

Europe's Digital Markets Act (DMA): Competition Perspectives from the European Commission

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SPEAKERS

Gerard de Graaf, Inge Bernaerts, Michael Koenig, Tim Lordan, Sumit Sharma

AUDIO

<https://netcaucus.org/audio/2022/20220602eucompetition.mp3>

Tim Lordan 00:00

Well welcome everybody. My name is Tim Lordan, and I'm the Executive Director of the Congressional Internet Caucus Academy. Welcome to our monthly tech policy recess discussion series. As you may notice, on the slide here, we have the wrong date. Today is January, June to 2022. And I just wanted to thank you for joining us. We've been doing these monthly briefings for the congressional in your caucus, probably since 1996. So thank you. Today's event is called Europe's digital markets act DMA competition perspectives from the European Commission and some perspectives from folks in the US. This as all of our events are hosted by the Congressional internet caucus Academy, which is us in conjunction with the Congressional Hispanic Caucus itself. And on the commercial Internet caucus, co chairs on the Hill are Senator Patrick Leahy and Senator John Thune on the Senate side, and Congresswoman Anna Eshoo, and Congressman Michael McCaul on the House side. So we thank them for co-hosting this event with us. Today, we're joined by representatives from the European Commission, and we're thrilled to have them. I've been doing this job for a long time. But before I joined this organization, I went to a congressional internet caucus briefing in 1998, about the Data directive in the European Commission. So it's been great that they show up and kind of explain what what they're doing in Europe and how it intersects. And it's a really great learning opportunity. So I wanted to thank the officials from the Commission and the mission here for helping us with this event. So let me just really quickly introduce the speakers from the Commission that are going to be speaking today we have Gerard de Graaf, who is the director for digital transformation at the Directorate-General Communications Networks, Content &

Technology, often called (DG CONNECT. at the European Commission. We also have Inge Bernaerts, policy director for the director, Directorate-General for Competition, sometimes called DG COMP, at the European Commission. And we have Michael Koenig, who's an advisor at the director, general DG CONNECT. So we're thrilled to have them and we'll have some follow up questions from Sumit Sharma, who's with Consumer Reports. And Ashley Baker from the Committee for Justice was supposed to be here today, but she got sick just a few hours ago, and she won't be able to join us. But let me just start by going first, I know that Gerard De Graaf, from the commission from DG CONNECT wants to make some just introductory remarks on where we are with the digital markets act chart.

Gerard de Graaf 02:38

Thank you, Tim. It's a pleasure to be here. Also, on behalf of my colleagues, and welcome, good morning to all of you who are connecting from the US. I wanted to say just a few words as kind of an opening, setting a little bit of the scene. And then my colleagues will take over and go into a bit more depth and of course, leave enough time for questions and answers that because that's that's really important. I wanted to say three things. I mean, the first thing is that OPC read to me today on the digital markets Act, which is a very important piece of legislation. I mean, there's a big political agreement on that at the end of March, it will be formalized and then adopted and, and enter into force later this year. So it's certainly a landmark piece of legislation. But I wanted to kind of just to, if necessary, point out that we're doing a lot in the European Union to make sure that the EU is ready and lead on digital transformation. And that obviously is in the regulatory field, we have a single market that needs to work better in digital, we have still too much fragmentation. But we also are investing significantly in digital technology. So I mean, I want to avoid the impression that the only thing that European Union does is legislate, we do a lot of investment. Also our member states and of course, also the private sector in areas for chips, 5g, Internet of Things, artificial intelligence, etc. So that's the first point I wanted to make. And maybe in the future, we could have another monthly I mean, we have some time to discuss these other things that the EU is involved in. The second point I wanted to stress is that we are going to, of course, implement and enforce the legislation and including the digital markets act in an even handed way. It does not matter where you are established as a company where your headquarters is what matters is kind of Are you active in the European Union? Are you providing your service to your union, so any kind of concern about that somehow the European Union will single out some companies and mean is unfounded and actually practice we are quite confident that also for the digital market and for the Digital Services Act, which is also a landmark piece of regulation. There will be several European companies and companies from other geographies within it. discuss. The last point I wanted to make is to stress that we'll be working very closely with our American colleagues in the context of the trade and Technology Council. The trade and Technology Council, of course, covers a very broad range of activities. It has really given momentum to the European EU us relationship. There's a lot going on. We had a meeting at the top political level two weeks ago, in Paris, I think it was a very, very positive meeting. Also in this area, we have been working very closely on the DSA and the DMA. We are also very vested in what happens on the hill. So I'm very interesting bills being introduced. I think in one word, the mood is constructive. This is not an area where the EU and the US are at loggerheads were kind of there is acrimony, etc. On the country, I think there is a shared problem analysis, of course, we regulated in a way that maybe you would not regulate in the US. But at least we have a great deal of of understanding and shared kind of convergent views around these, these issues. So with these three things, I just wanted to set a little bit the scene and then hand over to England to Michel, for a bit more detail on the digital markets.

Tim Lordan 06:18

Thank you. Thank you, Gerard. That's really great context. And, you know, with regard to India is going to maybe kind of I'd asking if she could lay out like what, you know, expand on what Dr. said, why the the European Commission, in your opinion, wanted to do the digital markets act, and what was the purpose? What's the rationale behind that, and just for the folks listening, Inga is from the director general of competition, different part of the commission. So this is a commission wide initiative. So Inge, could you give us more context on why?

Inge Bernaerts 06:51

Yeah, thank you very much, Tim. And good morning to you all, I, indeed, can very neatly pick up on where you left it, because I think it is indeed important to emphasize that, as EU, we want to lead on the digital transformation. And that's a matter of also generating the necessary investments to make that happen. But of course, for such investments to happen, it's important also to have a fair market conditions to have contestability into the market and opportunities for businesses of all sizes, no matter where they are coming from. And it's precisely from that perspective of contestability. Also, from the perspective of fairness, that we saw some issues in digital markets and, and that's very much the background to the digital market sector. And the reason why we tabled it. In DG competition, we've been having now more than 20 years of experience and very actively enforcing also the antitrust rules against the digital companies and against that type of behavior, which was having exclusionary consequences. And what we've seen throughout these 20 years throughout these cases, as that some patterns of behavior really occur, you see some behavior coming back, which we have looked into in detail and demonstrated how they have negative effects and how efficiencies do not outweigh those. And they really come in different shapes sometimes, but there are underlying patterns, whether that's about tying behavior or about self preferencing behavior, about online, the mediation platforms, abusing double roles that they play to create exclusionary effects. It's not only these antitrust cases, these enforcement cases, it's also sector inquiries that we have been doing. expert reports that we've been commissioning, from gigahertz departments perspective and observatory that has been looking into detail and mark as a market trends of which have been flagging the same issues. And so the question came to the fore like, are these antitrust instruments, the best suited to deal with these issues? And we quite quickly saw that that was not a case for two reasons. First of all, in digital, we are dealing with fast evolving markets. And often by the time you get to do your antitrust decisions, the markets have tips already. So there was an issue of speed of intervention. In this case, on the other side, as a matter of simply efficiency, then of enforcement, whether it's the most efficient way forward from an enforcement perspective, to go after every case, and look afresh each time into establishing dominance into analyzing effects and efficiencies. And what I wanted to highlight very much to you today as well, is that it's actually a quite common approach that we have followed in the EU over the past decades that when we see some systemic flaws in sectors, which are best tackled in a systemic manner, that I'm relying on base In ourselves on the romantic trust the knowledge, we go towards different instruments which at work much more exotic. That's something that we've done extensively in telecoms, if you think about regulation of roaming rates, for example, in the energy sector, what we've done in banking and what we have now also been doing, and when it comes to the digital market sector. So there are clear enforcement advantages to that approach, from my perspective, but I believe that there are also clear advantages to the businesses who might be in scope of the digital market sector. And one dimension has been highlighted already by gay half this, that our legislation, the digital markets Act also has a harmonizing effect, it

makes sure that there is a common set of regulatory rules across the EU, rather than companies having to deal with different sets of rules in our various member states. And secondly, it also provides more legal certainty to the businesses because rather than the principle based antitrust enforcement, the DMA contains quite specific obligations and prohibitions that I think give the company's concerns much more clarity about what is expected. There are some areas where we might have to fine tune that to regulatory dialogue, and Michelle will comment on that later. But I think overall, if you compare the precision of the DMA, towards the more principle based approach and competition, I think it's obvious to states that the digital markets Act gives them more more precision. Final point, maybe from my sides, is to highlight the scope of the digital markets act. It's a piece of a symmetrical regulation that only has a limited number of undertakings in scope that meets thresholds, which are very highly sat and that distinguish it from other pieces of legislation, like the Digital Services Act, for example, the hereafter referred to it distinguishes also from antitrust rules, which are generically applicable. So the digital market sector only zooms in on the largest players on the European market. It zooms in only on specific core platform services, which we believe have features that are prone to give rise to these issues of contestability and fairness that I described. And we zoom in only on a limited number of behavior for which we feel that there is sufficient evidence and the legislator has confirmed that based on the evidence that we have produced, that those are problematic behavior, whether its behavior going beyond what is forbidden by the DMA, we will still do the more refined case by case analysis on the antitrust to see whether that's something that requires action. So that's where we've been coming from and the general gist on the DMA and the purposes objectives that it tries to achieve. And Michelle can comment a bit more, maybe also using the slides that we have been sending in terms of background information on the mechanics of the digital market.

Tim Lordan 13:05

That's a great overview on the kind of why and and, and from Gerard and from Inga, so now I guess we've got to how, which is this is a complicated piece of legislation has been worked on for quite a while a lot of negotiation among the stakeholders in Europe. I'd asked Michael who Inge is with DG COMP. Let's go back to DG CONNECT with Michael Koenig, and kind of explain a little bit of the why the how does this work?

Michael Koenig 13:32

Guys, thank you very much, Jim. And also from my side to everyone and grateful to have the opportunity to address this audience today. So I will focus a bit on the mechanics of the digital markets act. And if you can have the next slide, please run through the main chapters. And I'd like to focus very much on the elements that have been subject also to discussion and changes in the legislative process, compared to the individual proposal that the Commission had put on, on the table. So all the next slides directly linking to what he said about the targeted nature of the DMA. It's its scope really starts with a number of lists of services, which are in scope, and which show the specific features that we have in the platform industries. And here in the process, two services to to at the end have been added, namely web browsers and virtual assistants also with a view of future proofing of a DMA and saying, Well, these are tools and services, which gains similar importance over time, and can be compared to all the other services that we already have. had proposed to be in scope at the beginning. Next slide please. Now, once we start from the services, then the question is what is the gatekeeper where the DMA works with genuine criteria and significant impact on the end on the EU market. Service has to be an important gateway and this position has to be entrenched meaning durable enough

and not just a one day situation. And then this green companies in scope really requires an individual designation decision of the commission. So this is really to give legal certainty for the companies to know exactly where they are in scope and which services will be captured. And, and this can be done via two ways, on the one hand, what we call the quantitative designation, based on certain numerical thresholds that create a presumption that the requirements are met. And those are related to, to turnover figures, or market capitalization, but also very much to use the numbers to inform the gateway question and adjust the duration of the of the of the position. Now, it's important to stress that there is flexibility in both ways, namely, the in case, there the thresholds are met, the company can still argue can rebut the presumption and can still argue these figures are not really telling about my position, and therefore, it should not be designated as a gatekeeper. And on the other hand, there's also a possibility for the commission to designate on a qualitative basis companies that do not meet the thresholds, but where it nevertheless believes that these more general criteria are fulfilled, and where the user numbers are again, not not telling enough to make this assessment. Next slide, please. So this just again, repeats the possibility of the rebuttal that there is a flexibility in the system. So there is no automatism that once you meet the thresholds, immediately, the company is in scope, and there is a no obligations apply. But at the same time, the presumption is a strong one. So there have to be really substantiated and convincing arguments to rebut this presumption from the thresholds. Next slide, please. Now, once the company is in scope, the obligations that we have in the AMA apply directly. So this is the general philosophy. And the distinguishing factor also, if you want to other tools in this area, is that these are precise obligations that are applicable directly once a company is in scope. And they can, you know, be clustered according to certain areas, and you don't have time to enter into all of them, you know, which things are related ones, things like to timing, those around the mobile ecosystem, and many more, maybe just to highlight a few changes that have been made in the negotiations, I will also just pick a few. There was a lot of interest in in the in the mobile ecosystems and opening up the mobile ecosystems with more choice for users. So the CIO introduced or obligations for for choice screens for some of the key services like virtual assistants, search engines or browsers on operating systems, which I think is a key element and brought was brought in there is also interoperability, as such, has been strengthened in both directions, if you want vertically between sort of operating systems and then connected devices, IoT devices based on work that we did in the IoT area and the sector inquiry. But also when it comes to horizontal interoperability between messenger services in particular, have a goal they come with a number of safeguards to ensure user security to be fully preserved. And then also when it comes to access conditions to certain services were beyond app stores also search engine and social networks now have to apply such trends conditions, published conditions, but also include dispute resolution mechanisms to resolve each had questions around. Next slide, please. Now, I stress very much that the obligations are directly applicable. But we also identified that a set of these obligations can profit from further specification. Now, it's again important to stress that this is specification about the how it's not about whether these obligations shall apply. But on some of them in particular, if you talk about interoperability, if you talk about access to data here, several technical questions can arise on how exactly to do it and feel that there's a possibility for either the Commission on its own to start such a specification discussions, or upon the request of a gatekeeper to, to engage in this and at the end of the protests, issue a binding decision which specifies further how in practice, concrete obligation has to be applied. Now, there is, of course, a degree of discretion by the Commission, or also to avoid the bad faith use of this dialogue, if you want to call it but our commitment is clear to say, Well, if there's a good faith, engagement on both sides, we are ready to engage in this dialogue process. Faith means that it

always is on the gatekeeper to make a first attempt a good faith attempt to comply, and then we can look at it and further specify. Now, of course, also there has been introduced possibilities to reopen these type of decisions in case they did not lead to the desired outcomes. Next slide, please. Then, there's also the possibility of market investigations. So where the commission more in depth looks into into certain questions. One is the qualitative resignation, I already mentioned. The other one cases of systemic non compliance, which opens up possibilities to impose further remedies and further solutions, and then also a very important element to ensure the future proofing. In particular, the commission is identifying new practices which are very close to the ones we already have. But where new developments require certain amendments to still achieve the objectives of these obligations, then there is a very specified a possibility for the commission to expand or adapt the obligations to such technical or business development. Now, there's also a enforcement toolbox, we have an effective investigation toolbox, which but at the same time also guarantees the rights to be heard of all the effective companies, because it may lead to sanctions for breaches of any of the applications on the one hand, leading to fines which can go up to 10% over one by turnover and 20% in case of repeated infringement, and in case of a systemic systematic non compliance. There's also the possibility to open up the toolbox for further remedies to address non compliance including behavioral and structural solutions. And this also includes a possible time limited and targeted ban on acquisitions. But it is very important to stress that all of these measures are under a clear requirement of proportionality, that other means that are less intrusive cannot achieve the same out comm and therefore will be very carefully used by the Commission obviously. Last but not least, to stress that the Commission will indeed be the sole enforcer of a DMA to reap the advantages that in the start is to say at the beginning, that we have a horizontal rulebook for the whole you but also the implementation and interpretation of his rule is consistent because it's exclusively the information that is enforcing and interpreting it with some help in terms of pre investigations at national level, but the ultimate decision is at the commission. And also the consistency of competition law enforcement and national level is ensured with a cooperation mechanism that will make sure that this is not leading to inconsistent outcomes for companies that operate in the EU. I think that is essentially the last slide just a few words on on the next step. So when is the DMA coming into force? It will be formally adopted in September October of this year, and then applies with a six month delay, meaning margin APR, which starts first with the obligation to notify for gatekeepers within two months. And then after the designation. The obligations really kick in Six months after the designation decision. So this allows you also to see a bit less leeway. And we are in full implementation and preparation mode now. But I'm very happy to answer any further questions around the content and this run up of the process.

Tim Lordan 25:17

Michael, thank you so much. There was a there was a great detailed discussion about how this all works and the next steps and when it goes into effect. We're going to do some, just a little bit of q&a for right now, before we go to the next step in the program. If you have any questions for Gerard, Inga, and Michael, please feel free to put them in the q&a. As far as the first question goes, the question is like, is this detailed PowerPoint available? And we're going to work on see if we can get a public version of it after the event. So please stay tuned for that. I have another question from the Hill. Counsel on the House Judiciary antitrust subcommittee. For the speakers is from, can you explain how you believe the DMA will affect innovation, dynamism and small business participation in digital markets? And how do you respond to claims by large internet platforms that the GMA will harm innovation in the EU? So I guess that's for Inge, Gerrard, and Michael.

Gerard de Graaf 26:21

I can say a few. I mean, we, I think there is a truth is that whenever you have more competition, you see more dynamism, you see more innovation. And the DMA is a pro competition instrument. I mean, we are seeing some practices in the European Union that diminish quite significantly the contestability of the market. And if you remove those practices, you would see opportunities in scope for for much greater competition, it is also an asymmetrical instrument. So it doesn't affect in any way. It doesn't impose any obligations on small businesses on the country, small businesses will have new opportunities that will benefit from our treatment. So this argument, which of course, if you are a platform for big tech, you when you use any argument to try to point out that this is not welcome. But But the argument that is somehow will be I mean, reducing innovation and competitiveness in the European Union is is completely as the French would say I could tell a plaque so completely untrue.

Inge Bernaerts 27:28

Maybe if I may just add on that the SCADA side indeed, we firmly believe that it's competitive markets, which ensure that it's the most innovative company bringing the best service at the best conditions against the market share. And that's what contestability is about, make sure that these chances are indeed preserved for innovation by all companies, not only the incumbents, but also new entrants. And I think we've been careful in designing the digital markets to make sure that we keep open for innovation, both incentives on the platforms on the largest digital players also to compete amongst each other, and enter into markets, which another platform might already have an established position, but also to allow for new entrants to come into the market. So both the intra platform competition and the within platform competition has clearly been kept in mind with the perspective of stimulating innovation from all sides.

Tim Lordan 28:32

Okay, another question from Mark McCarthy at Georgetown University. Mark is wondering if XR is covered. And I believe XR is a combination of AR, VR, Virtual technologies. Michael, Michael, if you want to, I think,

Michael Koenig 29:01

first of all, we we have to be clear that the definition of the different services is in large extent, technology neutral. So we're using terms like all online intermediation service. Services, which brings if you want supply and demand together on a platform, and no matter how this actually is done, technically, the same applies to if you want operating systems, where again, we don't make a distance whether this is an operating system on a device or on a mobile phone or on a on a smart TV or in a car. So I think we try to work as much as possible. There's notions which are more about the service and what a certain service does, rather than the technology that it uses to do so. And I think that the virtual assistants is also a good example. I mean, I think initially there was a discussion let's, let's include voice assistants, but it was already felt that this is a technological straightjacket, which is not compatible with this approach of, of really being technology neutral. So how the interaction is such an assistant is actually designed to be able to work with gestures, by support of more virtual technology that's in that sense rod manner. On the other hand, you know, there's no specific virtual reality or other application, which is specifically targeted. But as I said, we believe that with the notions that we have in shaping which services should be in scope, we are able to capture also technological developments that may then involve different technologies.

Tim Lordan 30:49

Thanks for that. It's interesting technology neutral. Let me just go to the next portion, the program, we wanted to have different perspectives from the US because there's a lot of legislation moving through the United States Congress, and we wanted up some perspectives on kind of how this how we could translate what's happening with the digital markets act in Europe and what what the companion pieces of legislation on the Hill look like. So we asked Sumit Sharma from Consumer Reports and Ashley Baker for over Committee for Justice, to join us to just provide some perspective and feedback on on this presentation. Ashley apparently just had was feeling ill this morning and just emailed us that she her voice was out, and so she won't be joining us. But Sumit is with us. Sumit, Can you provide some perspectives on this?

Sumit Sharma 31:36

So thanks. Thanks, Tim. And thanks for the invitation. It's a pleasure to speak with this audience. So in terms of I think I'm speaking to a US audience, most of them are probably aware of the of the two bills which to do similar things with DMA one is the American Innovation and Choice Online Act, S. 2992. And the other is the Open Up Markets Act, S.2710. And I think I would agree with Gerald here that we're not at loggerheads here, when it comes to some of these rules. You know, both these bills passed the with overwhelming bipartisan support, and the Senate Judiciary Committee. And I know the house versions as well of these bills, there was a letter of support by the DOJ or the belts, and we know the axelent office is also supportive. So I think there is momentum here in the US as well, to have similar rules to the DMA. And that's, those are the two things they're the next I would like to say there are similarities and how these, the DMA and the American Innovation Choice Online Act defined who's covered. But we have got platforms here as well. And it's based on similar criteria, focusing on companies who operate in the US based on the number of users in the US, which are online services, which reflects that, you know, these are companies which have an established base, but network effects, which is service, which is self reinforcing. Then the second bit is that we have a similar threshold, you know, a net sales or market capitalization threshold, which often reflects the fact that these companies operate across ecosystems. You know, the Google's the Facebook's, the Amazons, it captures the fact that they can leverage across different markets. And then finally, a market power type test in the US legislation is this criteria of critical trading partner for online platform to be covered platform, it also needs to be critical trading partner, I think this reflects the fact that in many cases, the largest the giant, the giant online platforms, effectively control the marketplaces or the appraisal sectors with conditions for these marketplaces. So it's a combination of all these three things, which are captured, I think, in both the DNA and the US version of these bills, which reflect these very complex sorts of the market problem. And you know, and then cover these different companies. I guess my job is only to go into detail of the of the American bills, but I'm happy to do that later offline and dusted. I'll just say a few words about the implementation of these bills. And so I think the commission has a lot of resources and I was 30 Commission's on take the lead here with the NRAS. In the US, it's going to be the FTC, the DOJ supported by state agencies, we definitely will need more, a lot more resources, to better resources equip these agencies to implement [inaudible], if it becomes it becomes law. And I think the DMA already has a lot of detail in it about what's covered what's not covered in some cases. And we're still in the bill in the US foresees that the FTC, FTC and DOJ will jointly come up with detailed guidelines in the year following the passage of the elephant becomes law. And during that chair, you know, the covered platforms and the DOJ can have a dialogue to come up with similar with withdrawals that are appropriate, more detailed rules, which are

appropriate. So you know, we have a similar waiting period. Yeah, before anything takes effect. That's fine. Just one final point, if I might add some differences in the details of what the DMA does and what the American Innovation Choice Online Act does, for example, in a messaging service is not explicitly covered here. In the act in the US, a pre installation is not done. It's just the ability is the ability to give users to easily change default, to understand the DMA actually says that if you can't pre install some services, that's not the case here with the US still. And finally, I guess there are some sort of business law restrictions and the the DMA when it comes to data use, right you have this concept of data silos, etc. Which is again, not there in in the US, Bill. So I think they also have differences in approach. And another interesting challenge will be coordination on some of these remedies when they're implemented. Thank you.

Tim Lordan 36:20

Thank you so much. That's great perspective. And again, I apologize. We just found out this morning that actually was, was feeling a little under the weather didn't have the voice to speak. So I don't want to speak for her. I'd like to share her perspective. But I am not prepared to do that. And I apologize. We have a few more questions, and I want to see if we can get to them. One is from Kelli Emmerich, who I believe is probably with me at that 1998 Congressional Internet Caucus EU Data Directive briefing on the Hill. She might Kelly asks, that Michael had mentioned that IoT devices in the context of vertical interoperability, can you can you expand on this point and explain where IoT will be included under the new regulation?

Michael Koenig 37:02

Yes, many thanks for the question. And I'm very happy to clarify. So we, this is based on at least the sector inquiry that, you know, competition was run around IoT devices were some of the issues that we already addressed to a certain extent in the DMA proposal that have been underlined, and therefore, this was strengthened. what is meant here is that in this IoT area, it's typically in relation to operating system of devices, where in order to interact, there needs to be, you know, a connection or interoperability, which both relates to software, but also hardware features. So if devices like, you know, wearables, or you know, smart home devices, wanting to connect with certain mobile devices, and smartphones, etc, I mean, they honor the DMA have to have the same access to the same technological features and performance of the operating system. And this device, as the, the gatekeeper offers to its own services to its own IoT and wearable and connected services. So again, this is if you want a kind of a non discrimination rule, in the sense that it imposes a sort of an equal treatment of third party providers have such connected devices compared to such connective devices that are offered by the by the gatekeeper in connection with its operating system and system as well. And I think this relates directly to the question of innovation, it is precisely to allow, you know, alternative providers off such such devices to profit from, from opportunities in this context.

Tim Lordan 39:02

Then thank you, Michael. That's great. Let me let me ask you, let me ask another question that that's come up with the current question answer is from cage valley from actually Europe, or the capacity constraints of ad employees still envisaged for the designation specification process, if so, has been a thinking regarding whether to designate all core platform services from a gatekeeper from the start, or perhaps focus on the most significant platform services. And she gives an example of Google's search service, but maybe not Microsoft's search service.

Inge Bernaerts 39:34

Maybe I can take this one, of course, from from the Commission's perspective, will will staff and the enforcement of the digital markets act as needed. But that's also the reason why when it comes to the designation that the question is about specifically, we believe that the criteria which are set out in the digital markets act will not necessarily require very detailed investigations. to come to the designation decision in itself, that's also why we believe the 45 working days deadline to do so, is is manageable. That's of course to say for those core platform services that meet the thresholds and where there is not a credible rebuttal that is handed in. But again, they're the mechanics as we have explained that are such that if there are more doubtful cases, that there is also a longer time period. And which will then also means that that designation will happen, the later point that I'd like to make with regard to the resources and those at people which have been foreseen right now as an indication of how many people will be there to enforce the DMA that concerns of course, the public enforcement by the commission. But it's important to underline that this is a piece of legislation, which in Europe also gives direct rights to private undertakings to the extent that there are obligations on the gatekeepers. So with private undertakings, those private undertakings can also enforce those rights directly in the courts and tribunals of our member states. If there is, for example, the most favored nation clause, which is prohibited by the DMA, then a national court can also declare such a close void. And that can also be injunction decisions which are sought for through private enforcement in those courts and tribunals. So I think it's important to think about the double angle of public enforcement that will of course, we think, the the key enforcement angle, but to also be aware that it will be private enforcement around the digital markets acts across Europe as well.

Tim Lordan 41:41

Great, great, thank you for answering that. I have a follow up question about gatekeepers from Bob Cohen, how are you going to select gatekeepers? But for instance, would a US CSP be able to be a gatekeeper if it had had ties with a European entity like France Telecom?

Gerard de Graaf 42:02

Well, maybe to clarify, first we are not going to select gatekeepers, I mean, the gatekeepers are under an obligation to give us information through the reporting initially by means of which then they can be designated as gatekeepers. So the initiative has to be lies squarely with the with the would be are the likely gatekeepers and so they will have to inform us what on the basis of their information that they have, which of their services, our core platform services and meet the requirements also the numerical numerical requirements of for being designated as a gatekeeper I mean, what we would of course expect is that, particularly big platforms would identify core platform services, where they believe that they are a gatekeeper, they might also argue that in some cases, even though the core platform service is a service that they provide, they might consider that they do not meet say, for example, the numerical criteria and then I mean, obviously, the Commission will look very carefully into into this and take all of these into account with during the designation process, but the important thing is we do not select we designate but on the basis of the information that the gatekeeper will make available, say in a very early stage of the entry into force. The point about I mean, as I said earlier, it doesn't really matter where you are headquartered, what country you are from, what is your ownership structure, as long as you provide services, core platform services into the European Union and you meet the criteria set out in the Digital Markets Act, I mean, you can and you will likely be designated and so if like Amazon is co-owned by France Telecom for like 50% obviously Amazon Marketplace with with kind of co-owned by France Telecom will be designated as a

core platform service and then therefore will have to comply with the obligations in the in the DMA. So ownership doesn't doesn't matter. You have to kind of be active, you have to provide your services within the European Union and then meet meet two criteria. So ownership is irrelevant.

Tim Lordan 44:17

Thank you, Gerard. I'm getting so many questions also getting questions from emails. There's one question. I think you're maybe Sumit can weigh in on this one and follow up with them. Inge. Inge had mentioned that the one of the things that this legislation does and the regulation does is give the Commission this speed to which to bring cases and address market competition concerns. I get that much, much faster than it normally would. And we know that sometimes antitrust in the United States can move at a glacial pace. Sumit Do you think that any legislation on the Hill would increase the speed and the rapidity with which the government can address competitive concerns. Is that part of what the package of different bills on the Hill seeks to do?

Sumit Sharma 45:08

Yes, I think that's that's definitely the idea. And it's the speed is the fact that there's going to be a pro competitive intervention, which actually allows others to enter and compete as opposed to coming in after the fact where potential competition has already gone away. So yeah, yes, I would agree with that.

Tim Lordan 45:27

And then I have I know it's getting late in Europe. I just have one last question from Hill staff. I think they're asking in the US. large, large online platforms claim that the legislation like the DMA here in the United States would harm privacy and cybersecurity. So we hear that a lot, or that it would destroy products like the iPhone and other products that are put out by large platforms? Did they're asking me if the platform's made these claims to the European Commission? And how did the European Commission respond to those concerns? So I brought that up to Inge, Michael, or Gerard.

Inge Bernaerts 46:07

Of course, when, when it comes to data protection, we have in the EU quite the modeling legislation as well around privacy and data protection. And the digital markets Act makes that clear that of course, compliance with the digital markets act must be done in a manner which is also compliant with those data protection rules. On the cybersecurity issues, those are indeed, arguments which have been made in the process of the design and the negotiation of the digital markets. And the DMA facies possibilities, of course, to indicate why certain features are unnecessary in order to preserve the cyber security of the user. But I think there is a fundamental underlying assault, that it's really about enabling the consumer to make sure that it takes the necessary protection and and for public authorities there to play their role and that it's not for the platform's to make those decisions about what type of risks is acceptable on behalf of the consumer. So the logic and the DMA is very much about enabling the consumer to make choices also when it comes to security. And of course, it is possible for the for the platforms to protect the integrity and the security of their own operating systems, for example. So there are safeguards in the digital market act that allow for those.

Tim Lordan 47:38

Well, I really appreciate I know we we have more view more of your time and late in the in the evening in Brussels. I just want to thank the European Commission and the delegation here in United States for working with us and Summit and nationally, of course, for to participate in this. Hopefully we can ask you all back, maybe as the Digital Services Act, you know, matures and maybe we can have a look at that when that's more finalized. But Inge, Gerard, Michael, thank you so much for participating. We really appreciate this.

Inge Bernaerts 48:08

Thank you for having us. The pleasure.

Tim Lordan 48:11

All right. Thank you, everybody. Bye