EU Digital Markets Act

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By means of introduction

- Paganelli-Bull Professor of Economics and International Business, Stern School of Business, New York University
- Teaching and research focus on firm competition as well as public policy related to firm competition
- Co-authored Cabral et al (2021) report, commissioned by the European Commission, on the proposed Digital Markets Act
- Disclosure: I have no financial conflicts of interest to report related to the work I've done on digital markets.
A simplified view of the Internet

1. Infrastructure
   - What you work on and I am wholly ignorant of
   - Standards, basic rules, etc
   - Mostly based on consensus and voluntary work

2. Economic activity on the Internet
   - What I work on and would like to talk about today
   - Mostly based on commercial motive
   - Issues of IP, competition rules, etc
   - Some overlap with 1.
Antitrust 101

• Best known outside of North America as *Competition Policy*
• Set of institutions (agencies and laws) that regulate market competition. Some key players:
  – US DoJ Antitrust Division
  – European Commission DG Comp
  – firms and consumers as litigants

• Some key areas of antitrust:
  – agreements between competitors (e.g., price fixing)
  – mergers and acquisitions (block or require remedies)
  – other possibly anticompetitive practices (e.g., exclusive dealing)

• Important point regarding jurisdiction: because most of the target firms (e.g., Google) are global, local agencies may effectively have a global jurisdiction. Exhibit A: In 2021, UK authority blocked merger of two US corporations (Meta and Giffy)
• Antitrust is particularly ingrained in the US tradition (dating back to the 1890s in Canada and US)

• In the past 30 years or so, the EU has stepped up its competition policy efforts, whereas US agencies have been mostly “asleep at the wheel”

• Exhibit A: air travel. In 1980s, European fares were twice the US. Currently, European fares are one half of the US.

• There is a general clamor for stricter antitrust / competition policy, especially in digital markets (platforms). EU is taking the lead, also in this area.
Digital Markets Act (DMA)

• Goal: to restore a level playing field in digital markets, especially in the presence of major *gatekeepers* (Alphabet, Amazon, Apple, Meta, etc).
• Current system characterized by closed systems (e.g., Apple “eco-system”). Proprietary software, data, customer information.
• Three important aspects of DMA

  1. defining what gatekeepers come under DMA’s reach. Series of thresholds that lead to about a dozen platforms.
  2. listing of *obligations* and *outlawed practices*
  3. implementation provisions

Next, will go over this in greater detail.
Gatekeepers

**Article 3.1.** A provider of core platform services shall be designated as gatekeeper if:
(a) it has a significant impact on the internal market;
(b) it provides a core platform service which is an important gateway for business users to reach end users; and
(c) it enjoys an entrenched and durable position, in its operations, or it is foreseeable that it will enjoy such a position in the near future.

**Article 15.1.** The Commission may conduct a market investigation for the purpose of examining whether a provider of core platform services should be designated as a gatekeeper pursuant to Article 3(6) ...
Chapter III (“Practices of gatekeepers that limit contestability or are unfair”) includes two important articles:

- Article 5 (“Obligations for gatekeepers”)
- Article 5 (“Obligations for gatekeepers susceptible of being further specified”)

The lists are long and I will try to list some typical implications, especially from the point of view of large platforms.
DMA Dos and Don'ts

- No self-preferencing in ranking or indexing (Amazon, Google, etc)
- FRAND (fair and non-discriminatory) access to click and query data (Amazon, Google, etc)
- Interoperability (e.g., messaging services) (Apple, Meta, etc)
- Interoperability app stores (Apple, Google)
- No restrictions on transactions off the platform (Amazon, Apple)
- Data portability (Amazon, etc)
- Notification of acquisitions, even when previous regime would not require (all platforms)
**Non-compliance**

**Article 16.1.** Where the market investigation shows that a gatekeeper has systematically infringed the obligations laid down (...) the Commission may (...) impose on such gatekeeper any behavioural or structural remedies which are proportionate to the infringement (...).

**Article 21.1.** The Commission may conduct on-site inspections at the premises of an undertaking or association of undertakings. (...)

**Article 26.1.** In the decision pursuant to Article 25, the Commission may impose on a gatekeeper fines not exceeding 10% of its total turnover in the preceding financial year. (...)

DMA
It’s on!

- Now comes the hard part: implementation. The devil is in the details.
- DMA gives European Commission regulatory and market investigation powers. Does EC have the staffing (numbers and skill) to do it?
- What role for private plaintiffs?
...and a shameless plug