the existing competition regime.</p> |
| United States | New powers | <p>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."</p> <p>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."</p> |
| Korea | Powers under existing competition law provisions | |
| Brazil | New powers | However, fines are imposed without prejudice to other civil, criminal or administrative sanctions. |