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EU digital economy competition policy: From *ex-post* to *ex-ante*. The case of Alphabet, Amazon, Apple, and Meta

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Abstract

Since 2007, the European Commission (EC) has opened numerous competition cases regarding Alphabet, Amazon, Apple, and Meta (AAAM). Enforcement, however, has remained elusive, prompting a new regulatory paradigm in the EU known as the Digital Markets Act. In this study, we analyze the EC's competition policy approach regarding big tech with an emphasis on AAAM. Rather than implementing a consumer welfare friendly neoclassic economics analysis, we adopt a critical political economy of communications (CPE) approach to analyze these cases. The article explores whether EU competition policy does enough to yield the required measures to preserve a healthy digital economy sector for political and social welfare as much as for consumer welfare.

Keywords

Alphabet, Amazon, Apple, Meta, communications policy, EU competition policy, public interest, digital markets act, digital economy sector, political economy of communication, platformization

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Introduction

The growth of Alphabet, Amazon, Apple, and Meta Platforms (AAAM) has prompted policymakers to rethink governance and regulation of the digital economy sector (Moore, 2016). Despite a post-pandemic setback, all hold dominant positions within the economy (Aral, 2020; Waters, 2021). Apple's market capitalization remains the largest of any company in the world, Alphabet ranks fourth, Amazon fifth, and Meta Platforms, undergoing the biggest post-pandemic decline, has recently fallen out of the top 10 companies in the world yet remains highly influential in terms of users within its platforms. AAAMs combined market capitalization is approximately five trillion US dollars, a figure larger than the GDP of most global economies (Companies Market Cap, 2023).

Despite a resurgence of interest across multiple jurisdictions in greater regulation by nation-states regarding aspects of the structure, conduct, and performance of digital platforms (Chan and Kwok, 2022; Flew and Su, 2022; Kretschmer, Furgal and Schlesinger, 2021), the size and power of AAAM have made regulatory oversight exceedingly challenging. All four companies have multifaceted processes, intricate business models, and burgeoning socio-cultural power. As Van Dijck (2021) argues, "the complexities of platforms are increasingly at odds with the narrow legal and economic concepts in which their governance is grounded" (p. 2802). Policy reevaluation of the digital economy sector has focused on content moderation concerns, big data/privacy/surveillance, and competition (Popiel, 2022, p. 36). Competition policy illustrates the most problematic area since policymakers have been unsuccessful in the enforcement of current competition law upon AAAM (Budzinski & Menelsohn, 2021).

At the cusp of this new regulatory era, we explore EU competition policy for the digital economy sector with an emphasis on AAAM. Applying a critical political economy of communications analysis, we ask whether current changes to competition policy are yielding the necessary measures to overturn growing concerns prompted by the platformization of the internet. We analyze current global competition policy initiatives before looking closer at AAAM platformization practices. We then describe European Commission *ex-post* antitrust cases of AAAM and the new *ex-ante* Digital Services Act Package.

Critical political economy of communication, platformization, and the public interest

Critical political economy is a tradition of analysis that investigates the power relations of how information is produced, arranged, and distributed (Fuchs, 2009; Garnham, 1990; Hardy, 2014; Mosco, 2009; Winseck & Jin, 2012). Golding and Murdock (1997) posit political economy stresses an analytical procedure that is holistic, historical, and ultimately more beneficial to society than neoclassical economics. Overall, political economy asks what the best choices are for the public interest. It does so by calling attention to the field's critical stance vis-à-vis "questions about power in communication and the conditions for realizing democracy" (Hardy, 2014, p. 3) while underlining "how government policies influence media behaviour and content" (McChesney, 2000, p. 109). While scholars within the approach specify strands of political economy of communications such as the monopoly capitalism school, the institutional school, and the cultural industries school (Winseck, 2017), we apply a holistic critical approach to reflect the complexities associated with platform power and platformization. As such, we draw on Flew's (2021) seven public concerns (identified below) associated with the platformization of the digital communications and the public interest as defined by Van Cuilenburg and McQuail (2003). In doing so, the study distances itself from neoclassical economics analysis of competition policy whereby emphasis is consigned to

consumer welfare, market dominance considerations, and the protection of consumer choice. Put another way, a key component of this study is in critically analyzing EU competition policies by expanding the concept of the public interest to more than just economic welfare, recognizing the socio-cultural concerns associated with platformization.

As information has migrated from an analogue communication setting to a more complex digital landscape, so too must the direction of enquiry. Drawing on the work of Yochai Benkler's *Wealth of Networks* (2006), Winseck and Jin identify this space, or framework of enquiry, as the "social ecology of information" (2012, p. 12). For a large part of the twentieth century, this framework was preoccupied by large media conglomerates (Mosco, 2009; Nicoli, 2012; Maniou & Bantimaroudis, 2021). Yet over the past two decades, information has fragmented into new structures to include along with the media additional components such as big tech and telecommunications entities, individual citizens, state agents, and digital symbol creators (Benkler, 2006; Winseck, 2020). As significant as this is, it is the governance of internet gatekeepers, those who control the endpoint between content and end user, that represents the most disruptive change and pressing challenge (Flew, 2021; Popiel, 2022). As Winseck and Jin note, "people who embrace political economy do not just sit back passively on the receiving end of these changes but try to influence them by, among other things, doing policy-relevant research" (2012, p. 13). The process of this change, defined as the *platformization* of information, focuses on the final point of delivery of information (Evens et al., 2020; Flew, 2021; Srnicek, 2017; Van Dijck, 2021).

Platformization and the public interest

Digital platforms, identified as "internet gatekeepers" (Helberger et al., 2015), "custodians of the internet" (Gillespie, 2018), and "internet intermediaries" (Flew, 2021; Iosifidis & Nicoli, 2021), consist of applications and services that allow users to interact with each other. Together they impact commerce, communication, entertainment, and finance of billions of people. Srnicek (2017) describes four features of their complex build-up. These are, (1) intermediaries that bring together and control multiple stakeholders; (2) their network effects, that allows them to control their market through a process of "tipping" (see also Budzinski & Menelsohn, 2021); (3) their practices of cross subsidization, allowing one aspect of their services (typically profit-making) to subsidize others (normally loss-making); and (4) the architecture of their products that keeps users engaged.

Similarly, Evens and Donders (2018) and Evens et al. (2020) identify five C's that make up today's digital platform environment. These are *connectivity*, or controlling the networking infrastructure, *content*, control of the programming rights, *consumer*, controlling the customer relationship, *capital* control of credit creation and *context*, the technological evolution, economic climate, and regulatory landscape. In defining her platformization tree, Van Dijck (2021) points to three specific platform dynamics that affords big tech their power—vertical integration, infrastructuralization, and cross-sectoralization.

Building a platformization theory for governing the digital economy sector, Flew (2021) identifies seven areas of public concern in how digital platforms are established and used. (72–103). These are as follows:

1. Online privacy and security
2. Data concerns
3. Algorithmic sorting
4. Disinformation and fake news
5. Hate speech and online abuse

6. Impact on media and creative industries
7. Information monopolies

These concerns have transpired from the self-governance forces and safe harbor provisions of laws such as Section 230 of the Communications Decency Act in the US, and the EU's Electronic Commerce Directive and code of practice on disinformation (Iosifidis and Nicoli, 2021). Further to these points, Van Cuilenburg and McQuail's (2003) analysis of the public interest as a tripartite consisting of political, social, and economic welfare remains useful in analyzing digital platform policy. While together, they offer sound analytical foundations necessary to reform the platformization of the internet, in practice broad definitions of the public interest remain difficult to oversee within EU competition policy for two main reasons. The first consists of difficulties in defining the public interest (Napoli, 2019). This argument considers the complex and diverse context of different societies and economies (such as each European Union member-state), representing conflicting viewpoints of what the public interest is. The term public interest assumes the existence of a common interest, although specific manifestations are seldom agreed upon (McQuail, 1992). Even if it presupposes the existence of a common interest, there is no consensus on what is in the common good and on the policies that are required to achieve it. In terms of EU competition policy, the precise meaning attributed to the notion of the public interest and the means proposed for achieving it is not a Europe-wide issue but instead falls within the scope of each member-state. Since it assumes the development of common interests, Iosifidis (2011), borrowing from McQuail, used the idea of public interest to refer to the collective cultural, political, social, and informational benefits to the society which serve both the democratic processes of political participation and the cultural, social, and economic well-being. Individual claims then are not included in the concept.

The second difficulty is that competition law is already a "complex beast" (Dunne, 2020, p. 259) and is therefore restricted to providing support to the economy within a fair market landscape. This argument points to other legislations that address public interest concerns. Competition law would contravene any effort in regulating extended versions of the public interest. This might be argued, for example, in how alcohol or tobacco is regulated. In such cases competition law would suffice in leveraging the economic sphere, making sure alcohol and tobacco companies compete on an equal playing field. Other more direct public interest legislation can address wider concerns such as driving under the influence or setting age limits.

Competition policy within the digital economy sector

Numerous reports and government inquiries have been commissioned around the world to investigate platformization concerns of the new digital economy and search for potential policy remedies and competition enforcement options (Cammaerts & Mansell, 2020; Puppis & Winseck, 2022). Examples include Australia (ACCC, 2019), the European Union (Cremer et al., 2019), Germany (Schallbruch et al., 2019), Japan (Japan Fair Trade Commission, 2017), the UK (Furman et al., 2019), and the US (House Judiciary Committee, 2020). All point to similar concerns (see also Budzinski & Menelsohn, 2021; Kerber, 2019). These include merger and takeover threats (mainly of nascent competitors), direct and indirect network effects, high levels of concentration, difficulties in defining markets, consumer lock-ins, marketplaces and operating system arrangements, and gatekeepers' use of data (for advertising, self-preferencing, withholding sales-related data to competitors).

Problems arise in the regulation of the digital economy sector on account of its fast-paced nature that makes it difficult to define markets either for measuring concentration levels or for defining

marketplaces. If the market is left to weak and inconsistent competition policy, it typically results in concentration of ownership, partly because of the high basic costs of access, and partly because of the ability of powerful firms to penetrate any market. In most cases, the more concentrated a market is, the stronger the barriers are to entry and the less competition involved. Using standard economic measures of concentration, the Concentration Ratios (CR) and the Herfindahl-Hirschman Index (HHI), the digital economy sector displays unheard-of results. And because of already existing high levels of vertical and horizontal integration, the digital economy sector itself is diverse and can be broken into further categories such as control over software and hardware as well as the level of advertising. For example, Apple's app store has a HHI of 5700 (anything above 2500 shows signs of a highly concentrated market) while Alphabet and Meta control roughly 70% of the online advertising market (Winseck, 2020). From the 500 plus acquisitions made by AAAM, the European Commission has only formally investigated eight, with Google's significant acquisitions of Android in 2005, YouTube in 2006, and DeepMind in 2014 not examined (Witt, 2022).

Are public interest concerns addressed within digital economy competition policy?

The shared concerns of global inquiries enable policymakers to pursue avenues to reform the sector, yet Popiel (2022) highlights several challenges of competition policy and existing silos within a global context. Competition policy within the digital economy has thus far acted in an *ex-post* framework designed for static markets to be dealt with within national jurisdictions. The dynamic global nature of digital marketplaces makes them harder to define and regulate on a state level despite, for example, Amazon controlling over a third of global transactions in most parts of the world (Furman et al., 2019). Digital marketplaces also mine data and can self-preference their own goods. This too highlights the limitations of national competition policy. These challenges have been documented by policymakers and scholars, and as we illustrate with EU competition policy, efforts are being made to remedy them.

Despite global policy reform, when we take a broader view of competition policy and the public interest efforts are abandoned since emphasis is placed on the protection of economic and consumer welfare. Two questions arise from this point. First, do policymakers pay equal attention to individual benefits derived from consumption and to collective social or political welfare? In other words, do they consider when policies stimulating consumer welfare and fair competition across the digital economy harm citizenship and broader social concerns? Second, do policymakers review how stimulating competition of the digital economy sector might threaten the economy as a whole? Policies concerning digital platforms that elicit competition and growth can lead to negative externalities upon citizens, society, and the overall economy. Here, our view is that policy intervention is required. We identify the below concerns that benefit consumers yet have the potential to impend extended descriptions of public interest.

Many platforms base their business models on zero-price services. These include social media and search engines. While many of the outcomes of zero-price services are addressed in current competition policies, one outcome of "free," is not. Tim Wu (2019) calls this an antitrust blind spot. It presumably costs nothing for a consumer to create a profile on a social media platform, yet attention costs have a negative effect elsewhere and indeed upon other sectors (see also Wu, 2019, 2018). Information scarcity and attention abundance has turned into information abundance and attention scarcity. According to Newman (2019), when it comes to attention costs, "implications for market analysis and policy design are enormous" (pp. 1504–1505). The reason is because it instigates mental overload that in turn causes distractions and a reduction in cognitive capacity. Digital

platforms, startups and nascent competitors are all vying for the attention of end users. As platforms continue to investigate new ways of grabbing people's attention and as competition policies spur them on further to innovative in these areas (consider, e.g., the new Apple headset investors are expecting the company to launch, as we approach a metaverse world), how many sectors of the economy will be threatened and at what costs to human wellbeing? Ørmen and Gregersen (2022), have investigated how Alphabet's YouTube monetizes attention by creating interconnected processes amongst content, creative labor, and audiences. In the study, they illustrate the advantages of large platforms within the context of attention blind spots and competition policy. These are public interest concerns omitted from recent policies and digital economy competition regulation including the EU's Digital Markets Act and the UK's Digital Market Unit recommendations.

Competition law reform of the digital economy sector persists in a climate of economic macrolevel and consumer welfare support, regulating specific functions of digital technologies without considering other concerns. Instead, a more holistic approach of embedding public concerns and interests within competition policy should be considered since digital platforms have the potential to destabilize the economic system itself. The answer is not to curtail innovation but rather to find a way to control it in such a way that it does not harm social welfare.

Alphabet, Amazon, Apple, Meta competition policy concerns

Prior to current digital platforms, large technology firms of the past were disrupted by innovations that facilitated healthy competition. This gave voice to non-interventionist advocates to persist with the status quo (Furman et al., 2019). Examples of disruption include the decline of IBM following the emergence of the personal computer; Microsoft's dominance over operating systems giving way to the internet; and AOL, Friendster, and MySpace failing to reach a critical mass due to a lack of bandwidth and infrastructure.

The advancement of digital networks, the pervasiveness of smartphones, and the turn of the century internet crash enabled AAAM to cease opportunities to consolidate their positions. AAAM have grown their digital ecosystems because users have built powerful network effects within them, leading to consumer lock-ins without the option to transfer their networks to other platforms (highlighting a lack of policies pertaining to interoperability). In addition, users willingly share much of their data across these platforms, further exacerbating the utility of these networks. Once critical masses are reached within these platforms these data rich archives and layered networks reinforce a winner takes all environment causing the market to tip and creating an anticompetitive environment. Furthermore, AAAM operate within economies of scale and scope that nascent competitors cannot (Barwise & Watkins, 2018). From a business to consumer perspective, *Google Gmail*, *Google Photos*, and *Amazon Kindle* are cases in point. It is difficult to untangle *Amazon's* e-commerce services, for example, with their cloud computing services. This issue becomes more complex in the intangible web of interrelatedness when it comes to a business-to-business, or business-to-government landscape. Some of *Amazon's* largest *AWS* business clients include *Netflix*, *LinkedIn*, *Facebook*, *BBC*, and *Baidu*; similarly, on *Amazon's AWS* government section of its website the first sentence reads, "With over 6,500 government agencies using *AWS*, we understand the requirements U.S. government agencies have to balance economy and agility with security, compliance, and reliability" (Amazon, 2023).

Anticompetitive practices are further highlighted across AAAMs growing two-sided network effects with content creators (both amateur and professional), motivating millions of people to generate content for a share of the advertising sector (Ørmen & Gregersen, 2022). Users have willingly shared content, driven by their own personal motives, allowing platforms to reap the

rewards of digital labor (Yazdanipoor et al., 2022). As the creator economy grows, new demand is created. As such, a host of digital players are vying to break the highly consolidated and established AAAM hegemony via the creator economy. These fast-growing players include TikTok owner ByteDance, LinkedIn, Snapchat, Spotify, and Twitter. Behind them, a tier of less heard digital entities such as Medium, OnlyFans, Quora, and YouNow have been growing at a steady pace over the past several years. With new players threatening AAAMs dominance, a laissez-faire approach might seem fitting (particularly in the case of the meteoric rise of TikTok). Yet AAAM have swiftly moved to address the creator economy to ensure they keep intact their incumbent user-base, illustrating their prudence in monitoring and responding to nascent competitors. *Amazon* has created *Twitch*, *Instagram* and *Facebook* have moved closer toward e-commerce business models, have launched *Reels*, and have begun the process of paying content creators, *YouTube* has for years established itself within the creator economy, while *Apple* is pushing its podcast and *iTunes* divisions. *Microsoft* albeit not analyzed in detail in this study, is also looking to move in this direction having investigated its options into buying *TikTok* and has clearly shown interest in moving into social gaming. It has recently purchased Activision Blizzard, a gaming firm, for nearly 70 billion dollars (Korn & Duffy, 2022). It will undoubtedly seek to reinforce partnerships with creators.

For Alphabet and Meta, free services offered to users is funded by advertising creating a zero-price market. In this context, growth motivations bare similarities with traditional media. The larger the audience, the more income generated by advertising. Digital platforms offered by Alphabet and Meta, however, strengthen their advertising model by harnessing big data (*Organisation for Economic Co-operation and Development* [OECD], 2016). For example, they make advertising options more sophisticated by means of targeted and engaging options (Nicoli et al., 2021). Furthermore, big data creates more possibilities for data-driven-innovation (DDI) which smaller companies with less data cannot do. Spotify, for example, (the platform that filed the case against Apple for having to pay application commission fees) or Xandr, a competing programmatic advertising landscape once owned by AT&T, acquired by Microsoft, over Google's advertising system, might benefit from competition law reform. Yet crucially, these reforms do not address extended public concerns of platformization, including security concerns, citizens' privacy, as well as their demand for transparent use of data. Furthermore, as seen by the acquisition of Xandr by Microsoft, like with Microsoft Bing in the online search domain, it takes another big tech entity to consider competing with Alphabet and Meta in the digital advertising space. Nonetheless, as demonstrated by Google Search, it is difficult even for large competitors to acquire a share of the market once dominant positions are held. Today, many consider Google Search a monopoly (with close to 90% market share of search) that not even Microsoft Bing (6%) has the capacity to compete with (Burton, 2021). Through its size and multisided network effects, Google Search facilitates its parent company, Alphabet, to move in vertical and horizontal directions, often cross subsidizing the costs required to establish itself in new spaces that nascent competitors have neither the time nor the investment to follow; Google Maps is a case in point.

EU enforcement of AAAM: 2007–2022

EU competition law, Articles 101 and 102 of the Treaty of the Functioning of the European Union (TFEU) are primarily designed to protect economic and consumer welfare of EU citizens (Witt, 2022). Furthermore, competition policy in the EU represents several mechanisms to implement the Treaty on European Union (TEU) (Chalmers et al., 2019). Two of these goals consist of the “well-being of its people” and to “establish an internal market” (Ezrachi, 2018, p. 2). Wider efforts to modernize EU competition law have continued along a similar path of making the economy more

competitive while disregarding universal public interest concerns. Dunne notes, “in bringing EU law more directly in line with the consumer welfare paradigm, however, the Commission has essentially disclaimed any role for broader public interest considerations” (p. 259–260).

The EC’s efforts to rein in digital platforms has intensified in recent years, upholding the region’s reputation as the world’s digital economy watchdog (Iosifidis & Nicoli, 2021; Kerber, 2019). Since the EU fined Microsoft in 1994 for abusing its dominant position, horizontal sector, *ex-post* competition policy has been at the heart of the region’s digital economy governance. Enforcement has focused on antitrust, mergers and state aid concerns. Between 2007 and 2021, across all four conglomerates analyzed in this study, 15 antitrust cases, eight mergers’ cases and three state aid cases have been opened (see Table 1).

Alphabet/Google

A search of Google/Alphabet antitrust cases on the EC competition policy website finds seven open cases between the period 2007 and 2022 for violating various competition laws. Three of them have merged into one case, *Google Shopping*. The case primarily deals with how the company favors its own search results. The second, *Google Android*, open in 2018, identified how the company uses its dominance to force Android smartphone manufacturers to pre-install its software. The third case, *Google AdSense* in 2019, concerns how the company forces advertising partners to use Google AdSense in favor of competitors. The fourth, *Google Adtech* launched in June 2021, investigates if and how the company abuses its online display advertising technology over others. At the time of writing, this remains a separate investigation but could merge with the *Google AdSense* investigation of 2019. The fifth case, opened in 2022 investigates agreements made between Facebook (Meta) and Google concerning programmatic advertising.

Amazon

Amazon has had three antitrust cases opened against it by the EC as well as a merger case and a state aid case (tax reductions by Luxemburg which was overruled in favor of *Amazon*). In terms of antitrust cases, in 2017, following a 2-year investigation into whether its e-book distribution agreements were fair, the company agreed to change its publisher contracts. The second investigation addresses the e-retailer’s advantage over how it collects and uses data of its buy box section. The third case, opened in late 2020, is on *Amazon’s* dual platform advantages in the marketplace, distorting competition to its benefit at the expense of other sellers on its platform (see also Khan, 2017, 2018).

Apple

Apple has won a state aid case for tax reductions to Ireland worth 13 billion Euro. The company has a long-standing partnership with Ireland and has had offices there for decades; the overruling of the case benefited both *Apple* and Ireland, (Ireland preferred keeping *Apple* in Ireland than having the money). The EC has four open antitrust investigations with *Apple* all pertaining to how the company uses its dominant position. These are either through its mobile payment system, a growing trend amongst smartphone users, or its app store practices, unfair treatment of music streaming competitors (following a complaint by Spotify), unfair treatment of the app store in terms of e-book and audiobook competitors, and unfair treatment of other applications (these include gaming

Table I. EU competition policy enforcement of Alphabet, Amazon, Apple, and Meta (Facebook) 2007–2022.

Firm	Antitrust	Period	Mergers	Period	State Aid	Period
Alphabet (Google)	Abuses in search engine dominance. EU fines Alphabet 2.4 billion euro in 2017.	2010–to date	Google acquisition of Doubleclick. EU approves.	2008	Poland to grant aid to Google Poland. EU approves	2008
	Forcing Android users to install Google Search and Chrome. EU fines Alphabet 4.3 billion euro in 2018.	2015–to date	Google acquisition of Motorola. EU approves.	2012		
	Misuse of dominant position in search advertising using AdSense. EU fines Alphabet 1.49 billion euro in 2020.	2016–to date	Google joint venture with Sanofi. EU approves.	2016		
	Favoring its own advertising display technology.	June 2021–to date	Google acquisition of Fitbit. EU approves.	2020		
	Agreement with Facebook on programmatic advertising known as Jedi Blue	2022–to date				
Amazon	Unfair e-book distribution (company agrees to changes).	2015–2017			Tax reductions in Luxembourg (13 billion euro). Case overruled 2021	2006–2014
	advantages over competitions (over how company uses its buy box section).	2019–to date				
	Dual platform advantage distorting competition over rivals.	2020–to date				
Apple	iTunes. EU approves Apple decision to equalize prices across the EU.	2007–2008	Apple acquisition of Beats. EU approves.	2014	Tax reductions in Ireland (13 billion euro). Case overruled 2020	1991–2007
	Distort competition and reduce choice and innovation of mobile payment.	2020–to date	Apple acquisition of Shazam. EU approves.	2018		
	Unfair treatment e-book, audiobook via app store.	2020–to date				
	Unfair treatment of music streaming services via app store.	2020–to date				
	Unfair treatment other applications via app store	2020–to date				
Facebook	Abuses in dominance to collect data that benefits the way it targets users.	2021–to date	Facebook acquisition of WhatsApp. EU fines for 110 million for misleading information in 2017. Facebook acknowledges infringement.	2014–2017		
	Agreement with Google + A15:A17 on programmatic advertising known as Jedi Blue	2022–to date	Facebook acquisition of Kustomer. EU approves.	2021–2022		

applications but exclude music) whereby the tech giant receives commission fees and information regarding competitors' data.

Meta platforms/Facebook

Facebook has been under increased regulatory scrutiny since 2017, when it was reported that political data firm *Cambridge Analytica* had harvested Facebook user data without consent in the context of the 2016 US presidential election (Iosifidis & Nicoli, 2020). During the same year, the company was fined 110 million euro for giving misleading information to the Commission. The company's defense was that it was unintentional and accepted the infringement. In June 2021, the EC opened a formal investigation into whether Facebook uses its dominant position to collect and use the data of its users and hence target them better than its competitors. The Commission is concerned with how this is implemented with classified ads where the social media platform can

better use its own *Facebook Marketplace* (EC, 2021). The other case (the Jedi Blue case) investigates agreements made between Facebook (Meta) and Google concerning programmatic advertising.

The digital markets act and current EU attempts to rein in AAAM

Rather than continue to pursue an *ex-post* horizontal sector approach of competition law, in December 2020 the EC proposed a largely *ex-ante* regulatory regime known as the Digital Services Act Package that specifically targets gatekeepers in the digital economy sector. The package is divided into the Digital Markets Act (DMA) that complements and updates existing competition policy, and the Digital Services Act (DSA), revising the 2000 E-Commerce Directive. As a package, one of its most significant changes is that it seeks to avoid difficulties in defining markets by setting simple quantitative criteria, or thresholds, for what makes a gatekeeper. If a company is identified as a gatekeeper, it needs to facilitate competitors in certain ways, for instance by ensuring end users can easily unsubscribe from core platform services or allowing end users to download alternative app stores. Violations can be heavily sanctioned by high fines and if breaches continue the EC will have the right to break up the gatekeeper.

The role of the DSA and DMA is to introduce regulation that will work together with antitrust enforcement to make the job of policymakers easier to rein in predefined internet intermediaries (Witt, 2022). The DMA addresses many of the economic welfare drawbacks identified above concerning competition policy. Defining markets becomes easier, data silos will need to be used by gatekeepers, and issues of interoperability and self-preferencing concerns are addressed. The DSA on the other hand seeks to address content moderation and speech concerns by providing obligations instigate public concerns and public interest of social and political welfare. What the regulation achieves as a package—apart from bypassing Section 230 and Europe’s E-Commerce directive—is to blend what is illegal in the economic sphere and what is illegal in a political or social context. Content moderation concerns require gatekeepers to do their due diligence in identifying it and taking it down. Ultimately, both democracy and free speech concerns (the DSA) and economic and consumer welfare concerns (DMA) are addressed. Announcing the two acts as a package also does much to link economic concerns with political and social interests, despite in essence, remaining separate regulations. Nonetheless, the DMA stops short of addressing broader public interest concerns that deal with attention blind spots. These are public interest concerns that affect other sectors of the economy and leave little room for policymakers to regulate effectively (Newman, 2019; Wu, 2019).

Despite the shortcomings of these regulations, it remains imperative that both the DMA and the DSA accomplish their goals in regulating digital platforms and protecting at the very least, consumer welfare, since as regulatory forerunners, other regions of the world will create copycat legislations. It is also significant that if the acts are at all watered down, civil society considerations are given more weight than gatekeeper and policymakers’ lobbying discussions. Complex issues pertaining to freedom of expression and digital privacy rights, for example, is a contested area that governments and large entities might both have vested interested in albeit not aligned with civil society.

The EU’s policy toward the digital economy sector illustrates clear solutions protecting economic and consumer welfare yet continues to overlook extended versions of the public interest such as Flew’s (2021) seven public concerns instigated from platformization and van Cuilenburg and McQuail’s (2003) tripartite public interest classification. In the EU, solutions that extend beyond consumer welfare are confronted separately from competition policy via the Digital Services Act. These are public interest concerns closely linked to political and democratic welfare.

Digital platforms, for example, are capable of provoking populist sentiments and inducing social and political polarization that in turn threaten the very existence of the EU (Flew & Iosifidis, 2020; Iosifidis & Andrews, 2020; Nicoli et al., 2022). These concerns are omitted from the DMA and are rather addressed in the DSA since they are closely linked to content moderation, freedom of speech concerns and digital democracy. Ongoing deliberations with civil society, policymakers and digital platforms are doing much to ameliorate current threats that protect political welfare. However, public interest concerns are separated between different policies disregarding the effects one component might have on another (see also Popiel, 2022). As the EU's Digital Markets Act becomes fully operational it remains to be seen whether large platforms and gatekeepers are more likely to litigate or comply (Macaulay, 2023). The regulation might ameliorate consumer welfare concerns but broader public interest concerns, such as attention blind spots identified above, that have the potential to harm competition, innovation, and the broader economy, and are not addressed in other policy approaches, remain missing from EU competition policy of the digital economy sector.

Conclusion

Overseeing platform regulation is difficult because of the sector's multifaceted processes, complicated business models, and growing socio-cultural power. Momentum for regulating digital platforms such as AAAM is growing, driven by growing concerns about the platform companies' economic power as well as concerns about privacy, security, the misuse of personal data, and online harms (Flew and Su, 2022). There is a need for a new generation of internet regulation that extends beyond consumer welfare and content moderation (Kerber, 2019). Regulating such a non-static and dynamic sector will be challenging for reasons that are yet unknown to policymakers. Breakthrough innovations and seemingly harmless mergers will be difficult to identify in the present as to whether they have a negative effect on society in the future. As the creator economy grows (particularly via metaverses) and as users and even specific regions of the globe (see Morales, 2021), continue to produce and consume content in digital settings, human distraction, and cognitive capacity concerns will burgeon. A more broadminded holistic approach of embedding public concerns and interests within competition policy should be considered since the digital economy sector has the power to destabilize the economic system as well as society more generally. For example, focusing on understanding the digital economy sector as an attention market as outlined by Wu (2019), is not considered in EU competition policy, yet can offer a clearer approach of defining digital platforms that can in turn be used to better serve the public interest in the present and in the future.

The European Commission aspires to create a fairer competitive landscape for the welfare of consumers through its Digital Markets Act while addressing certain political welfare and certain social welfare concerns via its Digital Services Act. Despite a persistence of applying competition policy within the prism only of consumer welfare, it is vital the two EU acts accomplish a fairer competitive digital economy landscape since many parts of the world turn toward the EU for guidance and will therefore look for policy inaccuracies and miscalculations within such an important region of the world.

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