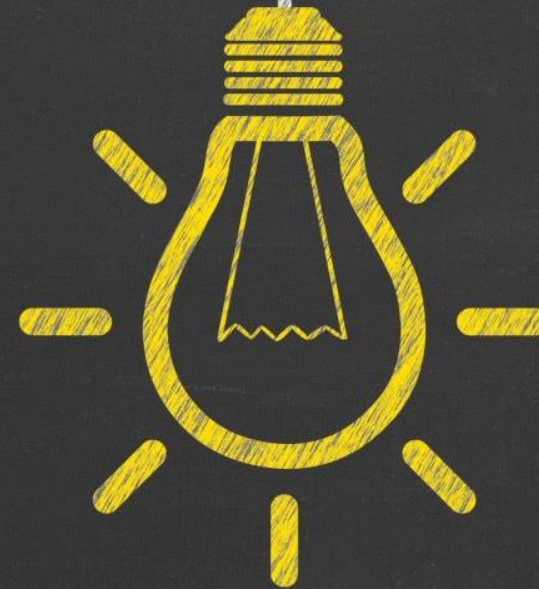


EU Legislations on Data

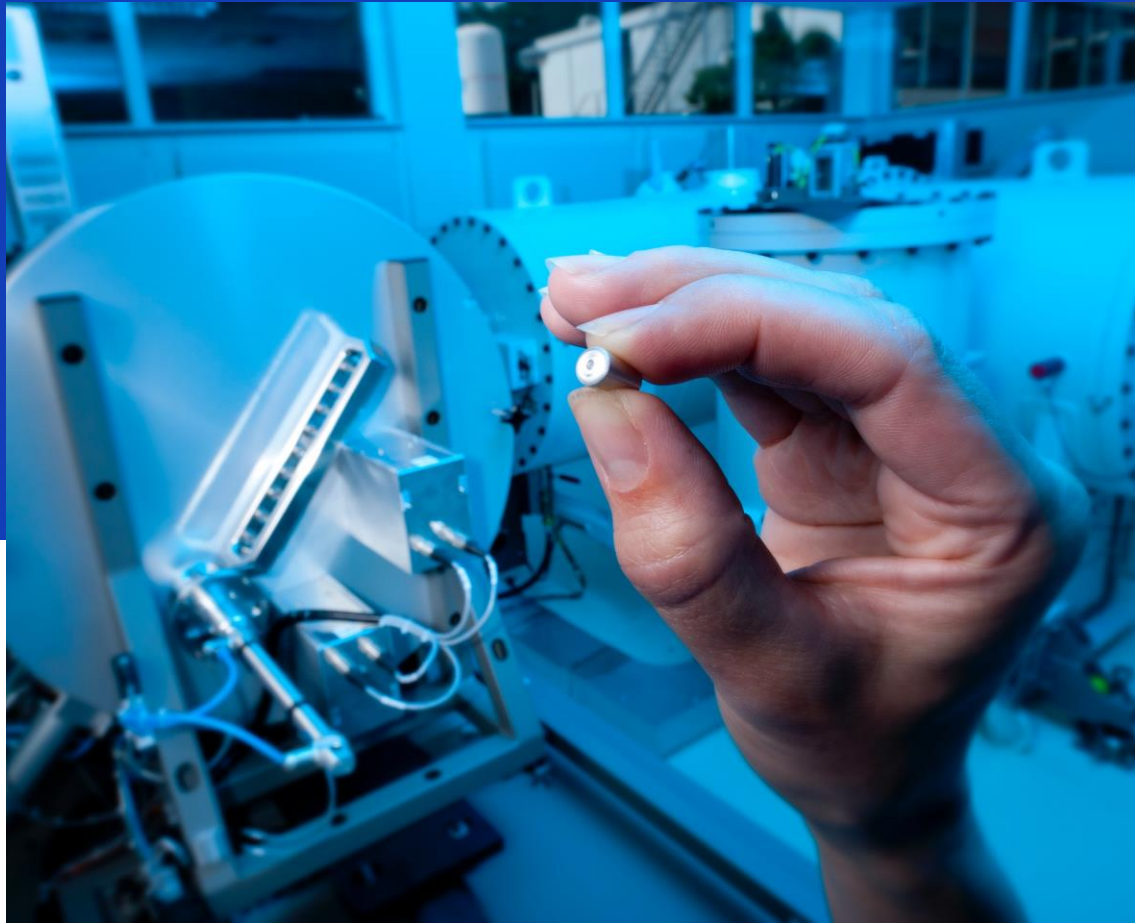
***Navigating Compliance and
Identifying Opportunities***

79th Systems Architecture Study Group Meeting
06.02.2024

Chawla, K. (Kartik)



Agenda



1. About me
2. A Europe Fit for the Digital Age
3. Data Act
4. Digital Services Act
5. Digital Markets Act
6. Wrap-up

Hi! I'm Kartik Chawla

- **B.A.-LL.B (Hons.)**, NALSAR University of Law, Hyderabad, India
- **LL.M.**, European Masters in Law and Economics
 - Erasmus University, Rotterdam
 - Universiteit Gent
 - Universität Hamburg
- **PhD, AI & Law**
 - Tilburg School for Economics and Management (TiSEM), Department for Information Management (DoIM)
 - Tilburg School of Law (TLS), Department of Private, Business and Labour Law (PBL)
 - Jheronimus Academy of Data Science, Den Bosch (JADS)
- **TNO, Data Ecosystems**
- *This presentation is not legal advice.
- **Clarifications and corrections are in progress.



A Europe fit for the Digital Age

A part of the EU Digital Strategy

- Make digital transformation ‘work for people and businesses’
- Achieve the target of climate-neutral Europe by 2050

- A single cross-sectoral and cross-border market for data in the EU
- With clear, fair and practical rules for access to data
- In compliance with European rules such as privacy, data protection, and competition

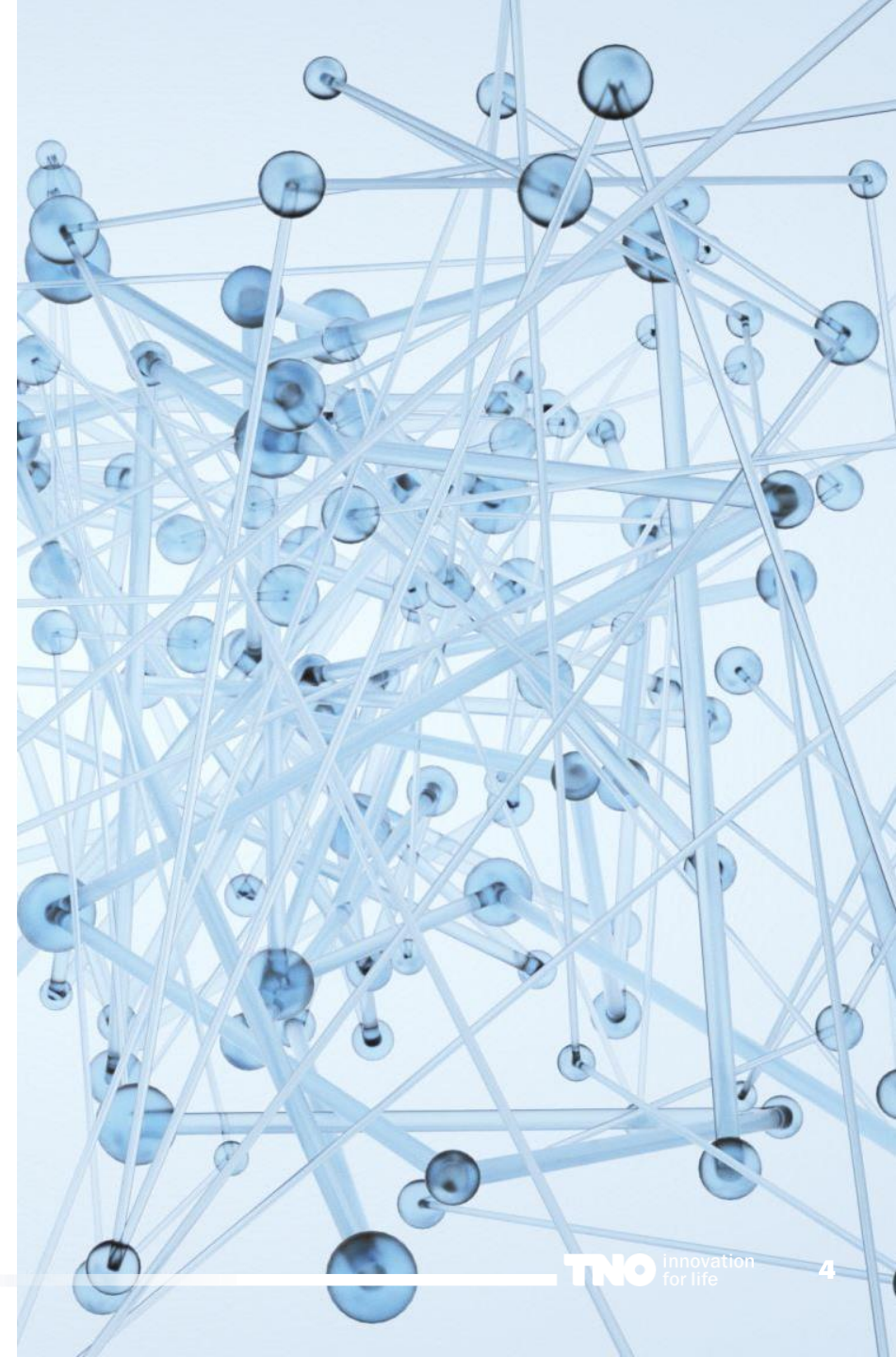
Zenner, Marcus and Sekut, [A Dataset on EU Legislation for the Digital World](#), Breugel.org (2023)



The Data Act

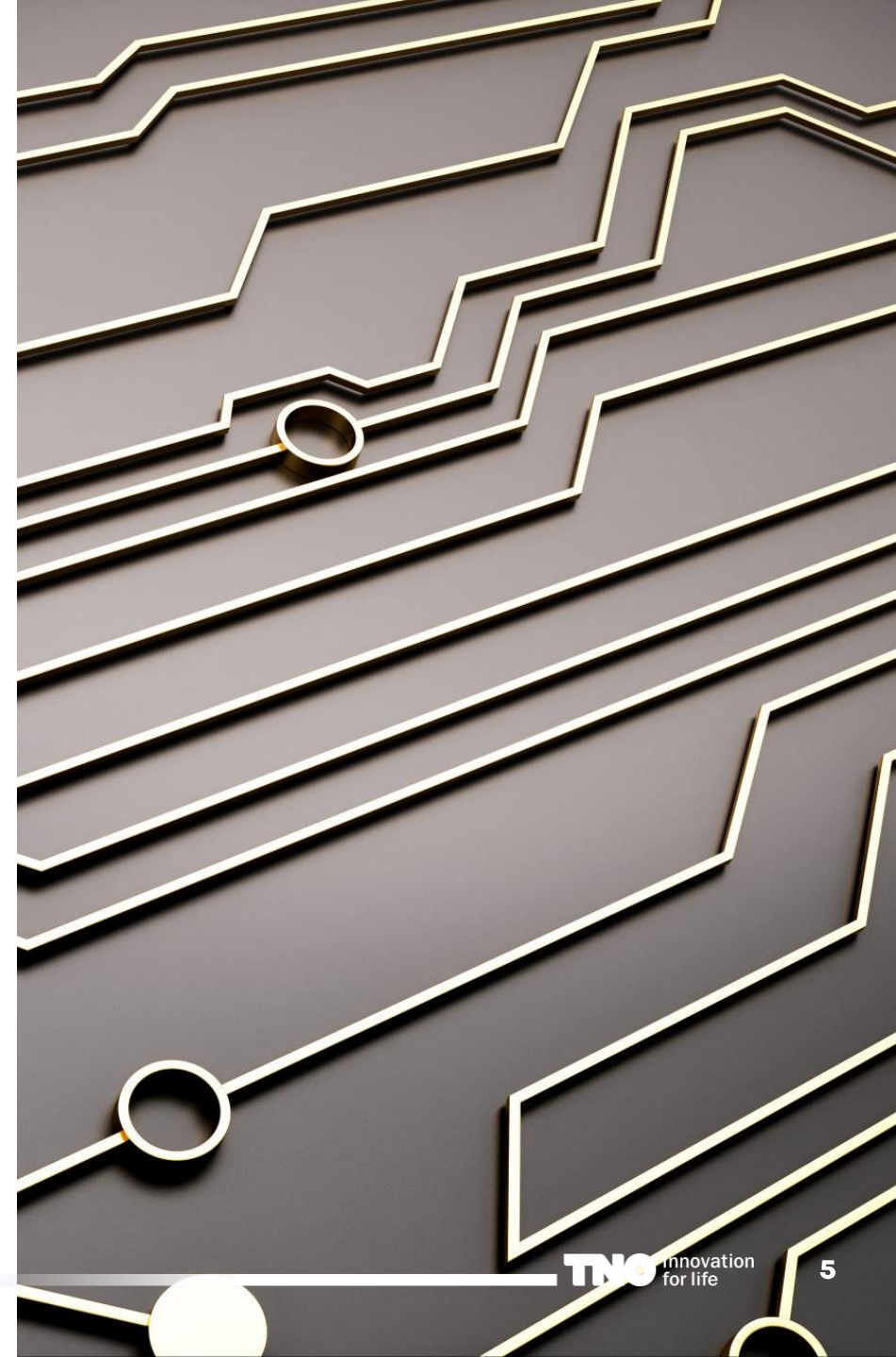
- ➔ Adopted November 2023.
- ➔ Applicable from September 2025.

- ➔ Rules on who can use and access data, for which purposes, across all economic sectors.
- ➔ Aimed to address the legal, economic and technical issues that lead to data being underused.
- ➔ Focuses on a) non-personal and b) IoT data (but not entirely).
 - Also obligations for, for e.g., Data Processing Service Providers
- ➔ The GDPR still remains applicable.




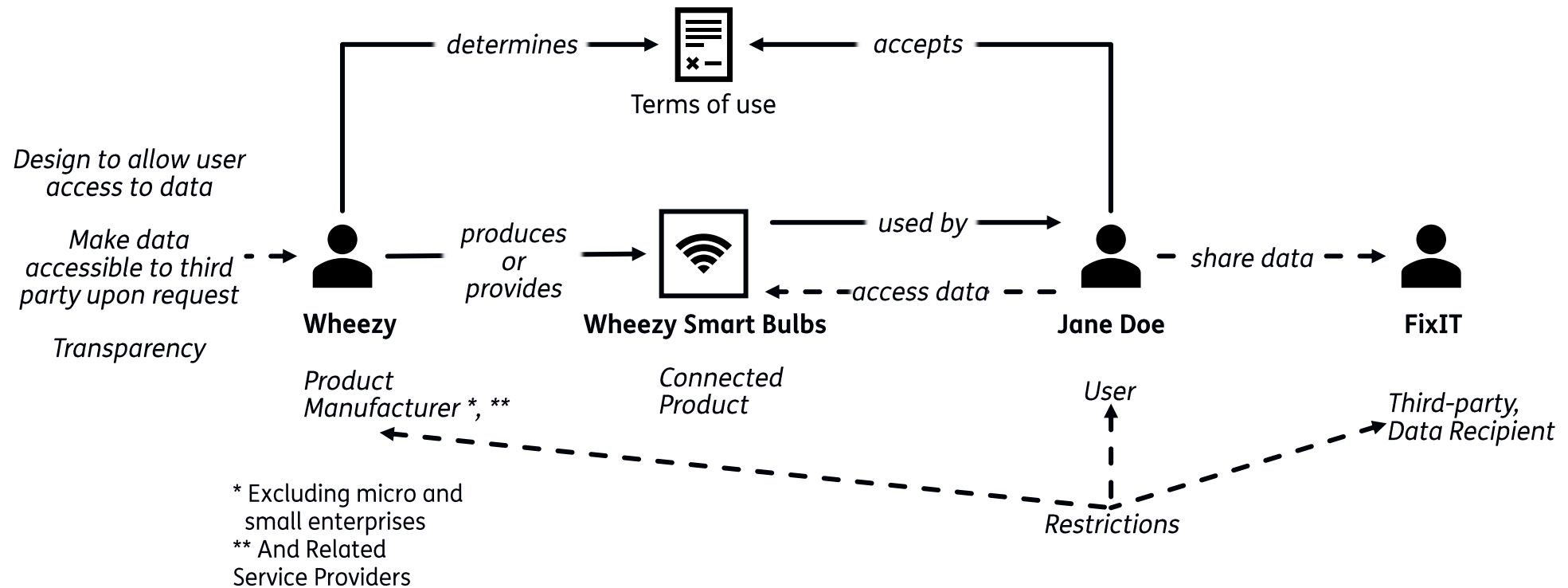
Applies to

- Main focus on:
 - **Connected (IoT) Product Manufacturers & Related Service Providers -> Users.**
 - **Data Holders -> Data recipients.**
 - **Data Processing Service Providers -> Consumers**
- Additional rules for other roles and technologies, for example, smart contracts and data spaces.



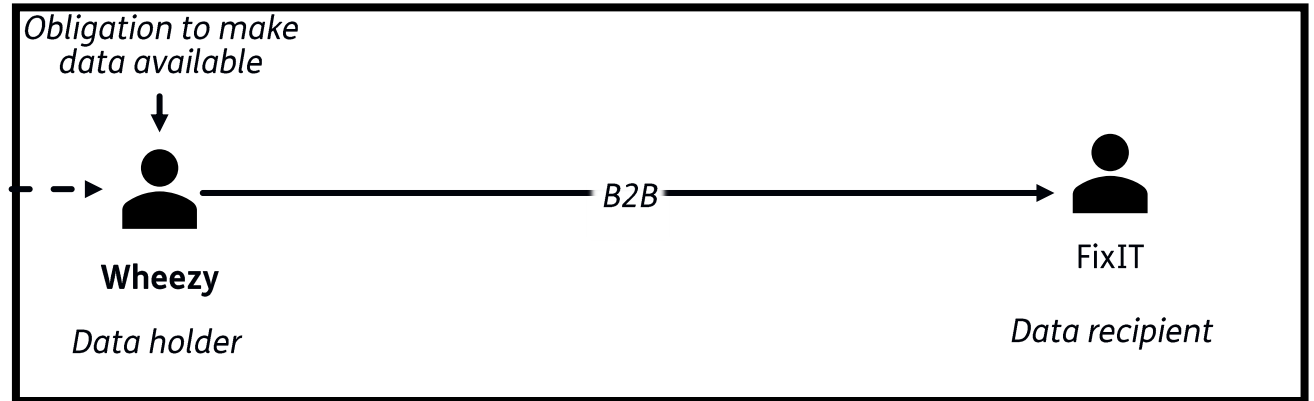
IoT Product Manufacturers, Related Service Providers

 Can be individual or legal entity.



Data Holders

- Requirements for how data is made available, e.g., FRAND terms, non-exclusive, reasonable and non-discriminatory compensation
- Technical protection measures
- Unfair terms are non-binding
 - ‘grossly deviate from good commercial practice’
 - Black list and grey list



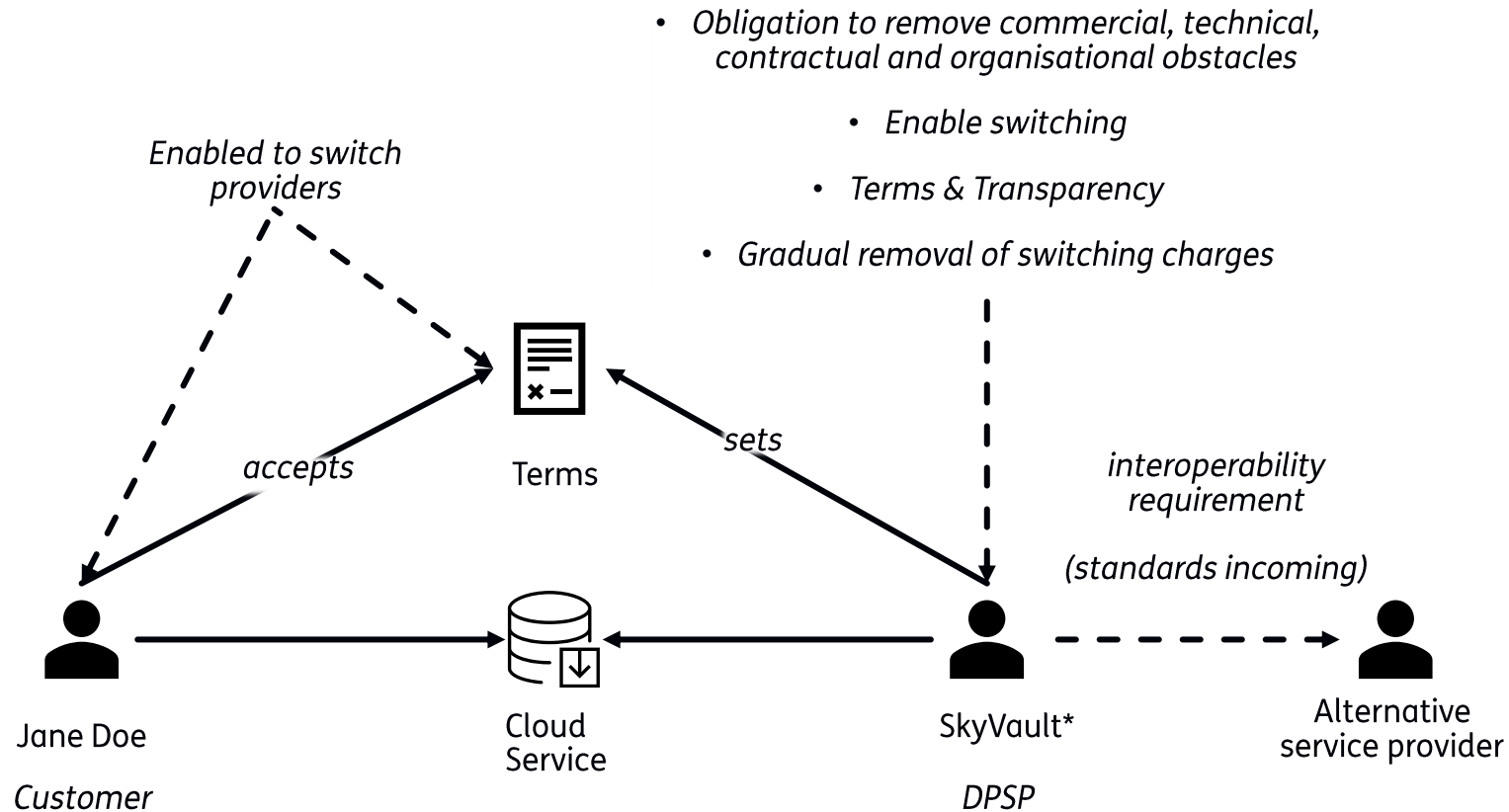
- Obligation to make data accessible in case of exceptional need**
- With protections, for data holder and (in case of personal data) data subjects



** Partial exception for micro and small enterprises

Data Processing Service Providers

* Functional equivalence required for IaaS providers



Other Highlights

- Art. 3(1) (Rules on data access by design) applicable to products placed on the market after 12 Sept. 2026.
- Easy access to dispute settlement.
- Non-binding model contractual terms to be developed by the Commission.
- Safeguards for international transfer of non-personal data.
 - Not to be transferred if such transfer would create a conflict with Union law or the national law of the relevant member state.
- Essential and interoperability requirements for data spaces and smart contracts.
 - Standardisation incoming.
 - EU Declaration of Conformity for smart contracts.
- *Sui generis* database rights do not apply to data obtained from or generated by the use of a product or related service.



Penalties and Enforcement

- **Penalties**

- To be determined by member states, taking into account recommendations of the European Data Innovation Board (EDIB).
- Data Protection Authorities (DPAs) and European Data Protection Supervisor (EDPS) can also impose administrative fines in line with the GDPR.

- **Enforcement**

- Competent authorities (and potentially data coordinators) to be designated – in the Netherlands, likely to be ACM.
- For provisions related to personal data, GDPR and Autoriteit Persoonsgegevens (AP) still have priority.

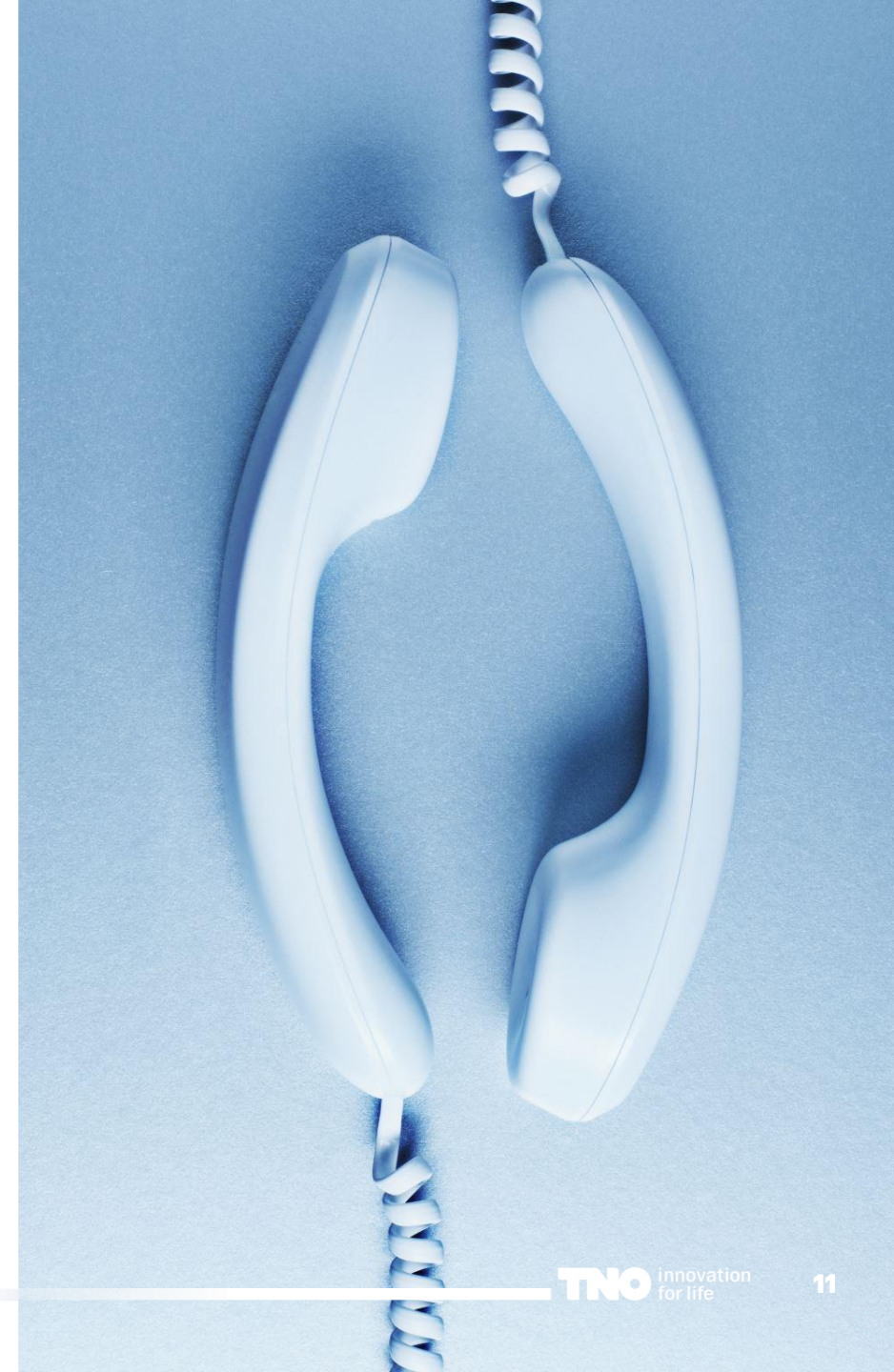


Digital Services Act

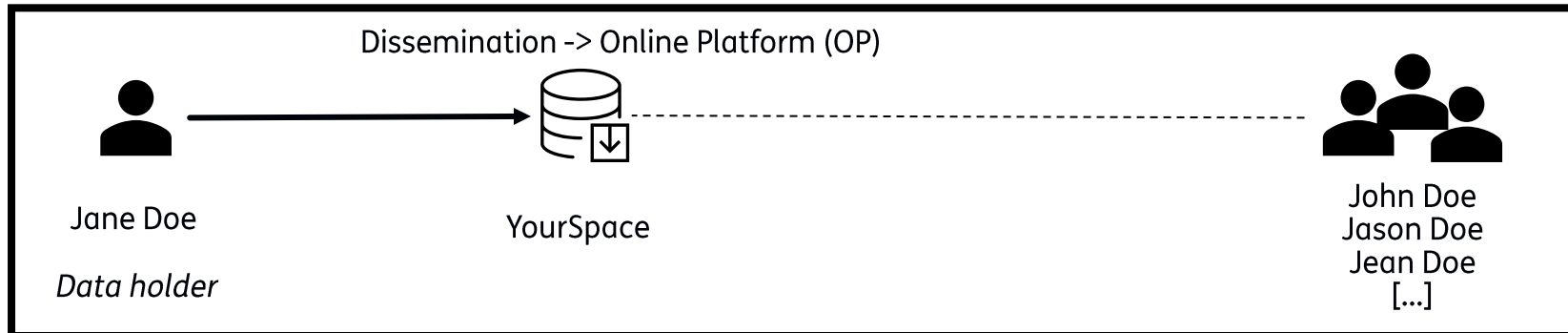
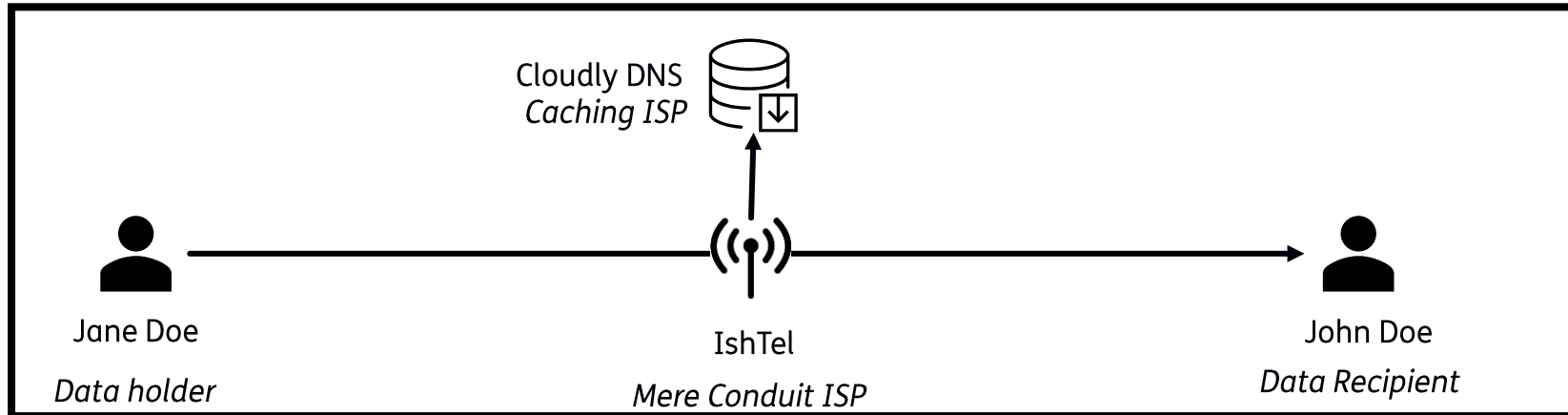
- Adopted October 2022.
- Applicable from February 2024.

- Main focus: Online content regulation, including intermediary liability, and user protection.

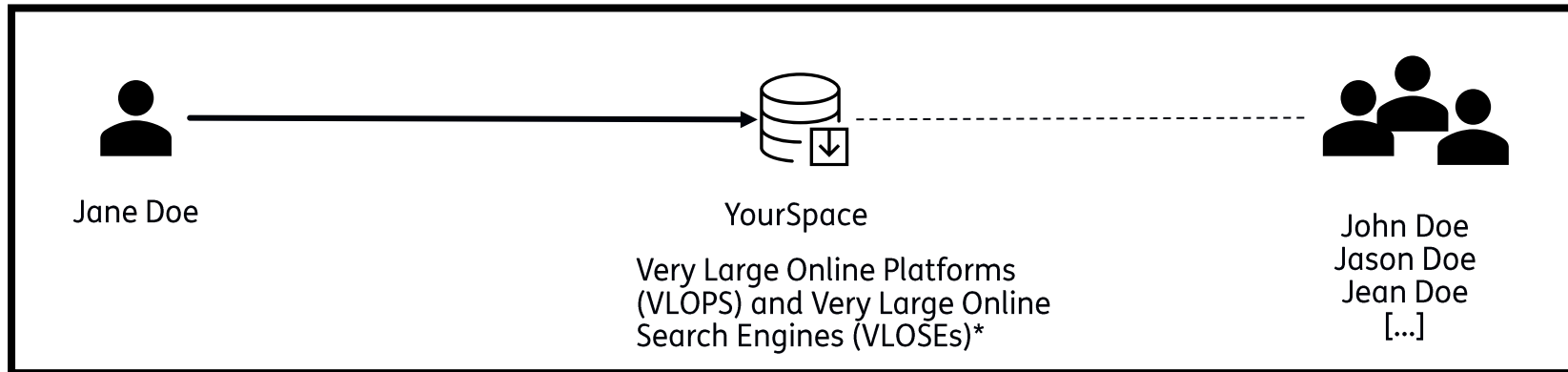
- Applicable to:
 - Intermediary Service Providers (ISP)
 - Hosting Service Providers (HSP)
 - Online Platforms (Ops)
 - VLOPS & VLOSEs
 - Consumers and Traders



Roles (1/2)



Roles (2/2)

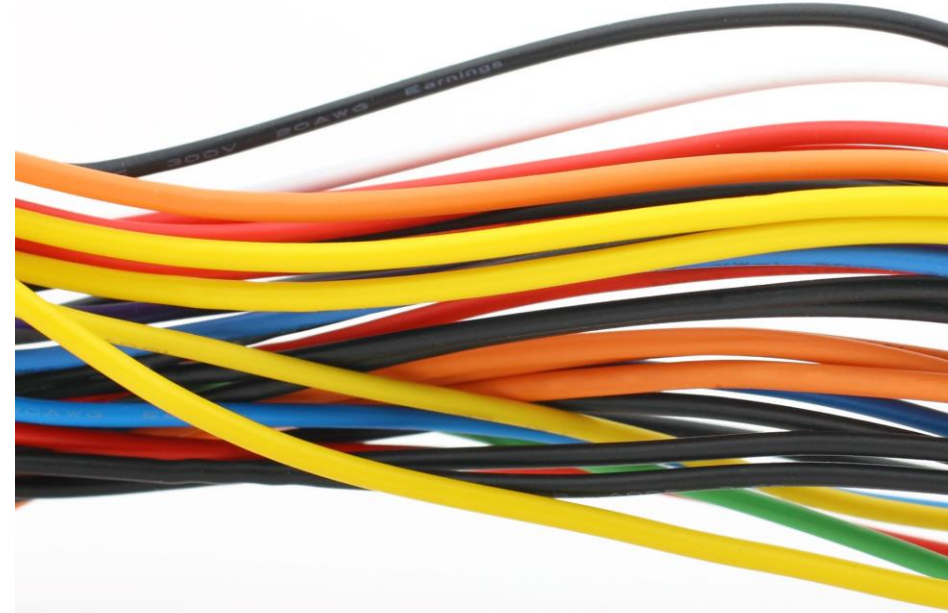


-> More than 45 million users per month in the EU (10%)

-> *Specifically designated by the EC

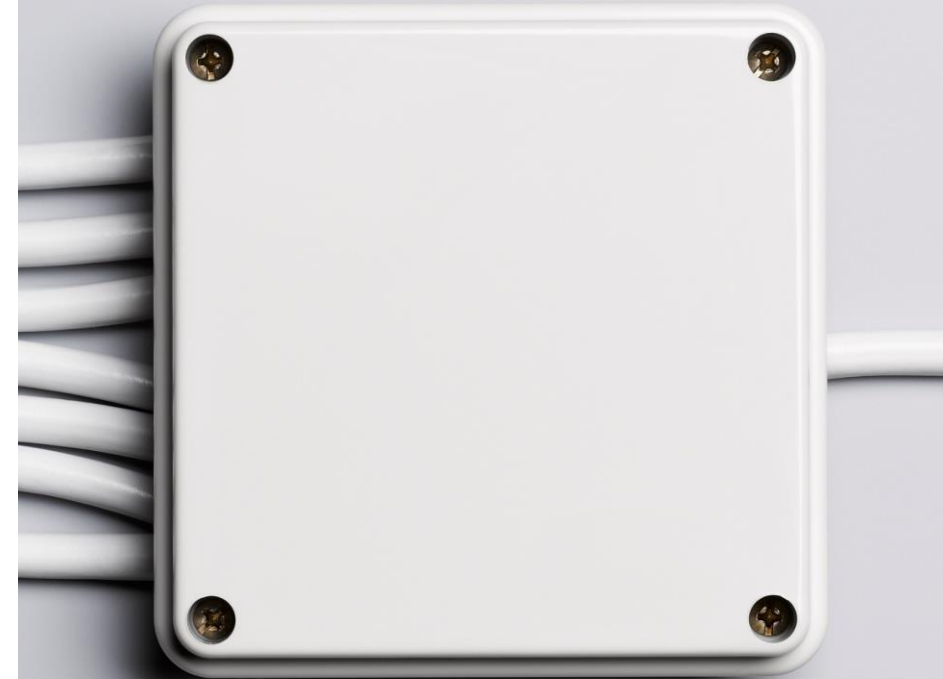
Highlights (1/2)

- Tiered application – all obligations for lower tiers (e.g., online platforms) apply to the higher tiers (e.g., VLOPs and VLOSEs) as well.
- Obligations for Intermediary Service Providers (ISPs):
 - Single point of contact and legal representative.
 - Changes to T&Cs.
- Obligations for Hosting Service Providers (HSPs):
 - Easy-to-access, user-friendly Notice-and-Action mechanisms.
 - Notify relevant parties, including, if necessary, law enforcement authorities.



Highlights (2/2)

- Obligations for Online Platforms (OPs):
 - Internal complaint handling system.
 - Trusted flaggers.
 - Out-of-court dispute settlement.
 - Reporting obligations.
 - Transparency and control for advertisements and recommendations.
 - Traceability of traders.
- Obligations for VLOPs and VLOSEs:
 - Systematic risk assessment and mitigation.
 - Independent compliance audits.
 - Internal compliance system.
 - Transparency and crisis response requirements.
 - Supervisory fee.



Penalties and Enforcement

- Penalties
 - Specified by Member States.
 - Maximum for failure to comply: **6%** of annual worldwide turnover.
 - Maximum for incorrect, incomplete or misleading information: **1%** of annual worldwide turnover.
- Enforcement
 - Designated Digital Services Coordinators (DSCs).
 - In the Netherlands, ACM is the DSC while the Autoriteit Persoonsgegevens (AP) is the supervisor for advertisements-related prohibitions.
 - For VLOPs and VLOSEs, direct supervision by the European Commission.



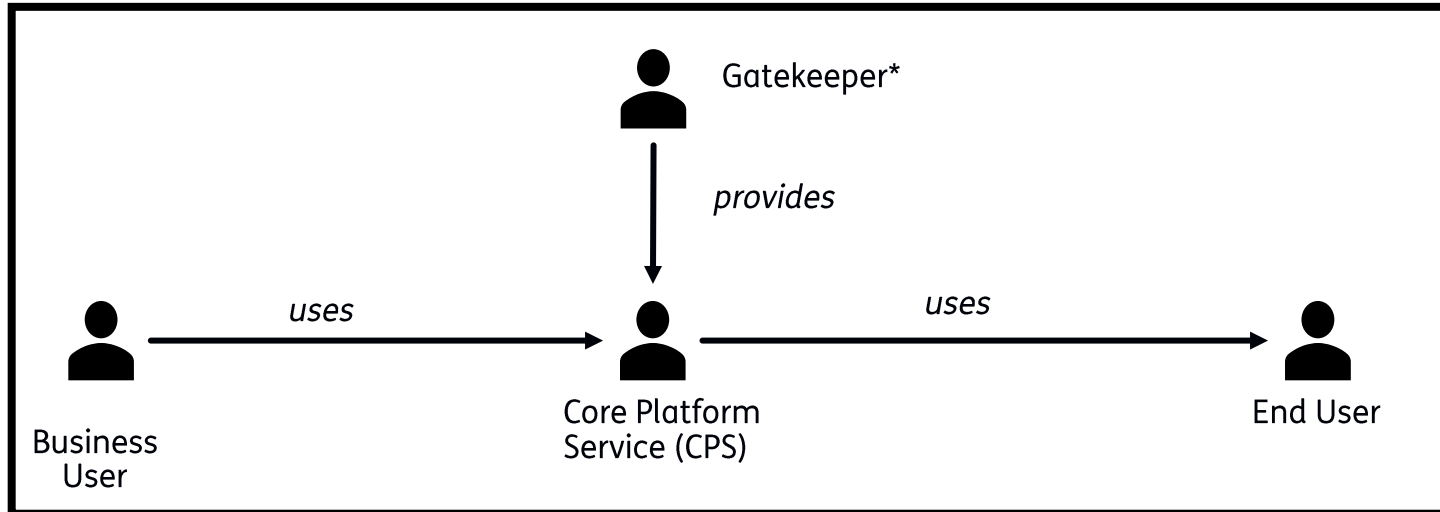
Digital Markets Act

- Adopted September 2022.
- Applicable from May 2023.

- Main focus: foster fair competition, curb anti-competitive practices, particularly in the context of gatekeepers.
- Applicable to: Gatekeepers, Business Users and End users.



Roles



*Designated by the EU

- Turnover of €7.5 billion in the last three financial years, or a valuation of at least €75 billion in the last financial year, **and**
 - Provision of a CPS in at least 3 EU Member States, **and**
- CPS has more than 45 million active monthly end users **and** more than 10,000 yearly active business users in the EU in the last financial year, **and**
 - in the last three financial years.

Highlights (1/2)

- Rights of end-users:
 - Easily uninstall any software on the gatekeeper's OS, unless essential.
 - Change default settings.
 - Enable usage of third-party software or app stores.
 - Cannot treat own services more favourably for ranking/indexing.
 - Switch between and subscribe to different software.
 - Port data.



Highlights (2/2)

- Rights of business-users:
 - Level playing field.
 - Detailed information about advertising, free of charge.
 - Access to search query data on Fair, Reasonable and Non-discriminatory (FRAND) terms.
 - Interoperability with the CPS.
 - Access to app stores, search engines and social networking services on FRAND terms.
 - Free-of-charge and high-quality access to data on the CPS.



Penalties and Enforcement

- Enforced directly by the European Commission.
- But, actions can also be initiated by national competition authorities like the ACM.
- Penalties:
 - Fines up to 10% of the company's total worldwide annual turnover.
 - Or up to 20% in case of repeated infringements.
 - Periodic penalty payments up to 5% of average daily turnover.
 - Additional remedies, including behavioural and structural remedies, are also possible.



Wrap-up: the main takeaways

- EU Data Strategy - working on creating an EU Fit for the Digital Age:
 - Promoting access to and (re-)use of data.
 - Clearer defaults and transparency.
 - Addressing platform power.
 - Promoting safety and security online.
 - Easier dispute settlement.
- Progress on creating the digital single market.
- But long road ahead.



Thank you for your time!

- Questions?
- Contact: kartik.chawla@tno.nl



Backup Slides



Data Act – Main Roles

<p>IoT Product Manufacturers, and Related Service Providers</p>	<ul style="list-style-type: none"> ✓ Do you produce or manufacture connected devices, such as a smart home appliance or smart industrial machinery? ✓ And, do these devices obtain, generate, or collect data concerning their use or environment? ✓ And, can they communicate product data, for instance via a publicly available electronic communications service? ✓ And, is their primary function not the storing and processing of data on behalf of a party other than the user? ➤ Then you may qualify as a product manufacturer. ✓ Do you provide a digital service, such as software? ✓ And, is this digital service integrated into a connected device? ✓ And, could the connected device not perform one or more of its services without your digital service? ✓ Or, is it connected to the device at a point later than its purchase to add to, update or adapt its functions? ➤ Then you may qualify as a related service provider.
<p>Data Holders</p>	<ul style="list-style-type: none"> ✓ Do you have a right or obligation to make specific data available under EU law or national legislation adopted in accordance with EU law? Such a right or obligation can be, for instance: <ul style="list-style-type: none"> ○ As an IoT manufacturer under the Data Act, or ○ A data holder receiving a request for data from a public body under exceptional need, or ○ A data holder making data available under the Digital Governance Act, or ○ A data holder making data available under the GDPR. ➤ Then you may qualify as a Data Holder. ➤ Please note that this category is broader than obligations to make data available under the Data Act.
<p>Data Processing Service Providers (DPSPs)</p>	<ul style="list-style-type: none"> ✓ Do you provide cloud or edge computing services? ✓ That is, do you enable ubiquitous and on-demand administration and remote access to a scalable and elastic pool of shareable computing resources? ➤ Then you may qualify as a Data Processing Service Provider.

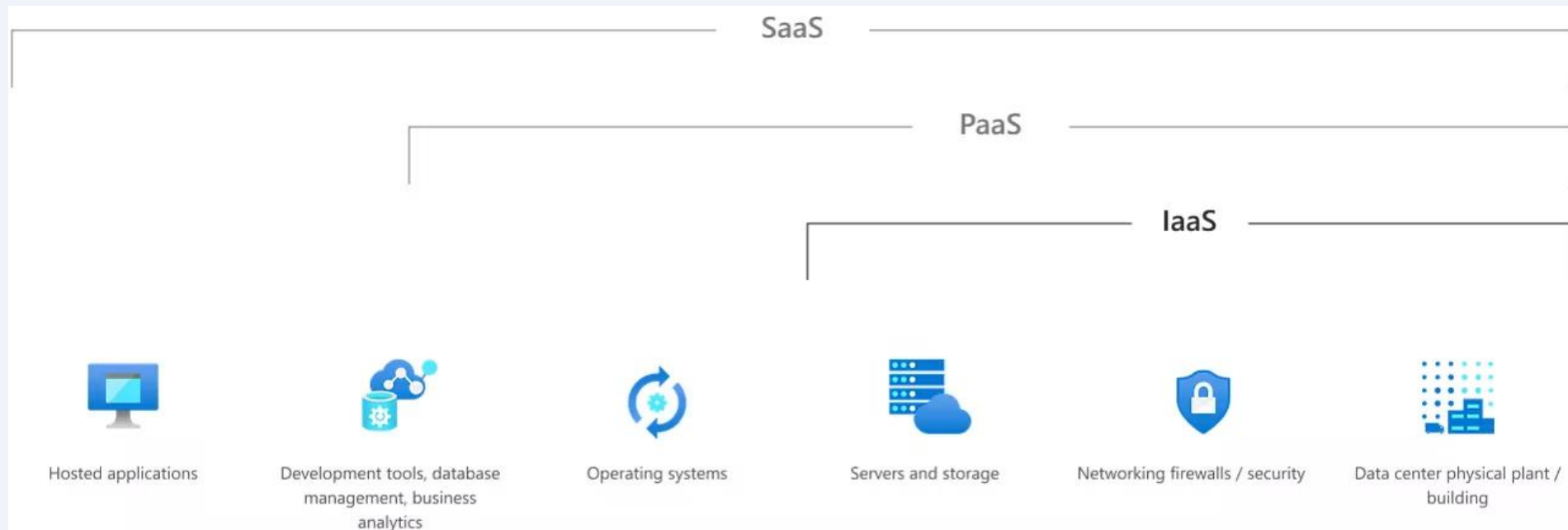
Unfair Terms (1/2)

- Art. 13(3): A contractual term is unfair if it is of such a nature that **its use grossly deviates from good commercial practice** in data access and use, **contrary to good faith** and **fair dealing**.
- Art. 13(4): In particular, a contractual term shall be unfair for the purposes of paragraph 3, if its object or effect is to:
 - (a) exclude or limit the liability of the party that unilaterally imposed the term for intentional acts or gross negligence;
 - (b) exclude the remedies available to the party upon whom the term has been unilaterally imposed in the case of non-performance of contractual obligations, or the liability of the party that unilaterally imposed the term in the case of a breach of those obligations;
 - (c) **give the party that unilaterally imposed the term the exclusive right to determine whether the data supplied are in conformity with the contract or to interpret any contractual term.**

Unfair Terms (2/2)

- Art. 13(5): A contractual term **shall be presumed to be unfair** for the purposes of paragraph 3 if its object or effect is to:
 - (a) inappropriately limit remedies in the case of non-performance of contractual obligations or liability in the case of a breach of those obligations, or extend the liability of the enterprise upon whom the term has been unilaterally imposed;
 - (b) allow the party that unilaterally imposed the term to access and use the data of the other contracting party in a manner that is significantly detrimental to the legitimate interests of the other contracting party, in particular when such data contain commercially sensitive data or are protected by trade secrets or by intellectual property rights;
 - **(c) prevent the party upon whom the term has been unilaterally imposed from using the data provided or generated by that party during the period of the contract, or to limit the use of such data to the extent that that party is not entitled to use, capture, access or control such data or exploit the value of such data in an adequate manner;**
 - (d) prevent the party upon whom the term has been unilaterally imposed from terminating the agreement within a reasonable period;
 - (e) prevent the party upon whom the term has been unilaterally imposed from obtaining a copy of the data provided or generated by that party during the period of the contract or within a reasonable period after the termination thereof;
 - (f) enable the party that unilaterally imposed the term to terminate the contract at unreasonably short notice, taking into consideration any reasonable possibility of the other contracting party to switch to an alternative and comparable service and the financial detriment caused by such termination, except where there are serious grounds for so doing;
 - (g) enable the party that unilaterally imposed the term to substantially change the price specified in the contract or any other substantive condition related to the nature, format, quality or quantity of the data to be shared, where no valid reason and no right of the other party to terminate the contract in the case of such a change is specified in the contract.

Types of Cloud Services



Source: <https://azure.microsoft.com/en-us/resources/cloud-computing-dictionary/what-is-iaas>