

Germany's Barriers to U.S. Digital Services Suppliers

Over the past several years, Germany has passed or proposed several key measures that severely threaten the ability of U.S. digital service suppliers to access its market. The net effect of these measures is to put U.S. digital services suppliers at a competitive disadvantage in Germany's market: by adopting discriminatory scoping of U.S. firms for stricter review under competition law, imposing excessive fines and content takedown requests, allowing the dominant telecommunications operator to throttle internet traffic that does not pay a transmission premium ("paid peering"), and potentially adopting discriminatory mechanisms to extract revenue from U.S. digital firms. Even where not directly or immediately restricting access, the burdens and risks associated with these measures will severely diminish access opportunities in a market that accounted for \$27.3 billion in U.S. digitally-delivered services exports in 2023.¹ Specific proposed or enacted barriers are as follows.

On May 29, 2025, Germany's Minister of Culture announced the country's intention to impose a **10% digital services tax** on the revenues of large digital services providers offering online advertising, with the explicit intention of targeting U.S. companies while likely shielding most competing incumbent suppliers.² The proposed tax would appear modelled off Austria's 5% digital services tax on online advertising services, albeit at a far higher rate of 10% and on a digital advertising market that is one of the largest in Europe (estimated to be worth \$40 billion by 2030).³ It would therefore represent an unprecedented move to extract revenue in a discriminatory manner, burdensome for U.S. companies and, as a revenue-based tax, in violation of international taxation norms.

On April 1, 2025, the ruling government coalition announced a proposal to impose an **online streaming funding obligation**.⁴ The proposal would rely on an investment obligation to "strengthen the competitiveness" of domestic industry, and appears to revive an earlier proposal that would require streaming and other video on demand services to invest 20% of their German turnover on domestic production. This would be a radical departure from the status quo, where no such obligations are currently in effect.

¹ <https://apps.bea.gov/iTable/?reqid=62&step=6&isuri=1&tablelist=359&product=4>.

² For proposal was announced in an interview with German magazine, *Stern*, <https://www.stern.de/politik/deutschland/google-und-co---regierung-plant-plattformabgabe-fuer-internet-giganten-35762870.html?source=email> and on the Ministry's website <https://kulturstaatsminister.de/weimer-fordert-plattform-soli>.

³ <https://www.grandviewresearch.com/horizon/outlook/online-advertising-market/germany#:~:text=The%20Germany%20online%20advertising%20market,revenue%20generating%20type%20in%202023>.

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https://www.koalitionsvertrag2025.de/sites/www.koalitionsvertrag2025.de/files/koav_2025.pdf#page=124.

Section 19(a)(1) of the German Competition Act,⁵ passed in 2021, allows the German Federal Cartel Office to predesignate certain firms as having “paramount importance for competition across markets,” thereby subjecting them to stricter oversight, including through preemptive prohibitions on conduct. This authority has been almost exclusively used to target U.S. digital services firms,⁶ prohibiting them from engaging in pro-competitive behaviors that their rivals are generally permitted to pursue.

The **Network Enforcement Law (NetzDG)**, enacted in 2017, mandates that social media companies remove “manifestly unlawful” content on social media within 24 hours, with potential fines up to €50 million.⁷ The law places the burden on platforms to make complex judgments about whether user speech violates legal standards, leading companies, under pressure from short review periods and steep fines, to over-censor by removing lawful content to avoid penalties, raising concerns about transparency, free expression, and the global reach of takedown requirements.⁸ Since its enforcement in 2018, the law has inspired similar regulations in countries like Russia, Singapore, Türkiye, and Venezuela.⁹

Germany’s largest telecommunications operator has been allowed to leverage its **termination monopoly** for internet traffic to extract premium payments (“paid peering”) from companies willing and able to pay to reach its end-users. For other customers, it has been allowed to unreasonably throttle non-paying traffic and prioritize paid peering, creating congestion that pressures content providers to pay for access and degrades service quality for startups, critical applications, and users across Germany.¹⁰

⁵ Amendment of the German Act Against Restraints of Competition, BUNDESKARTELLAMT (Jan. 19, 2021),

https://www.bundeskartellamt.de/SharedDocs/Meldung/EN/Pressemitteilungen/2021/19_01_2021_GWB%20Novell.e.html.

⁶ See

https://www.bundeskartellamt.de/SharedDocs/Meldung/DE/Meldungen%20News%20Karussell/2023/05_04_2023; and

https://www.bundeskartellamt.de/SharedDocs/Meldung/EN/Pressemitteilungen/2022/06_07_2022_Amazon.html; and

https://www.bundeskartellamt.de/SharedDocs/Meldung/EN/Pressemitteilungen/2022/05_01_2022_Google_19a.html; and

https://www.bundeskartellamt.de/SharedDocs/Meldung/EN/Pressemitteilungen/2022/04_05_2022_Facebook_19a.html; and

https://www.bundeskartellamt.de/SharedDocs/Meldung/DE/Pressemitteilungen/2023/28_03_2023_Microsoft.html?n=1.

⁷ <http://dip21.bundestag.de/dip21/btd/18/130/1813013.pdf>.

⁸ <https://www.hrw.org/news/2018/02/14/germany-flawed-social-media-law>.

⁹ <https://www.euractiv.com/section/digital/opinion/the-digital-berlin-wall-how-germany-built-a-prototype-for-online-censorship/>.

¹⁰ <https://epicenter.works/content/beschwerde-gegen-die-deutsche-telekom-wegen-verletzung-der-netzneutralitaet>.