



The EU and U.S. Approach to Digital Regulation: Considerations for Proposed Legislation in Turkey

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INTRODUCTION

As nations across the globe look to address a perceived asymmetry of power in digital markets, Turkey has begun considering approaches for the regulation of large digital platforms. Through a Draft Amendment to Law No. 4054 of the Protection of Competition, regulators hope to lessen competitive harm in the market for digital services while ensuring the preservation of positive economic impacts of digital access.

Up to this point, the European Union has been the world leader in regulating digital competition, having enacted the Digital Markets Act (DMA) in 2022. The law is now in the implementation phase, leaving the world to watch and assess whether the European approach successfully increases competition or boosts economic growth.

Meanwhile, in the United States, Congress effectively rejected the opportunity to adopt comparable legislation in 2022 by declining to bring the American Innovation and Choice Online Act and Open App Markets Act, the two U.S. bills that most closely resemble the DMA, for a vote. During this time, the U.S. has economically outperformed Europe's largest economies, with the strength of the tech sector being one contributing factor.

Concerns about the impacts on technological innovation, economic growth, and the consumer-friendly vibrance of digital platforms kept many in the United States from fully embracing the proposal. Additional concerns regarding the low cost of digital tools for entrepreneurs and small businesses further dissuaded adoption. Now, with implementation in Europe proving rocky, the European model is not the only path forward. Not only is there little evidence from the EU

that the measure will be effective in promoting competitive growth, but the vagueness of the legislation paired with steep penalties creates a situation that disincentivizes the establishment of digital companies. From Turkey's perspective, this poses an interesting set of questions regarding how to proceed.

Here, we break down the proposed measures, where they are in the legislative process in the United States and Europe, and concerns regarding implementation.

LEGISLATIVE COMPARISON

The following tables provide the definitions for covered platforms, the additional legal provisions designated platforms are meant to comply with, and the penalties associated with noncompliance with the European Union's Digital Markets Act,¹ the United States' American Innovation and Choice Online Act,² and the Turkish Draft Amendment to Law No. 4054 of the Protection of Competition (as has been reported publicly),³ respectively. We acknowledge that without the published text of the proposed legislation, the exact provisions may deviate from what is listed here. While being extremely similar in intention, each presents slightly different criteria for the scope of the legislation in a way that may only further complicate the landscape for global digital business.

Each proposal hinges on a concept similar to that proposed in the European Union, relying on establishing additional rules for what is considered anti-competitive conduct for a certain set of digital companies that fall into the qualifying criteria. Each bans a company from promoting their own products above the products of competitors on their platforms as well as the use of non-public data to compete with competitors on their platforms. All three also impose penalties in the form of fines based on significant portions of gross annual revenue.

The major difference in the Turkish proposal lies in the lack of definition for the "covered platform." Instead of opting to give the power to establish quantitative thresholds to the Competition Board, the law has the potential to align with the United States and European Union on the use of quantitative size thresholds, though this is still up for review as of now.

COVERED PLATFORMS

<p>EUROPEAN UNION (DIGITAL MARKETS ACT)</p>	<ul style="list-style-type: none"> • Online intermediation services • Online search engines • Operating systems • Online social networking • Video-sharing platform services • Number-independent interpersonal communication services • Cloud computing services • Virtual assistants • Web browsers • Online advertising services, including advertising intermediation services 	<p>Platforms must meet the following criteria to be established as a gatekeeper:</p> <ul style="list-style-type: none"> • Have a significant impact on the internal market <ul style="list-style-type: none"> • Presumed to be true if the platform has €7.5 billion annual turnover in the last three financial years or an average market capitalization of €75 billion in the past financial year • Hold importance as a gateway for business users to reach end users <ul style="list-style-type: none"> • Presumed to be true if a platform has at least 45 million monthly active end users and at least 10,000 yearly active business users in the European Union • Hold an entrenched and durable position in their operations <ul style="list-style-type: none"> • Presumed to be true if the above criteria were met in each of the last three financial years
<p>UNITED STATES (AMERICAN INNOVATION AND CHOICE ONLINE ACT)</p>	<p>Website, online or Mobile application, operating system, digital assistant, or online service that:</p> <ul style="list-style-type: none"> • 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; or • Facilitates business between and among consumers or businesses not controlled by the platform operator; or • Enables user searches or queries that access or display a large volume of information 	<p>If a platform is owned by a publicly traded company and has:</p> <ul style="list-style-type: none"> • 50,000,000 United States-based monthly active users on the online platform; or • 100,000 United States-based monthly active business users on the online platform; • Has net annual sales of greater than \$550,000,000,000; or • During any 180-day period during the 2-year period, an average market capitalization greater than \$550,000,000,000 and • Is a critical trading partner for the sale or provision of any product or service offered on or directly related to the online platform; or • Has at least 1,000,000,000 worldwide monthly active users on the online platform; and is a critical trading partner

**TURKEY
(DRAFT
AMENDMENT)**

- Online intermediation services
- Online search engines
- Online social networking services
- Video/audio sharing and broadcasting services
- Number-independent interpersonal communication services
- Operating systems
- Web browsers
- Virtual assistants
- Cloud computing services
- Online advertising services offered by the provider of any of these services

The Competition Board shall determine the quantitative thresholds for covered companies, taking into account:

- The annual gross revenues and
- The number of end users or commercial users, as well as
- The qualitative criteria in the context of the structure of the core platform services, such as network effects, data ownership, vertically integrated and conglomerate structure, economies of scale and scope, lock-in and spillover effect, transition costs, multi-homing, user trends, merger and acquisition transactions realized by the undertaking and other procedures

OBLIGATION IMPOSED ON COVERED PLATFORMS

**EUROPEAN UNION
(DIGITAL MARKETS ACT)**

- Ban on combining personal data and using core platform service data to compete with business users
- Granting advertisers and publishers access to information including price and fees paid, metrics, etc.
- Data portability for end users
- Access to data generated by the use of the platform for business users
- Requires the option to uninstall pre-installed software
- Ban on self-preferencing and ranking (i.e. Amazon cannot rank Amazon products on top of search results without clear criteria)
- Cannot prohibit businesses from offering their own services directly through platforms
- Grant end users access to third-party software, services, etc. (such as third-party software applications on mobile operating systems)
- Requires that third-party products and services should be able to work with the platform and that messaging service providers can communicate with one another
- Ban on requiring end users to use or businesses to offer gatekeeper's services (including requiring a designated web browser or payment system)

**UNITED STATES
(AMERICAN INNOVATION AND
CHOICE ONLINE ACT)**

- Must not unfairly preference their own products or services over those of business users
- Must ensure interoperability with competitors' systems and services
- Business users must have access to data generated on the platform
- Users must be able to uninstall preinstalled software applications
- Must provide clear information about ranking criteria and entitlement to appeal
- Cannot use nonpublic data that are obtained from or generated on the covered platform by the activities of a business user to offer products or services of the covered platform operator that would compete with products or services offered by business users

**TURKEY
(DRAFT AMENDMENT)**

- Ban on self-preference of goods and services
- Ban on using core platform data gathered to compete with business users
- Cannot tie their own goods or services provided to business users and end users to another good or service provided by themselves
- Ban on forcing end users to register with further core platform services IOT use one
- Shall allow end users to easily uninstall any software, applications, or application stores pre-installed on the operating system of the devices or to switch to another software, application or application stores
- Must allow installation of third-party software, applications, or application stores; allow them to easily change default settings
- Cannot restrict business users from offering the same services as a core platform
- Must facilitate data portability
- Interoperability of core platform services or ancillary services with relevant products or services
- Shall provide sufficient information on core platform services' and ancillary services' scope, quality, and performance and pricing terms and conditions of access to these services to the business users, at their request
- Granting advertisers and publishers access to gathered information
- Cannot discriminate between business users

PENALTIES FOR NON-COMPLIANCE

<p>EUROPEAN UNION (DIGITAL MARKETS ACT)</p>	<ul style="list-style-type: none"> • Violations by gatekeepers can result in fines of up to 10% of their worldwide annual turnover • Repeated infringements may lead to up to 20% fines • In cases of systematic violations, the European Commission may impose structural or behavioral remedies, including bans on acquisitions • Additionally, gatekeepers can face collective actions from individuals or companies in national courts for noncompliance with DMA obligation
<p>UNITED STATES (AMERICAN INNOVATION AND CHOICE ONLINE ACT)</p>	<ul style="list-style-type: none"> • Fines up to 15% of the platform's total U.S. revenue • Injunctions to cease and desist violating conduct • Restitution and disgorgement for aggrieved parties • Potential treble damages for willful conduct • Repeated violations may lead to increased scrutiny and more severe penalties.
<p>TURKEY (DRAFT AMENDMENT)</p>	<ul style="list-style-type: none"> • In cases where the systematic violation has been determined two or more times within five years by undertakings having significant market power, the Board may ban the mergers or acquisitions by such undertakings having significant market power for up to five years • The upper limit for administrative fines that may be imposed in case of violation of the obligations for undertakings with significant market power has been doubled (from up to ten percent of gross annual revenues) and the deterrence for such violations and the sanctioning power for cases where deterrence cannot be achieved have been enhanced

STATE OF PLAY IN THE EU AND U.S.

In the United States, the American Innovation and Choice Online Act and Open App Markets Act were introduced in 2021. Similar to the European Union’s Digital Markets Act, the bills focused on only the largest digital companies, with criteria based on company size and number of users.

In practice, the legislation would have taken away services from American consumers and companies. A key provision of the bills

prohibited covered platforms from engaging in “self-preferencing,” or promoting a company’s own products above others on their platforms. This could mean the end of services that have become vital to American small businesses, such as Amazon Prime shipping (via the fulfillment by Amazon program due to preferencing of Amazon’s own warehouse products) or free-to-access business profiles included in Google search. The legislation also disregarded the state of the global technology market, in which

American companies' biggest competitors are Chinese tech platforms, opening up further security risks should we choose to limit the influence of just a handful of American companies that qualify as "covered platforms" under the bill (definitions for "covered platforms" are defined in Section III). Eventually, the bills lost steam, and did not receive a vote in the U.S. Congress. The United States has since turned to conventional competition enforcement action, with the Federal Trade Commission and Department of Justice bringing numerous antitrust cases to investigate anticompetitive practices by specific digital platforms.

On the European side, the Commission has defined six companies as falling under the purview of the DMA as of November 2023. Google, Amazon, Apple, ByteDance, Meta, and Microsoft must now comply with the additional restrictions placed on companies determined by the EU to be "gatekeepers."⁴ With unclear guidance for what compliance means for gatekeeper companies, consumers and those in industries reliant on digital platforms face massive uncertainty. PPI's own analysis of jobs supported by mobile app stores shows that the iOS ecosystem accounted for roughly 2.9 million jobs in the European Union in 2023, up 53% since 2019. Additional uncertainty in the state and availability of mobile app stores could impact this growth.

FIGURE 1: EU APP ECONOMY JOBS 2019-2023

	2019	2023	PERCENT CHANGE
TOTAL APP ECONOMY	1,906	2,919	53%

Data: PPI

These concerns are consistent with PPI's overall analysis of the economic risks of the overregulation of digital industries. Indeed, global productivity data clearly shows the advantages of the U.S. approach over the European approach. Europe moved forward with a period of intense regulation of digital markets, beginning with the General Data Protection Regulation in 2018 and continuing with the Digital Markets and Digital Services Acts.

The data shows a slowdown in European productivity growth across these two periods, and an acceleration in U.S. productivity growth. From 2019 to 2023, productivity growth (real GDP per employed worker), was 1.4% in the U.S., compared to negative growth across EU countries such as France, Germany, and Spain.

FIGURE 2: PRODUCTIVITY GROWTH (REAL GDP PER EMPLOYED WORKER)

	2007-2023	2019-2023
US	1.2%	1.4%
FRANCE	0.1%	-1.2%
GERMANY	0.1%	-0.2%
ITALY	-0.2%	0.3%
SPAIN	0.6%	-0.4%

Data: OECD

CONCLUSION

While Turkey considers whether their own market requires the type of novel competition regulation being tested by the European Union, it is important to consider whether this approach shows evidence of the desired outcome, an increase in digital competition. The United States has not adopted similar measures, and with cases brought by the government moving through the courts alleging various

anticompetitive practices by major technology companies has instead opted to follow traditional guidance for competition enforcement, based on evidence of consumer harm. As companies seek to comply with the EU’s Digital Markets Act as it is implemented, countries seeking to replicate the regulation will benefit from watching its outcomes and further assessing whether the regulation makes sense for their own markets.

ABOUT THE AUTHOR

Malena Dailey is the Director of Technology Policy with the Progressive Policy Institute, where she works on issues relating to social media and the internet and technology sector.

References

- 1 "The Digital Markets Act (DMA)," EU Digital Markets Act, accessed March 6, 2024 [https://www.eu-digital-markets-act.com/#:~:text=The%20Digital%20Markets%20Act%20\(DMA\)%20is%20part%20of%20the%20Digital,personal%20data%20for%20targeted%20advertising.](https://www.eu-digital-markets-act.com/#:~:text=The%20Digital%20Markets%20Act%20(DMA)%20is%20part%20of%20the%20Digital,personal%20data%20for%20targeted%20advertising.)
- 2 "American Innovation and Choice Online Act," bill (2021).
- 3 Bahadır Balkı et al., "A New Age for Digital Markets in Turkey? The Draft Amendment to the Law No. 4054 on the Protection of Competition," ACTECON, October 25, 2022, <https://www.actecon.com/en/news-articles/p/a-new-age-for-digital-markets-in-turkey-the-draft-amendment-to-the-law-no-4054-on-the-protection-of-competition-233>.
- 4 "Digital Markets Act: Commission Designates Six Gatekeepers," European Commission, September 6, 2023, European Commission, https://ec.europa.eu/commission/presscorner/detail/en/ip_23_4328.



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