

VIVALDI OPEN LETTER – MICROSOFT DMA COMPLIANCE**1. EMPOWERING BROWSERS ON WINDOWS THROUGH THE DIGITAL MARKETS ACT**

Vivaldi's mission is to empower users by providing a browser that caters to their individual needs, putting them in control. We believe in offering a browser that allows customization without compromising performance or security.

Vivaldi supports the EU Digital Markets Act ("**DMA**") because it gives users more control and gives them more options.¹ The DMA deals with many issues IT companies such as Vivaldi have faced. It offers hope for restoring genuine competition in the browser space and other digital markets, liberating users from the walled gardens of Big Tech.

Vivaldi and its CEO, Jon von Tetzchner, bring a wealth of experience dealing with gatekeepers and how they deprive browser competitors of opportunities to advantage their own offerings. Jon's experience dates back to the 1990's, both from his current role at Vivaldi and his former position as CEO of Opera. Back then Microsoft bundled its dominant Windows operating system with its Internet Explorer browser. Microsoft has continued to find ways to force its own browser (first Internet Explorer, now Edge) onto users.

In light of the DMA becoming fully applicable in the coming months, Vivaldi via this open letter wishes to express concerns over Microsoft's recent behaviour.² While attention is often focused on the responses of Apple, Google, and Meta to the DMA, Microsoft's actions should not be overlooked.

Microsoft has publicly always expressed a constructive stance towards the DMA.³ However, its actions tell a different story. Recent months have revealed Microsoft's concerted efforts to either intentionally disregard the incoming regulation or expand its market power before the DMA takes full effect. This disregard for the DMA manifests itself in a variety of areas, but notably also in how Microsoft operates in the browser market:

- Section 2.1 Microsoft has increased the prompts to users that look for an alternative browser
- Section 2.2 Microsoft is imposing *de facto* Edge default exclusivity and is making it harder for Browser providers to create user-friendly browser default settings

¹ Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828, as can be accessed [here](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32022R1925) [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32022R1925]

² The DMA entered into force on 1 November 2022. Its rules started applying six months later on 2 May 2023. By 3 July 2023 companies meeting the notification threshold had to notify the EC with designations following in early September 2023. Compliance with the substantive DMA provisions would be mandated by March 2024.

³ See [here](https://blogs.microsoft.com/eupolicy/2021/05/03/microsoft-supports-new-rules-for-gatekeepers/) [https://blogs.microsoft.com/eupolicy/2021/05/03/microsoft-supports-new-rules-for-gatekeepers/] and [here](https://blogs.microsoft.com/eupolicy/2021/12/10/lets-stay-focused-and-make-the-digital-markets-act-effective/) [https://blogs.microsoft.com/eupolicy/2021/12/10/lets-stay-focused-and-make-the-digital-markets-act-effective/]

- Section 2.3 Microsoft increasingly ignores and overrides default browser settings, including in Outlook and Teams
- Section 2.4 Microsoft is leveraging its innovative Bing Chat feature by requiring users to use Edge

At Vivaldi, we believe it is crucial for companies to align their actions with their stated commitments. We call upon Microsoft to reconsider its course of action and fully embrace the principles and objectives of fairness and contestability set forth in the DMA. It is only by adhering to these principles that a truly competitive and user-centric digital ecosystem can thrive. In the remainder of this open letter, we will set out in more detail the various ways in which Microsoft has moved away from DMA compliance in recent months.

2. WHAT MICROSOFT HAS DONE LATELY

2.1 Doubling down on Edge prompts

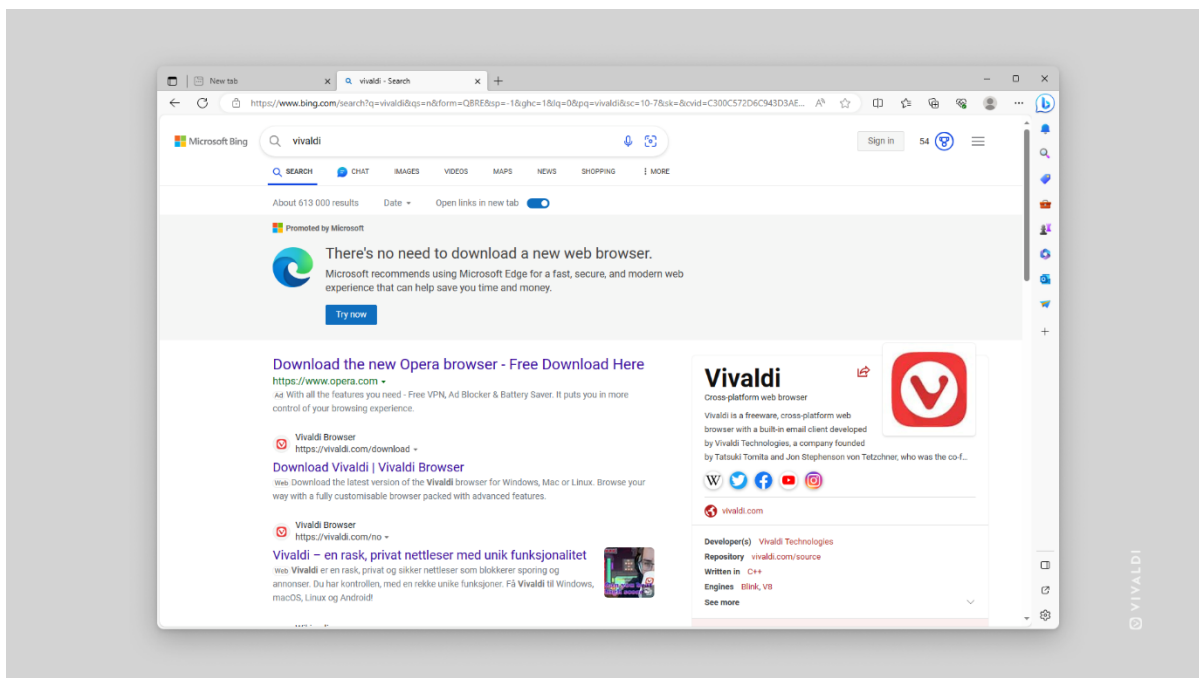
The DMA attempts to secure true user choice in browsers by requiring in Article 6.3 that users are able to choose their preferred browser from a choice screen upon first use of any browser. Gatekeepers must prompt end users, "*at the moment of the end users' first use of an [...] web browser [...], to choose, from a list of the main available service providers, the [...] web browser to which the operating system of the gatekeeper directs or steers users by default.*"

The primary focus of this provision is to address the issue of default settings, which we will discuss further in section 2.2 below. Nevertheless, by implementing a choice screen upon first use of *any* browser, the provision also serves to mitigate the effects of pre-installed browsers on fair competition. Through a DMA-compliant implementation, users will immediately be redirected to their preferred browser via the choice screen and won't be forced through a pre-installed browser.

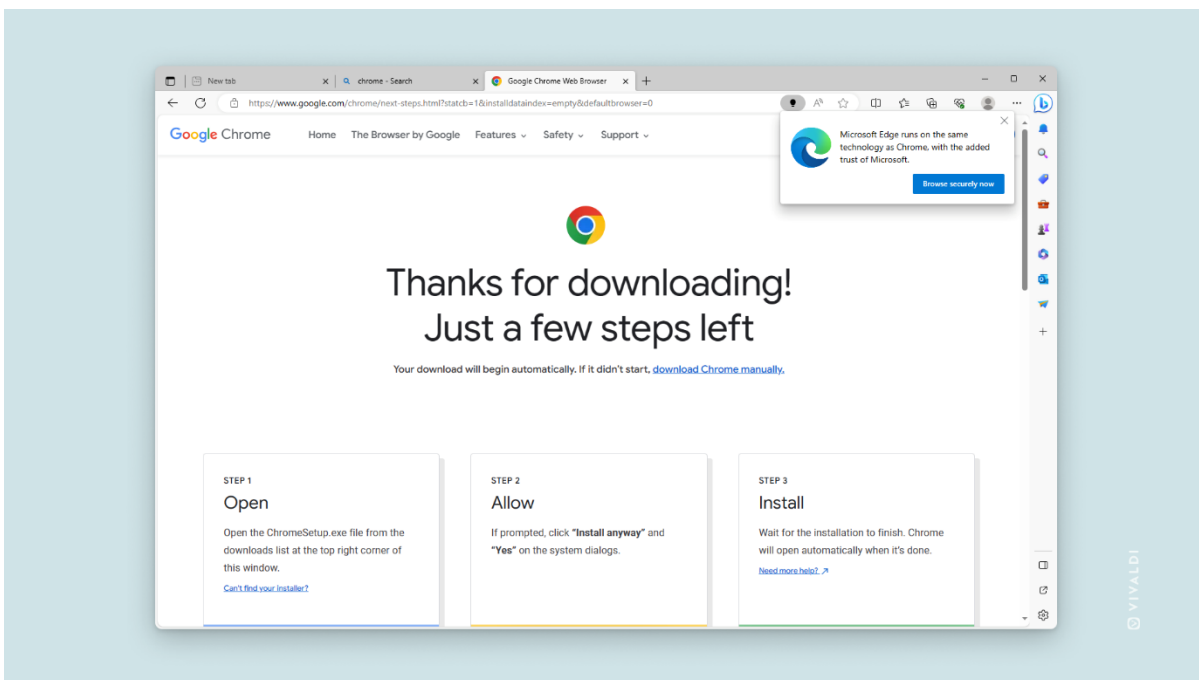
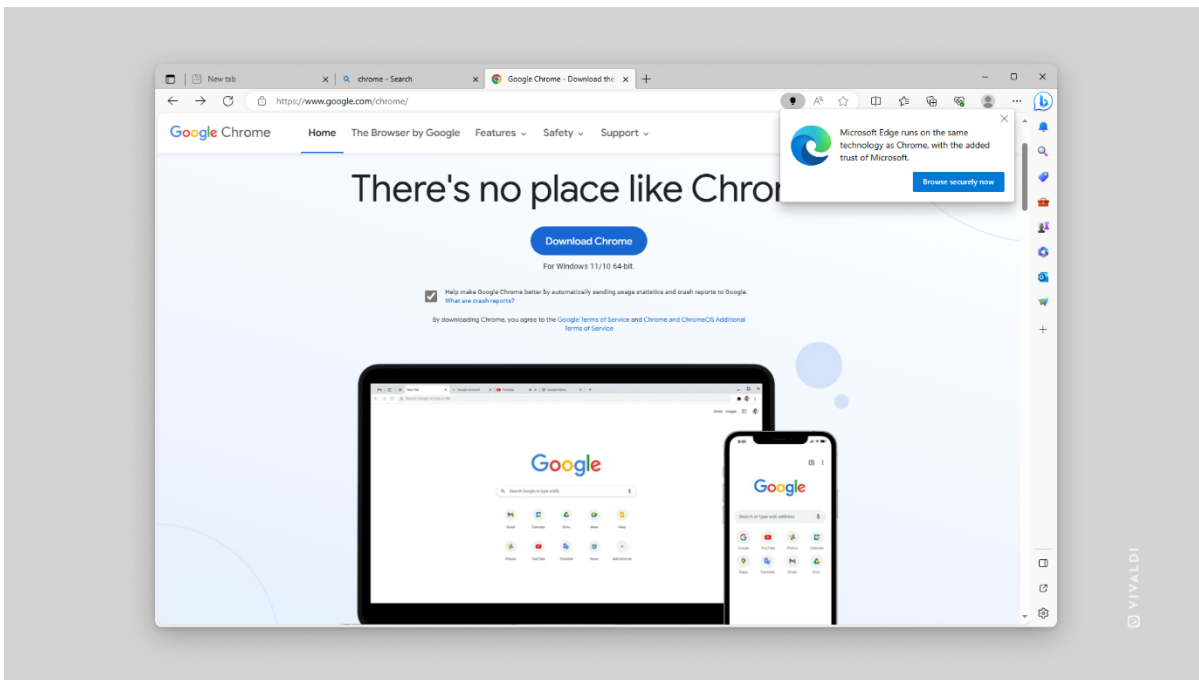
In contrast, Microsoft's Edge browser on Windows is acting as a gatekeeper for users to get to their preferred browser, being the out-of-the-box installed and default option. Microsoft forces users to go through Edge to get to their preferred browser. Compounding the issue, Microsoft is bombarding users with persistent warning screens and popups encouraging them to stick with Edge, whereas competing browsers have no ability to reach users in a similar way. These tactics not only impede users' freedom of choice but also create an unfair advantage for Microsoft in the browser market.

Moreover, Microsoft's long-standing practices in nudging users towards its Edge browser have taken a more aggressive turn in recent times. Users downloading a competing browser via Microsoft Bing on Edge are exposed to a barrage of three distinct prompts. First, Microsoft strategically places a warning screen at the top of Bing search results (which is generally set as the default in Edge), on an area of the page that is reserved to Bing and which competing browser providers cannot get into, assuring users that there is "*no need to download a new web browser.*" This initial prompt attempts to dissuade users from exploring alternatives and reinforces the perception that Edge is the optimal choice.

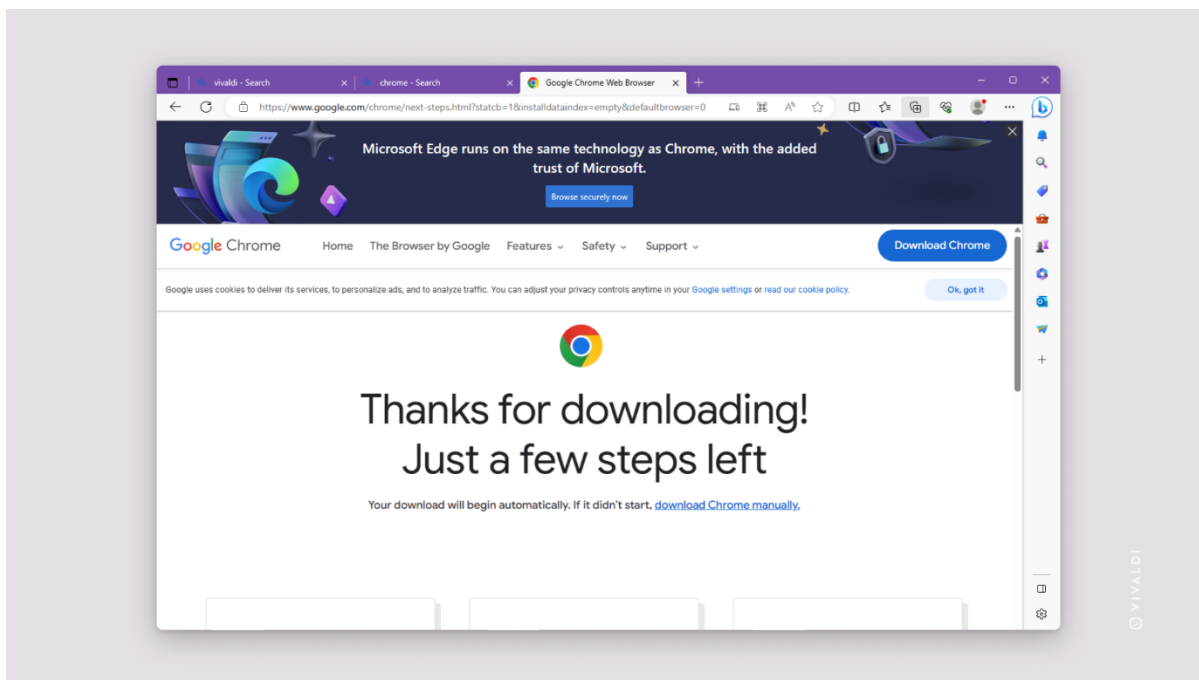
Alternative browsers cannot compete with Microsoft's prompt, not even through paid advertising on Microsoft Bing. Ads on Bing are much smaller, with just basic search result text, and a label "Ad" beside them. In contrast, the Edge banner is given more screen real estate than actual search results. This contrast can be seen in searches for Vivaldi where another browser has paid for an advertisement, as shown below.



Furthermore, when users visit the website of a competing browser, they are greeted with a popup message highlighting that Edge offers the "*added trust of Microsoft*," implying that the user's preferred browser should not be trusted.



In a final attempt to retain users, Microsoft prompts a full-size banner after the competing browser has been downloaded, again stressing the alleged superior quality of Edge. This is inserted into the browser interface itself above the web page, a space which competing browser have no chance to get into.



Microsoft's practices, once designated, are illegal under the DMA.⁴ The DMA prescribes that gatekeepers, upon first use of a web browser on their operating system, must prompt a choice screen of main available browsers. Consequently, users should be redirected via the choice screen to their preferred browser and Microsoft will no longer be able to force users through Edge and past its assertive steering tactics. Nevertheless, despite the legal implications, Microsoft seems determined to cling on to these practices while it still can, in stark contrast to its *support* for the DMA and its promotion of Windows as an *open* platform.

2.2 Imposing *de facto* Edge default exclusivity

Even when users persist in downloading an additional browser on Windows, Microsoft increasingly puts obstacles in place to prevent that browser from becoming the default choice. This approach to default setting also raises concerns regarding fair competition and compliance with the DMA.

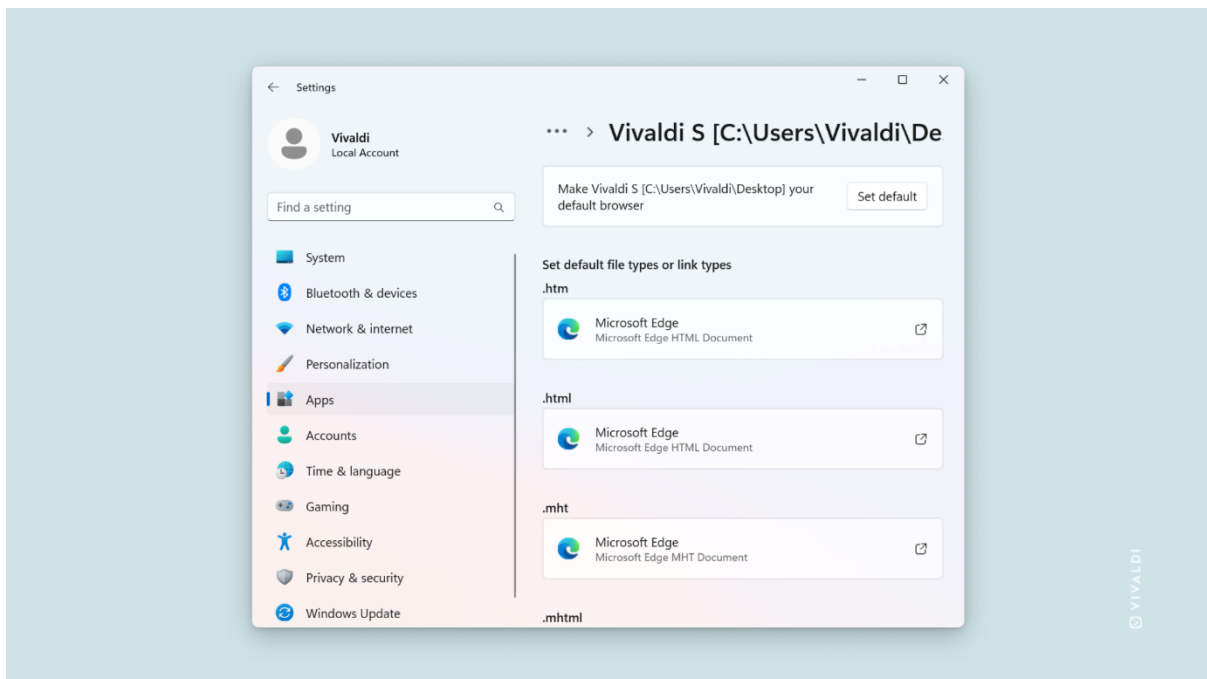
As set out above in section 2.1, Article 6.3 of the DMA mandates the use of a choice screen to set the default browser. Furthermore, Article 6.3 stipulates that a ***"gatekeeper shall allow and technically enable end users to easily change default settings on the operating system, virtual assistant and web browser of the gatekeeper that direct or steer end users to products or services provided by the gatekeeper."***

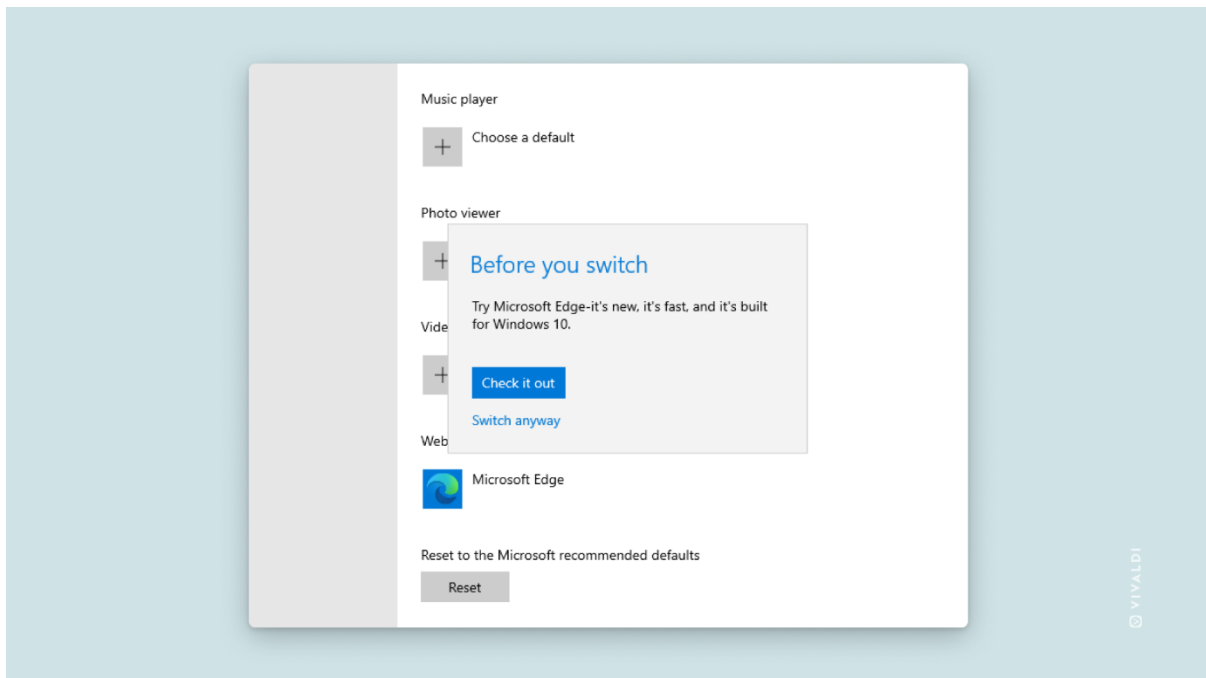
Despite this provision and the underlying concern, the default setting of browsers on Windows has become increasingly difficult. For example when Microsoft introduced "S mode" for Windows 10 (and subsequently Windows 11), Microsoft's *"streamlined version for optimised security and performance,"* it blocked all competitors from ever becoming the

⁴ Microsoft has already been designated for Windows and should be designated for Edge and Bing in the coming months on all accounts and metrics.

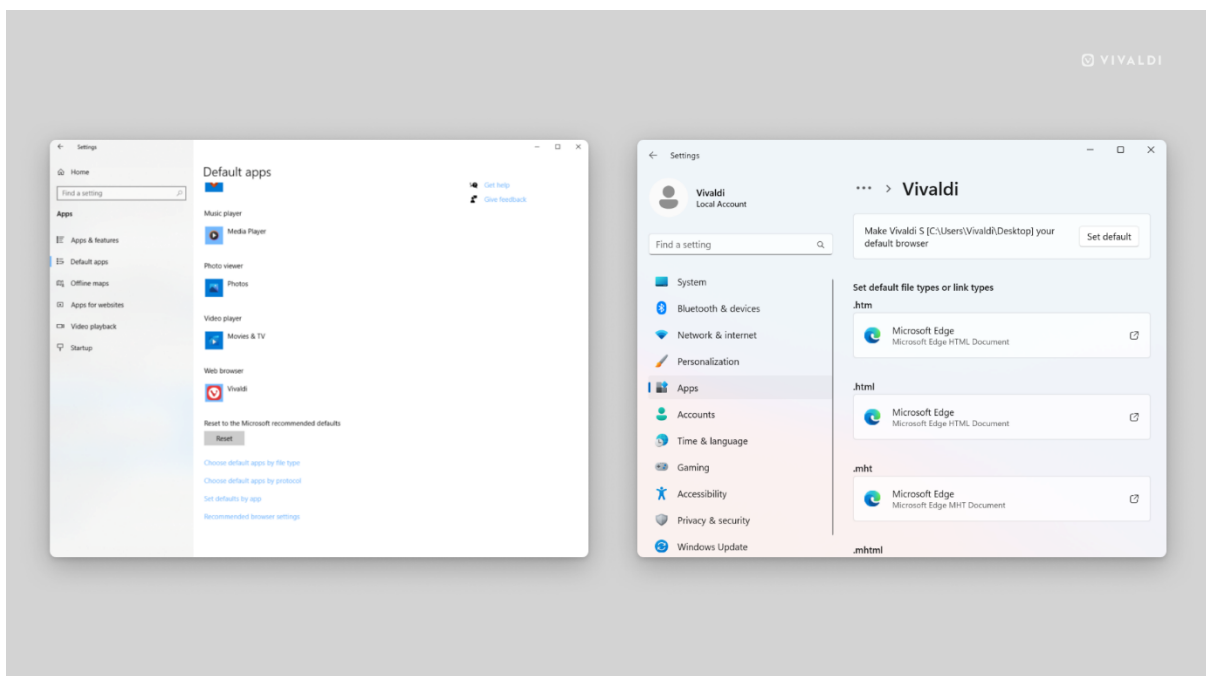
default browser. In S mode Microsoft Edge is always the default web browser, and Bing is the default search engine.

In addition, the transition from Windows 10 to Windows 11 has added to the frustration of changing default settings. Rather than simplifying this process and empowering users to customize their preferences, Microsoft has chosen to make default setting more difficult. In Windows 10, users could change their default browser with a single click. However, Windows 11 introduced a convoluted system that required users to set the default browser one file extension at a time, causing unnecessary complexity and inconvenience.





Moreover, although a subsequent update brought marginal improvements, the default setting menu in Windows 11 (right) remains significantly less visible and harder to access compared to its previous placement in Windows 10 (left):



Browser providers, in response to Microsoft's tactics, have sought user-friendly workarounds to provide a seamless experience for their users, e.g., through a popup that allows users to change to their preferred default browser in one click. However, recent reports by users

indicate that Microsoft has intensified its efforts to suppress these innovative solutions, leaving users trapped within the confines of its own ecosystem.⁵

Furthermore, once a user has selected a different default browser, there have been many historical examples of Microsoft updates nagging users to reset Windows to "recommended" default settings, which will reset the default browser to Edge.⁶ The exact appearance can be different each time, and different warnings have historically been used. However, such prompts instill unease in users, making them question their settings and suspecting that their selections might somehow be harmful.

Once again, Microsoft's practices flagrantly and increasingly violate Article 6.3 of the DMA. This provision stipulates that gatekeepers such as Microsoft must "*allow and technically enable end users to easily change default settings on their operating systems.*" By doing so, the DMA aims to cultivate an environment of fair competition and provide users with the power to shape their digital experience. However, Microsoft's actions, despite its words, paint a different picture altogether, as it diverges further from DMA compliance, impeding the realization of a truly open and competitive browser landscape.

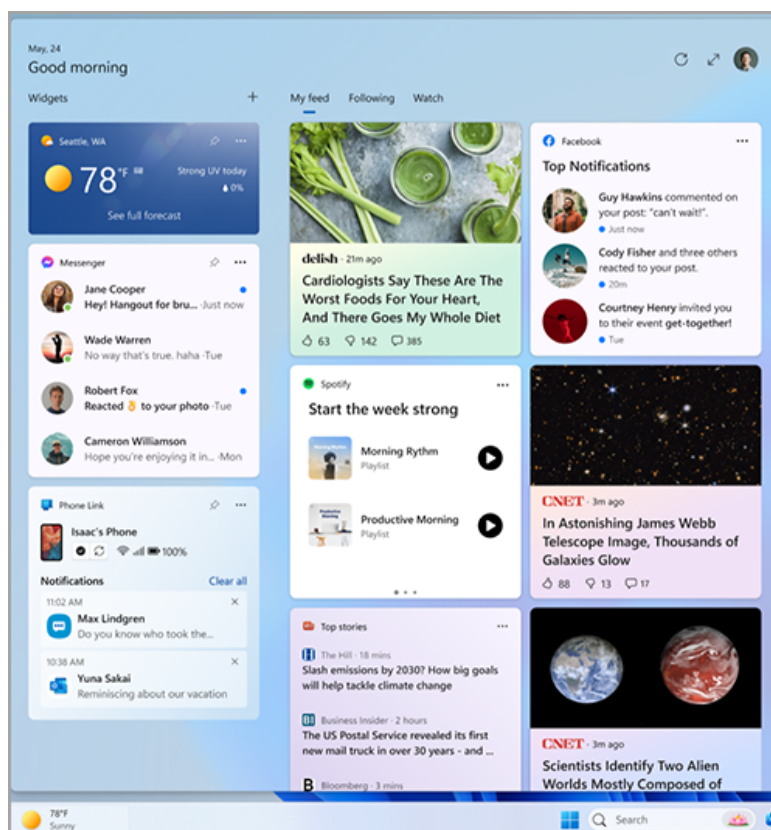
2.3 Increasingly ignoring default browser settings, including in Outlook and Teams

Arguably even more concerning than Microsoft's deliberate efforts to frustrate users and overcomplicate default settings, is its increasing disregard for default settings altogether. Article 6.3 would become wholly ineffective should gatekeepers be able to override default settings as they please. As such, while Article 6.3 is silent on this aspect, overriding default settings breaches the anti-circumvention provision of the DMA (Article 13), which sets out that "*the gatekeeper shall not engage in any behaviour that undermines effective compliance with the obligations.*"

Even if users, despite the obstacles Microsoft places in their path, manage to set their preferred browser as the default in Windows 10 and 11, they soon discover that Microsoft does not adhere to these choices for all links. For important services such as Windows widgets (dynamic tiles as shown below on the Windows desktop related to apps and services) and the Windows Search bar, Microsoft overrides users' preferences and forces links to open through its Edge browser. To compound the issue, developers who have attempted to find user-friendly workarounds to prevent Microsoft from redirecting links to Edge have faced repeated obstacles, with their solutions being systematically blocked.

⁵ See [here](https://gizmodo.com/microsoft-windows-google-chrome-feature-broken-edge-1850392901) [https://gizmodo.com/microsoft-windows-google-chrome-feature-broken-edge-1850392901] and [here](https://www.windowscentral.com/software-apps/browsing/a-windows-update-blocked-this-google-chrome-feature-to-promote-microsoft-edge) [https://www.windowscentral.com/software-apps/browsing/a-windows-update-blocked-this-google-chrome-feature-to-promote-microsoft-edge]

⁶ See [here](https://www.windowslatest.com/2020/11/15/windows-10-is-now-nagging-users-with-microsoft-edge-recommendations/) [https://www.windowslatest.com/2020/11/15/windows-10-is-now-nagging-users-with-microsoft-edge-recommendations/]



Furthermore, recent reports from users indicate that Microsoft will double down on its behaviour.⁷ Microsoft has announced that Outlook and Teams, two critical tools for professional communication, will also disregard the default web browser on Windows and open links exclusively in Microsoft's Edge browser.

This move significantly magnifies the anti-competitive impact of Microsoft's actions but ironically comes soon after a Microsoft blogpost where the company announced "*a principled approach*" to app defaults that will ensure that user choices are respected.⁸

While the DMA itself does not explicitly address the overriding of default choices, it does establish that users must be allowed to select an alternative default service when directed to a web browser by the operating system (see recital 49 and Article 6.3). As such, Microsoft's behaviour violates the DMA. Microsoft's behaviour would be a flagrant circumvention of the DMA provisions falling squarely within the DMA's anti-circumvention provision. By overriding user default choices to its own benefit, Microsoft is actively undermining the very essence of fair competition and consumer choice that the DMA seeks to protect.

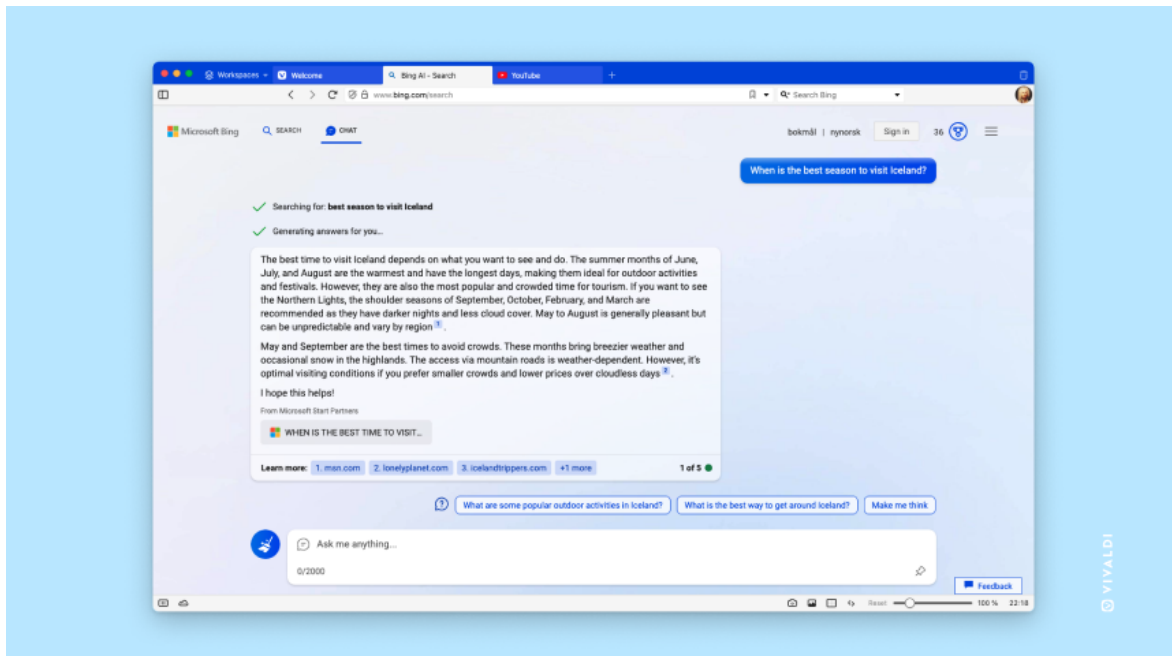
⁷ See [here](https://www.theverge.com/2023/5/3/23709297/microsoft-edge-force-outlook-teams-web-links-open) [https://www.theverge.com/2023/5/3/23709297/microsoft-edge-force-outlook-teams-web-links-open]

⁸ Access the Microsoft blogpost [here](https://blogs.windows.com/windowsexperience/2023/03/17/a-principled-approach-to-app-pinning-and-app-defaults-in-windows/) [https://blogs.windows.com/windowsexperience/2023/03/17/a-principled-approach-to-app-pinning-and-app-defaults-in-windows/]

2.4 Leveraging its competitive advantage in AI (via ChatGPT)

Finally, Microsoft is not satisfied with solely leveraging its dominant position in operating systems to gain an advantage in the browser market. Recently, the company has sought to leverage its newfound strength in general search into browsers as well.

With the boom of AI solutions following the introduction of ChatGPT, Microsoft aims to capitalize on its competitive edge over Google via Bing Chat, Microsoft's integration of ChatGPT with Bing. However, Microsoft is using its position in AI to strengthen its foothold in the browser market by tying Edge to Bing Chat. Despite the availability Bing Chat on all platforms, users are arbitrarily required to use Microsoft Edge to access it. Such behaviour forces browser providers like Vivaldi to resort to workarounds, such as disguising themselves as Edge, to ensure their users can enjoy the innovative features of Bing.



While workarounds present short-term resolutions to the immediate anti-competitive effects, the underlying nature of Microsoft's behaviour remains anti-competitive. Vivaldi should not be forced to hide its identity in order to provide users with full access to services. Such overt discrimination is unacceptable under the DMA. First, the DMA explicitly forbids gatekeepers from forcing users to utilize additional core platform services when they wish to use a particular core platform service (Article 5.8). In other words, Microsoft may not coerce users to use Microsoft Edge when they want to use Bing Chat and must allow users to exercise their preference for a preferred browser. In addition, the DMA mandates that gatekeepers ensure "*effective interoperability with [...] the same operating system, hardware or software features [...] as are available to, or used by, that gatekeeper*" (see recitals 55-57 and Article 6.7).

3. CONCLUSION

In conclusion, the introduction of the DMA should mark a new era of opportunities for software developers and users. The focus in digital markets should be on providing the best and most innovative products, without leveraging a gatekeeping position. Unfortunately, while we move closer to the DMA becoming fully applicable, Microsoft is moving further away from compliance. In recent months Microsoft has reinforced its "death by a thousand cuts" strategy to keep Windows users locked into its Microsoft Edge browser.

The impact of Microsoft's behaviour is likely to be worst for browsers that do not have a large advertising platform such as Bing and Google with which to convince users to continue with their selection in spite of, *e.g.*, the warnings set out in section 2.1. By targeting users directly, Microsoft can actively harm users' impression of the competing browser they have selected. In addition, Section 2.3 shows that IT managers are directly targeted with Microsoft's messaging. It is impossible to quantify the harm that these combined factors cause to competing browsers, but it is certain to be non-negligible.

Microsoft's contradictory behaviour raises concerns over its true commitment to fostering fair competition and user choice. In the spirit of fair competition, we urge Microsoft to reconsider its current approach and fully embrace the principles of the DMA. By allowing users to easily select their preferred browser, Microsoft can contribute to a more dynamic and diverse digital ecosystem that benefits everyone involved, including end users and competitors. It is time for Microsoft to not only advocate for DMA compliance but also take concrete actions to support it. It is time for Microsoft to respect the market and let users decide which browser they prefer.

At Vivaldi, we believe in fostering a culture of collaboration when it comes to addressing DMA compliance. Therefore, we look forward to engaging in constructive dialogue with Microsoft and the EC to find a solution that upholds the values of fairness and contestability as laid out in the DMA. Together, we can work towards a digital landscape that promotes innovation and choice.

Jon von Tetzchner

Vivaldi Technologies