European Policy Inquiry: Digital Market Gatekeepers, Supply Chain Due Diligence, and Algorithmic Accountability

Part I: The Transformation of Gatekeeper Oversight and Internal Market Competition

1.1 The Paradigm Shift from Ex Post Antitrust to Ex Ante Regulation

The European Union has fundamentally restructured the regulatory architecture governing the digital economy, transitioning from the traditional ex post, effects-based approach of European competition law to the ex ante, per se prohibitions established by the Digital Markets Act (Regulation (EU) 2022/1925)[1]. Historically, antitrust enforcement under Article 102 of the Treaty on the Functioning of the European Union (TFEU) has been hindered by protracted judicial proceedings and complex standard-of-proof requirements. Regulatory authorities were historically required to establish anticompetitive effects through instruments such as the "as-efficient competitor" (AEC) test, a highly litigated standard prominently debated in the *Intel* and *Google Shopping* enforcement actions[3]. The DMA, grounded in Article 114 TFEU for internal market harmonization, circumvents these jurisprudential hurdles by imposing rigid behavioral obligations on designated "gatekeepers" without requiring a demonstration of specific anticompetitive harm or absolute market dominance in each instance[2].

Under this framework, designated gatekeepers—currently encompassing Alphabet, Amazon, Apple, ByteDance, Meta, and Microsoft—must adhere to a strict catalogue of obligations outlined in Articles 5, 6, and 7 of the DMA[2]. The European Commission, acting as the sole enforcer through the coordinated efforts of the Directorates-General for Competition (DG COMP) and Communications Networks, Content and Technology (DG CONNECT), possesses sweeping administrative powers[1]. The Commission is authorized to monitor compliance and levy fines of up to 10 percent of a gatekeeper's global annual turnover, escalating to 20 percent for systematic infringements, alongside the imposition of structural remedies such as mandatory divestitures[2].

The regulatory landscape is further complicated by concurrent national frameworks, most notably Section 19a of the German Act Against Restraints of Competition (GWB). Section 19a GWB grants the Bundeskartellamt enhanced powers to prohibit anticompetitive practices by entities deemed to possess "paramount significance for competition across markets"[10]. While the DMA harmonizes ex ante rules across the Union, Articles 37 and 38 of the DMA require stringent coordination between the European Commission and national competition authorities to prevent fragmented enforcement, overlapping jurisdictional mandates, and conflicting remediation orders[10].

1.2 Administrative Scrutiny of Self-Preferencing and Anti-Steering Mechanisms

The initial phase of DMA enforcement has been characterized by aggressive administrative intervention, signaling that the European Commission intends to interpret gatekeeper obligations with maximalist stringency. In March 2024, the Commission initiated formal non-compliance proceedings against Alphabet, Apple, and Meta[14].

A critical focal point of this scrutiny is the prohibition of self-preferencing under Article 6(5) of the DMA, which mandates that gatekeepers apply transparent, fair, and non-discriminatory conditions to the ranking and display of services and products[7]. In Case DMA.100193, the Commission investigated Alphabet regarding the display of specialized search units, including Google Flights and Google Shopping[17]. In an attempt to achieve compliance, Alphabet implemented "subtractive changes," deprecating certain reserved links and interactive display units entirely to avoid prominently featuring its own distinct services over those of its rivals[16]. The Commission determined that these modifications failed to constitute effective compliance[16]. By adopting a functional definition of "similar services" rather than relying on strict economic substitutability, the Commission asserted that third-party services forced to become business partners of the gatekeeper to receive equal prominence do not enjoy equal treatment[16]. This enforcement action marks a profound shift: the Commission explicitly noted it is under no duty to investigate actual market harm, negative impacts on innovation, or the effects of non-compliance, relying instead on the per se violation of the DMA's structural fairness mandates[6].

Concurrently, in Case DMA.100109, the Commission targeted Apple's anti-steering rules and its newly introduced "Core Technology Fee" (CTF) under Article 5(4) of the DMA[21]. Following the DMA mandate to permit alternative app distribution (sideloading), Apple's revised business terms required developers of third-party applications and alternative app stores to pay a €0.50 fee per installed app after surpassing one million downloads[24]. The Commission's preliminary findings concluded that such fee structures, alongside the complex, multi-step user journeys required to install alternative app stores, constitute artificial barriers designed to undermine the contestability objectives of the DMA[22]. Apple has subsequently appealed the Commission's decisions to the General Court (e.g., Case T-438/25), initiating a protracted legal battle that will test the boundaries of the DMA's enforcement architecture and the proportionality of the Commission's ex ante interventions[28].

1.3 Cloud Infrastructure and Platform Architecture Investigations

While mobile operating systems and search ecosystems dominate immediate enforcement actions, regulatory scrutiny is actively expanding into cloud infrastructure. The European Commission has informed Amazon and Microsoft of preliminary views indicating that their cloud computing services, Amazon Web Services (AWS) and Microsoft Azure, meet the threshold for gatekeeper designation under the DMA[28]. In conjunction with this, the Commission has launched a formal market investigation into cloud computing services under Article 19 of the DMA[28].

Cloud infrastructure represents a foundational layer of the digital single market. If AWS and

Azure are fully designated, they will be subject to stringent interoperability mandates and strict prohibitions against leveraging their infrastructural dominance to preference their proprietary software-as-a-service (SaaS) and artificial intelligence (AI) models[28]. The second-order effect of such designations would force a fundamental unbundling of integrated cloud ecosystems, compelling providers to grant equitable API access to rival software developers and independent cloud integrators.

Regulatory Framework	Jurisdictional Scope	Standard of Intervention	Primary Targets & Enforcement Mechanisms
Article 102 TFEU	EU Internal Market	Ex Post / Effects-Based	Dominant enterprises; requires proof of market definition, dominance, and specific anticompetitive harm.
Digital Markets Act (DMA)	EU Internal Market	Ex Ante / Per Se Rules	Designated Gatekeepers (Alphabet, Apple, etc.); levies fines up to 20% of global turnover for systematic breaches.
Section 19a GWB	Germany (with EU coordination)	Hybrid Ex Ante/Ex Post	Entities of "paramount significance"; targets specific leveraging conduct; requires EC coordination (Arts. 37/38 DMA).
Digital Services Act (DSA)	EU Internal Market	Systemic Risk Mitigation	VLOPs and VLOSEs; mandates algorithmic audits, data access, and

			proactive risk assessments.

Part II: Algorithmic Accountability, Commercial Review Integrity, and Data Preservation

2.1 Mitigating Systemic Risks and Fraudulent Commercial Reviews (DSA & UCPD)

Beyond structural competition, the regulation of digital markets increasingly encompasses consumer protection, content integrity, and fraud mitigation under the Digital Services Act (Regulation (EU) 2022/2065) and the Unfair Commercial Practices Directive (UCPD)[1]. A pervasive distortion of internal market signals occurs through the systemic manipulation of commercial reviews. Fraudulent and incentivized reviews artificially inflate product reputations, overriding authentic consumer electronic word-of-mouth (eWOM) and generating substantial financial harm, estimated at over $152 billion globally in misdirected online spending[32].

Under the DSA, Very Large Online Platforms (VLOPs) and Very Large Online Search Engines (VLOSEs) are subject to asymmetric obligations regarding systemic risk mitigation[8]. Article 34 of the DSA explicitly requires these entities to identify, analyze, and assess systemic risks stemming from the design or functioning of their services[32]. This inherently encompasses the coordinated dissemination of fake reviews, deceptive commercial practices, and the proliferation of fraudulent web storefronts[32].

Fake reviews constitute a form of covert, misleading advertising, directly violating the UCPD by causing average consumers to make transactional decisions they would otherwise avoid[32]. The persistence of review farms and manipulated reputation ecosystems on dominant platforms indicates a profound failure in platform architecture to authenticate user identity and verify transaction realities[34]. As platforms utilize algorithmic recommender systems to prioritize content and index search results, the ingestion of manipulated review data creates a negative feedback loop that rewards fraudulent actors while suppressing legitimate, independent business operators[34]. Regulatory scrutiny must assess whether designated gatekeepers and VLOPs are committing sufficient resources to algorithmic risk mitigation (Article 35 DSA) to detect, demote, and remove coordinated inauthentic behavior tied to commercial reviews[32].

2.2 Mandatory Independent Auditing of Search Indexing and Ad-Ranking (DSA Article 37)

The opacity of algorithmic systems deployed by VLOPs and VLOSEs represents a critical vulnerability in the digital internal market. To ensure accountability, Article 37 of the Digital Services Act mandates that designated platforms undergo comprehensive, independent annual audits to assess their compliance with the Regulation's obligations, particularly regarding systemic risk mitigation and content moderation[43].

The methodological framework for these audits is codified in Commission Delegated Regulation (EU) 2023/1127, which establishes rigorous criteria for third-party auditing organizations[46]. These auditors must possess technical expertise in algorithm design, data science, and fundamental rights impact assessments, while maintaining strict independence from the audited platform[47]. The audit process requires a dual approach: *control testing*, to verify the existence and design of the platform's internal compliance mechanisms, and *substantive testing*, to empirically validate whether the algorithms function as claimed and effectively mitigate identified risks[47].

Crucially, this audit mandate must be aggressively applied to search indexing and ad-ranking systems. Auditors must evaluate the data inputs, the logic of the recommender systems (which, per Article 38 DSA, must offer at least one non-profiling option), and the outcomes of automated content moderation[49]. A significant challenge identified in early audit cycles is the reliance on benchmarks and definitions provided by the platforms themselves—for example, how a platform internally defines "fake reviews" algorithmically[50]. If an auditor identifies systemic failures in how ad-ranking algorithms suppress fraudulent commercial actors, the platform must adopt a detailed remediation plan subject to continuous monitoring by the European Commission, backed by the threat of financial penalties reaching up to 6 percent of global annual turnover[43].

2.3 Data Access for Vetted Researchers and Whistleblower Safeguards

Auditing alone is insufficient without ongoing, independent academic and civil society scrutiny. Article 40 of the DSA establishes a revolutionary legal framework granting vetted researchers access to the internal data of VLOPs and VLOSEs[43]. Upon a reasoned request coordinated through the Digital Services Coordinator (DSC) of establishment, platforms must provide access to data via Application Programming Interfaces (APIs) or secure data clean rooms[49]. This provision effectively pierces the corporate veil of proprietary algorithms, enabling researchers to independently study the amplification of disinformation, the propagation of algorithmic bias, and the structural vulnerabilities of ad-ranking networks[43]. By securing historical data access, Article 40 ensures that platforms cannot unilaterally modify, purge, or obfuscate data sets prior to regulatory investigations, thereby preserving the evidentiary chain required for non-compliance proceedings.

Crucially, the efficacy of algorithmic auditing and regulatory oversight is highly dependent on insider knowledge. Directive (EU) 2019/1937 on the protection of persons who report breaches of Union law (the Whistleblower Protection Directive) is essential in this context. Platform engineers, data scientists, and trust and safety personnel who identify intentional algorithmic manipulation, the suppression of critical compliance data, or the circumvention of DMA interoperability mandates must be afforded robust legal safeguards across all EU jurisdictions. Ensuring strict adherence to whistleblower protections guarantees that corporate non-compliance and the deliberate distortion of digital internal markets are reported without fear of retaliation, bridging the profound information asymmetry between technology conglomerates and European regulators[43].

Part III: Cross-Border Freight, Subcontracting, and Supply Chain Transparency

3.1 The Intersect of Transport Regulation and Corporate Sustainability Due Diligence

The European internal market relies heavily on an integrated road freight network, which is currently undergoing a profound regulatory realignment due to the intersection of environmental mandates and labor standards. The Corporate Sustainability Due Diligence Directive (CSDDD, Directive (EU) 2024/1760) compels large enterprises to identify, mitigate, and account for adverse human rights and environmental impacts throughout their "chain of activities"[55]. In the logistics and transportation sector, this translates to rigorous accounting of Scope 3 emissions (value chain emissions, including downstream transportation and distribution) and ensuring labor compliance among third-party logistics (3PL) providers and subcontracted fleets[58].

Simultaneously, the European road transport sector is governed by the Mobility Package (Directive (EU) 2020/1057 and related regulations), which introduced stringent rules regarding the posting of drivers, cabotage limits, and mandatory return policies[61]. The objective of the Mobility Package is to eradicate "social dumping," combat unfair competition, and improve the working conditions of highly mobile transport workers[61].

3.2 Cabotage Restrictions, The Mobility Package, and the CJEU Ruling

Cabotage—the provision of domestic transport services within a Member State by a carrier established in another Member State—is tightly restricted to protect national transport markets from wage undercutting by operators based in lower-cost jurisdictions[62]. Under the current Mobility Package rules, a carrier is permitted to perform a maximum of three cabotage operations within seven days following the unloading of an incoming international transport[65]. A mandatory "cooling-off" period of four days applies per vehicle (not per driver) in the host Member State before further cabotage can be undertaken[65].

These restrictions necessitate meticulous administrative tracking via the Internal Market Information (IMI) portal. Transport operators are legally bound to submit posting declarations via the IMI portal before a driver commences a cabotage or cross-trade operation, detailing the driver's identity, the vehicle registration, and the anticipated duration of the posting[62]. Failure to register exposes carriers to immediate vehicle immobilization and severe financial penalties, which scale drastically across jurisdictions—for example, up to €5,000 in Germany, and up to €15,000 in France accompanied by potential criminal sanctions and vehicle seizure[65].

A highly contentious element of the Mobility Package was the obligation for transport undertakings to return their vehicles to the Member State of establishment every eight weeks[68]. This measure, intended to prevent the establishment of "letterbox companies," was fiercely opposed by peripheral Member States due to the economic inefficiencies and environmental damage caused by forced empty runs[70]. In October 2024, the Court of Justice of the European Union (CJEU) delivered a landmark ruling (Joined Cases C-541/20 to

C-555/20), annulling the eight-week vehicle return rule[61]. The CJEU determined that the EU legislature had failed to provide sufficient evidence demonstrating the proportionality of the measure[68]. However, the Court upheld the remaining pillars of the Mobility Package, including cabotage limits, rest period requirements, and driver posting rules[69].

3.3 Subcontracting Obfuscation and Enforcement by the European Labour Authority

Despite these robust regulatory frameworks, the rapid expansion of e-commerce has catalyzed the proliferation of highly fragmented, multi-tiered subcontracting networks, particularly within the courier, express, and parcel (CEP) delivery sectors[75]. Principal shippers and primary logistics contractors frequently outsource final-mile delivery and cross-border linehaul operations to unbranded 3PLs and individual owner-operators[75]. This structural fragmentation is utilized to dilute legal liability, bypass national commercial registry obligations, and obscure non-compliance with both CSDDD environmental reporting and Mobility Package labor standards[75].

The European Labour Authority (ELA) has identified widespread instances of bogus self-employment, undeclared work, and severe labor exploitation within these opaque supply chains[75]. Opaque subcontracting allows principal actors to insulate themselves from direct accountability for unpaid waiting times, under-declared working hours, and the circumvention of minimum wage laws applicable to posted workers[63].

To combat these systemic enforcement deficits, the ELA has radically escalated its coordination of Concerted and Joint Inspections (CJIs)[79]. By integrating data from the IMI portal, smart tachographs, and the European Register of Road Transport Undertakings (ERRU), the ELA enables national enforcement authorities to conduct targeted, intelligence-led roadside and premises inspections[81]. Utilizing remote screening technologies (e.g., REDCR), inspectors can detect potential tachograph manipulation and missing posting declarations before a vehicle is physically intercepted[82]. During multi-national action weeks, joint operations have successfully identified sophisticated tachograph frauds, illegal employment schemes, and systemic breaches of cabotage cooling-off periods[82]. As the legislative framework extends to light commercial vehicles (LCVs between 2.5 and 3.5 tonnes) starting in mid-2026, the volume of data and the scope of ELA's enforcement mandate will expand exponentially[65].

Transport Compliance Area	Regulatory Framework	Operational Requirement	Non-Compliance Sanctions
Driver Posting / Remuneration	Mobility Package / Dir 2020/1057	Mandatory IMI Portal Declarations pre-departure.	Financial penalties; operational bans; back-pay claims.
Cabotage Restrictions	Mobility Package	Max 3 operations in 7 days; 4-day	Up to €15,000 fines (France); vehicle

		cooling-off per vehicle.	seizure; loss of Community licence.
Supply Chain Liability	CSDDD (Dir 2024/1760)	Monitoring of Scope 3 emissions & 3PL labor standards.	Corporate liability; mandated remediation plans.
Driving & Rest Times	Regulation (EC) No 561/2006	Smart tachograph tracking; ban on in-cabin weekly rests.	Fines; vehicle immobilization; remote roadside detection via ELA.

Part IV: Institutional Oversight and Cross-Border Coordination

The enforcement of the DSA, DMA, and internal market directives relies on an intricate, multi-level institutional architecture. While the European Commission holds exclusive jurisdiction over the systemic obligations of VLOPs, VLOSEs, and designated Gatekeepers, Member States are required to designate independent Digital Services Coordinators (DSCs) to oversee general intermediary services and act as primary points of contact for cross-border complaints[86].

The establishment of the European Board for Digital Services serves as the central coordinating body, advising the Commission, facilitating joint investigations between national DSCs, and ensuring consistent application of the law[87]. The "country of origin" principle dictates that a platform is primarily regulated by the DSC where its main establishment is located. Given the concentration of technology headquarters in specific jurisdictions, the Irish DSC (Coimisiún na Meán) functions as a critical juncture—frequently characterized as the "Irish Funnel"—for managing cross-border complaints regarding platform non-compliance[90]. Should a national DSC exhibit administrative inertia, the Board possesses the authority to recommend cross-border joint investigations, thereby mitigating the risk of regulatory capture at the national level[88].

Furthermore, oversight is rigorously maintained by the European Parliament, particularly through the Internal Market and Consumer Protection (IMCO) Committee. IMCO hearings have actively scrutinized the implementation of the Digital Services Act, the proliferation of unsafe online products, and the drafting of the Digital Fairness Act[93]. The Parliament's oversight ensures that the Commission applies maximum regulatory pressure on gatekeepers, as evidenced by demands for strict enforcement against fraudulent commercial operators exploiting the single market[93].

Part V: Synthesis of Third-Order Effects and Administrative Action Requested

5.1 Second and Third-Order Market Dynamics

The confluence of the DMA, the DSA, and internal market supply chain regulations induces profound second and third-order effects across the European economy[98].

First, the strict ex ante prohibitions of the DMA regarding self-preferencing and data combination force gatekeepers to fundamentally re-engineer their core platform architectures. A second-order effect of this is the potential degradation of integrated user experiences. As observed in the Alphabet DMA.100193 case, a platform may opt for "subtractive changes"—removing proprietary features entirely rather than seamlessly integrating third-party alternatives—leading to a short-term reduction in service quality for European consumers[16]. A third-order effect is the strategic shift in gatekeeper business models from product-centric monetization to infrastructural toll-based models[98]. Apple's implementation of the Core Technology Fee is emblematic of this shift; restricted from monopolizing application distribution, the platform extracts economic rent at the foundational infrastructure level, preserving its revenue streams while technically altering its interface[23].

In the physical supply chain, the interaction between the CSDDD and the Mobility Package generates analogous complexities[58]. The strict limitations on cabotage and the stringent requirements for IMI posting declarations establish high compliance overhead[62]. A second-order effect is the acceleration of industry consolidation, as smaller hauliers lack the administrative and digital capacity to manage cross-border compliance at scale[64]. A third-order effect is the emergence of "compliance-washing" within multi-tiered subcontracting networks. Large shippers may officially mandate CSDDD and Mobility Package adherence in their primary contracts, while tacitly acknowledging that third-tier subcontractors utilize unbranded fleets, bogus self-employment, and manipulated tachograph data to maintain artificially low freight rates[75].

Furthermore, the stringent auditing requirements of the DSA (Article 37) drive a rapidly expanding secondary market for algorithmic compliance and legal services. While this institutionalizes algorithmic transparency, it simultaneously risks creating a "tick-box" compliance culture where platforms optimize their systems specifically to pass the benchmarks established by Delegated Regulation 2023/1127, rather than proactively addressing the root causes of systemic risks such as commercial review manipulation[32].

5.2 Requested Administrative Proceedings and Inquiries

Based on the comprehensive regulatory analysis presented, this submission requests that the European Commission (DG COMP / DG CONNECT) and the Members of the European Parliament (specifically the IMCO Committee) initiate formal administrative proceedings and committee inquiries to address the following enforcement gaps:

1. **Scrutiny of Gatekeeper 'Subtractive Compliance' and Toll Extraction (DMA & DSA):** Initiate formal proceedings to determine if the deployment of "subtractive changes" (as seen in Google Search ranking) and infrastructural toll extraction (such as Apple's Core

Technology Fee) constitute deliberate circumvention of Articles 5 and 6 of the DMA. Regulatory dialogue must definitively establish whether degrading consumer search experiences to avoid rival integration violates the principle of contestability. Concurrently, mandate that Article 37 DSA audits specifically isolate and evaluate platform mechanisms designed to prevent commercial review manipulation within ad-ranking systems. Platforms failing to aggressively filter incentivized, fraudulent review farms must be deemed in violation of their Article 34 systemic risk mitigation obligations, triggering enhanced supervisory fines.

2. **Investigation of Supply Chain Subcontracting and ELA Data Interoperability (CSDDD & Mobility Package):** Direct the European Labour Authority to deepen the integration of the IMI posting declaration portal with the European Register of Road Transport Undertakings (ERRU) and national commercial registries to facilitate real-time, remote roadside inspections. Parliament must investigate the widespread use of unbranded 3PLs and bogus self-employment as a structural mechanism for principal corporate entities to evade Scope 3 carbon accounting under the CSDDD and labor compliance under the Mobility Package.
3. **Preservation of Algorithmic Data and Whistleblower Protections:** Ensure that data access frameworks for vetted researchers (Article 40 DSA) require VLOPs and VLOSEs to maintain immutable historical logs of algorithm deployment and search indexing decisions, preventing the unilateral modification of compliance records prior to regulatory investigations. Concurrently, reinforce the enforcement of Directive (EU) 2019/1937, ensuring that engineers and data scientists reporting intentional non-compliance or data destruction are shielded from cross-border corporate retaliation.

Through the synchronized enforcement of the DMA, the DSA, and internal market transport frameworks, the European Union possesses the statutory authority to dismantle systemic market distortions. Achieving genuine accountability requires regulators to move beyond surface-level compliance metrics and aggressively confront the sophisticated technical and operational circumvention strategies deployed by dominant market actors.

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