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Understanding the Digital Markets Act: Implications for Video-On-Demand Platforms

A comparative case study investigating ambiguity within the criteria for Gatekeeper designation

verfasst von / submitted by

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Abstract

This master thesis delves into the transformative impact of the Digital Markets Act (DMA) within the European Union (EU), particularly focusing on its implications for Video-On-Demand (VOD) platforms. In the backdrop of rapidly evolving digital markets, characterized by the rise of dominant players, the DMA emerges as a pivotal regulatory response.

The thesis investigates the ambiguity and the resultant challenges posed by the definition of 'gatekeepers' under the DMA, a notion that has garnered criticism from economic experts for its perceived arbitrariness and potential inconsistencies.

Employing a methodological framework that combines an integrative literature review and a comparative case study, the thesis critically examines the DMA's role in reshaping the digital market landscape. The comparative case study contrasts two major VOD platforms, YouTube (AVOD) and Netflix (SVOD), to assess their alignment with the 'gatekeeper' criteria and the consequent obligations imposed by the DMA.

Key findings reveal that while YouTube likely meets the gatekeeper criteria due to its vast network of independent content creators, Netflix's reliance on major film studios and license holders makes its designation less probable. The thesis highlights the discrepancy between the quantitative thresholds of gatekeeper designation and the qualitative aspects of platform dominance, particularly in the context of SVOD platforms.

This thesis contributes to the academic discourse by elucidating the complexities and implications of the DMA, particularly in the realm of VOD platforms, offering a comprehensive understanding of the challenges and opportunities presented by this landmark legislation in the digital age.

Diese Masterarbeit beschäftigt sich mit der transformativen Auswirkung des Digital Markets Act (DMA) innerhalb der Europäischen Union (EU), insbesondere mit Blick auf seine Implikationen für Video-On-Demand (VOD)-Plattformen. Vor dem Hintergrund der sich schnell entwickelnden digitalen Märkte, die durch das Aufkommen dominanter Akteure gekennzeichnet sind, erweist sich der DMA als entscheidende regulatorische Reaktion.

Die Arbeit untersucht die Ambiguität und die daraus resultierenden Herausforderungen, die sich durch die Definition von "Gatekeepern" im Rahmen des DMA ergeben, ein Konzept, das

von Wirtschaftsexperten aufgrund seiner wahrgenommenen Willkürlichkeit und potenzieller Inkonsistenzen kritisiert wurde.

Mit einem methodologischen Rahmen, der eine integrative Literaturübersicht und eine Fallstudie kombiniert, untersucht die Arbeit kritisch die Rolle des DMA bei der Umgestaltung der digitalen Märkte. Die vergleichende Fallstudie stellt zwei große VOD-Plattformen, YouTube (AVOD) und Netflix (SVOD), gegenüber, um deren Übereinstimmung mit den "Gatekeeper"-Kriterien und den daraus resultierenden Verpflichtungen des DMA zu bewerten.

Die wichtigsten Erkenntnisse zeigen, dass YouTube aufgrund seines umfangreichen Netzwerks unabhängiger Content Creator höchstwahrscheinlich die Gatekeeper-Kriterien erfüllt, während die Zusammenarbeit von Netflix mit großen Filmstudios und Lizenzinhabern eine Einstufung als weniger wahrscheinlich erscheinen lässt. Die Arbeit hebt die Diskrepanz zwischen den quantitativen Schwellenwerten für die Gatekeeper-Bezeichnung und den qualitativen Aspekten der Plattformdominanz hervor, insbesondere im Kontext von SVOD-Plattformen.

Zudem leistest sie einen Beitrag zur akademischen Diskussion, indem sie die Komplexitäten und Implikationen des DMA, insbesondere im Bereich der VOD-Plattformen, erläutert und ein umfassendes Verständnis der Herausforderungen und Chancen bietet, die der DMA als eine kritische Gesetzgebung des digitalen Zeitalters mit sich bringt.

Table of Content

List of Abbreviations

AVOD - Advertisement-based Video-on-Demand

CPS - Core Platform Services

DMA - Digital Markets Act

DBM - Digital Business Model

DSA - Digital Services Act

GAFA - Google, Amazon, Facebook, Apple

GDPR - General Data Protection Regulation

SVOD - Subscription-based Video-on-Demand

TFEU - Treaty on the Fuctioning of the European Union

VOD - Video-on-Demand

List of Tables

List of Figures

1. Introduction

1.1. Relevance

In the last 20 years, the digital landscape in the European Union (EU) have undergone significant changes, driven by the rapid advancement of digital technologies and the emergence of new digital platforms and services - the so called digital markets. The EU has witnessed the rise of global players like Google, Amazon, Facebook, and Apple (GAFA), which have become dominant actors in these digital markets and have reshaped the competitive landscape. These changes have brought both opportunities and risks for the EU, as it seeks to harness the potential of digital technologies while addressing issues related to competition, data protection, and innovation.
According to Eurostat, in 2022, 84% of individuals in the EU used the internet on a daily basis, while 68% of individuals bought goods or services online for private use (Eurostat, 2022). This massive involvement of EU citizens within the internet and more specifically digital markets has led the EC to bring forth the Digital Markets Act.

1.2. Status Quo

The Digital Markets Act aims to regulate the behavior of tech companies with significant market power, known as "gatekeepers." The legislation is part of a broader package of proposals aimed at addressing issues related to the digital economy. Another current and noteworthy legislation is the Digital Services Act (DSA), which focuses on the consumer side of intermediary service providers and will come into effect in February 2024 (Hausfeld, 2022).

The Digital Markets Act on the other hand, already came into effect, but has a staggered stage of impact, as can be seen in fig. 1 below.

The DMA proposal was introduced by the European Commission in December 2020 and has since been enacted in November 2022. The DMA Implementing Regulation and the DMA itself have both become effective on May 2, 2023.
Platform providers have until July 3, 2023 to inform the Commission of their compliance with the requirements for gatekeeper designation. The EC is expected to make its designation decisions by September 6, 2023, and the resulting obligations will take effect in March 2024.

Figure 1: Stages of the DMA (own creation)

The proposed legislation would require gatekeeper companies to adhere to a set of rules and obligations, such as providing access to certain data and services to competitors and users, prohibiting self-preferencing practices, and ensuring cooperation agreements with other services.
Overall, the DMA can be seen as a critical piece of legislation for the EU to assert its sovereignty over the digital economy and ensure that the interests of its citizens and businesses are protected in the rapidly evolving digital landscape.

However, the DMA has also received feedback & criticism from economic experts and potential gatekeepers, who show their concern about unclear gatekeeper criteria, unintended consequences and regulatory overreach (Geradin, 2021; Marinelli and Martins, 2023).
This master thesis aims to shed light on the definition of the term “gatekeeper” and how the published criteria for becoming a gatekeeper may be subject to interpretation or in need of clarification. Furthermore, the role of video-on-demand (VOD) platforms will be analyzed as

they come in a variety of business models and thus are likely to have a volatile reaction should they be designated as a gatekeeper. Given the significant role that VOD platforms play in the daily lives of EU citizens, this focus on VOD platforms serves as a valid benchmark for anticipating the implications not only for businesses but also for consumers.

1.3. Research scope & purpose

Looking forward, this master thesis seeks to answer the following research questions:

1. **To what extent did the rise of Digital Markets create the need for the Digital Markets Act in the EU?**
    a. Why has the current definition of "gatekeepers" lead to uncertainty and criticism from economic experts?
2. **How does the DMA affect video-on-demand (VOD) platforms?**
    a. To what extent do Youtube and Netflix fall under the DMA's definition of a "gatekeeper" in accordance with Article 3 (2)?
    b. To what extent do the results of Jacobides framework for platform dominance impact the findings about gatekeeper classifications of question 2. a.?
    c. How would the potentially resulting gatekeeper obligations impact the business operations of YouTube and Netflix?

By analyzing the potential effects of the DMA on VOD platforms, this research aims to contribute to the understanding of the evolving digital landscape in the EU and the regulatory measures implemented to address its complexities.
After outlining the relevance of this topic above and having presented the resulting research question, the methods used to answer the research questions will be outlined below.

1.4. Methodology

This thesis will conduct an integrative literature review in order to critique and synthesize the current research state in regard to the research question number one.

1.4.1. Integrative literature review

The official website of the European Commission, commission.europa.eu, provides access to the legislative document, which is hosted on EUR-LEX (2022) which will serve as a foundational point of reference for all assertions related to the DMA within this thesis.
The official legislative document dating from 12th October 2022 will be part of the sample characteristics, as well as scientific papers and blog posts that discussed the DMA in its complexity. Official announcements and comments from VOD companies in response to the upcoming regulations will be considered as well.
A qualitative analysis of the literature will be provided, pointing out opportunities as well as potential friction points between the aim of a fairer digital landscape and the current implementation state of the DMA.
This approach allows for a thorough examination of the regulatory framework and its potential effects, as well as an exploration of the broader academic discourse on the topic. Such research contributes to the existing body of knowledge on the evolving digital landscape in the EU and the regulatory measures implemented to address its complexities.
This thesis exclusively considers literature published up until July 16th, 2023 in order to ensure that the review process is manageable and focused, given the vast and continually evolving nature of the topic. As depicted in figure 1 above, the gatekeeper designation process will be concluded by August 2023 but its results will not be part of this thesis.

1.4.2. Comparative case study

Following the integrative literature review, a comparative case study between 2 of the largest VOD platforms will be conducted. The aim of this case study is to find out how the different business models of VOD platforms may be interpreted in regard to the classification as a “gatekeeper” and what obligations they may be subject to starting in 2024. In undertaking this case study, our goal is to ultimately provide empirical verification for research question number two.

A case study appears to be the most suitable methodology for investigating our aforementioned research question number two, as put by Ghauri and Firth (2009, p. 31) : "...when 'how' and 'why' questions are asked, a case study method as a research strategy is recommended". Furthermore the authors explain that a case study is particulary well suited for addressing international business topics and when collecting data from cross-border and cross-cultural settings. Given that the criteria for gatekeeper designation include company metrics across all EU member states, it is evident that this international business setting highlighted by Ghauri and Firth is indeed fulfilled.

The rationale for conducting a comparative case study, rather than focusing on a single case, stems from the fact that the VOD market can broadly be categorized into two distinct business models: advertisement-based video-on-demand (AVOD) and subscription-based video-on-demand (SVOD) platforms. The complexities associated with these two variations will be examined in detail in chapter 2. To represent AVOD platforms, YouTube was selected as a case, while Netflix was chosen as a representative of SVOD platforms.

During the course of the case study, a systematic approach consisting of four distinct steps will be undertaken for each case. Subsequently, the results will be compared in order to reach conclusive findings related to the research question. These steps will be comprehensively laid out at the beginning of chapter 4, as it is essential to gain a prior understanding of the terminology and fundamental mechanisms of the DMA regulation.
To ensure accuracy and reliability of the data collected the triangulation method will be deployed. Various metrics will be compared and own calculations will be performed to ensure that the official, global data matches the criteria set by the DMA, which frequently is limited to EU territory.

The thesis will conclude by answering the two research questions from 1.3. above. Ultimately, possible areas for further research in this particular field will be sketched out, as the upcoming implementation of the legislation will unravel new questions and topics for debate.

2. Digital Markets

Digital markets refer to the online platforms and services that facilitate the buying, selling, and exchange of goods, services, and information. These markets have become increasingly important in the modern economy, with more and more individuals and businesses relying on digital platforms for their everyday activities.

Defining and analyzing the digital markets in the EU is an important first step in this thesis, as it allows for a clear understanding of the scope and impact of the DMA legislation.
To properly grasp the impact, that digital markets had and will continue to have on our society and economy, the development of the digital landscape on the EU will be investigated in a first step.
The subsequent section of this chapter will thoroughly analyze the distinct challenges and risks that are inherently linked to these markets. These include, but are not limited to, the possibility of engaging in anti-competitive practices and the concerns surrounding privacy for the consumer in digital markets.

2.1. Developments of Digital Landscape

The development of digital markets and the digital landscape has significantly transformed the world and the European Union (EU) over the past decades.
The impact and pertinence of digital markets in the EU becomes evident when looking at the statistics: 87% of EU citizens have used the internet at least on a weekly basis in 2021(Petrosyan, 2022). This substantial utilization of the internet frequently manifests as active engagement within digital markets. Supporting this notion, Statista Market Insight (Statista, 2023b) reveals that in 2022, approximately 69.9% of EU citizens participated in e-commerce, involving the purchase of physical goods via online platforms. Additionally, 50.7% of individuals were involved in digital media purchases, which encompass VOD, video games, digital music and e-publishing (Statista, 2023a). While digital markets are not confined to these two sectors, they are certainly a significant part of it, amounting to 385.26 $billion revenue in 2022 for e-commerce and 51.88 $billion for digital media.

While this digital transformation of the everyday life of people certainly is a new trend and unique to the 21st century, similar pattern of technology-induced, disruptive changes to companies and whole economies can be observed long in the past, as proclaimed by the historical economist Weitzmann (1998).
For example, one of the most impactful and disruptive technologies from the past, the steam engine, correlates to the increase of the Human Development Index, according to a study by Brynjolffsson & Mcaffe. According to the authors, the current digital revolution "does for mental power - the ability to use our brains and to understand and shape our environment - what the steam engine and its descendants did for the muscle power" (Brynjolfsson and McAfee, 2014).

Digital economies have since emerged as dominant forces in global economies, with numerous companies basing their business models around them. In 2006, among the five companies with the highest market capitalization worldwide, only Microsoft had a digital business model (DBM). However, the economic landscape shifted significantly a decade later. By 2016, all the top five companies had a DBM at the core of their operations (Table 1).

2006	**2011**	**2016**
Exxon: 446	Exxon: 406	Apple: 582
GE: 383	Apple: 376	Alphabet: 556
Total: 327	Petrochina: 277	Microsoft: 452
Microsoft: 293	Shell: 237	Amazon: 364
Citi: 273	ICBC: 228	Facebook: 359

Table 1: Top 5 Global Revenue of companies in $billion (Schaller *et al.*, 2019)

Zott et. al define a DBM when a change in technology majorly impacts the value creation process of a company (Zott, Amit and Massa, 2011). The BISE journal has since published a research agenda on digital business models that highlights the literature and advancements in the field (Veit *et al.*, 2014).
A focus on digital economies has been set by Burkard et al. (2012), while Reichwald et al. (2009) as well as Leimeister (2012) have explored the changing role of the customer during times of digital transformation.
Different revenue models have been implored, such as the analysis of the premium model's potential to increase consumer willingness to pay for content (Wagner et al., 2013) or the potential and acceptance of dynamic pricing in electronic commerce (Hinz et al., 2011).

Considering the aforementioned DBM research, an emphasis on the consumer perspective becomes evident. However, Täuscher & Laudien (2018) took a distinct approach by focusing on companies employing a digital marketplace business model, in which business users become equally relevant.
Through the application of cluster analysis, the authors identified six distinct types of marketplace business models, thereby demonstrating that a uniform approach cannot be universally applied to the creation, delivery, and value capture within digital marketplaces and platforms. Täuscher's & Laudien's research hold particular significance as it anticipates the challenges associated with applying the regulations outlined in the Digital Markets Act to these online platforms characterized by diverse business models.

The most recent field of study focuses on the impact of the Covid pandemic on digital economies. It is noteworthy that although the digital economy is anticipated to continue expanding in 2023 and beyond, the year 2022 marked a first-time decline in digital economic revenue and penetration rate in the EU (Statista, 2023b, 2023a). This short term decline in digital economy activities during 2022 may be explained as it coincided with the first year after the COVID-19 pandemic. The years 2020 and 2021thus have exceptionally high and inflated numbers, as the COVID-19 pandemic gave another strong boost to digitalisation in many fields and drastically transformed how we work and live.
Nagy and Somosi (2022, 4) label this sudden increase as the “age of forced digital innovation due to its unintentional characteristic”. The effects of covid-induced increased digitalization on sustainability has been reported by Szalmáné Csete–Buzási (2020) while (Mitrofanova et

al. 2021) advocate for its role in forming smart cities by limiting social contacts and increasing digital technologies.

2.2. Risks & Challenges

In order to stay competitive and defend against new competitors, companies with a DBM need to understand and adapt to technological advances and opportunities. The (re)structuring and (re)organizing of existing resources and know-how is key in order to create a value proposal for existing and new customers (Schaller *et al.*, 2019).
This continuous technological arms race presents a dual scenario, that on the one hand can lead to novel breakthroughs, value creation, and healthy competition. On the other hand, it also poses a multitude of risks and challenges that necessitate the attention of regulators such as the European Union. These initiatives at regulating these risks & challenges will be explored in the following section.

2.2.1. EU Competition Laws

Self-preferencing is one of the most glaring challenges that lies within the competition laws of digital markets. As outlined by Colomo (2020), self-preferencing entails a dominant company utilizing its market power in one sector to promote its own products in a connected market. This practice can manifest in various forms, such as refusal to engage in business transactions or distorting competition through upstream market dominance.
One such example can be found in Amazon, which "control the essential market infrastructure on which their rivals depend" (Khan, 2017). This dominance would enable a platform to exploit information collected on companies using its platform in order to undermine them as competitors, according to Khan.

While self-preferencing practice is the core characteristic of any for profit firm and the capitalistic market as a whole, it does clash with the EU competition laws in case of such extreme dominance of singular players like observed with Amazon.

EU competition laws have evolved significantly over time to promote fair competition, protect consumers, and ensure a level playing field for businesses within the European Union.

So far, the practices of companies like Google, Amazon, Facebook and Apple (GAFA) were predominantly dealt with under Articles 101, 102 of the Treaty on the Functioning of the European Union (TFEU) (Bongartz, Langenstein and Podszun, 2021). For example, Article 101 of the TFEU prohibits all agreements and decisions between companies that try to achieve the “prevention, restriction or distortion of competition within the internal market”(EUR-Lex, 2012).

In order to understand the impact EU competition laws had on the origins of the DMA, it is necessary to dive into the EU regulatory approach and differences between *ex ante* and *ex post*:
The term *ex ante* commonly used in economics, corresponds to the concept of "A priori" in law and refers to the anticipation of a situation before it occurs. In legal terms, it refers to the ruling of situations following the adoption of a law or regulation, without retroactive effect. It encompasses a proactive establishment of rules, decisions, or general provisions by an authority.
On the other hand, *ex post* commonly used in economics and corresponding to "A posteriori" in law, relates to the reaction of an entity to an observed situation or behavior. It includes individual decisions on sanctions, dispute resolutions, or mediation settlements, which occur after the event(Frison-Roche, 2023).
In summary, *ex ante* focuses on the proactive regulation of situations before they happen, while *ex post* refers to the reactive response to observed events or behaviors.

Returning to the EU's efforts in the realm of competition law, it can be observed that these laws primarily operate on an *ex post* basis. Consequently, they do not necessarily prevent the emergence of unfair competitive advantages or monopolistic situations, but rather focus on penalizing them after they have occurred.
As such, European antitrust enforcers have made extensive efforts to preserve competition in the digital economy through the initiation of numerous antitrust cases against major technology companies. While these cases have achieved some significant legal victories, they have generally been unable to effectively counteract the rapid concentration trends observed in digital markets due to their complex and time-consuming nature (Blankertz, 2022).
A notable example is the EU's initial antitrust case against Google, which commenced in 2010, reached a decision in 2017 (EC, 2017b), and was ultimately affirmed by the European Court of Justice in 2021 (General Court of the EU, 2021). The final verdict of the EC was a

$2.42 billion fine for Google. Commissioner Margrethe Vestager, in charge of competition policy in 2017 proclaimed that "Google abused its market dominance as a search engine by promoting its own comparison shopping service in its search results, and demoting those of competitors"(EC, 2017a).

Although a fine of $2.42 billion may appear substantial, it is important to consider the context of Google's global revenue in 2021, which amounted to $256 billion (Alphabet Inc., 2022).

Given the disparity between the fine and the company's overall revenue, it raises doubts about the effectiveness of such penalties in deterring future misconduct. GAFA may view the strategy of prolonging legal battles under post-ex competition laws as a potentially profitable course of action, especially if it enables them to gain a long-term competitive advantage over their rivals.

Another concern raised by Sousa (2020) points out the difficulties of separating pro competitive effects of self preferencing from the anticompetitive effects that EU competition laws are trying to avoid and calls for more detailed example cases as outlined in Article 2 TFEU.

In response to these challenges, European policymakers are adopting a new approach with the introduction of the DMA, which builds upon the lessons learned from previous European Commission cases. Instead of relying solely on prolonged legal battles, policymakers are striving to establish self-executing rules for gatekeepers through an ex-ante regulatory approach.

For comparison: The traditional three-step competition policy procedure involves outlining the relevant market, assessing the firms' market power, and designing appropriate remedies. In contrast, the DMA adopts a one-step procedure by using absolute-size thresholds and quasi-automatically imposing obligations, thereby bypassing the aforementioned steps (Cabral *et al.*, 2021).

In conclusion, the DMA imposes obligations that extend beyond Article 102 TFEU, with the objective of addressing distortions to competition that arise from unique characteristics of digital markets. Additionally, it aims to "address the resulting market failures more holistically than competition law remedies could (Schweitzer, 2021, p.5)".

2.2.2. GDPR Regulations

While competition laws primarily concentrate on regulating business practices and preventing unfair advantages and monopolistic behavior, the subsequent chapter will shift the focus towards the consumer perspective and thus data protection rights.

The most recent push for more data privacy & security in the EU came in the form of the General Data Protection Regulation (GDPR), that came into effect on May 25, 2018.

The GDPR aims to protect the personal data of individuals within the EU and regulates the processing and transfer of such data. It provides individuals with control over their personal data and imposes obligations on organizations handling this data (GDPR.EU, 2018).

It is of note that the GDPR also affects companies operating from outside the EU, as long as they collect data from EU citizens, which in turn forced many global companies to adopt their data collection policies (Shovon *et al.*, 2019).

Due to the scope limitations of this thesis, an in-depth exploration of the GDPR text is not feasible. Nonetheless, figure 2 presented below offers a concise summary of the eight fundamental aspects of the regulation. Notably, it highlights the potential penalties for non-compliance, wherein violations of the GDPR may result in fines of up to 4% of a company's annual turnover. A more detailed examination of these fines will be explored in subsequent sections.

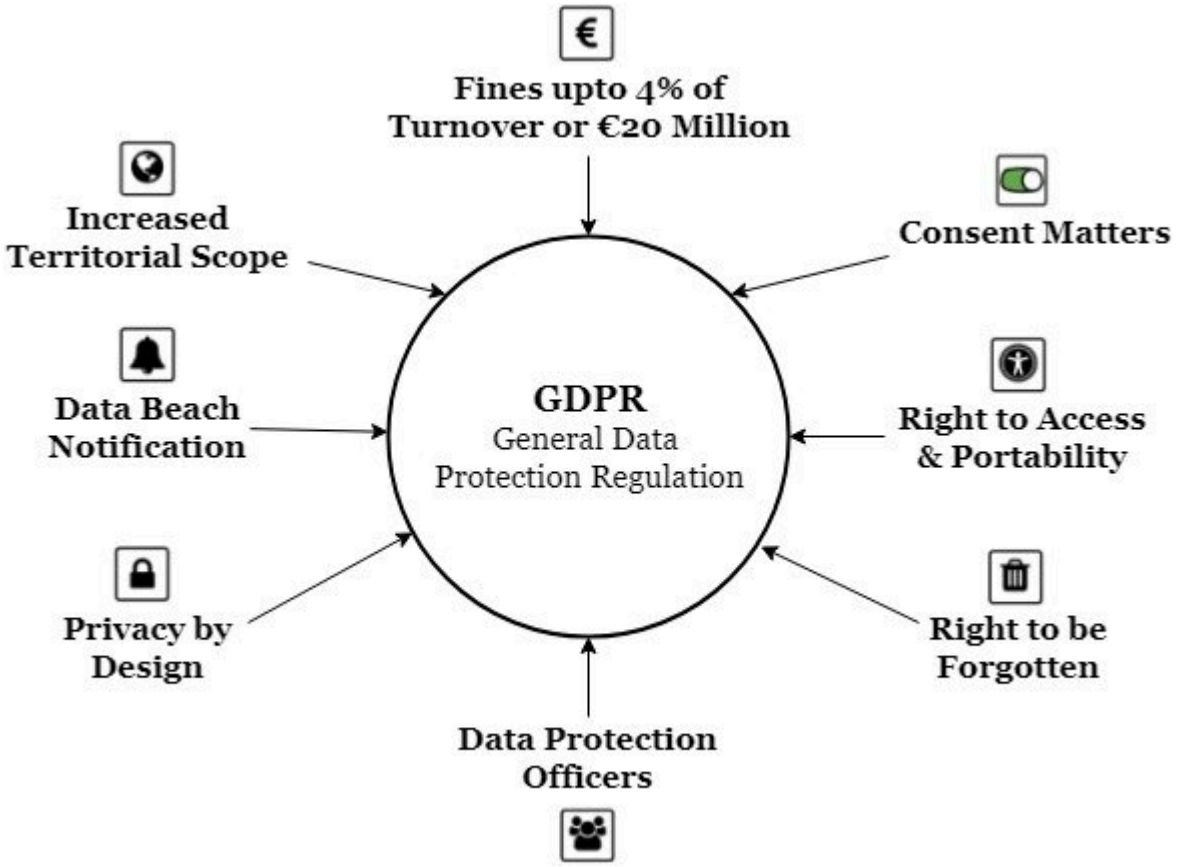

Figure 2: General Overview of the GDPR (Shovon *et al.*, 2019)

Since its inception in 2018 the GDPR has been met with mixed receptions from business, consumers, and literature.

According to the findings of a panel survey conducted by Strycharz, Ausloos, and Helberger (2020), the Dutch population demonstrates awareness of the GDPR and possesses knowledge regarding certain individual rights granted by the regulation. However, the survey also reveals a notable level of reactance among the respondents towards the GDPR and skepticism regarding the efficacy of their individual rights.

Contradicting this notion is a survey conducted by the University of Virginia, which found that over 63% of EU consumers believe that the GDPR has had a positive impact on consumer data privacy in 2019 (Dick, 2019).

The implementation of requirements like obtaining consent under the GDPR may have resulted in a reduction in the overall volume of data collected. However, paradoxically, it also contributed to an increase in the proportion of data collected by big online platforms such as Facebook and Google, known for their extensive processing of personal data. In essence, the

GDPR inadvertently strengthened the market power of Facebook and Google (Johnson *et al.*, 2020).

Since the GDPR took effect in May 2018, over 900 fines have been issued across the European Economic Area (EEA) and the U.K. GDPR fines have experienced a substantial increase, evident in the recent case involving Amazon, where the National Commission for Data Protection of Luxembourg imposed a fine totaling €746 million (Bell, 2022).

This is not the first instance in which Amazon faced penalties for its practices involving the collection and sharing of personal data through cookies. In late 2020, France imposed a fine of €35 million on Amazon after the company was accused of not obtaining proper cookie consent on its website (Tessian, 2022).

Amazon since has appealed the decision and the case is set to go to the Luxembourg Administrative Tribunal in January 2024 (Newman, 2022).

It can be stated that - akin to the TFEU - the GDPR operates on an ex post basis by initiating an oftentimes lengthy legal process after breaches have occurred, as seen in the Amazon case. Thus, the more ambiguous aspects of certain GDPR Articles are at the risk of being disregarded by major online platforms such as GAFA, who prioritize profit maximization over the risk of potential legal consequences in the form of fines.

Moreover, according to Geradin et. al (2021), the resource-intensive and bureaucratic nature of adhering to GDPR regulations provide an advantage to larger players in the industry who have the financial means to allocate resources for compliance. While the GDPR exempts most companies with fewer than 250 employees from the obligation to maintain a data processing register (Art. 30 (5) GDPR), these smaller firms still face significant costs associated with compliance. These costs include expenses related to obtaining consent through management tools, staying informed about the evolving regulations, and appointing a Data Protection Officer (DPO). Hence, many smaller firms have simply exited the market, collapsing under the regulatory burdens of the GDPR (Johnson, *et. al,* 2019).

Without the implementation of collaborative, ex ante initiatives bridging consumer rights and competition law, it remains uncertain whether the GDPR in isolation can effectively regulate ad tech firms like Google, Facebook & Amazon in a sustainable manner. Nonetheless, it can be concluded that according to empirical research the GDPR has successfully heightened public consciousness surrounding matters pertaining to personal data (Dick, 2019; Strycharz, Ausloos and Helberger, 2020).

The enactment of the DMA presents an opportunity to align the objectives of EU-wide competition laws for businesses with the protection of consumer data rights, all while ensuring enforcement in an ex ante fashion. The connection between the GDPR and the DMA lies in their shared focus on protecting individuals' rights and promoting fair competition in the digital landscape. The DMA addresses competition issues in digital markets, including potential abuses of data and market power by gatekeeper platforms. The GDPR's data protection framework complements the DMA by safeguarding individuals' privacy rights and ensuring the secure and lawful processing of personal data within the context of digital markets.

2.3. Video-on-Demand Platforms

VOD platforms have become an integral part of the digital landscape in the European Union. In recent years, there has been a significant shift in how people consume media, with more and more individuals opting for online video streaming services. This trend has been primarily driven by the rise of VOD platforms like Netflix, Youtube, and Disney +, which have revolutionized the way people access and interact with media content.
This chapter will investigate why video-streaming platforms are an essential part of the digital landscape in the EU and how they are affected by the examined risks & challenges.

The growth of video-streaming platforms has fundamentally transformed the media landscape in the EU. However, at the beginning of the century, the long term profitability of video-streaming platforms was still debated upon, as the required bandwidth for video uploads was too costly and none of the platforms were earning significant revenue (Huang, Li and Ross, 2007).
Google's acquisition of Youtube, the nowadays largest video-sharing platform, in 2006 for $1.65 billion was initially considered a risky venture and even labelled as a “poison pill” (Arrington, 2007). Furthermore, shortly after the acquisition, the platform's revenue in 2006 turned out to be significantly lower than anticipated, amounting to only $15 million (Lee, 2007).
However, as depicted in table 2, Youtube’s revenue quickly grew steadily and amounted to $29.2 billion ad-fueled revenue in 2022.

2010	0.8	2017	8.1
2011	1.3	2018	11.1
2012	1.7	2019	15.1
2013	3.1	2020	19.7
2014	4.2	2021	28.8
2015	5.5	2022	29.2
2016	6.7	2023 Q1	6.69

Table 2: Youtube Ad Revenue per year in $billion (own representation) (Iqbaal, 2023, Alphabet Inc., 2023)

Meanwhile, the world's largest subscription-based video on demand (SVoD) service provider Netflix achieved global revenues of $31,62 billion in 2022 and currently has approximately 230 million paying subscribers(Statista, 2022b) .

According to Lyu (2023) The rise of video streaming platforms has been fueled by several factors:

1. The growth of high-speed internet has made it possible for individuals to access video content seamlessly.
2. The proliferation of smartphones and other mobile devices has made it possible for individuals to access video content anytime and anywhere.
3. The availability of a vast array of content on video streaming platforms has made it possible for individuals to access a wide variety of content from different regions and cultures.
4. Low cost in relation to other form of entertainment TV, cinema, books etc. A Netflix subscription can be as cheap as €7,99 per month, while Youtube & Twitch are completely free to use.

The stakeholders in the video streaming industry are diverse and include content creators, distributors, advertisers, regulators, and consumers. Content creators can range from big film studios that produce high budget shows & movies to small independent individuals that produce low cost videos or livestream themselves playing game or reacting to other video content.
The distributors in the video streaming industry, which are the main focus of our study case in chapter 4, can be divided into three main categories (Vinikas, 2021):

a. Subscription-based Video on Demand (SVOD) services - These are services that require a subscription fee to access the content. Examples of SVOD services include Netflix, Amazon Prime Video, and Disney+.
b. Ad-supported Video on Demand (AVOD) services - These are services that are free to access but supported by advertisements. Examples of AVOD services include YouTube and Twitch.
c. Transactional Video on Demand (TVOD) services - These are services that allow users to rent or purchase individual movies or TV shows. Examples of TVOD services include Apple iTunes, Google Play, and Vudu.

The distribution landscape is constantly evolving, with new players entering the market and existing players adjusting their business models to stay competitive.

Regulators are responsible for ensuring that the content on the platform is appropriate for the target audience or that data protection rights and a fair competitive landscape are upheld. Consumers are at the end of the value chain and consume content by watching and, depending on the type of services, paying for it.

The rise of video streaming platforms has also created several risks and challenges that must be addressed. One of the most significant risks is the proliferation of illegal content on video sharing platforms. This content ranges from pirated movies and TV shows to extremist propaganda and hate speech or minors having access to R-rated content . This content can be harmful to individuals and society as a whole and must be addressed, however is not directly regulated by the DMA.

As observed in chapter 2.2.2, a variety of GDPR breaches within the realm of video streaming platforms in recent years has occurred. Reed (2023) has provided a comprehensive

summary of Netflix's breaches in this regard: Some of the older cases, predating the implementation of the GDPR, involve instances where Netflix disclosed its users' viewing history. Conversely, more recent cases reveal the company's failure to adhere to GDPR guidelines, such as the leakage of user passwords or succumbing to cyberattacks perpetrated by hackers. The most recent case in 2021 saw a classic example of human error wherein a Netflix employee openly shared sensitive and disclosed financial information to the press.
Additionally, another case in which the GDPR were breached was put forth by the NGO “none of your business” (noyb), which collects and submits privacy cases by using the many enforcement possibilities of the EU with the goal of strengthening consumer's privacy rights.
In 2019, a formal complaint was launched against multiple video-sharing companies, including Youtube, Netflix and Apple, that did not provide correct access to a users data, as mandated by the GDPR (noyb, 2019).

Referring back to chapter 2.2.1, numerous antitrust issues can fall under the purview of the DMA if a video-sharing service is classified as a gatekeeper. Self-preferencing practices are prevalent in SVOD platforms such as Netflix and Amazon Prime. Both companies produce their own shows and movies, known as "Netflix Originals" and "Amazon Originals," respectively. These products are prominently featured on their respective platforms, actively promoting users to watch them over other third party content, thus theoretically meeting the criteria of self-preferencing (Jenner, 2018).
Previously, the live-streaming platform *Twitch* upheld a platform-wide exclusivity clause on its content creators, prohibiting them from streaming on alternative platforms. The exact contract agreement read as content creators “would not be able to stream live content on any other service except for Twitch” (Grubb, 2015).
However, in 2022, this clause underwent revision, and Twitch now permits content creators to stream on platforms such as YouTube, but only after concluding their stream on Twitch. Consequently, simultaneous broadcasting on multiple platforms remains prohibited, potentially conflicting with the new regulations introduced by the DMA (Grayson, 2022).
As the DMA is set to apply to video sharing platforms, it might be powerful a tool to reduce the above-mentioned risks.

In conclusion, this chapter provided an overview of the profound transformation that has taken place in the digital landscape of the EU over the past two decades. This transformation has given rise to a diverse range of digital markets characterized by various digital business

models. As is the case in other industries, the dominance of major players within these markets has raised concerns regarding antitrust issues, which are currently addressed through the implementation of competition laws by the EC, most notably the TFEU, in an ex post manner.
Furthermore, the emergence of digital markets has brought forth challenges related to data protection and privacy rights violations. In response, the EC introduced the GDPR in 2018, signaling its intention to regulate the activities of companies operating within this dynamic landscape. The GDPR represents a significant step towards establishing a regulatory framework that aims to ensure a level playing field for all businesses involved.

Both antitrust issues, as well as data protection violations, are commonly found on the big video-streaming platforms, such as Youtube, Amazon Prime, or Twitch. Thus, an analysis of how the enactment of the DMA will affect those video-streaming platforms is deemed of scientific relevancy.

3. The Digital Markets Act

In order to gain a comprehensive understanding of the implications of the DMA on video-streaming platforms, it is crucial to examine the detailed text and Articles of the DMA itself. This will provide insights into the specific provisions and regulations that will be applicable to these platforms and have implications for competition, user protection, and data privacy in digital markets.

Furthermore, it is important to delve into the academic literature discussion around the DMA. Since the creation process of the DMA has been of an evolving nature for the past 3 years, scientific articles have to be classified accordingly. A blog post critical of the gatekeeper criteria published in 2021 could provide valuable insights into the response to the initial DMA proposal. However, it is important to note that the findings of such a text may already be considered outdated and its points of criticism addressed by the updated version of the DMA.
This approach seels to identify the different perspectives and debates surrounding the DMA and provide a more nuanced understanding of its implications. Additionally, it seeks to analyze the evolution of the wording and content of the key Articles throughout the developmental process of the DMA.

3.1. Key Articles

3.1.1. Article 1 - Purpose & Scope

If not otherwise specified, all Articles referenced to in this chapter will be based on the official DMA document, publicly available on the EUR-Lex servers (EUR-LEX, 2022).
The vision that acts as a basis for the DMA is described in Article 1.1 of the DMA document:

“The purpose of this Regulation is to contribute to the proper functioning of the internal market by laying down harmonised rules ensuring for all businesses,

contestable and fair markets in the digital sector across the Union where gatekeepers are present, to the benefit of business users and end users.”

From this quote, it is evident that the DMA will have a significant impact on certain stakeholders of digital markets. Firstly, it will affect companies that operate digital market platforms and meet the criteria of so-called "gatekeepers". Additionally, the DMA is set to impact business users and end users who operate within these digital market platform offered by gatekeepers.

3.1.2. Article 2 - Key terms

The focus will now be shifted towards carefully defining these key terms in order to gain a substantiated knowledge base that allows for further analysis and critical discussion of the literature surrounding the DMA.

The official legislation text commits the first chapter to defining the subject matter, scope and key terms.

Article 2 (21) of the DMA characterizes business users as “any natural or legal person acting in a commercial or professional capacity using core platform services for the purpose of or in the course of providing goods or services to end users”.

Article 2 (20) defines end users as “any natural or legal person using core platform services other than as a business user.

Article 2 (1) defines the term “gatekeeper” as companies, that provide any core platform service (CPS) as well as fulfilling the criteria of Article 3. Subsequently, Article 2 (2) lists these CPS as follows:

(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

The categorization of service providers aligns with the vision outlined in Chapter 2, which emphasizes the European Union's objective of regulating the growth of digital markets. These various categories significantly influence the digital landscape within the EU and moderating them through the DMA could thus achieve this vision.

Moving forwards, this thesis will be focusing on *video-sharing platforms* as outlined by Article 2 (2) (d). To ensure a comprehensive understanding of the subject, it is important to delve into the European Commission's definition of video-sharing platforms.
This definition is referenced in the DMA legislation and can be found in Article 1(1), points (a) and (g), of Directive 2010/13/EU. Therein, an audiovisual media service is defined as a television broadcast or as “an audiovisual media service provided by a media service provider for the viewing of programmes at the moment chosen by the user and at his individual request on the basis of a catalogue of programmes” (EUR-Lex, 2010).
The broad nature of this definition suggests that any video-streaming platform, irrespective of its specific business model, will be categorized as a "video-sharing platform" and thereby the company qualifies for potential gatekeeper status.

3.1.3. Article 3 - Gatekeeper criteria

Now that the terms end user, business user, core platform services as well as video-sharing platforms have been defined, focus can be shifted towards an essential question: What are the criteria for a company to be designated as a gatekeeper?

These criteria are listed within Article 3 of the DMA and can be classified into qualitative criteria and quantitative criteria.
Article 3 (1):
A company shall be designated as a gatekeeper if:

a. it has a significant impact on the internal market;
b. it provides a CPS 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.

The qualitative criteria outlined in Article 3 (1) serve to identify the specific types of companies that the EU aims to target, as well as the underlying reasons for doing so. The objective is to mitigate the anti-competitive behavior that arises from platform providers acting as intermediaries between businesses and end users.

However, the reliance on qualitative criteria alone may pose challenges in effectively implementing the regulation and may give rise to similar issues as discussed in chapter 2.2, which are primarily driven by ex post regulations.
Thus, Article 3 (2) further clarifies the exact thresholds required in order to be classified as a gatekeeper:

Article 3 (2)
Quantitative Criteria
A company shall be presumed to satisfy the respective requirements in paragraph 1:

a. it has annual turnover of a minimum of EUR 7.5 billion in the EU in each of the last three financial years, or a market valuation of at least EUR 75 billion in the last financial year it provides the same core platform services in at least three Member States;
b. it has at least 45 million monthly EU active end users and at least 10.000 yearly EU active business users in the last financial year;
c. the thresholds of active end users and business users above-mentioned have been met for the last three financial years.

According to Article 2 (1) a gatekeeper is defined by any company that provides a core platform services that falls under the criteria of Article 3 (2). However, to avoid under-inclusion of important gatekeepers, the Commission incorporated a review clause into the proposed DMA. As outlined in Article 3 (8) and Article 17 of the document, the Commission is empowered to reassess the list of gatekeepers and undertake market investigations. This allows the Commission to designate a company as a gatekeeper, even if it doesn't meet the *quantitative* criteria of Article 3 (2), but rather based on its fulfillment of the *qualitative* criteria of Article 3 (1).

The assessment on whether a company shall be included (or excluded) as opposed to their nonfullfilment (or fulfillment) of Article 3 (2) will be done via a market investigation led by the EC. This market investigation is captured in Article 17 of the document and must be concluded within 12 months.

3.1.4. Article 5 & 6 - Gatekeeper obligations

Firstly, it is important to note that, should a company be designated as a gatekeeper, the EC then provides a list of all relevant CPS of that company, to which the gatekeeper obligations of Article 4 & 6 DMA apply.
The crux of the Digital Markets Act (DMA) centers around two categories of obligations imposed on gatekeeper platforms: a quasi-automatic list of obligations outlined in Article 5, and a list of obligations that can be further specified in Article 6 . For instance, Article 5 lists the right for business users to offer their products or services to end users through third-party online intermediation services. On the other hand, Article 6 includes prohibitions such as granting preferential treatment in rankings to products and services offered by the gatekeeper, as well as restricting the ability of end users to switch platforms.

A fundamental driving force behind the DMA policy initiative is to expedite the implementation of remedies for anticompetitive behavior exhibited by gatekeeper platforms. Specifically, Article 5 tries to achieve this objective by imposing ex-ante obligations or behavioral restrictions on all platforms that have been designated as gatekeeper platforms. These obligations are applicable without the need for further investigations by the European Commission, thereby relieving both the regulator and the platform from the burden of proof (Cabral et. al, 2021).

In the non-compliance decision, the Commission may impose on a gatekeeper fines of up to 10 % of its total worldwide turnover. In case of repeated offenses, the fine can reach up to 20 % of worldwide turnover. Such a non-compliance decision can be made when a gatekeeper fails to comply with the imposed obligations of Article 5, 6 and 7 or other obligations as specified by Article 30 (1).

In situations where gatekeepers repeatingly violate their obligations under the DMA, further remedies can be applied following a market investigation according to Article 17 (1) and (2). These penalties must be appropriate and commensurate with the nature of the offense. As a last resort, non-financial remedies may be imposed, which can involve behavioral or structural changes such as the divestiture of certain business segments.

3.2. Critical Literature discussion of the DMA:

The Digital Markets Act has gained significant attention and sparked critical discussions within academic literature. This chapter will show how scholars and economic experts have closely examined various aspects, including its scope, effectiveness, and potential implications for digital markets in the EU. These discussions have also delved into the intended goals of the DMA, its regulatory approach, and the contention around the criteria to qualify as a “gatekeeper”.
By exploring these critical discussions, a deeper understanding of the DMA's strengths, limitations, and potential implications for the digital markets in the EU can be gathered.

3.2.1 Internal Amendment Process of the EU

Prior to considering external opinions and critiques, it is crucial to examine the internal discourse within the European Union institutions. To gain a full understanding of the modifications and concessions made to the DMA, an overview of the different proposal and amendment phases undertaken by the European Commission, the European Parliament, and the Council of the EU will be conducted:

Fig. 2: Amendment period of the DMA (own representation)

The Article that has garnered the most extensive discussion within the context of the DMA is Article 3 (2), which has undergone multiple revisions throughout the amendment period. As previously explained, Article 3 (2) establishes the criteria for classifying companies that operate large online platforms as gatekeepers, thereby serving as a significant source of disagreement among various stakeholders. In the subsequent paragraph, the various iterations that Article 3 (2) underwent during the amendment stage of the DMA will be examined.

In June 2021, Andreas Schwab, the rapporteur of the Internal Market and Consumer Protection (IMCO) parliamentary committee, put forth a proposition regarding the DMA that involved higher quantitative thresholds compared to those initially proposed by the European Commission. Schwab, in a first draft, advocated for an increase in the quantitative thresholds for the EEA turnover and average market capitalization of the undertaking, from €6.5 billion to €10 billion and from €65 billion to €100 billion, respectively (Marinelli & Martins, 2023). Furthermore, the suggestion was made that in order for a company to be identified as a gatekeeper, at least two Critical Platform Services (CPS) provided by the same company should meet the aforementioned quantitative thresholds (Committee on the Internal Market and Consumer Protection, 2006).

Schwab's proposition raised concerns in the United States, as it was perceived to have been designed in a manner that would exclusively subject non-EU companies to the obligations outlined in the DMA (Times, 2021).

In the final amendment proposal of the EP, the initial request made by Schwab to increase the number of CPS owned by a gatekeeper from one to two was omitted.

As for the average market cap and annual turnover, the IMCO committee reached a final agreement that ultimately resulted in a compromise between the initial EC proposal and Schwab's amendment. This compromise involved the adoption of a quantitative threshold of €8 billion turnover and €80 billion market capitalization by the European Parliament.

This threshold served as a foundation for negotiation during the trilogue between the European Parliament, the European Commission, and the Council of the European Union in the first Quarter of 2022.

Subsequently, the threshold number underwent one final revision during the trilogue process. As seen in table 3, the final version of the DMA established the quantitative criteria for attaining gatekeeper status as €7.5 billion turnover and €75 billion market capitalization.

		EC proposal (Dec 2020)	Schwab proposal (Nov 2021)	IMCO position (Dec 2021)	EC Final Adoption
a)	average market cap last year	€65 million	€100 million	€80 million	€75 million
	annual EEA turnover in	€6.5 million	€10 million	€8 million	€7.5 million
	provides CPS	1 CPS in at least 3 MS	2 CPS in at least 3 MS	1 CPS in at least 3 MS	1 CPS in at least 3 MS
b)	number of end user	45 million active users	45 million active users for each CPS	45 million users for each CPS	45 million active users
	number of business users	10.000 active users	10.000 active users for each CPS	10.000 users for each CPS	10.000 active users
	established or located in	the Union	the Union	the EEA	the Union
c)	meets threshold of b) in each of the last	3 financial years	3 financial years	2 financial years	3 financial years

Table 3: Development stages of Article 3 (2) of the DMA ((Marinelli and Martins, 2023), (EUR-LEX, 2022)

As can be extracted from Table 3, other details of Article 3 (2) underwent significant changes:

- ➔ The proposal by Schwab and the IMCO to require the inclusion of the number of active users for each CPS has been reverted to the original EC proposal
- ➔ The IMCO's suggestion to apply point b) on the EEA in addition to the EU has been ommited
- ➔ The IMCO's proposal to shorten the threshold date range to the last 2 financial years has been abandoned
- ➔ The IMCO's suggestion to not specifically count only active end and business users has been dropped

In general, it can be argued that the amendments made by the IMCO shifted the criteria of Article 3 (2) towards a higher overall limit, but also made those numbers more easily attainable. However, most of these amendments were reverted after the trilogue between the EC, EP, and the Council.

Looking back on figure 2, the DMA was adopted 22 months after the initial proposal by the European Commission in December 2020, in September 2022. However, it will have taken over 3 years from the proposal until the first gatekeeper obligations take effect in January 2024. This lengthy period of time highlights the time-consuming nature of implementing fundamental changes in the digital landscape of the EU. The extensive legislative procedures and stakeholder input contribute to this perceived lengthiness, but ultimately should ensure a fair and effective path forward for the digital landscape in the EU.

3.2.2. Definition problems

After having laid out the amendment process the gatekeeper criteria went under, the focus will now be shifted towards a critical discussion surrounding them.
The Commission's reasoning behind these gatekeeper criteria remains undisclosed. However, by examining the annex of the Digital Markets Act Impact Assessment support study—which conducted an analysis of multiple quantitative indicators for 19 digital firms—(Geradin, 2021) drew three conclusions:

Geradin found the European Commission's process to be fundamentally subjective. These quantitative benchmarks were not based on a “magical economic equation” that could have optimized the effectiveness of the DMA's imposed restrictions and duties.
The European Commission likely utilized a method of reverse engineering in its approach. With a general idea of the companies intended to be impacted by the DMA, the Commission designed the benchmarks such that they would definitively encompass the larger entities.
Lastly, the Commission was required to strike a precise balance. Overly high benchmarks could decrease the DMA's influence, as firms with significant market leverage and potential to curb competition in digital markets could slip beyond its reach. On the other hand, overly low benchmarks could lead to excessive costs—burdening firms with compliance obligations when they aren't inhibiting competition in the digital marketplace or placing added stress on already strained public enforcers.

According to Schweitzer (2021), the quantitative thresholds that serve to designate gatekeepers lack an indication of actual bottleneck power. Although these thresholds offer clear and immediately applicable guidelines, the chosen absolute values and metrics do not seem to accurately capture the qualitative conditions outlined in Article 3 (1) DMA. Schweitzer highlights that turnover thresholds are met as long as the CPS provider is affiliated with a large parent firm, irrespective of its market power, a point which will be of relevance in the case study of YouTube and its parent company, Alphabet.
The criteria appear to be excessively fixated on size rather than on the actual power of gatekeeping.

Geradin (2021) argued that a missing definition of the notion of “end users” may cause confusion, as the term was neither self-explanatory nor had the same meaning in the context of different CPS. In the context of an e-commerce platform like Zalando, which operates as a two-sided transaction platform, the question arises whether the term "end users" should include all users visiting the platform, regardless of whether they make a purchase or solely engage in browsing. Alternatively, should it be limited to only users who actively complete a transaction by making a purchase? This example shows the issue of defining the scope of "end users" within the context of the platform's operations. According to Geradin, the latter approach should be chosen, as in the case of a so-called two-sided transaction platform, the core service provided by the platform is to facilitate a transaction between business users and end users.

However, the EC ruled otherwise: In the final regulation, the term “end user” did indeed receive its own definition with Article 2 (20), whereas an “end user means any natural or legal person using core platform services other than as a business user”. Thus, a person browsing (and hence using) the Zalando platform without making a purchase would still fall under the DMA’s definition of an end user.

To apply this to the video streaming industry, the example of an end user browsing Youtube with an “ad blocker” installed shall be examined: An ad blocker can be installed as a browser extension and prevents websites from showing any advertisements on their pages, including videos. As the core business model provided by YouTube is characterized as an ad-fueled video on demand (AVOD) service , the end user with an ad blocker is not part of this value creation concept.

Similar to Geradin's Zalando example, the presence of ad blocker users browsing YouTube leads to an overestimation of end user figures. However, unlike the Zalando case where there is potential for future transactions, in the case of YouTube, users with ad blockers are unlikely to disable them, amplifying the issue even further.

To put the severity of the problem into perspective: In 2021 the penetration rate of ad blocker usage in Europe amounted to 29,9% percent (PageFair, 2022, p.6). Meanwhile, the loss of revenue due to blocked advertisements in the US in 2020 is estimated to be $12.2 billion, not limited to video-streaming ads (Statista, 2021).

The issue of correctly assessing the amount of end users and business users in the context of VOD platforms will be of relevance in the case study of chapter 4.

3.2.3. Core Platform Services, SVOD vs AVOD

Another point of contention in literature is the given list of Core Platform Services (CPS) in Article 2 (2). In order to apply the gatekeeper criteria, it is necessary to refer to the list of CPS. If a service does not meet the listed definition of CPS as stated in Article 2 (2), it will not be eligible for gatekeeper status under Article 3 (2).

When examining the list of CPS from which gatekeepers are identified, it raises the question whether this list is based on a market-oriented approach, where services are distinguished and categorized based on the economic goods they provide (Kerber 2021). In some cases,

services that offer similar goods to consumers and compete horizontally with each other are only partially covered by the DMA.
Although this issue does apply to a variety of platform services, the VOD sector is especially affected by the limited list of CPS given under Article 2 (2):

Video-sharing platform services like YouTube or Twitch are firmly included in the DMA's list of core platform services, while subscription-based video-on-demand (SVOD) services are not included and therefore not covered by the DMA according to prevailing opinions of the European Audiovisual Observatory (Joan Barata *et al.*, 2021). These services include SVOD platforms such as Netflix, Amazon Prime, Disney+ and others.
However, both theoretical analysis and empirical evidence strongly suggest that services like YouTube compete with services like Netflix (Budzinski, Gaenssle and Lindstädt-Dreusicke, 2021). Consequently, different treatment of competing services may arise based on their business models, although they provide the same economic goods: video content provided through an advertisement video-on-demand (AVOD) platform may be classified as a gatekeeper, whereas the same content offered through a subscription-based video-on demand (SVOD) model would not be classified as such.

Thus, special gatekeeper obligations would not be assigned based on superior market power, as is the case in competition law, but solely based on the choice of the business model - AVOD vs. SVOD (Budzinski and Mendelsohn 2021). The authors recommend starting a discussion about expanding the list of core platform services, so that platforms directly competing with each other would all be subject to the gatekeeper criteria.

As stated by Joan Barata et al., (2021), the CPS "video-sharing services" listed in Article 2 (2) of the DMA would not include SVOD services. However, this paragraph presents a counterargument to demonstrate why, based on the final text of the DMA, SVOD services like Netflix are not automatically excluded from potential gatekeeper status. This argument aims to reinforce the rationale for including Netflix as an SVOD platform in the case study of Chapter 4 and refers back to the analysis of key terms in chapter 3.1.2.
In that section, the precise meaning of the CPS "video-sharing service" was examined and it was established that CPS refers to any "audiovisual media service provided by a media service provider for the viewing of programmes at the moment chosen by the user and at his individual request on the basis of a catalogue of programmes" (EC, 2010).

The broad scope of this definition implies that any video-streaming platform, regardless of its specific business model, falls under the CPS category of "video-sharing services." While the term "video-sharing service" may initially bring to mind AVOD platforms like Youtube or Twitch, a closer analysis reveals that subscription-based streaming platforms like Netflix and Amazon Prime are also encompassed within the CPS term of "video-sharing" platforms.
Therefore, this allows us to incorporate a SVOD platform, such as Netflix, into the case study of Chapter 4.

It is essential to determine if SVOD services are able to meet the gatekeeper criteria outlined in Article 3 of the DMA. In a webinar about the impacts of the DSA & DMA on the VOD industry, Budzinski claims that gatekeeper effects can possibly arise in SVOD markets:
Even though there exists a healthy competitive landscape in the SVOD sector, big and vertically integrated players can be gatekeepers without dominating the market (*Webinar on the Digital Services Act Package*, 2021).
Therefore the potential signs of SVOD gatekeeper effects and platform dominance will be explored as part of the case study in Chapter 4.

3.3.4. Multi-Homing

One of the most prevalent critiques of the Commission's proposal pertains to its failure to consider the capacity of users and businesses to utilize multiple platforms for the same purpose. This practice is defined by Armstrong (2006) as “multi-homing” which can prevent competitive bottlenecks from arising.
A prime example of this is evident in the realm of hotel reservations, where users have the option to compare prices and book rooms through various available platforms or directly through the hotel's website. Similarly, hotels can offer their rooms through these diverse channels. The occurrence of multi-homing, as well as the associated costs, are widely recognized in the platform economics literature as key indicators for assessing market power entrenchment. When customers have the ability to engage in multi-homing, they are more likely to evade conditions imposed by a single platform by increasing their usage of a competing platform (Belleflamme and Peitz, 2019).

The concept of multi-homing has been suggested as a criterion for determining gatekeepers by a panel of economic experts on the EU Joint Research Center . Therein, Cabral et al. (2021) suggest quantitative metrics such as the reliance on referral traffic from major search engines, as well as the extent of multi-homing by users on both sides of the market were utilized to measure the degree of platform dominance.

For example, e-commerce or ride-sharing platforms have low switching costs for users, enabling a higher degree of multi-homing compared to mobile operating systems, which require the purchase of a new device.

Applying the concept of multi-homing to video-streaming platforms is especially relevant, as the switching cost depends heavily on the business model of said video platform. For an end user, switching between video-streaming services that require no fixed subscription fee is a lot easier than switching between subscription style streaming services like Netflix and Amazon Prime.

Therefore, multi-homing will play a crucial role in measuring platform dominance within the different video-streaming platforms analyzed in the case study of Chapter 4.

4. Case Study

4.1 Methodology

This chapter aims to explore and compare the implications of the DMA on the different business models of the video-streaming platforms Youtube and Netflix. The analysis will adopt a descriptive approach through a comparative Case Study. The objective is to apply the gatekeeper criteria of Article 3 (2) DMA onto these 3 companies, as well as to cross-check the results with an external framework, provided by Jacobides (2021) in his scientific article about ‘What Drives and Defines Digital Platform Power?’.
Youtube and Netflix were selected due to their dominant positions in their respective AVOD vs. SVOD market sectors.
Although the general methodology of the case study has been established in chapter 1, the following subchapter will leverage the acquired understanding of the DMA from chapter 3 to construct a comprehensive analytical framework. The following 4 questions will serve as a roadmap for our case study and facilitate the exploration of research question number 2.

A. *How does the studied case provide it’s video streaming service to the end user? (Business Model)*
B. *Does the case fulfill the thresholds listed under 3 Article 3 (2) of the DMA? (Gatekeeper Criteria)*
C. *Does the case fulfill the framework criteria of platform dominance according Jacobides? (Platform Domincance)*
D. *What would be the practical implications of the gatekeeper obligations for the studied case? (Future Implications)*

It is worth mentioning that Jacobides predominantly employs the terminology of "consumers" instead of "end users" and "sellers" instead of "business users" or “content creators”. For the purpose of this study, these terms will be used interchangeably.

4.1.1 Business Model

In his policy brief, Ducci (2021) argues that a universal definition of gatekeeper and a standardized set of rules for their conduct cannot exist. The identification of gatekeepers and the corresponding obligations that arise should consider the specific business models of companies.
Therefore, in the initial stage of the following case study, the companies in questions will be introduced briefly. Then, their business models along with the discoveries made earlier in this thesis will be analyzed.
The exact revenue model will be compared, as well as the role of the content creators and the consumers on the platform.
The objective here is to determine Netflix, and YouTube's position in the VOD market and show the crucial role that leveraging their entrenched position plays in their business models and ecosystems. Additionally, any ownership relations of said VOD platform will be incorprated into the analysis.

4.1.2. Gatekeeper Criteria Article 3 (2)

As elaborated in chapter 3.1.3., in accordance with Article 3 (1) DMA a company has to

a. have a significant impact on the internal market;
b. provide a CPS which is an important gateway for business users to reach end users; and
c. enjoy an entrenched and durable position, in its operations, or it is foreseeable that it will enjoy such a position in the near future

in order to qualify as a gatekeeper.

In order to quantify, wheter a company meets those criteria, the threshold for qualifying as a gatekeeper are listed in Article 3 (2) as:

a. annual turnover of a minimum of EUR 7.5 billion in the EU in each of the last three financial years, or a market valuation of at least EUR 75 billion in the last financial year and it provides the same core platform services in at least three Member States;
b. at least 45 million monthly EU active end users and at least 10.000 yearly EU active business users in the last financial year;

c. the thresholds of (b) have been met for the last three financial years.

These three criteria will be applied to the cases under scrutiny and analyzed for their fulfillment. The triangulate method, recommended by Ghauri & Firth (2009) will be employed during data collection to enhance data validity. Official year-end reports of the companies in question will be consulted to determine their annual turnover. The assessment reports of experts will serve as a guideline for market valuation, and will be compared with one another. To determine whether a company offers its CPS in at least three member states can be easily verified by consulting the company's website.
However, obtaining information about the threshold of 45 million active end users and 10,000 business users poses a challenge, as these numbers are typically not disclosed by companies. If disclosed, they are usually provided on a global or continental scale, making it difficult to gauge the exact numbers for EU states only. To overcome this challenge, multiple sources will be consulted and considered to obtain the most accurate result. Additionally, own calculations will be conducted in order to approximate an accurate result. These calculations can be found in the appendix of this document.
Should such reports be contradictory, the results don't have to be classified as either true or false. Instead, "we can treat such responses as displays of perspectives and moral forms" (Silverman, 1993, p. 107).

4.1.3. Platform Dominance

In his research, Jacobides (2021) focuses on identifying platforms that possess a unique combination of being both a "bottleneck" and an "unavoidable intermediary." These platforms have the ability to leverage their position to control and extract economic profit. Rather than solely relying on objective characteristics such as user or engagement levels, Jacobides emphasizes the importance of qualitative attributes that collectively describe a platform.
This distinguishes Jacobides approach from the quantitative gatekeeper criteria that are laid out in Article 3 (2) DMA. Article 3 (8), 17 DMA acknowledge the possibility that Article 3 (2) could under- and/or over include certain CPS and does add the option of conducting a market investigation in order to revise the result of Article 3 (2).
This qualitative framework provided by Jacobides will act as an extended cross-check of

Article 3 (2) during this case study and will give a first impression on whether a more qualitative approach to platform dominance could contradict the quantitative gatekeeper designation of the DMA.

One key concept Jacobides explores is the notion of "relative replaceability," which has been shown to play a significant role in determining who can capture value within a sector or ecosystem. Platforms that are less replaceable can benefit from engaging in exclusionary conduct, thereby solidifying their essential role (Jacobides and Tae, 2015). Based on the factors discussed, Jacobides suggests a set of criteria that can be used to assess a platform's market power over sellers within a specific marketplace. The degree to which a platform meets these conditions determines whether it possesses power and the strength of that power.

This set of criteria are listed below and the wording has been adjusted to meet the different stakeholders of video streaming platforms.

Exclusive Access to End Users

If a platform possesses exclusive access to a large consumer base, content creators who are solely reliant on that video-streaming platform will lose access to consumers if they switch platforms or opt out. However, in a competitive market, consumers can be reached through multiple channels, preventing any single platform from exerting control over exclusive access to consumers.

The classic example of exclusive access to consumers is ofen referred to the “App Store” on Apple devices. Apple controls the functionality of the iPhone, iOS, and the App Store, and by Apple’s policy, the App Store is the only way that users can install apps on its iOS devices (Shoemaker, 2019). Thus the App Store gains exclusive access to all users that own an Apple device and gains platform dominance.

→ Should exclusive access to consumers be confirmed, then this indicates a higher platform dominance.

Difficulty of Multi-Homing or Platform Switching

If consumers face challenges, such as high costs or significant effort in using multiple video-streaming platforms, content creators cannot leave a platform without sacrificing access to the consumers present on it. In other words, if a content creator were to switch from a platform with high switching costs for consumers who exclusively use that platform, the content creator would lose access to those consumers.

→ If multi homing for consumers proves to be difficult, this indicates a higher platform dominance

Substitutability of Content Creators

If content creators are easily substitutable to consumers, for instance, if multiple content creators offer similar goods and services, consumers can easily switch between content creators. Consequently, consumers can switch content creators more readily than they can switch platforms, allowing platforms to exert their power over content creators without facing consequences of the departure of any specific content creator, thereby foreclosing competition.

→ If content creators are easily substitutable for the consumer, this indicates a higher platform dominance.

Network Effects and Multi-Homing Requirements

If a content creator is compelled to serve a video-streaming platform in order to maximize the value it provides to consumers on other platforms, forgoing service to the first platform would harm the content creator. By leaving the platform, the content creator not only loses access to the consumers on that platform but also provides less value to its consumers on other platforms. This makes it harder for content creators to opt-out of the platform even in the face of restrictive terms or high pricing. The classic example of an online platform with high network effects for its users are dating platforms, where a user of *platform A* greatly benefits from additional users on *platform B*, as it increases the pool of potential "matches".

→ If a strong network effect requires the content creator to multi home, this indicates a higher platform dominance

Barriers to Entry

An established platform with an established network, network effects, and a sticky ecosystem can effectively deter alternative platforms from entering the market. Such a platform may require limited investment to attract content creators and stimulate network effects. Conversely, early-stage platforms typically face the challenge of investing in building network effects by attracting content creators to attract consumers, which can pose a

formidable barrier to entry.

→ If strong network effects lead to a high barrier to entry, this indicates a higher platform dominance

These 5 points will be analyzed subsequently and answered with either “rejected”, “confirmed”, or “indecisive”.

4.1.4. Possible Gatekeeper Obligations

In the final stage of the analysis, the existing business model of step A will be compared with the forthcoming gatekeeper obligations outlined in Article 5 and 6 DMA. Since these obligations are set to take effect in March 2024, the precise modifications implemented by the companies can only be estimated. The relevant Articles will be referenced and evaluated to determine their potential implications on the day-to-day operations of the video-streaming platforms.

4.2. Youtube

YouTube is a prominent video-streaming platform that allows users to upload, share, and view a wide variety of videos. It was founded in 2005 by three former PayPal employees and has since become one of the most popular websites globally. YouTube's business model revolves around advertising revenue generated from its vast user base and content creators.

4.2.1. Business Model

YouTube operates on an ad-supported video on demand (AVOD) model, which means that users can access the platform and its content for free. The platform generates revenue primarily through advertising, with advertisers paying to display their ads before, during, or alongside videos. YouTube offers various advertising formats, including display ads, overlay

ads, skippable and non-skippable video ads, and sponsored content. Additionally, Youtube has been pushing their optional subscription service “Youtube Premium”, which allows subscribers to avoid most of the ads and gives access to additional features and is currently available in the EU for €11.99 per month (*YouTube*, 2023).
Youtube Premium has become a growing revenue source for the company, amounting to 80 million subscribers in 2022 (Iqbaal, 2023) and saw its revenues rise 9%, from $6.81 billion in Q1 2022 to $7.41 billion in Q1 2023 (Alphabet Inc., 2023)

Role of Content Creators:

Content creators play a crucial role in YouTube's ecosystem. They upload videos on various topics, ranging from entertainment, education, music, gaming, and more. These creators can monetize their content through YouTube's Partner Program, which allows them to earn a share of the advertising revenue generated from ads displayed on their videos. Content creators can also engage with their audience, build a subscriber base, and potentially earn additional income through brand partnerships, merchandise sales, and crowdfunding.
In the context of the DMA, content creators are the business users, that use the video-streaming platform in order to reach the end users, the consumers of their video content.

Ad-Supported Video on Demand (AVOD) Service:

Unlike subscription-based video streaming services like Netflix, YouTube operates as an ad-supported video on demand platform. This means that users can access content for free, supported by advertisements. This model allows YouTube to reach a vast audience and offer a wide range of content without requiring users to pay a subscription fee. Advertisers benefit from the platform's extensive reach and targeted advertising options, while content creators have the opportunity to monetize their videos through ad revenue.

Overall, YouTube's business model combines its massive user base, content creators, and advertising revenue to provide a free and accessible platform for video streaming. Its integration with Google and AVOD approach has contributed to its dominance in the online

video industry. In the following steps, the case study will assess whether Youtube does fulfill the gatekeeper criteria listed under Article 3 (2) DMA and compare it with the framework for platform dominance provided by Jacobides.

Google Ownership:

In 2006, YouTube was acquired by Google, making it a subsidiary of Alphabet Inc., Google's parent company. This acquisition provided YouTube with significant resources and technological support, enabling its growth and expansion. Google's ownership has also allowed for integration with other Google services, such as Google Ads, Google Analytics, and Google Cloud, enhancing YouTube's advertising capabilities and data analytics.
This ownership relation with a company, that has been dominating the digital landscape not only in the EU, but the whole world, is certainly a factor to analyze in the upcoming analysis.

The examination of the ownership relationship with a company like Google/Alphabet who have exerted significant influence over the digital landscape, not only within the European Union but globally, constitutes a crucial aspect in the upcoming analysis.
Furthermore, this ownership structure leads to the following scenario: Alphabet is the company, that would get labelled as a gatekeeper, should YouTube (or any other CPS of Alphabet) fulfill the criteria of Article 3 (2) DMA.

4.2.2. Gatekeeper Criteria Article 3 (2)

Annual turnover & Market capitalization

Article 3 (2) a) stipulates a criterion of an annual turnover amounting to EUR 7.5 billion within the European Union over the course of the last three fiscal years.

For reliable information, the most official reference available is the annual report of Alphabet, the parent company of Google, which in turn holds ownership of the CPS YouTube. Figure 3 displays the global revenue figures for the past three years as provided by this source. Nonetheless, it should be noted that these figures only partially classify the revenue streams relevant to our research objectives.

Disaggregated Revenues

The following table presents revenues disaggregated by type (in millions):

	Year Ended December 31,		
	2020	2021	2022
Google Search & other	$ 104,062	$ 148,951	$ 162,450
YouTube ads	19,772	28,845	29,243
Google Network	23,090	31,701	32,780
Google advertising	146,924	209,497	224,473
Google other	21,711	28,032	29,055
Google Services total	168,635	237,529	253,528
Google Cloud	13,059	19,206	26,280
Other Bets	657	753	1,068
Hedging gains (losses)	176	149	1,960
Total revenues	$ 182,527	$ 257,637	$ 282,836

No individual customer or groups of affiliated customers represented more than 10% of our revenues in 2020, 2021, or 2022.

The following table presents revenues disaggregated by geography, based on the addresses of our customers (in millions):

	Year Ended December 31,					
	2020		2021		2022	
United States	$ 85,014	47 %	$ 117,854	46 %	$ 134,814	48 %
EMEA[1]	55,370	30	79,107	31	82,062	29
APAC[1]	32,550	18	46,123	18	47,024	16
Other Americas[1]	9,417	5	14,404	5	16,976	6
Hedging gains (losses)	176	0	149	0	1,960	1
Total revenues	$ 182,527	100 %	$ 257,637	100 %	$ 282,836	100 %

(1) Regions represent Europe, the Middle East, and Africa (EMEA); Asia-Pacific (APAC); and Canada and Latin America ("Other Americas").

Fig. 3: Year End report Alphabet (Alphabet, 2023, p. 59)

The revenue categories under consideration are "YouTube ads" and "Google other". Due to its AVOD business model, it is be expected that YouTube ads will constitute the majority of YouTube's revenue. However, it is important to also take into account the revenue from YouTube Premium and YouTube TV, which falls under the "Google other" category. However, it should be noted that this category also includes other, additional revenue streams from Google, which may lead to an inflated figure (Alphabet, 2023, p. 28).

In the subsequent step, only the revenue generated within the EU needs to be considerated. In Alphabet's report, the closest regional revenue filter applied is the Europe, Middle East, and Africa (EMEA) region. While this includes all EU member states, it also encompasses the Middle East and Africa, thereby further inflating the numbers. In order to further approach revenue only generated in EU member states, the published YouTube User statistics were consulted (YouTube Statistics, 2023). Therein, Europe as a region was responsible for 27% of all YouTube views, whereas the MENA region claimed only 7%. This resulted in calculating with 74,1% of the EMEA revenue listed in the Alphabet report.

While views do not equal revenue, it can help as an approximation in order to approach a

realistic EU-revenue, as views are responsible for generating advertisement based revenue. For more information on the calculation process, please refer to the appendix.

	2020	2021	2022
1.Youtube Ads + Google Other	9221,6709	13065,21567	12527,65722
2.YouTube Ads	4395,3156	6625,98495	6284,02827
3.Youtube Ads + Youtube Premium	4661,8533	7070,21445	6994,79547

Table 4: Different approaches of estimating YouTube's revenue in the EU, in € million (own calculation)

As can be deduced from table 4, by taking the first and broadest calculation approach possible, the threshold of EUR 7.5 billion turnover in each of the last three financial years in the EU has already been reached.
However, as the "Google Other" category, which is included in this calculation, does not limit the revenue to YouTube services. Thus, the actual revenue number seems to be much smaller.

The second and more conservative approach focuses on YouTubes core revenue model of AVOD. As depicted in row two of table 4, the threshold has not been reached in any year so far. However, should YouTube keep its growth trajectory, it will soon reach the revenue threshold of 7.5 billion with it's ad-revenues alone.

The third approach tries to find a compromise between including all relevant revenue streams of YouTube while at the same time keeping the data accurate and reliable. By calculating an estimate of the revenue generated of its subscription service "YouTube Premium", it can be concluded that YouTube reached the €7 billion revenue line in 2020. A breach of the threshold of €7.5 billion seems inevitable, but would need to be breached in 3 consecutive years in order to fulfill the criteria.

Although the annual turnover may not reached, a market valuation of at least EUR 75 billion in the last financial year can lead to the fulfilment of Article 3 (2).
The gatekeeper criteria in point b of Article 3(2) DMA states that a company can be considered a gatekeeper if its market capitalization exceeds EUR 75 billion in the last financial year. The Market capitalization of Alphabet Inc., the parent company of Google and

YouTube, is calculated by multiplying the total number of a company's outstanding shares by its current stock price. By employing the average exchange rate of 2022 (1 Dollar = 0.951 EUR), a market capitilization of 1,09 €trillion can be derived, thus easily breached the threshold provided by point a of Article 3 (2) DMA (Companiesmarketcap.com, 2022).
As for the final point of the paragraph, YouTube does offer its core platform service in at least three member states, as Youtube operates globally.

In summary, Article 3 (2) a) can be seen as fulfilled. Although the annual turnover threshold has not (yet) been reached, Alphabets market capitalization of €1,09 trillion makes it meet the criteria.

➢ **Article 3 (2) a) can be deemed as fulfilled**

Active Business & End Users

In accordance with Article 3 (2) b), the CPS must possess a minimum of 45 million monthly EU active end users and at least 10,000 yearly EU active business users during the previous financial year. Furthermore, this threshold must be met over the course of the past three financial years, as stated in Article 3 (2) c).

Similar to the challenges faced when calculating the annual turnover limited to the EU, comparable difficulties are encountered in determining the number of active users.
Nonetheless, even the most conservative estimations indicate a violation of the threshold. For instance, the global yearly active end users of YouTube reached 2.6 billion in 2021. Furthermore, in Germany alone, the yearly active end user base amounts to 70 million individuals, surpassing the 45 million threshold (*YouTube Users, Stats, Data, Trends, and More*, 2023). Consequently, it does not appear necessary to invest time and resources into further calculating the precise number of end users for the EU.

The issue of determining the number of yearly active business users presents a similar challenge. In the case of YouTube, business users are defined as the individuals responsible for creating content on YouTube channels. Regrettably, there is a lack of publicly available data regarding the precise number of active YouTube channels in the European Union over

the past years. Nevertheless, a manual search on the website hypeauditor.com was conducted to identify the 1000 largest YouTube channels in each EU country. This website provides a comprehensive list of up to 1000 YouTube channels per country. It is worth noting that while some smaller EU member states exhibit fewer than 1000 active YouTube channels (e.g., Austria: 250, Belgium: 254, Portugal: 800), the majority possess at least 1000 active channels. Notably, countries such as France, Germany, Spain, Greece, the Netherlands, Italy, Poland, Slovakia, and Romania all boast a minimum of 1000 active YouTube channels, as reported by Hypeauditor (Top 1000 YouTube Channels | HypeAuditor, 2023).
Therefore, counting all reported numbers of EU countries together, it can be concluded, that the threshold of 10.000 active business users has been reached.

➢ **Article 3 (2) b) and c) can be deemed as fulfilled**

4.2.3. Platform Dominance Jacobides

Exclusive Access to Consumers

YouTube does not have exclusive access to consumers in the VOD industry. The same user can be accessed through multiple different VOD platforms on the same or different types of devices. It can be concluded, that YouTube does therefore not exert additional platform dominance by obtaining privileged access to consumers.

➢ rejected

Difficulty of multi-homing or platform switching

The difficulty for end users to switch to a different VOD platform depends on the type of revenue model. Switching from the AVOD platform YouTube to another AVOD service like Twitch does neither require a paid subscription nor does it require the creation of a personalized account at all. While both of these options are available on Twitch in order to personalize one's viewing experience or unlock additional benefits via a paid subscription, they are not mandatory. Both time and monetary constraints are significantly lower than opposed to multi-homing SVOD platforms like Netflix.

Based on a survey conducted by Statista (2021) in the US, it has been found that 84% of individuals in the age group of 18 to 25 are considered active YouTube users. Additionally, a considerable 61% of respondents in this age range are also active users of TikTok, while 16% of them actively participate on Twitch. These findings suggest that, despite YouTube's dominant position as the most popular AVOD service, it is not uncommon for individuals to multi-home and utilize different video-sharing platforms.

- ➢ No additional platform dominance through the difficulty of multi-homing or platform switching (rejected)

Substitutability of Business Users

YouTube boasts over 10 million active YouTube channels worldwide that can be classified as business users in our context. This number alone suggests, that substitutability is easy for the platform. Furthermore, the average end user is subscribed to 40 YouTube channels and 60-90% of a channels watch time comes from non-subscibers anyway.

Thus one business user leaving the platform would result in an insignificant drop of content for the end user, which makes it less likely that said end users would follow the business user to another platform.

This is not to say that there would be no reasons for business users to leave he platform.

Content creators commonly complain about YouTube's business practices such as intransparent search algorithms, unfair revenue models, and seemingly arbitrary demonetization of certain videos. These complaints are often spearheaded by big content creators with millions of subscribers, such as the example of "penguinz0", a channel with 13

million subscribers. In his video (*Youtube Change is Worse Than I Thought*, 2023), the content creator goes into detail about ___

Penguinz0 effectively utilizes multi-homing and incorporates another AVOD service, namely "Twitch," for his live-streaming content. Nevertheless, he persistently uploads videos to his YouTube channel and has not abandoned the platform. Other examples of content creators publicly and repeatedly criticizing YouTube, but not daring to miss out on the video platform are “jacksepticeye”(*Youtube has some serious issues...*, 2022; *The Youtube issues get worse*, 2022), or “Joueur du Grenier”, one of the largest french Youtubers (*Serious talk - Claim & Démonétisation sur Youtube / Avenir et Article 13*, 2018; *Youtube m’ennuie.*, 2019) . This is suggesting that the platform has acquired such an entrenched position for business users, that is has become without alternative. Consequently, this further enhances the substitutability potential the platform holds over its business users. YouTube remains unaffected by the departure of any single content creator, thereby enabling it to exert its dominance over sellers and stifle competition without facing repercussions. Only a widespread migration of content creators to an alternative platform, could potentially diminish the substitutability of YouTube. Such a migration is currently happening within the AVOD subsector of live-streaming platforms, notably between the two platforms of Twitch and Kick.

The business users of Twitch, referred to as streamers, expressed dissatisfaction with the recently announced revenue split agreement. Originally, revenue generated through user subscriptions and donations was divided in a ratio of 70/30 between the streamers and the platform. However, the new agreement, announced in late 2022, introduced a shift towards a 50/50 split. Consequently, when the newly launched live-streaming platform Kick enticed streamers with an appealing 95/5 split model, many streamers seized the opportunity to depart from Twitch towards Kick (Sternlicht, 2023). In response to the discontent and mass migration to a rival platform, Twitch eventually revised its revenue split strategy in June 2023 and reintroduced the 70/30 split model (Hatmaker, 2023) for its most popular streamers.

This brief illustration involving Twitch and Kick serves to demonstrate that substitutability can pose a challenge for AVOD platforms, particularly when competitors present enticing alternatives for business users. However, in the case of YouTube, a lack of evidence of business users abandoning the platform becomes evident. The entrenched and dominant

market position held by YouTube contributes to a high degree of substitutability of business users.

- ➢ Confirmed: High substitutability of business users leads to additional platform dominance for YouTube

Network Effects and multi-homing requirements for business users

Direct network effects for users are generally not applicable to AVOD services. The main benefit that end users receive from subscribing to AVOD platforms like Youtube is the consumption of media. There is neither a benefit nor a possibility for engagement with viewers from other platforms in order to fully enjoy the value proposition offered by YouTube.

- ➢ Rejected: No additional platform dominance due to business users being forced into multi-homing due to network effects or benefits for the end user

Barriers to entry

Within the AVOD sector, there is a notable lack of competitors that can rival YouTube. While alternative platforms do exist, they have not achieved the same level of success and tend to cater to specific niche audiences. For instance, Vimeo focuses on delivering high-quality, artistic content and holds a respectable 19% market share in the "video-sharing platforms used by companies" sector, in contrast to YouTube's dominant 75% (Datanyze, 2023).

Moreover, YouTube also holds sway in terms of the number of end users it attracts. In Europe alone, the platform boasts 401.7 million monthly users, which accounts for 53.8% of the continent's population actively engaging with the platform. Nevertheless, new contenders do emerge in the market. Notably, the AVOD platform TikTok has recently experienced considerable success by specializing in short videos and offering easily adjustable filters and video special effects. With 125 million active monthly users in Europe, TikTok demonstrates that it is possible for a new AVOD platform to establish itself, even if it has not yet reached the level of YouTube.

Barriers to entry for competitors to YouTube can be significant due to several factors:

1. Brand and User Trust: YouTube has established itself as a trusted and well-known platform for video sharing. It has built a strong brand reputation and user trust over the years, making it difficult for new competitors to gain a similar level of credibility. This is backed by a study investigating Aaker's brand personality scale for Youtube and concluding that "YouTube's personality can be characterised as very exciting and reasonably sincere"(Mutsikiwa and Maree, 2019, p.295).

2. Network Effects: YouTube benefits from network effects, where the value of the platform increases as more users join and contribute content. With a large user base and extensive content library, YouTube attracts more viewers and creators, reinforcing its dominant position. New entrants would need to overcome the challenge of attracting a critical mass of users to achieve similar network effects. This network effect has been discussed above within the issue of substitutability of business users, which poses no problem for YouTube (Budzinski et al, 2021)

3. Content and Creator Ecosystem: YouTube has a vast and diverse range of content, including established creators, influencers, and celebrities. It also offers various monetization options for creators, such as advertising revenue, channel memberships, and merchandise sales (Hall, 2022). Competitors would need to attract and retain high-quality content creators and provide comparable monetization opportunities to compete effectively.

4. Infrastructure and Technology: YouTube has invested heavily in its infrastructure, including data centers, content delivery networks, and video streaming technologies. Building a similar infrastructure from scratch requires significant financial resources and technical expertise (Vonderau, 2016).

5. Licensing and Copyright: YouTube has established agreements with major content creators, media companies, and music labels, allowing it to host a wide range of copyrighted content (Tushnet, 2015). Obtaining similar licensing agreements and managing copyright issues can be challenging for new entrants, especially without an established track record.

Overall, the combination of brand reputation, network effects, content ecosystem, infrastructure, licensing agreements and advertising dominance creates significant barriers to entry for competitors looking to challenge YouTube's dominance in the video-sharing market.

- ➢ Confirmed: YouTube exerts additional platform dominance due to its substantial barriers to entry for alternative AVOD platforms

4.2.4. Possible Gatekeeper Obligations

Article 5, 6 and 7 DMA lay down all potential obligations Gatekeepers will have to adhere to, should they be designated as such.

In its year-end report of 2022, Alphabet specifically referred to the DMA by name under its "Risks related to laws, regulations and policies" section: Therein, Alphabet claims that "Laws and regulations focused on large technology platforms, including the Digital Markets Act in the European Union (EU)" will likely affect its "billing policies, fees, and business model…"(Alphabet Inc., 2022, p. 13).

The exact changes in business practices are not outlined in the report and will only take effect after the gatekeeper designation state, the earliest in January 2024. Nevertheless, the following section will provide a glimpse into the possible gatekeeper obligations YouTube may be subjected to in the future.

Some possible gatekeeper obligations for YouTube under the DMA could include:

Transparency and Non-Discrimination

Article 6 (5) does impose upon gatekeepers that they shall not treat products affiliated with the gatekeeper itself more favorably than other products offered on that platform. Furthermore, the gatekeeper is obliged to apply transparent, fair and non-discriminatory conditions to all rankings on their platform.

This means that YouTube may be required to provide transparent information about its ranking algorithms and content moderation policies. It may also be obligated to ensure non-discriminatory treatment of different content creators, preventing any unfair advantage or disadvantage for certain creators on the platform.

The YouTube algorithm is a complex system that determines which videos are recommended to users based on a variety of factors. In 2018, YouTube's recommendation system was already responsible for generating over 70 percent of viewing time on its platform (Nicas, 2018). The algorithm is designed to maximize user engagement and satisfaction by suggesting videos that are likely to be of interest to each individual user. The algorithm takes into account various factors when recommending videos, including user preferences, video performance and watch times (Geyser, 2019).
For business users, having their videos recommended by the algorithm can significantly increase their viewership and subscriber count and in turn, their revenue. For end users, the algorithm keeps them engaged with the platform and delivers the content they are looking for, whether it be consciously or subconsciously.

However, the algorithm has been subject to criticism and controversy. Business users as well as end users feel that it is not transparent enough, and they have raised concerns about the potential for biased recommendations and unfair treatment(*Youtube m'ennuie.*, 2019; *The Youtube issues get worse*, 2022). Researchers have criticized YouTube for its lack of cooperation in disclosing detailed information about the algorithm, which poses challenges in conducting studies with insufficient data (Walker, 2019). Such a case study about the recommendation system of online video platforms by Singh (2020) concluded that YouTube did "not provide significant transparency around how its recommendation system operates, thus limiting the agency users have over their personal YouTube experience."

The situation could potentially change should YouTube be compelled to disclose its ranking algorithms and make adjustments to ensure fairness towards businesses and end users, as mandated by Article 6 (5) DMA. However, the finale outcome hinges on the European Commission's definition of "transparent, fair and non-discriminatory conditions to such rankings" (EUR-LEX, 2022, p. 35).

Offering products and services on alternative platforms

Article 5 (3), (4) of the DMA guarantees business users the right to offer their products and services on both the gatekeeper platform and third-party marketplaces. This means that a YouTube channel is permitted to promote and sell its video content on other video-streaming platforms, without being subjected to exclusivity regulations imposed by YouTube.

Additionally, business users have the freedom to include links to other platforms in their YouTube profiles and within their videos. This provision holds significant importance for business users on YouTube, as they rely on merchandise sales through third-party platforms. Although YouTube currently allows this practice, it would prevent YouTube from prohibiting it in the future in order to promote its own merchandise integration and further its entrenched position.

Furthermore, many YouTubers utilize crowdfunding platforms such as "Patreon" or "OnlyFans" to generate additional revenue and foster community engagement. End users subscribe to these third-party platforms and pay a monthly fee to access exclusive content (‘What is Patreon? And how Patreon is helping YouTubers’, 2016). The common practice of redirecting one's YouTube audience to a crowdfunding platform serves as a significant revenue stream for many business users on YouTube. To provide context, as of 2022, Patreon accommodated 221,730 content creators worldwide, with 38% of them focusing on video content.(Statista, 2023d, 2023c)

These two examples of merchandise sales and crowdfunding subscriptions demonstrate the notable reliance of YouTube's business users on external, third-party platforms. In 2017, YouTube imposed restrictions on content creators, prohibiting them from including external links within their videos. Only business users who are part of the YouTube Partner program are currently allowed to promote their Patreon channels or any other external link in their videos (Klepek, 2017). Article 5 (3), (4) DMA could potentially compel YouTube to revise its policy and reinstate the allowance of external links for all content creators, not solely those affiliated with the YouTube Partner Program.
The answer to this query can be found in the precise definition of the phrase "business users" on YouTube: Can an individual who generates content on YouTube but is not enrolled in the YouTube Partner Program be categorized as a business user? This matter was discussed in Chapter 4.2.2. and ultimately will come down to an evaluation by the EC.

In conclusion, YouTube will be unable to further restrict the ability of its business users to sell content on alternative platforms or promote these platforms within their YouTube content. It might even be obligated to loosen the conditions of its YouTube Partner Program in order to comply with Article 5 (3), (4) DMA.

Fair and Open Advertising Practices

Article 5 (9) obligates gatekeepers to ensure fair and transparent advertising practices, preventing any anti-competitive behavior or preferential treatment of its own advertising services. Notably, gatekeepers need to provide to advertisers as well as to the publishers with exact performance metrics of their respective advertisement campaigns. In this case both the advertisers (the entity buying the ads) as well as the publishers (the YouTube channel on which the ads run), are business users on YouTube.

It is worth noting that YouTube already offers “Google Ads” for advertisers as well as the “Youtube Studio” for publishers, which both offer insights and analytics on their involvement with video advertisements. However, the extent of those obligations might force YouTube to increase the capabilities of both tools for advertisers and publishers. As YouTube currently relies on its AVOD revenue model, those additional requirements from Article 5 (9) DMA are of significant impact for the business practices of the company.

Data Privacy

At the beginning of the gatekeeper obligations section in the DMA, Article 5 aligns with the data privacy rights of end users of online platforms. Further restrictions on the processing of data from end users are outlined in Article 5 (2) points a-d. Emphasis is placed on prohibiting the collection or utilization of data with other CPS owned by the gatekeeper. This is particularly noteworthy for YouTube, as its parent company, Alphabet, possesses numerous other products and services (Browse All of Google’s Products & Services - Google, 2023), many of which may be considered relevant CPS.

For instance, YouTube may no longer incorporate data collected from an end user's inputs into the Google search engine into its video algorithms on YouTube. Additionally, data may not be collected from end users who utilize third-party services that make use of the gatekeeper's platform.
However, such usage is allowed if the end user provides active consent in accordance with the consent practices outlined in Article 7 of the GDPR.
These obligations concerning data protection demonstrate the EC's willingness to utilize the existing regulatory framework of the GDPR as a foundation which the DMA can be built upon.

4.3. Netflix

Netflix is a subscription-based video on demand (SVOD) service that offers a varietye of movies, TV shows, documentaries, and other original content. It was founded in 1997 as a DVD rental service and has since has transformed into one of the largest and most influential video-streaming platforms globally.

4.3.1. Business Model:

Netflix operates as a subscription-based Video-on-Demand (SVOD) service, where users pay a monthly fee to access its content library. The platform offers different subscription plans with varying features and pricing tiers. Subscribers can stream unlimited content on multiple devices, including smart TVs, smartphones, tablets, and computers. Netflix also provides personalized recommendations based on users' viewing history and preferences.

Unlike ad-supported platforms like YouTube or Twitch, Netflix does not rely on advertising revenue to sustain its business. Instead, its primary source of income comes from subscription fees paid by its subscribers. This model allows Netflix to offer an ad-free viewing experience and focus on delivering high-quality content to its users (Hivelr Business Review, 2023).
However, in 2022, Netflix implemented a modified pricing strategy by introducing a more affordable subscription option that incorporates advertisements into the viewing experience.
The new ad-supported subscription has not yet been incorporated in the EU and is restricted to the US market only. The ad-based subscription costs $6.99 and will trigger advertisements to be played before or during the viewing experience (*Plans and Pricing*, 2023) .
This strategic shift was prompted by the deceleration in new subscribers and revenue growth, as well as the prevalence of account sharing among its customers. Moreover, the intensified competition from Hulu, HBO, and other established television production companies compelled Netflix to recognize the impending stagnation of its revenue. Consequently, the company undertook a thorough examination of its customer profiles and planned to accommodate a market segment that showed a strong inclination towards subscribing to its

content at reduced price levels, even if it meant the inclusion of advertisements (Punwasee, 2022).

Content creators play a crucial role in Netflix's value chain. They are responsible for producing the movies, TV shows, and documentaries that Netflix offers to its subscribers. Netflix collaborates with various production studios, independent filmmakers, and content creators to acquire or produce original content.

Netflix has gained recognition for its investment in original programming, including critically acclaimed series like "Stranger Things," "Narcos," and "The Crown." By creating exclusive content and engaging in vertical value creation, Netflix aims to attract and retain subscribers, differentiate itself from competitors, and build a loyal user base (Hivelr Business Review, 2023).

Independent content creators can also submit their projects to Netflix through its submission process. If selected, Netflix may acquire the rights to distribute the content on its platform, providing creators with a broader audience and potential financial gains.

Unlike YouTube, which is owned by Google/Alphabet, and Twitch, which is owned by Amazon, Netflix operates independently without being owned by any other company. This independent ownership allows Netflix to have more control over its business decisions and strategic direction. At the same time, the lack of ownership relations may be of relevancy for the status of a gatekeeper as it makes the assessemnt of the gatekeeper criteria more streamlined and overall clearer.

In summary, Netflix's business model revolves around SVOD, offering a diverse range of content to its subscribers. Although this original business model of Netflix is quite different to its AVOD counterparts, the revenue models have since converged. With the implementation of a novel pricing strategy that combines a more affordable, advertisement-based subscription model, Netflix is now engaging in even more direct competition with AVOD platforms.
The following steps of our case study, will assess whether Netflix fulfills the gatekeeper criteria listed under Article 3(2) DMA and compare it with the framework for platform dominance provided by Jacobides.

4.3.2. Gatekeeper Criteria Article 3 (2)

In order to assess whether the company "Netflix Inc" can be categorized as a gatekeeper, the criteria outlined in Article 3 (2) will be applied to both the company and its main CPS, Netflix. To determine if the threshold of 7.5 €billion annual turnover has been exceeded, the yearend report of Netflix Inc will be examined.

During the analysis, similar challenges were encountered as with the yearend report of Alphabet, as the regional revenue segments are only segmented up to the EMEA region (table 5).

Europe, Middle East, and Africa (EMEA)

	As of/ Year Ended December 31,			Change
	2022	2021	2020	2022 vs. 2021
	(in thousands, except revenue per membership and percentages)			
Revenues	$ 9,745,015	$ 9,699,819	$ 7,772,252	$ 45,196 — %
Paid net membership additions	2,693	7,338	14,920	(4,645) (63)%
Paid memberships at end of period (1)	76,729	74,036	66,698	2,693 4 %
Average paying memberships	73,904	69,518	60,425	4,386 6 %
Average monthly revenue per paying membership	$ 10.99	$ 11.63	$ 10.72	$ (0.64) (6)%
Constant currency change (2)				6 %

Table 5: Annual Revenue Netflix Inc, EMEA region (*Netflix - Financials - Annual Reports & Proxies*, 2023)

Consequently, an approximation calculation was conducted to generate a close estimate of where Netflix Inc's revenue falls within the gatekeeper criteria spectrum.

According to the report, Netflix generated an average of $10.99 per subscription in 2022 (*Netflix - Financials - Annual Reports & Proxies*, 2023). Additionally, (Pascual, 2021) estimates that Netflix has 70.4 million subscribers in Europe. By multiplying Pascual's subscriber figure by the reference price provided in the year-end report, an annual revenue figure of 9.29 million € is obtained, as depicted in table 6. Revenue below 6.5 billion are shown in green, below 7.5 billion in orange and above 7.5 billion in red.

	2020	2021	2022
EMEA Revenue $	7.772.252.000$	9.699.819.000$	9.745.015.000$
EMEA Revenue €	6.816.265.004€	8.206.046.874€	9.267.509.265€
Europe Revenue $ (approximation)	7.461.120.000$	8.835.960.000$	9.289.613.102$

Europe Revenue € (approximation)	6.543.402.240€	7.475.222.160€	8.834.422.060€

Table 6: Netflix Revenue in the last 3 financial years (*Netflix - Financials - Annual Reports & Proxies*, 2023), (own calculation)

As shown above, Netflix is currently not fulfilling the gatekeeper criteria according to our approximation calculation. Even though they breached the threshold for the first time in 2022, this number has not been reached in the other 2 financial years of 2021 and 2020. Furthermore, the actual revenue numbers of the EU member states will be even lower, as in our calculation European states that are not a memberstate of the EU are included. However, when keeping the current growth trends, Netflix will surpass the threshold of 7.5 billion€ annual turnover in the near future.

Based on our approximation calculation, it is evident that Netflix currently does not meet the gatekeeper criteria of Article 3 (2) a). Although they exceeded the threshold for the first time in 2022, this breach was not replicated in the preceding financial years of 2021 and 2020. Moreover, it is important to note that the actual revenue figures for EU member states will be even lower due to the inclusion of non-EU European states in our calculation. However, it is reasonable to propose that if Netflix continues its current growth trajectory, it will likely surpass the annual turnover threshold of 7.5 billion € in the foreseeable future.

The second criterion that may contribute to the fulfillment of Article 3 (2) a) is the market capitalization of Netflix Inc. Market capitalization denotes the aggregate market value of a publicly traded company's outstanding shares and is commonly utilized to assess a company's overall worth. This metric is derived by multiplying the number of outstanding shares by the prevailing market value of a single share. In order to calculate the market cap of Netflix, data from the website companiesmarketcap.com (2023) will be utilized, which has calculated the company's market cap at $131.22 billion in 2022. By employing the average exchange rate of 2022 (1 Dollar = 0.951 EUR), a value of €124.79 billion is derived. This number succeeds the threshold of €75 billion by a vast amount and thus the criterion can be seen as fulfilled.

➢ **Point a) of Article 3(2) can be deemed as fulfilled.**

When evaluating point b) of Article 3 (2), the focus is on the number of active businesses and end users. In the case of Netflix, end users refer to the individuals who browse and watch the Netflix interface on their chosen media device. However, it is important to distinguish between Netflix's definition of a subscription and the DMA's definition of an end user. This distinction arises from the fact that a base subscription of Netflix can accommodate up to two individuals, while the premium subscription plan allows for up to three different users(*Abos und Preise*, 2023). Consequently, the actual number of end users is likely to be significantly higher than the number of subscription plans currently reported by Netflix (*Netflix - Financials - Annual Reports & Proxies*, 2023), p.22 (1)).

Regrettably, there is limited accurate data available regarding the precise number of individuals utilizing Netflix. Conversely, Netflix does report the number of subscriptions, which serves as a metric depicted in table 5. Therefore, for the purposes of our analysis, the number of subscriptions as a conservative estimate of Netflix's end user figures will be deployed. If the number of subscriptions exceeds the threshold of 45 million per year, point b) of Article 3 (2) can be deemed as fulfilled, as the actual number of end users can only be greater than the number of subscriptions utilized for estimation.
It is evident from the data in table 5 that Netflix reported 76 million paid subscriptions in the EMEA region by the end of 2022. However, it is important to note that the number of subscriptions limited to the EU region must be significantly lower than this figure. To address this discrepancy, the website flixpatrol.com was manually scraped to obtain the estimated subscription numbers for each EU country (Netflix Subscribers sorted by value • FlixPatrol, 2023) .The cumulative number of subscriptions in the EU that was obtained through this approach is 50.455.000 subscriptions.
This number does breach the established threshold of 45 million monthly active end users. Additionally, the fact that multiple users can access Netflix content through a single subscription raises the possibility that the threshold may have already been surpassed in the years 2021 and 2020, for which there exist no historic active end user data. In the end, the precise number of end users can only be provided by Netflix itself.

Based on the results above, it can be asserted with confidence that Netflix has surpassed the threshold of 45 million end users, thereby satisfying point b) of Article 3 (2). Nevertheless, point c) of Article 3 (2) imposes an additional condition, namely that the 45 million active end users must be reached over a period of 3 consecutive years. In light of the insufficient

data available for this scenario, it is not possible to confidently affirm the fulfillment of point b) of Article 3 (2).

Business users are not as easily defined in the case of Netflix. As opposed to Youtube or Twitch, there exists no direct contact between end users and business users on the platform of Netflix. However, Netflix does act as a platform, that displays the product and content of film studios or independent filmmakers. Those film studios are reliant on streaming services or TV channels to license their content in order to generate revenue and reach their target group, meaning end users.
This description of film studios or independent film makers matches point 21 of Article 2 DMA which defines business users as “any natural or legal person acting in a commercial or professional capacity using core platform services for the purpose of or in the course of providing goods or services to end users”.

Compared to YouTube and Twitch, it has been challenging to obtain specific information regarding the exact number of content providers that collaborate with Netflix. Furthermore, it is important to note that Netflix owns its own film studios and production companies, which produce the so-called "Netflix Originals". Those can not be considered business users in this particular context as they belong to the Netflix company.

Although the precise number of business users that engage with Netflix's SVOD platform could not be determined, an alternative approach can be employed to verify the application of the 10,000 business user threshold.
Initially, it is assumed that each show or movie is created by a maximum of one business user. While co-productions between two or more independent film studios are possible, they are infrequent occurrences. Although Ampere Analysis (Editor, 2018) estimated that the share of co-production content was around 12% in 2018, this pertains to co-productions between Netflix and a single film studio. No substantial data regarding co-productions between two independent film studios could be found, thus supporting our hypothesis that each piece of content is provided by a maximum of one business user.

Slovakia possesses the largest active content library in the EU, comprising 8427 titles that are readily available for streaming by end users with a Netflix subscription (Moody, 2023). It is

worth noting that a significant portion of these titles is produced by a single film studio, thereby reducing the number of active business users. Furthermore, Netflix's current approach of augmenting the proportion of "Netflix Originals" to achieve a 50/50 division further diminishes the potential pool of external business users (Moore, 2023).

Although an exact estimation of business users for Netflix is unavailable, it can be asserted with confidence that the number would be less than 10,000. This can be derived from the fact that the quantity of relevant titles that could be contributed by business users is certainly below that threshold.

➢ **Point b) of Article 3(2) can not be deemed as fulfilled.**

As point **b)** is not fulfilled, point **c)** is automatically seen as not fulfilled as per definition.

4.3.3. Platform Dominance Jacobides

Exclusive Access to Consumers

Netflix does not have exclusive access to consumers in the VOD industry. The same user can be accessed through multiple different VOD platforms on the same or different types of devices. Netflix does thus not exert additional platform dominance by keeping privileged access to consumers.

➢ **Rejected:** No exclusive access to consumers available and thus no additional platform dominance for Netflix

Difficulty of Multi-Homing or Platform Switching

The difficulty for end users to switch to a different VOD platform depends on the type of revenue model. Switching from the SVOD platform Netflix to another SVOD service like Amazon Prime or Disney+ requires creating a personalized user profile. Additionally, in order to use Netflix, a monetary commitment in the form of a monthly subscription fee of at least 7.99€ is required (Abos und Preise, 2023). On the other hand, empirical evidence shows,

that multi-homing is a common occurrence for the SVOD sector. According to a streaming survey conducted by Forbes in the US (Glover, 2023), 86.6% of individuals subscribe to more than 1 streaming service with the average person being subscribed to 2.8 services.
In summary, there exists a certain degree of difficulty for end users to switch from one SVOD to another. However, in practice, this does not seem to stop users from multi-homing effectively.
Therefore, our findings can neither confirm nor reject additional platform dominance through the difficulty of multi-homing.

- ➢ **Indecisive:** There exist a substantial amount of barriers to multi-homing for end users, however, in practice this seems to not (yet) result in additional platform dominance for Netflix

Substitutability of Content Creators

Popular shows on Netflix can be hard to substitute for the platform due to the strong backlash from fans of the show. This can be seen in the example of "The Office" leaving the Netflix library in many countries as the license expired in early 2023. However, due to the immense popularity and outcry from fans, Netflix was able to negotiate a last-minute deal with the rights holder NBC to extend the license for the future (Robinson, 2022).

"The Office" has a dedicated fan base that has grown over the years, and many viewers have become accustomed to watching the show on Netflix. The series has become a staple in popular culture and was the most streamed show in 2020 (*"The Office" is the most powerful force in streaming*, 2021). Therefore, when news broke that "The Office" would be leaving Netflix, fans expressed their disappointment and frustration on social media platforms.
In response to the backlash, Netflix recognized the value of retaining popular shows and the importance of meeting the demands of its subscribers. The last-minute deal to extend the license for "The Office" on the one hand demonstrates Netflix's willingness to invest in securing the rights to popular content, even if it comes at a high cost. On the other hand, it shows that the business user, in this case NBC, does hold a certain amount of leverage and is hard to substitute for the platform owner.
However, it is important to consider that this particular case involved an attempt to replace one of the most popular television shows in the world. It is worth noting that less popular

shows, which make up the majority of Netflix's content, are more easily replaceable, as evidenced by the fluctuation in the platform's title library over the years. For instance, in June 2023, a total of 80 titles were removed from the UK Netflix library, followed by 130 titles in July 2023. On the other hand, 91 new titles were added in June 2023 and 119 in July 2023 (*Leaving Soon on Netflix from Netflix*, 2023; *What's Coming Soon to Netflix*, 2023). With the current total number of titles in the UK being 7482 (Moody, 2018), it can be estimated that the annual substitution rate ranges from 13-16%. This indicates an ongoing and monthly substitution process, suggesting that business users can be easily replaced unless they are able to leverage their dedicated fan base into a strong negotiating position with Netflix.

- ➢ **Confirmed:** Sustainability of business users can be proven and leads to additional platform dominance for Netflix

Network Effects and Multi-Homing requirements

Similar to our previous AVOD service YouTube, direct network effects for users are generally not applicable to SVOD services. The main benefit that end users receive from subscribing to SVOD platforms like Netflix is the consumption of media. There is no requirement for engagement with viewers from other platforms in order to fully enjoy the value proposition offered by Netflix.

The sole potential advantage that end users may derive from a business user engaging in multi-homing is social value. Engaging in discussions about a show or movie with one's social circle, who may be subscribed to a different SVOD platform, could generated additional social value for end users. Consequently, this would increase the significance of multi-homing for the business user and diminish their bargaining power with SVOD platforms.

A survey conducted by M. Guo (2022) indicates that social norms exert a positive influence on the retention rate of SVoD consumers. Conversely, a study conducted by Azzahro, Ghibran and Handayani (2020) rejects all hypotheses claiming that social value has any impact on customer satisfaction or willingness to pay. Given the inconclusive findings and the overall minimal effect on end users' satisfaction levels, the claim that network effects and multi-homing requirements would result in additional platform dominance can be dismissed.

This is reflected by numerous film studios or license holders who opted not to engage with multiple platforms, instead choosing to sign exclusive contracts with a single SVOD platform. This trend is particularly evident with Netflix's emphasis on its "Netflix Originals" strategy, which includes producing its own content and securing exclusive licensing agreements for many titles in its library (Moore, 2023).

- **Rejected:** No definitive additional platform dominance due to network effects and multi-homing requirements present

Barriers to entry

Oliver Budzinski, Professor of Economic Theory at Ilmenau University of Technology, addressed the issue of competition and lock-in effects in the SVOD market. According to most economic theories, effective competition can prevent gatekeeping and reduces the barrier to entry. In the VoD markets, there is currently a lot of competition between SVOD services, but also with AVOD services (such as YouTube), and with linear television.
However, according to Budzinski, vertical integration can already be seen with some of the major VoD services such as Netflix, which produce and distribute content via the Internet to consumers' homes. The combination of this vertical integration, with an offer responding to consumers' desire for a one-stop shop, and the use of personalised data, in particular via algorithmic search and recommendation systems, may in fact lead to gatekeeper effects, barriers for smaller production companies to enter the market, and self-preferencing. dominance of the relevant market is not necessary for these effects: size and exceptional relevance in the market, in a given ecosystem, are sufficient. As a conclusion, big and vertically integrated players can act as gatekeeper and create entry barriers without dominating the market.
Budzinski's claims can be verified when looking at the competitive landscape of the SVOD market in table 7:

	2017	2018	2019	2020	2021	2022
Amazon Prime Video	100.00	125.00	150.00	200.00	203.90	208.00
Apple TV+				33.60	40.00	47.62
Disney+				33.50	103.60	137.70
HBO Max				53.80	63.90	76.80

	2017	2018	2019	2020	2021	2022
Hulu	17.00	20.10	23.20	28.80	37.70	41.40
iQIYI	50.80	87.40	106.90	101.70	101.60	101.00
Netflix	99.04	124.40	151.60	193.00	209.00	220.60
Paramount+	1.50	2.00	4.00	8.00	32.80	55.90
Tencent Video	43.00	63.00	89.00	112.00	125.00	124.00
Youku	57.89	62.31	65.77	70.79	76.19	82.00
YouTube Premium	2.80	10.00	18.00	30.00	50.00	80.00

Table 7: Global Subscribers of VOD platforms (in million) (*Statista Market Forecast*, 2023)

As illustrated above, Netflix and Amazon Prime own a considerable market share in the SVOD industry. However, in the year 2020, Apple TV+, Disney+ and HBO Max emerged and successfully penetrated the market, posing significant competition to Amazon Prime and Netflix. It is also noteworthy to mention Youtube Premium, which has experienced a remarkable 3200% increase in subscribers since 2017 and has made successful entrance into the SVOD sector.

Thus, it can be argued that a substantial level of competition exists among SVOD platforms, with recent entrants achieving noteworthy growth. Nevertheless, upon closer examination of these new players, it is important to acknowledge that all three rely on pre-existing network structures. Furthermore, they are themselves part of a vertical integration strategy executed by their respective parent companies: HBO Max is owned by Warner Bros, a massive film and entertainment studio that was able to leverage its internally produced shows and movies into a successful launch of HBO Max. The same has to be said for Disney+, who are owned by The Walt Disney Company and owns the right to movie and show franchises such as Star Wars, The Simpsons and all Disney movies.
The emergence of successful SVOD platforms on the global stage sees a clear pattern of either “first-mover advantage (Netflix), industry affiliate subsidization (Hulu, via its ownership structure), or massive deployable resources and complementary lines of business (Amazon and Apple) (Pakula, 2021, p. 160)” as a base of success.

So while it seems evident that there is a continuous influx of new participants in the SVOD industry. it is important to note that numerous new entrants have encountered failure. A notable example is Quibi, which despite securing a substantial funding of $1.75 billion, was

unable to gain enough subscribers to achieve profitability, ultimately leading to its closure in October 2020 (Garcia-Hodges, 2020) . This case serves as an illustration of the substantial investment required in content development, infrastructure, and marketing when launching a streaming service. Nevertheless, it highlights the inherent risk that even a significant capital investment may not guarantee success in this highly competitive market, due to its high entry barriers.

The results of applying Jacobides framework thus concur with Budzinskis assessment that dominance of the relevant market is not necessary for the existence of lock-in effect or entry barriers: Big and vertically integrated players can prevent new players from entering the market without necessarily having to dominate the market themselves.

- ➢ **Confirmed:** Barriers to Entry are present in the SVOD sector and lead to additional platform dominance for Netflix

4.3.4. Possible Gatekeeper Obligation

Transparency of the Netflix Reccomendation System

Similar to YouTube, Netflix employs a complex algorithm to determine which videos are recommended to users. It plays a crucial role in shaping the content that users see on their Netflix dashboard and in the different subcategories of shows & movies. The algorithm is designed to maximize user engagement and satisfaction by suggesting videos that are likely to be of interest to each individual user, taking into account the past viewing history of said user.

In contrast to YouTube, where end users have the option to subscribe to channels and receive notifications when new videos are released, Netflix users rely solely on its recommendation system. This system collects and updates recommendations throughout the user's journey and is considered the key element of Netflix's successful SVOD strategy over the past decade (Gomez-Uribe and Hunt, 2016).

Singh's (2020) case study revealed that Netflix provides limited customization tools for its recommendation system and has disclosed more details about the inner workings of its algorithms than YouTube. However, users were not able to access the specific characteristics and signals used by the recommendation system to make video suggestions, nor are they

provided with explanations for why certain titles are recommended to them. Furthermore, users did not have the ability to control or opt out of certain factors considered by Netflix's recommendation system. Additionally, there was no option for users to completely opt out of receiving title suggestions from the recommendation system (Singh, 2020).
Article 6 (5) DMA could thus lead to Netflix needing to increase transparency and customization options for end users and business users.

The first sentence of said Article 6 (5) brings up another point of discussion: “The gatekeeper shall not treat more favourably, in ranking and related indexing and crawling, services and products offered by the gatekeeper itself than similar services or products of a third party.”
As discussed above, Netflix drives a strategy of increasing the share of its own “Netflix Originials” in its content library (Moore, 2023) and has been supsected of favoring these self-owned productions by its algorithm (Jenner, 2018). Should this be the case, this practice would stand in direct contrast to the gatekeeper obligation formulated by Article 6 (5), which leaves little room for interpretation.

Exclusivity Agreements

Article 5 (3) DMA guarantees business users of gatekeeper platforms the right to offer their products and services on third-party platforms or other sales channels. However, this provision may conflict with the content strategy pursued by companies like Netflix, which heavily relies on its "Netflix Originals" content. Netflix, typically acquires exclusive rights to movies from film studios and enters into exclusivity agreements, which prohibit the studios from making the same movie available on other video platforms. This practice of signing exclusivity licensing agreements with film studios and license holders is a fundamental aspect of Netflix's business model.
Other SVOD platforms also operate in a similar manner, as holding exclusive content over competitors serves as a significant selling point for potential subscribers and distinguishes one SVOD platform from another (Greenwod, Kennard and Mowry, 2022).
The aim of Article 5 (3) is evidently to prevent a scenario in which gatekeepers abuse their entrenched market position to force business users into exclusivity. As discussed in the context of barriers to entry, the SVOD market currently holds a diverse field of competitors and film studios or licencse holders have a decent bargaining position during licensing negotiations.

For instance, Netflix reportedly invested US$450 million in the spring of last year to secure the rights to two sequels of the 2019 murder mystery film Knives Out. Likewise, NBCUniversal's new streaming service, Peacock, entered into a deal worth over $400 million to acquire the global rights for a new franchise based on a fifty-year-old film, The Exorcist.

This indicates that entering into exclusivity agreements can often be a financially rewarding choice for business users in the SVOD market, as video platforms require exclusive content to differentiate themselves from competitors. As long as healthy competition among SVOD platforms persists, business users are likely to benefit from exclusivity agreements and would actually face negative consequences from the provisions of Article 5 (3).

4.4. Discussion

Over the course of chapter 4, the business models of two VOD platforms were examined. While Youtube acts as a traditional AVOD platform, Netflix main revenue derives from its status as a SVOD platform. Therefore, both cases have different business models and value propositions for its end users, but still end up competing with each other. A slow but steady convergence of the two revenue models was observed as well: YouTube has started to offer a SVOD service called YouTube Premium and Netflix launched an ad-based, cheaper subscription plan in 2021.

Gatekeeper Criteria

As depicted in table 8 below, our research provided rather conclusive results for whether YouTube falls within the thresholds of Article 3 (2) DMA.
Although it does not quite reach €7.5 billion annual turnover in the EU in the last 3 years, the 100€ billion market capitalization of YouTube's parent company, Alphabet, does breach the set 75€ billion threshold. As only one of both criteria has to be fulfilled, this is enough for Youtube to fulfill the criteria set by Article 3 (2) DMA to the full extent. As a result, Alphabet would be flagged as a Gatekeeper and its CPS YouTube would need to comply with the new gatekeeper regulations.

Gatekeeper Criteria Article 3 (2)	YouTube	Netflix
€7.5 billion annual turnover in last 3 years	❌	❓
€75 billion market cap in the last year	✅	✅
10.000 active business users	✅	❌
45 million active end users	✅	✅

Table 8: Results of Case study regarding Article 3 (2) DMA

The results obtained from analyzing the yearend reports and subscription numbers of Netflix are less conclusive. Currently, the annual turnover falls below the 7.5€ billion threshold for three consecutive years, but it may surpass this threshold in the near future. Similar to Youtube, Netflix's market capitalization of €124.79 billion renders the annual turnover insignificant and satisfies the criteria outlined in point a) of Article 3 (2).

Moreover, the number of Netflix end users in the EU exceeds 45 million. However, determining the number of business users on Netflix proved to be challenging. Nevertheless, our calculations indicate that the threshold of 10,000 yearly business users is far from being reached. Therefore, according to the current gatekeeper criteria, Netflix is unlikely to be designated as a Gatekeeper.

Ultimately, the criterion of 10,000 active business users is what distinguishes YouTube and Netflix. YouTube relies heavily on a wide range of smaller, independent content creators, making it easier for them to surpass the threshold for business users. On the other hand, Netflix relies on major film studios and license holders, who contribute the majority of content to the platform, making it less likely for Netflix to meet this threshold.

This suggests that there is a differentiation between SVOD and AVOD platforms, where the former is generally unlikely to be subjected to gatekeeper obligations, concurring with the opinion of (Barata et al., 2021). The question remains, whether this seemingly arbitrary focus on business users would lead to a reality, in which video-streaming platforms get subjected to

the gatekeeper status based on which business model they chose, and not based on how much dominance its platform exerts.

Platform Dominance Jacobides

Therefore, in the second step, Jacobides' framework for platform dominance was applied to both Netflix and YouTube in order to cross-check the reality of gatekeeper status without narrowing down on the quantitative criteria of Article 3 (2) DMA.

Jacobides Framework for Platform Dominance	**YouTube**	**Netflix**
Exclusive Access to End Users	❌	❌
Difficulty of Multi-Homing for End Users	❌	❓
Substituability of Business Users	✅	✅
Multi-Homing requirement for Business users	❌	❌
Barriers to Entry	✅	✅

Table 9: Results of the case study regarding Jacobides Framework for Platform Dominance

In this phase, it has been determined that neither cases demonstrate platform dominance through exclusive access to end users or the multi-homing requirement of business users due to network effect. However, both YouTube and Netflix exhibit substantial platform dominance over their business users by being able to substitute them with ease. Although the organized migration of business users in both cases may lead to challenges in terms of substitutability, these business users are generally unorganized and lack unionization as they compete with one another for the end users on the platform. Consequently, they encounter difficulties in leveraging their position against the (mal)practices of the platform.

Furthermore, both platforms are integrated into an ecosystem that presents significant barriers for new entrants. While new competitors have emerged within the SVOD ecosystem in the past, all successful SVOD platforms have relied on an existing network, vertical integration, and substantial investment from a parent company. In the AVOD sector, a total dominance of

YouTube can be observed, who have 401,7 million monthly active end users in Europe (Ferreno, 2023).
A difference in outcomes was observed when evaluating the level of difficulty for end users to multi-home effectively. In the AVOD sector, the act of multi-homing can be executed without encountering any financial or ease-of-use obstacles. This is due to the absence of subscription fees and the optional nature of creating an account on various AVOD platforms, such as YouTube or Twitch.

On the other hand, in the SVOD sector, the situation is quite different. Here, a paid subscription is mandatory, and users are required to establish a user account that entails providing personal information and payment details. This requirement effectively hinders the users' ability to engage in multi-homing. Nevertheless, despite these barriers, a considerable number of end users opt to subscribe to multiple SVOD platforms. Consequently, our evaluation of platform dominance for Netflix in relation to end users' multi-homing remains inconclusive. In contrast, it is evident that YouTube does not derive its platform dominance from this particular condition.

In comparing our analysis of the gatekeeper criteria with Jacobides' framework for platform dominance, a discrepancy in the results could be observed. According to Article 3 (2) DMA, it is determined that Youtube will most likely be obligated to adhere to gatekeeper obligations, while Netflix is currently unlikely to be classified as a gatekeeper. This contradicts our assessment of the two platforms when applying Jacobides' framework for platform dominance. In this regard, both Netflix and YouTube were found to meet the same conditions for platform dominance, such as entry barriers and substitutability. Additionally, Netflix shows signs of platform dominance due to the challenges associated with multi-homing for end users.
This discrepancy raises the issue of SVOD and AVOD services within the context of gatekeeper designation. Although our analysis only considered one case for each type of service, it is possible to theorize that the majority of SVOD services will not be subject to gatekeeper obligations due to their inability to surpass the 10,000 business user threshold. This is primarily because SVOD services tend to collaborate with larger film studios and license holders.
Conversely, YouTube and other AVOD services are more likely to meet the business user threshold, as their platform relies on content produced by numerous small, independent

business users. This, in turn, may result in an under-inclusion of gatekeepers and have a detrimental impact on AVOD services, as they must allocate additional resources to comply with gatekeeper obligations. Meanwhile, SVOD services, which, according to the Jacobides framework, may possess even greater platform dominance than AVOD services, are exempt from these obligations.
In other words: It is important to question the rationale behind the exclusion of AVOD platforms from the current gatekeeper criteria of the DMA, considering their potential to exert substantial platform dominance as indicated by our findings based on Jacobides framework.

Finally, it is imperative to examine Article 3 (8) and Article 17 of the DMA, which allows the Commission to reevaluate the list of gatekeepers and conduct market investigations. This provision grants the Commission the ability to classify a company as a gatekeeper, irrespective of its failure to satisfy the criteria of Article 3 (2). Consequently, this may serve as a means for the EC to include major SVOD platforms within the purview of the gatekeeper classification.

Should one or both companies be designated as gatekeepers, their video platforms will be subject to various gatekeeper obligations that will impact their business practices. Both platforms will need to modify their recommendation algorithms to operate in a more transparent and equitable manner. In the case of Netflix, it will also be necessary to ensure that its own in-house productions are not given preferential treatment over content provided by third parties, and there is a risk of losing exclusivity agreements in the form of "Netflix Originals". These issues are not of concern to YouTube, as it does not create content itself and does not rely on exclusivity agreements with business users.

Conversely, YouTube faces additional obligations in terms of providing additional metrics and insights to advertisers and publishers. Furthermore, data-sharing between YouTube and its parent companies Google and Alphabet presents additional challenges. In contrast, Netflix is not affected by these concerns, as it does not rely on advertisers and is not owned by a company that would benefit from data sharing across different content provider systems.

5. Conclusion

This part will conclude the thesis by answering the research questions by referring to the finding of our literature research and the conducted case study. It will then treat the limitations of this thesis and give an outlook on the topic and further possible research.

5.1 Research Questions

1. **To what extent did the rise of Digital Markets create the need for the Digital Markets Act in the EU?**

The rise of digital markets has led to the emergence of powerful digital platforms that act as intermediaries between businesses and consumers. These platforms, such as Amazon, Google, and Facebook, have gained significant market power due to their size, network effects, and access to vast amounts of data. As a result, they have the ability to control access to markets, set rules for competition, and potentially engage in anti-competitive behavior, such as self-preferencing.

The DMA aims to address these concerns by introducing a set of rules and obligations for digital platforms with significant market power. It seeks to ensure fair and open competition, protect consumers' interests and tie in with the data protection rights of the GDPR.

Furthermore, anticompetitive behavior and data protection infringements frequently arise within prominent video-streaming platforms, including Youtube, Amazon Prime, and Twitch. Consequently, an examination of the potential impact of the DMA on these video-streaming platforms holds significant scientific relevance.

The need for the DMA is further emphasized by the challenges posed by the ex post nature of the already existing GDPR and competition laws in the EU. The enactment of the DMA presents an opportunity to align the objectives of EU-wide competition laws for businesses with the protection of consumer data rights, all while ensuring enforcement in an ex ante fashion.

a. **Why has the current definition of “gatekeepers” lead to uncertainty and criticism from economic experts?**

The current definition of "gatekeepers" in the DMA has led to uncertainty and criticism from economic experts for several reasons.
Firstly, the criteria for determining whether a company is classified as a gatekeeper has been deemed arbitrary and not necessarily indicative of platform dominance. The internal amendment process saw the gatekeeper criteria change multiple times over the course of the last 2 years, however the quantitative thresholds of Article 3 (2) seem to be of mostly of subjective nature. This has raised concerns about the fairness and effectiveness of the gatekeeper designation process.
The limited list of Core Platform Services (CPS) in the DMA raises questions about whether it is based on a market-oriented approach. This might lead to different treatment of competing services based on their business models (AVOD vs. SVOD), rather than their market power.
The failure to consider the concept of multi-homing, where users and businesses can utilize multiple platforms for the same purpose, is a prevalent critique of the DMA. Multi-homing is seen as a key indicator for assessing platform dominance and should be considered in determining gatekeepers.

Overall, the current definition of gatekeepers in the DMA has faced criticism and uncertainty due to its arbitrary criteria, potential under-inclusion of non-listed CPS, and discrepancies with other frameworks regarding platform dominance. These concerns highlight the need for further examination and potential revisions of the gatekeeper designation process.

2. **How does the DMA affect video-on-demand (VOD) platforms?**

The DMA may have significant implications for VOD platforms as they fall under the definition of listed CPS of “video-sharing platforms” in accordance with Article 2 (8) DMA.
This raises the issue of the distinction between SVOD and AVOD platforms within the context of gatekeeper designation. SVOD services, like Netflix, may not meet the business user threshold due to their collaboration with larger film studios and license holders. On the other hand, AVOD services, like YouTube, are more likely to meet the business user threshold, as their platform relies on content produced by numerous small, independent business users. This potential under-inclusion of gatekeepers in the AVOD sector and

exemption of SVOD services from gatekeeper obligations may have implications for fair competition and resource allocation.

The present case study aimed to examine the fulfillment of the quantitative (Article 3 (2)) and qualitative (Article 3 (1)) gatekeeper criteria by the SVOD platforms Netflix and the AVOD platform YouTube. A case study approach was employed to analyze these platforms and explore the potential impact of gatekeeper obligations on both cases.

a. **To what extent do Youtube and Netflix fall under the DMA's definition of a "gatekeeper" in accordance with Article 3 (2)?**

According to the results of the case study, YouTube is likely to be obligated to adhere to gatekeeper obligations, while Netflix is currently unlikely to be classified as a gatekeeper.
Ultimately, the criterion of 10,000 active business users is what distinguishes the outcome between YouTube and Netflix. YouTube relies heavily on a wide range of smaller, independent content creators, making it easier for them to surpass the threshold for business users. On the other hand, Netflix relies on major film studios and license holders, who contribute the majority of content to the platform, making it less likely for Netflix to meet this threshold.
Another finding of the case study is that point **a** of Article 3 (2) is very easily breached by a vertical ownership structure. Were YouTube not owned by Alphabet, it would likely not yet breach the thresholds of 7.5€ billion annual turnover or a market capitalization of 75€ billion.
On the other hand, the criteria of numbers of business or end users of point **b** Article 3 (2) is not tied to the ownership level, but limited to the CPS itself. For example, a CPS that is owned by GAFA, but does not have more than 10.000 active business users, would not fulfill the criteria of Article 3 (2).

b. **To what extent do the results of Jacobides framework for platform dominance impact the findings about gatekeeper classifications of question 2. a.?**

Based on the results of the case study, both YouTube and Netflix show signs of platform dominance and meet the conditions of several dimensions for platform dominance according to the framework provided by Jacobides.

The Jacobides framework for platform dominance considers factors such as entry barriers and substitutability of business users. Both YouTube and Netflix were found to meet these conditions for platform dominance. However, neither platform shows signs of platform dominance due to exclusive access to end users or the requirement for business users to multi-home.

Furthermore, it is worth noting that Netflix exhibits additional signs of platform dominance, which can be attributed to the challenges associated with multi-homing for end users. The existence of multi-homing challenges for end users across all SVOD platforms, including mandatory subscription and the need to create an account, strengthens the notion that SVOD platforms have the potential to function as gatekeepers, even in the absence of access to a substantial number of active business users.

Thus, both YouTube and Netflix demonstrate at least an equal level of platform dominance, with Netflix possibly fulfilling one additional criteria due to its challenges for end users to multi-home effectively.

In terms of the DMA's definition of a "gatekeeper," there is a discrepancy in results between the quantitative thresholds outlined in Article 3 (2) and the findings based on Jacobides' qualitative framework. Based on the platform dominance exhibited by both YouTube and Netflix, the findings of our case study, it can be argued that both platforms should be considered as potential gatekeepers.

The discrepancy between the fulfillment of the DMA's gatekeeper criteria and the platform dominance exhibited by these platforms raises questions about the rationale behind the effective exclusion of SVOD platforms from the gatekeeper criteria. Further examination and potential revisions of the gatekeeper designation process are necessary to ensure fair competition and consumer protection in the VOD sector.

c. How would the potential resulting gatekeeper obligations impact the business operations of YouTube and Netflix?

In order to comply with Article 6 (5) DMA, both Youtube and Netflix would be required to ensure that their recommendation algorithms function in a transparent and fair manner, without displaying bias towards their own content or discriminating against content provided by third parties. Especially for Netflix, this could have significant implications as its content strategy revolves around its “Netflix Originals”, some of which can be classified as their own content that they would not be allowed to favor in its recommendation system any longer.

Moreover, "Netflix Originals" that are not under the ownership of the company are subject to exclusivity agreements with film studios and license holders, potentially raising concerns regarding compliance with Article 5 (3) DMA.
Youtube on the other hand would need to address the challenges associated with data-sharing between itself and its parent companies Google and Alphabet, in order to prevent potential anti-competitive behavior and data privacy breaches linked to the GDPR (Article 5 (2) points a-d). Navigating these additional requirements
Due to the nature of its AVOD revenue model, YouTube would be required to provide advertisers and publishers with additional metrics and insights regarding the performance and ranking of their content on the platform in accordance with Article 5 (9) DMA.
Lastly, YouTube will be unable to further restrict the ability of its business users to sell content on alternative platforms or promote these platforms within their YouTube content. It might even be obligated to loosen the conditions of its YouTube Partner Program in order to comply with Article 5 (3), (4) DMA.

Ultimately, this thesis has provided scientific value by highlighting how the current gatekeeper criteria in the DMA led to uncertainty and criticism due to its arbitrary nature and potential under-inclusion of certain platforms.
Our case study showed that both YouTube and Netflix meet conditions for platform dominance, contradicting the exclusion of SVOD platforms from the gatekeeper criteria in the DMA. This discrepancy highlights the need for further research and potential revisions of the gatekeeper designation process to ensure fair competition and consumer protection in the VOD sector and across the digital landscape of the European Union.

5.2 Limitations & Outlook

There are several limitations and areas for further research that can be identified in this master thesis:

The case study in this thesis focused on only two VOD platforms, YouTube and Netflix. While these platforms can be seen as representative of the AVOD and SVOD sectors, the

findings may not be generalizable to other VOD platforms. According to our analysis, it is evident that numerous AVOD platforms adopt SVOD business practices, and vice versa. Future research should thus include a larger sample size, encompassing a wider range of VOD platforms, to provide a more comprehensive understanding of the impact of gatekeeper obligations.

Moreover, the calculation of the gatekeeper criteria of Article 3 (2) DMA was done via an approximation method and likely does not fully reflect the outcome of the gatekeeper designation process that these platforms will go through in the summer of 2023. The key metric of numbers of business users remains a complex and uncertain concept particularly when considering its application to the different types of VOD platforms and needs to be comprehensively addressed by the EC.

This thesis primarily focuses on the economic and market implications of gatekeeper obligations for VOD platforms. However, it would be valuable to incorporate the perspectives of other stakeholders, such as consumers, content creators, and regulators, to provide a more holistic understanding of the potential impacts and challenges associated with gatekeeper obligations. Unfortunately the reach-out that have been done towards members of the EP and EC have not been met with comprehensive answers and thus provide a limitation of this thesis. Qualitative interviews with representatives of designated gatekeepers about their planned changes in business practices and prevalent opinions about the impact of the DMA could provide valuable scientific contribution.

This thesis primarily focuses on the gatekeeper classifications of YouTube and Netflix within the context of the DMA. Future research could consider conducting a comparative analysis of obligations for large online platforms across different regulatory frameworks, such as the GDPR and competition laws in the EU, to identify potential synergies or conflicts between these regulations.

Lastly, the analysis in this thesis is based on the current state of the DMA and the VOD industry. However, the regulatory landscape and market dynamics are subject to change. Future research could consider the implications of potential revisions to the DMA or the emergence of new regulations on gatekeeper obligations for VOD platforms.

The present master thesis offers a significant contribution by shedding light on the potential consequences of the recently implemented DMA on various categories of VOD platforms.

However, further research is needed to address the limitations outlined above and to fully investigate the found discrepancies between the impact of the DMA on SVOD and AVOD platforms respectively.

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