

A report on the status of the regulation the Digital Economy in the EU prepared by the Communications and Digital Economy working group of the IBA Communication Law Committee¹

Regulating the Disruptors? Shaping EU Communications and Media Regulation and EU Competition Policy in a New Digitalised Era

The tech revolution rages through the world, providing new opportunities and challenges in a globalised world. In Europe, the European Commission (the **Commission**) has claimed that achieving a connected Digital Single Market (**DSM**) can contribute EUR 415 billion per year into the economy.

Shaping EU communications and media regulations, in parallel with EU competition policies, in this new digitalised era has undoubtedly been on the top of the agenda of EU institutions. With the current Commission mandate coming to an end and the European Parliament (the **Parliament**) elections approaching in May, this paper takes stock of the development of the EU's DSM and competition policy, focusing in particular on the communications and media sectors.

1. State of Play of Key Regulatory Initiatives

1.1 The EU's accomplishments in the DSM

Launched in May 2015, the DSM strategy has been one of the principal political priorities of the Juncker Commission. It is designed to create an area where businesses and consumers have unrestricted access to digital goods and services across EU Member States, underpinned by the free flow of data across borders, with the goal of creating growth in the digital economy. The DSM label has been applied to diverse policy areas, from data security to copyright reform, and from broadband infrastructure to parcel delivery and e-government. It has also encompassed a competition sector inquiry into e-commerce which was centred on the online trade of consumer goods and the online provision of digital content.

The DSM strategy comprises 16 key initiatives with some 38 separate actions under these key headings. At the time of writing, 21 initiatives have been completed, with significant acts including the adoption of the Geo-Blocking Regulation (albeit with a narrower scope of application than the Parliament had aimed for), the Wholesale Roaming Regulation which phased out roaming surcharges, the Regulation on Portability of Online Content, and the European Electronic Communications Code (the **Code**) which updated the old regulatory framework from 2009. In addition, the EU's Open Internet Regulation, which enshrines the principle of non-discriminatory traffic management ("net neutrality"), has been applicable since April 2016.

Among other revisions, the Code focuses on the development of very high capacity networks, consisting of full-fiber infrastructures or other infrastructures with equivalent performances. In addition, the Code: extends regulation to over-the-top (**OTT**) services such as Skype and WhatsApp; extends the scope of regulatory obligations that could be imposed on providers who do not have significant market power (**SMP**); encourages co-investment by stating that

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an SMP-provider which enters into agreements with its competitors may be subject to lighter touch regulation, or even be exempted from regulation; provides for wholesale only operators and related light touch regulatory regime; and sets out rules for use of harmonised radio spectrum, including coordinated assignment of 5G spectrum.

While the Commission aimed to achieve maximum harmonisation, thereby ensuring that all users in the EU should enjoy the same level of end-user protection, the Code does leave significant room for Member States to take specific national circumstances into account when implementing the new rules. Furthermore, the final impact of the Code can only be assessed fully when the Commission adopts a series of delegated acts and implementing acts between December 2019 and 2022, clarifying issues such as a single maximum Union-wide mobile voice termination rate and a single maximum Union-wide fixed voice termination rate, and specifications for small-area wireless access points. Remarkably, a retail cap for intra-EU calls has also been mandated.

Despite this modernisation of the rules, concerns have already been expressed by industry experts that European companies have been too slow to wake up to the full potential of the digital environment instead focusing on safeguarding traditional income streams such as voice telephony.

1.2 What remains to be done

While the EU institutions have managed to get the Code and some other important initiatives over the line, 17 other DSM legislative initiatives are still working their way through the decision-making procedures. At the time of writing, several of these initiatives were close to completion. For example, the proposed Platform to Business Regulation ("P2B Regulation") and the Cybersecurity Act were due to be voted in the European Parliament plenary in April. In addition, two other initiatives, the Directive on Copyright in the DSM and the Broadcasting Directive (sometimes referred to as "SatCab"), were due to be finally endorsed by the Council in April following their adoption by the European Parliament plenary session in March.

New obligations for online platforms

The P2B Regulation can be regarded as one of the first concrete signs of a more interventionist EU approach to regulating online platforms. The new rules are aimed at creating a fair, transparent and more predictable environment for businesses and traders, when using online platforms. This legislative initiative comes after a complaint to the Commission by traders selling online via marketplaces, hotels using booking platforms and app developers, particularly SMEs, regarding what they saw as the unfair practices of the online platforms they use to reach consumers. The final text of the P2B Regulation, which will be directly applicable at the national level, is expected to be officially adopted by the Parliament in April, and subsequently by the Council. At this point, the new P2B Regulation will enter into force 12 months after publication in the EU Official Journal, and is already being hailed by the Commission as a first of its kind anywhere in the world.

It will apply to online intermediation services and online search engines which provide their services to business users as well as corporate websites established in the EU and which offer goods or services to consumers located in the EU. This is likely to encompass e-commerce market places and app stores, social media for business, price comparison tools and general online search engines. Despite efforts by the Parliament's negotiators to include operating systems in the scope of the Regulation, these have not been directly included in the final text.

While the Commission considered its original approach to be "light touch", the final agreement does bring with it some notable new obligations for online platforms:

- A ban of certain practices deemed to be unfair:
 - Online platforms can no longer suspend or terminate a seller's account without clear reasons, and users should have the possibility to appeal.
 - Terms and conditions must be easily available and provided in plain and intelligible language. When changing terms and conditions, at least 15 days' prior notice must be given to allow companies to adapt, and longer notice periods apply if the changes require complex adaptations.
- Greater transparency:
 - Marketplaces and search engines must disclose the main parameters that they use to rank goods and services on their site in order to help sellers understand how to optimise their presence. However, search engines will not be required to disclose the detailed functioning of their algorithms.
 - It will be mandatory for online platforms to disclose any advantage they may give to their own products over others.
 - They must also disclose what data they collect and how they use it – in particular how such data is shared with their other business partners. Note that in case of personal data, online platforms must also comply with the provisions of the General Data Protection Regulation (**GDPR**).
- Dispute resolution mechanism:
 - All online platforms must set up an internal complaint handling system to assist business users, and only the smallest platforms are exempt from this.
 - Platforms will have to provide businesses with more options to resolve a potential problem through mediators.
 - Business associations will be able to take platforms to court to stop any non-compliance with the rules.
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The EU Copyright Reform: it's been a bumpy road

The passage of the P2B Regulation has been relatively smooth in comparison to the controversial proposal for a Directive on Copyright in the DSM. Following its adoption by the European Parliament in March, if the proposal is formally adopted by the Council in April, it will tip the overall balance of the copyright framework not insignificantly in favour of certain right holders and creators (although not all), while attributing more responsibility to online platforms and service providers.

Among the most lobbied provisions in the proposed Directive is Article 15 which aims to provide the legal recognition of press publishers as right holders. Specifically, press publishers are granted a two year term of protection in copyrighted works, for its reproduction and for making it available to the public, to offer protection against online uses by internet service providers and aggregators. The use of individual words or "very short extracts" is not covered by this provision. As a response to online campaigns where

opponents have characterised the provision as a "[hyper-]link tax", Article 15 also states that it does not apply to private or non-commercial uses of press publications by individual users, or to hyperlinking. Furthermore, journalists would be entitled to an "appropriate share" of the revenues which press publishers receive for the uses of their press publications by information society service providers.

European press publishers will now begin preparations to use Article 15 as a tool to negotiate more strongly with digital platforms. News aggregators and media monitoring companies in turn will have to prepare for any additional costs of obtaining licenses from press publishers, or in some cases modify their current practises to avoid potential costs. Additionally, we expect to see scope for further litigation regarding the exact meaning of "very short extracts".

The source of the greatest dissent, however, has been Article 17 which addresses what the Commission has characterised as the legal uncertainty regarding whether online content sharing services that provide access to a large amount of content uploaded by their users engage in copyright-relevant acts, and would therefore need to obtain authorisations from rightholders. Record companies and collection societies, in particular, have complained that the existing uncertainty affects their ability to negotiate appropriate remuneration for the use of their works, resulting in a "value gap" between the value that services such as YouTube extract from music and the revenue returned to the record companies and artists. Meanwhile, opponents have condemned Article 17 as a censorship machine that would introduce widespread use of "upload filters", calling for the legislation to be stopped in order to "save the internet".

Article 17 stipulates that an online content sharing service provider performs an act of communication to the public, or an act of making available to the public, when they give the public access to copyright protected works uploaded by its users. In such circumstances, the service provider cannot invoke the limitation of liability established in Article 14(1) of the e-Commerce Directive (2000/31/EC). This new provision has been strongly criticised by online platforms and service providers which regard the limitation of liability provisions in the e-Commerce Directive as a fundamental building block of the digital economy.

Nevertheless, there are significant mitigating factors included in the new rules. Online content service providers will not be liable if they demonstrate that they have: made "best efforts" to obtain authorisation; made "best efforts" to ensure the unavailability of specific works highlighted by rightholders; and acted "expeditiously" to remove access to notified works preventing their future upload. Furthermore, new online content sharing service providers, whose services have been available to the public for less than three years and which have an annual turnover below EUR 10 million, are subject to a lighter regime.

Serious legal questions have been raised about the compatibility of this provision with the e-Commerce Directive, even though the Directive as it is currently worded states that this provision shall not lead to any general monitoring obligation. Of course, there is also a real prospect of more discussion and potential litigation around what exactly constitutes "best efforts".

Delays in the adoption of the e-Privacy Regulation

The forthcoming e-Privacy Regulation, which was intended to complement the General Data Protection Regulation, has also proven to be extremely difficult to get over the finish line and into law. The proposed Regulation, which was published by the Commission on 10 January 2017, focuses on the confidentiality of communications and rules regarding tracking and monitoring. Discussions have focused on issues such as the confidentiality of machine-to-machine communication in the Internet of Things as well as the confidentiality of

individuals' communication on publicly accessible networks such as public Wi-Fi. However, this Regulation is no longer expected to be adopted within this mandate, since Member States have not yet reached a common position with the Parliament.

The Sagrada Familia of legislative initiatives: a story of unfinished business

As we head towards the last months in the life of the Juncker Commission, there is little doubt that the administration would have hoped to have a higher success rate. Moreover, some initiatives like the proposed Regulation on Online Transmissions had to be greatly reduced in scope in order to reach political consensus. This proposal, which aims to enhance cross-border access to TV and radio programmes by simplifying copyright clearance for online services (such as simulcasting and catch-up services) was initially much broader in scope.

However, the proposal was met with staunch opposition from commercial audio-visual producers in the Member States who were alarmed at the potential impact of the new rules on investment, marketing and promotion of home-grown content. This led the European Parliament and Council to greatly narrow the scope of the Regulation to news and current affairs, or programmes fully financed and controlled by the broadcaster, excluding any sports events. While Vice-President for the DSM, Andrus Ansip nevertheless hailed the adoption of the legislation in December 2018 as a "big part of the puzzle" to achieve a DSM, the proposal was even further redrafted as a Directive since Member States did not want to substantially change their existing national regimes. This reduced proposal was adopted by the European Parliament plenary on 28 March, and is expected to be officially endorsed by the Council during April.

1.3 Outlook for the next Commission and Parliament

At this late stage in its mandate, the Commission appears to be grappling with the issue of how to apply "European values" to the digital economy. Although it will not be stated so overtly in Commission position papers, the current DSM Strategy appears to have been motivated by concern that the EU is falling behind in innovative technologies and infrastructure, in comparison to the U.S. and China. In this context, the deployment of 5G has of course become the focus of international security concerns in a climate of global trade conflicts and the domination of non-European operators over cloud computing infrastructures is also a reason for concern.

In its search to find some answers to the issues raised by the new digitalised economy, the Commission has created a number of expert groups charged with gathering information that will help to shape the work programme for the next mandate. If the establishment of advisory groups can be seen as a harbinger of legislative action to come, it is interesting to note that the Commission last year appointed an expert group for a new Observatory on the Online Platform Economy, with the aim of enabling "evidence-based and problem-focused" policy making. Among other things, this Observatory will monitor the evolution of the market and effective implementation of the upcoming P2B Regulation. This development points to the prospect of future intervention to come if the Commission is not satisfied with the results.

The EU executive also set up a High-Level Expert Group on Artificial Intelligence (**AI**), which is due to issue ethical guidelines in the near future. In a speech in Cambridge on 4 February 2019, the EU Competition Commissioner, Margrethe Vestager, underlined that data is becoming one of the "vital resources" that should not be monopolised by a few

companies. Significantly, she added that "competition rules won't solve all the issues we face, when it comes to the power of data." Other recent Commission initiatives in the digital field have included the appointment of a High-Level Expert Group on the Impact of the Digital Transformation on EU Labour Markets, and an Expert Group on Business-to Government Data Sharing (B2G).

Recommendations from these groups will no doubt feed into the new digital programme with a new name that is now being developed for the next College of Commissioners. The former French Secretary of State for Digital Affairs, Mounir Mahjoubi, had suggested EuroTech 2024. Romanian Digital Minister Alexandru Petrescu suggested Next Horizon...

Whatever the ultimate name given to the Commission's future digital strategy, it is clear that the preliminary plans are being drawn up in a European climate of "tech lash". Technology companies can expect that the "light touch" regulatory approach they have benefitted from until now will change over the next few years. As Nick Clegg, the head of global public relations for Facebook indicated on a visit to Brussels on 28 January 2019, "[w]e are at a discussion which is no longer about whether social media should be regulated, but how it should be regulated."

The EU institutions have been circling the issue of online platform regulation, not only via the P2B Regulation, but with certain provisions (notably Articles 15 and 17) in the proposed Directive on Copyright in the DSM, as well as the proposal for a Regulation on "preventing the dissemination of terrorist content online" and the "voluntary" Code of Practice on Disinformation. Policy experts now fully expect that the next College of Commissioners will move to reassess and review the e-Commerce Directive, one of the most important laws for Europe's internet economy.

Crucially, the e-Commerce Directive states that all platforms hosting third-party content currently benefit from its liability exemptions protections, empowering everything from innovation to freedom of expression. As described above, the EU debate around Article 17 of the proposed Directive on Copyright in the DSM, which also touches on the liability provisions, has been volatile and often divisive. Yet these tense negotiations may be seen as a mere curtain-raiser to the battle over the review of the e-Commerce Directive that is expected to come to the fore during the next mandate of the European Commission and Parliament.

The next Commission is also expected to push forward with plans to ensure maximum connectivity, so businesses and individuals can participate fully in the digital economy. Very-high-capacity networks are increasingly important for all sectors, but in particular for education, healthcare, manufacturing, transport and energy. Whether we are looking towards the future of connected cars, infotainment, smart cities and the Internet of Things, all of these sectors of the innovative economy rely on 5G technologies. However, there are already marked differences in approach between Member States when it comes to the allocation of suitable spectrum for 5G. According to the Code, this allocation has to take place by the end of 2020 at the latest, but the Commission has already acknowledged it is expecting delays in certain Member States.

The 5G auction process is already being hotly contested. In Germany, for example, almost all telecom operators appealed the auction terms of the 3400-3800 MHz band, but the appeal had been dismissed with the auction now ongoing. In other countries where auctions have already taken place, the results differ significantly with respect to the sizes of the spectrum blocks offered and final prices. In addition, the participation of new market players interested in acquiring spectrum licenses for 5G entrants further increases the competitive pressure with the potential to drive up the prices.

Looking beyond EU policy goals, there is also hard economic reality to contend with. The so-called "Gigabit Society" which the Commission is working towards can only be achieved with massive investments mainly from private sources, with public support in less profitable areas. So the burning question remains - how to achieve a regulatory environment that fosters such massive private investment?

To sum up, some DSM initiatives to date have resulted in questions rather than providing any clarity, while others, such as the new legislation on the Online Transmissions, risk adding a layer of regulation to the existing legal framework that could arguably further complicate contract negotiations in the digital environment. It could also be said that some DSM proposals contradict key elements of existing legislation, such as the uneasy relationship between Article 17 of the proposed Directive on Copyright in the DSM and the limitation of liability provisions of the e-Commerce Directive.

Finally, the DSM strategy has been criticised by third countries behind closed doors for being protectionist in nature, or for attempting to compensate for lack of risk-taking among European entrepreneurs. In short, the DSM strategy, with its strengths and obvious weaknesses cannot compensate for its shortcomings in the entrepreneurial culture in Europe.

2. Shaping EU competition policy

2.1 Another seminal year for competition law and policy

Those regulatory developments in the DSM are supplemented by a debate on how competition policy can contribute to an innovative and fair European digital market. The debate is ongoing, and we anticipate that the year 2019 will be a crucial year for the application of EU competition law in the technology and communications sector focusing on topical issues, such as whether:

- the Commission should allow the creation of "European champions";
- recent merger approvals in the mobile sector are a warm-up to increased flexibility for further consolidation in the tech & comms sector;
- the recent multi-billion euro fines imposed on tech companies for alleged exclusionary practices (also, for example, involving the use of algorithms) are a prelude for increased enforcement; and
- the availability of hundreds of millions of euro in State funding for broadband development will have implications to State aid enforcement.

In addition, a fundamental debate has arisen in the competition law community about the role and effectiveness of competition law in today's society. Some argue that big tech giants are the Standard Oil of our day (as some say: "data is the new oil"), calling for them to be broken up, in line with what happened to Standard Oil more than a century ago (and later with AT&T). However, others argue radically against that notion citing increased consumer welfare which has brought about by the tech wave.

Special Advisors and Conference on "Shaping competition policy in the era of digitisation"

Amid the policy debate, Commissioner Vestager last year appointed a panel of three external special advisors, made up of Professors Heike Schweitzer, Jacques Crémer and Assistant Professor Yves-Alexandre de Montjoye. The special advisors published a report on 4 April 2019 regarding the future challenges of digitisation for competition policy (see below).

The Commissioner also organised a first a high-level conference in January entitled "Shaping competition policy in the era of digitisation" which gave the first indication of the direction of where the debate is heading. During the full-day event, speakers and panellists tackled diverse topics, including: the intersection between competition, data, privacy and AI; the market power of digital platforms; and preserving innovation through competition policy. The general message throughout the conference seemed to be that there is a consensus on the need for active enforcement. The question is however, how?

On the competition law enforcement of online platforms, keynote speaker Jean Tirole, Chairman of the Toulouse School of Economics and laureate of the 2014 Sveriges Riksbank prize in economic sciences in memory of Alfred Nobel, stressed that the traditional enforcement framework is poorly suited for the technological world. Speaking in particular on "structural" policy (that is, breaking up giants) he said that while he is not against this idea as such, since the fast-changing nature of technology makes it difficult to identify how to split up companies, practically speaking.

The closing speech by Johannes Laitenberger, Director-General of the Commission's Directorate-General for Competition, provided some useful insights from the enforcer's perspective. Mr Laitenberger noted that digitisation touches on all sectors, which ups the stakes. This also means that enforcers must carefully consider how they will intervene in digital markets - timing, method (competition law, regulation, or both) and intensity (broad or narrow stroke) are highly important in these fast-moving markets. He also stressed the importance of an evidence-based analysis. Given the novelty and complexity of the digital markets, a real understanding of their functioning is essential to good intervention.

More importantly, Mr Laitenberger stressed that EU competition law, as laid down in the Founding Treaties, has shown that it can accommodate changing circumstances - change to those fundamental rules does not therefore seem necessary. However, the digitisation of the economy may require adapting the analytical framework and the procedural toolbox. Succinctly put: "competition law is fit for purpose, but it cannot do business as usual". However, that discussion must not only address quantifiable models and calculations, but will also require normative choices, and Mr Laitenberger indicated that the fundamental principles in the Founding Treaties should provide guidance in that regard.

Expert Report – Competition policy for the digital era

As noted above, the three special advisors appointed by Commissioner Vestager published their report on 4 April 2019, and they have set out their various recommendations. We briefly summarise their main findings.

Competition law concepts, doctrines and methodologies should be adapted and refined

According to the special advisors, EU competition rules have provided a "solid basis for protecting competition in a broad variety of market settings" and that it has "evolved and reacted to various challenges and changing circumstances". However, in light of the new

challenges of the digital economy, they argue for stringent competition law enforcement and for adaptation of the current concepts, doctrines and methodologies.

The experts call for a revision of the “consumer welfare standard” because it is difficult to quantify the harm on consumers. They argue that the concept should be expanded to include business users, and the burden of proof should, in some cases, be reversed: “even where consumer harm cannot be precisely measured, strategies employed by dominant platforms aimed at reducing the competitive pressure they face should be forbidden in the absence of clearly documented consumer welfare gains”.

The experts call for a flexible approach to account for the fast-changing nature of digital markets, and as such enforcers should focus less on market definitions and more on identifying anti-competitive strategies, and authorities should err on the side of caution and prohibit potentially anti-competitive conduct, reversing of the burden of proof on the incumbent to show that that the conduct is pro-competitive.

Beware of the platforms

The experts recognise that network externalities and returns to scale mean that there may only be room for a small number of platforms within a given market. They urge enforcers to protect “competition for the market” by ensuring that dominant platforms do not create artificial barriers to entry, such as imposing Most Favoured Nation (MFN) clauses or preventing multi-homing and switching services.

They also call for competition on the platform to ensure that platforms do not sell “monopoly positions” to their business users, or promote their own competing services, for example, by offering better ranking of results or by designing self-preferencing rules. The experts therefore suggest that platforms should be required to ensure that “their rules do not impede free, undistorted, and vigorous competition without objective justification”.

Data, data and data

Given the importance of data as an input for digital service providers, it is no surprise that the experts formulated several recommendations on this topic. However, they stressed that the topic is highly sector-specific and that different types of data may require different treatment. Nevertheless, they had some suggestions for specific types of data, such as personal data, for which they suggest to strengthen the probability requirement under GDPR by way of regulation or competition enforcement.

The experts also suggested that forced data access (and possibly data interoperability) may be necessary in certain circumstances, such as in the context of complementary markets or after markets. In such case, the conditions for access should be clearly specified.

Killer acquisitions

The experts see the risk of acquisitions by dominant platforms of small start-ups with a quickly growing user base and significant competitive potential and recognise that these transactions now sometimes slip through the maze of merger control framework. However, they consider it too early to change the jurisdictional thresholds of the Merger Regulation at this stage, and instead propose to monitor the results of the changes introduced by certain Member States (see also below).

To see whether an acquisition actually constitutes a “killer acquisition”, the experts propose a four-pronged test: (i) does the acquirer benefit from barriers to entry linked to network effects or use of data, (ii) is the target a potential or actual competitive constraint within the technological users space or ecosystem, (iii) does its elimination increase market power

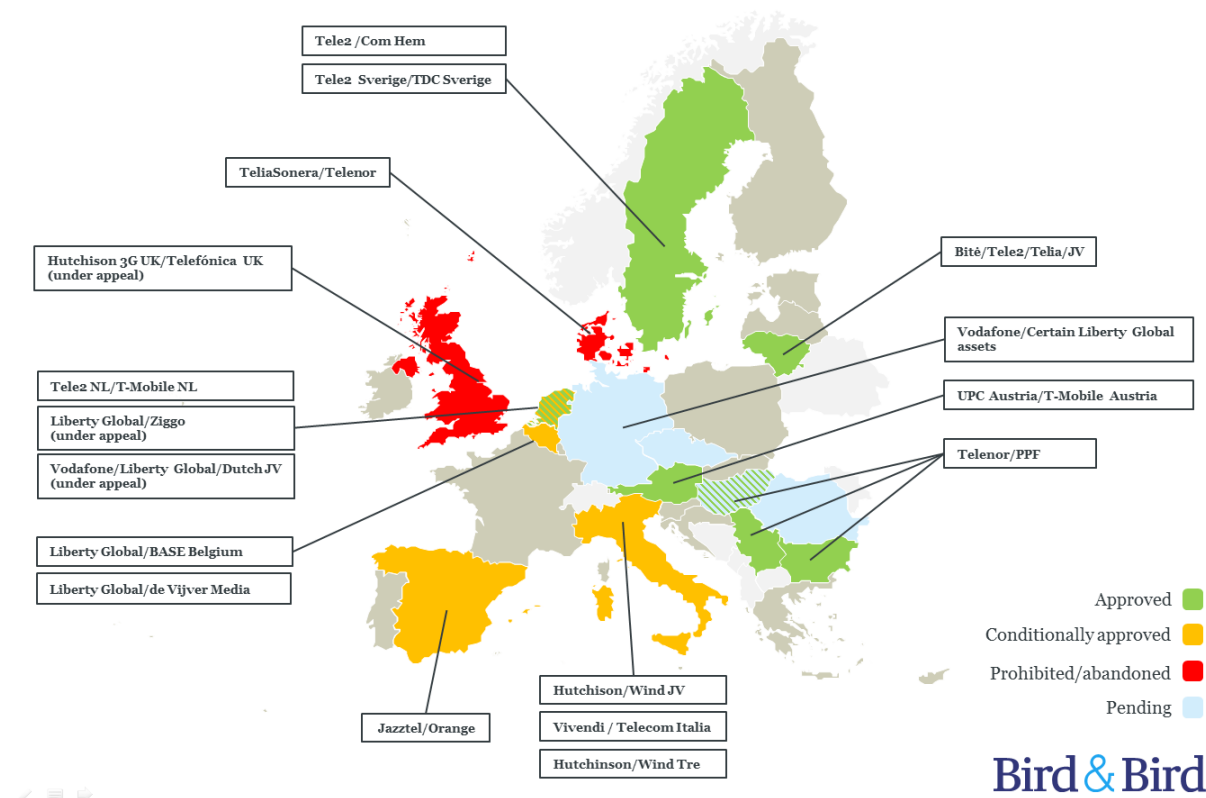
within this space through increased barriers to entry, and (iv) if so, is the merger justified by efficiencies.

While the experts agree that this test implies “a heightened degree of control of acquisitions of small start-ups by dominant platforms and/or ecosystems”, it does not, in their view, “create a presumption against the legality of such mergers.” It merely helps minimise the false negatives.

2.2 Merger control

Consolidation in the telecommunication sector

In recent years, there has been a consolidation wave in the European telecommunications sector. In total, 17 telecommunications cases were notified to the Commission during Commissioner Vestager's mandate.



An analysis of these telecommunications cases shows that, contrary to what some are claiming, there does not appear to be a consolidation block in Europe. Many deals eventually get approved, with many of those being approved unconditionally.

Traditional market definitions and remedies

At a more granular level, the Commission's decisional practice in merger control in the telecommunications sector shows that the Commission sticks to rather traditional market definitions, and seems to hold on to the *summa divisio* of fixed and mobile markets. Multi-play bundle markets are usually only marginally investigated by the Commission (if at all).

Mergers between non-overlapping cable networks are generally seen as non-contentious, although the Commission verifies that OTT operators will be able to continue to develop and innovate. Vertical mergers (that is, transactions combining broadcasting channels and cable network) also seem generally uncontroversial as long as access to content and access to TV channels is guaranteed. These types of mergers are usually conditionally approved.

An example of where both types were combined is the *Liberty Global / Ziggo* transaction. Here in this case, the Commission found that the merging parties had an incentive to hamper the development of OTT players by reducing access to their network or by preventing their content providers from also providing the same content to those OTT players. To alleviate those concerns, the Commission required that OTT players should have sufficiently speedy access to the parties' networks and that the latter were not allowed to prevent content providers from also providing content to OTT players. The Commission also had concerns about foreclosure of the content held by Liberty Global and Ziggo but cleared the transaction once Liberty Global had divested its premium film channel.

For fixed internet access transactions, the competition concerns were considered slightly more acute. However, the Commission generally also clears this type of merger, subject to commitments. In transactions which reduce the number of operators from four to three (a so-called "four-to-three transaction"), the Commission seems to require structural remedies to allow a new fourth player to enter the market (e.g. the divestment of the FTTH network of one of the merging parties). In addition, the Commission generally adds conditions by which it imposes the obligation on the merging parties to allow wholesale access to their network.

Mobile-to-mobile mergers are undoubtedly the most hotly-debated telecommunications mergers. After two blocked/abandoned transactions in the UK and Denmark, the Commission only cleared an Italian transaction after receiving commitments which enabled the entry of a fourth player. This led the competition law community to posit whether the Commission had a "magic number" in the sense that four-to-three mobile mergers generally would not be cleared without remedies enabling a new player to enter the market.

The Commission has always denied this, and now points to the recent Dutch *Tele2 NL / T-Mobile Netherlands* case as proof that the "magic number" theory does not hold water. The transaction, which was cleared unconditionally, is however somewhat particular: the Dutch market was dominated by two large, vertically integrated multi-play players (KPN and VodafoneZiggo) and the market shares of the second and third mobile-only players (T-Mobile Netherlands and Tele2 NL) were much smaller. The joining of the latter two companies effectively allowed for the creation of a viable third party as a competitor to KPN and VodafoneZiggo. It remains to be seen whether the Commission would also clear a more traditional four-to-three mobile transaction without market entry commitments.

A first look into the Commission's approach toward data-heavy transactions?

Beyond the telecommunications sector, the *Apple / Shazam* transaction highlights a deal where the Commission focused on the data aspects. In this deal, Apple acquired the popular music identification app, Shazam. While the transaction was cleared unconditionally, the Commission decision could serve as a blueprint for its approach towards data-heavy mergers.

First, the Commission found that Apple could use Shazam as an additional tool to acquire customers for its musical streaming business. However, given that music streaming is a growing market and that direct acquisition of customers is much more important, the Commission did not consider the transaction contentious in that regard. Second, the Commission also considered that Shazam had a unique set of data on its users' preferences,

but this point did not end up being problematic either since this type of data is very easy to acquire.

Outlook for merger control cases

The Commission's decisional practice enables us to make careful predictions about future merger control enforcement in the digital world. For example, the *Apple / Shazam* case shows that the Commission's understanding is maturing in how to apply the merger rules to online markets. Previous decisions such as *Facebook / WhatsApp* were in contrast heavily criticised, including from within the Commission's own ranks (notably, the Commission – after clearing the transaction – imposed a fine on Facebook for providing misleading information to the Commission). In *Apple / Shazam*, however, the Commission is showing a more clarity in its approach.

There is also a debate as to whether the current rules are able to capture all important transactions in the market. While there is a consensus that high-value transactions involving low-turnover companies are currently not sufficiently covered by the merger rules, there is debate on how the rules could be change. Indeed, Germany and Austria have already introduced new value-of-transaction thresholds, albeit with limited success, and Hungary has introduced lower, “soft thresholds” focusing on the expected competitive effects of the transaction. In addition, there is a concern that increased scrutiny of transactions could negatively affect development in the digital sector as more regulatory intervention may lead to fewer transactions, which in turn could result in a loss of financing for start-ups.

Merger control in the mobile sector has also shown that prices and margins in the sector have persistently followed a downward trajectory, which may have a negative impact on the willingness or ability of operators to develop infrastructure. As such, experts have commented that four to three mergers could, as an alternative, be treated with regulatory remedies, such as MVNO access (as was the case for certain mobile mergers during the Almunia mandate), preserving competition while not affecting operators' desire to rationalise the deployment of infrastructures.

Current theories of harm relating to innovation may also be difficult to apply to the digital world, as innovation in the digital sector is different from innovation in the agrochemical and pharmaceutical sectors for which these theories were initially designed. Indeed, innovation in the digital world is short-term, less asset-driven and less based on IP rights. The question is therefore much more about preventing transactions from stopping or delaying innovation (so-called killer acquisitions, as addressed in the special advisor's report noted above) than on pipeline products. As a result, existing theories may require updating, including, for example, a broader understanding of the concept of 'potential competition' in markets where the boundaries are constantly evolving (that is, broader market definitions).

We also note that competitors seek alternatives ways of cooperation which do not go as far as a “full” merger. The most typical example of such cooperation is undoubtedly network sharing, which is getting increasingly common in Europe. This has also caught the Commission's attention, and led to it opening a formal investigation into the network sharing agreement between O2 CZ / CETIN and T-Mobile CZ. This case is still pending.

Competition law in the digital sector also goes hand in hand with a greater deal of uncertainty. The merger control framework requires competition authorities to make a forward-looking assessment. In that context, the question arises whether the current “more likely than not” standard is sufficient and whether the regulators have sufficient (access to) information to assess the impact of a transaction on the market. To overcome those concerns, as noted above some, including the special advisors appointed by Commissioner

Vestager, argue for a reversal of the burden of proof, requiring parties rather than regulators to prove that a transaction has no adverse effect on competition.

Finally, the Commission's recent telecommunications mergers show that it has not stood in the way of consolidation in the sector. At the same time, decisions in other sectors show that the Commission appears to ignore arguments related to the creation of "European champions". For example, the Commission recently prohibited the *Siemens / Alstom* transaction, in spite of heavy political pressure. Heavy-weight countries Germany and France urged the Commission to approve the deal, which would see the two companies' railway business combined, arguing that a prohibition would leave the EU industry unable to compete with Chinese competition. Commissioner Vestager did not budge, stating that it is not her business to create "European champions" to counter a threat that may never materialise. Indeed, in a recent speech she indicated that "the EU must make full use of the trade defence instruments at its disposal".

2.3 Anticompetitive practices – Article 101 TFEU

There have been relatively few decisions or judgments on anticompetitive practices in the digitised world. In *Eturas*, the Court of Justice held that imposition of maximum rebates via an online platform for travel agents constituted an anticompetitive practice. Eturas, an online platform for travel agents, had implemented certain restrictions on the travel agents' ability to grant rebates over 3%. The Court held that while the travel agents would technically have been able to override the limitation, it would have involved several additional steps on the platform and, in practice, none of them appeared to have done so. In addition, some of the travel agents claimed not to have been aware of the limitation, stating that they had not seen the platform operator's message announcing the rebate cap. The Court held that platform users can be presumed to have been aware of (and to have consented to) such a limitation, unless they can prove that they actively distanced themselves from the practice. The judgment mainly relates to a classic hub-and-spoke situation and the conditions under which a party can distance itself from anticompetitive behaviour, but the only "digital element" in that case was that the anticompetitive practices occurred via an online platform.

Platforms have also been an important topic for Article 101 cases in the context of e-commerce. In *Coty*, the question for the Court of Justice was essentially whether a supplier may restrict its retailers from distributing the contract goods via online platforms such as Amazon marketplace. The Court held that, while it is not possible completely to restrict the sale of goods via online platforms, a supplier may limit its distributors' online sales to the sales made through their own e-shop and to those made through a third-party, insofar as the involvement of that third party is not discernible to the public.

The Commission was also actively pursuing manufacturers who restricted online sales: it fined consumer electronics manufacturers for imposing fixed or minimum resale prices on their online retailers and sports merchandise producers for restricting cross-country merchandise sales within the EEA. The Commission noted in the former case that the biggest online retailers used pricing algorithms which, in practice, broadened the impact of the pricing restrictions imposed.

Focusing in particular on the media sector, the Commission's investigation into *Cross-border access to pay-TV* delved into territorial restrictions in the market for pay-TV. The Commission essentially alleged that the U.S. Hollywood studios restricted Sky UK from making its retail pay-TV services available to unsolicited requests from consumers in other jurisdictions. The studios also committed to imposing a similar restriction on other retail pay-TV providers with respect to the UK and Ireland. After an initial settlement with Paramount in 2016, the other parties all settled in March 2019, as well.

The cases show that the Commission's decisional practice and the Court's case law on anticompetitive agreements in the digital sector remains fairly limited and we also expect that it will be some time before there will be a consistent stream of digital cases. The discussions on the Brussels conference circuit, which have focused on "virtual competition" and the use of algorithms, have very limited features in concrete case law or decisional practice.

2.4 Abuse of dominance – Article 102 TFEU

Platforms, algorithms and apps

The Commission's practice on abuse of dominance in the digital sector is, in contrast, more extensive and more innovative. It has even received widespread attention in mainstream media. In *Google Shopping*, the Commission found that Google had abused its dominant position by placing its own price-comparison results in a more favourable position than those of other price comparison websites when users searched for products on Google's search engine. The Commission required Google to amend the algorithm which it used to organise the results. In *Google Android*, the Commission found that Google had also abused its dominant position by requiring or incentivising manufacturers of Android phones to pre-install the Google Search and Chrome apps, and by preventing manufacturers wishing to pre-install Google apps from selling even a single smart mobile device running on alternative Android forks which were not approved by Google. Finally, most recently in *Google AdSense* the Commission fined Google for another instance of abuse of dominance: the imposition of certain restrictive clauses in Google's agreements with third party websites which allegedly prevented Google's rivals from placing their search adverts onto these websites.

Rather than imposing a fixed solution, the Commission allowed Google to comply with the decisions as it sought fit, subject to scrutiny by the Commission. With respect to *Google Android*, phone producers would be free to use Google's version of Android as well as competing versions. In addition, Google no longer requires manufacturers using its version of Android to pre-install Google Search and Chrome as a condition for access to Google's app store. Instead, they can pay a fee to license Google's app store. Google also offers incentives for the manufacturers to install Google Search and Chrome. As a remedy to the *Google Shopping* case, Google changed a search box at the top of its site that appears when a consumer searches for a product on Google's general search engine. The changes were aimed at giving competing comparison websites greater prominence. In *Google AdSense*, the company has already terminated the relevant practices, so the Commission just prescribed that it should refrain from similar practices in the future.

Burden of proof and the presumption of innocence

In *Intel*, the Commission imposed a EUR 1.06 billion fine on Intel for abusing its dominant position. The Commission found, among other things, that Intel had granted loyalty-enhancing rebates to its customers (such as Hewlett-Packard, Lenovo or Dell) in order to exclude its competitor AMD from the market. However, Intel brought an action for annulment against the decision before the General Court, which then rejected the action and upheld the Commission decision. Intel then lodged an appeal before the Court of Justice, which quashed the General Court's judgment on procedural grounds. The case has now been referred back to the General Court, which must rule again on the merits of the case.

This case is particularly interesting in the debate on whether or not to shift the burden of proof in digital cases (such as by introducing new presumptions), or whether to apply *per se*

prohibitions, as some suggest. That point was reflected in the speech of Mr Tirole at the conference on shaping competition policy in the digital world, in which he said that we should "err on the side of protecting competition". He claims that due to an absence of data, it is hard to prove suppression of competition in digital cases and that the burden of proof should therefore in some instances be shifted from the regulator to the undertakings concerned. This is also one of the recommendations featured in the special advisors' recent report.

This position has been heavily criticised, especially when it comes to anticompetitive agreements and abuse of dominance cases, as courts have consistently held that antitrust is quasi-criminal in nature. Accordingly, shifting the burden of proof to the defendant in such cases to compensate for a lack of evidence on the part of the regulator is likely to run counter to the presumption of innocence and the rule of law. Indeed, the *Intel* judgment has reaffirmed that there is a significant burden of proof which the Commission has to discharge in antitrust matters and a shift in the burden would run counter to that. It will be interesting to see how these two divergent schools of thought will further develop.

Outlook for abuse of dominance cases

The Commission's practice in the area of abuse of dominance in the digital world begins to show its limitations as it struggles to apply the traditional concepts of "market definition" and "market power" to the digital economy, as well as in relation to the discharge of its burden of proof. The mainstay of the discussion appears to focus on these aspects.

The Commission's market definition in Google Shopping, for example, has been criticised for insufficiently taking into account the struggle for consumer attention. The Commission had defined the relevant product market as "comparison shopping services", which includes websites such as Yahoo! Shopping but excludes marketplaces such as Amazon, Alibaba or eBay. Critics have stated that this definition fails to acknowledge the reality of the online world, where companies compete with each other for the limited time spent by consumers online on merchants' sites. According to those critics, Google Shopping, Yahoo! Shopping, Alibaba, Amazon, Facebook Marketplace and the likes are competing equally with differentiated offerings to attract a shopper's attention, and are therefore part of the same market.

In addition, the remedies in the two earlier Google cases have received considerable criticism, and questions are raised as to their effectiveness. In *Google Android*, the Commission demanded that manufacturers be free to use Android and include the Google Play Store on devices without having to pre-install the Google Search app and Chrome. However, critics say that it is too little, too late: consumers are accustomed to the presence of Google's apps on Android phones, and Android device producers will continue to have to include Google's applications in order to compete.

More importantly, the Commission stated in *Google Android* that "*Google is dominant in the worldwide market (excluding China) for app stores for the Android mobile operating system. Google's app store, the Play Store, accounts for more than 90% of apps downloaded on Android devices. This market is also characterised by high barriers to entry. For similar reasons to those already listed above, Google's app store dominance is not constrained by Apple's App Store, which is only available on iOS devices*". It is more than likely that the Commission will soon have to decide on alleged abuses by Google through its Play Store, notably exclusionary abuses which favour own apps or indeed the very Play Store itself. Google was the subject of a complaint by Aptoide, a rival app store.

Likewise, the Commission will have to determine whether Apple's App Store is dominant in relation to iOS apps. Indeed, the Commission has already received a complaint from Spotify against Apple's App Store rules.

To alleviate the concerns in the *Google Shopping* decision, Google introduced an 'auction system' which allowed other price comparison websites to bid for the chance to appear in the ads banner at the top of the site. The solution too has attracted strong opposition as Google Shopping's bids are, according to critics, meaningless internal accounting measures, paid from one Google entity (Google Shopping) to the other (Google Search).

In addition, critics claim that as long as the slots are populated by auction rather than by relevance, participants are required to bid away the majority of their anticipated profit due to the overpopulation of the auctions. In March 2019, Google indicated that it is considering changes to its remedy and is now testing a special tab which showcases price-comparison websites. Nicholas Banasevic, an EU official leading the Google probe, however said that Google's changes to its shopping site are increasing traffic to online shopping services and that the "remedy is working".

These cases show that the digital world is challenging the Commission's approach to business-as-usual. It will have to come up with novel solutions to confront the challenges posed by the new economy. We expect the debate to continue in 2019, and the years thereafter.

2.5 State aid

Significant funds for broadband development

In 2013, the Commission estimated that EUR 250 billion would be required to achieve its 2020 broadband targets, and in addition EUR 500 billion to achieve the 2025 broadband targets. It comes as no surprise that State aid policy is an important factor in relation to these targets, especially since the Commission has only approved approximately EUR 24 billion for broadband infrastructure during the last five years.

In the Lithuanian *RAIN 3* case, the Commission approved a EUR 50 million extension of the Lithuanian governments RAIN funding, for the development of broadband networks. The approval was subject to the condition of third party access to the network on equal and non-discriminatory terms. In addition, the infrastructure was limited to remote rural areas in Lithuania where no equivalent structures are currently in place or planned by private investors.

In the Bavarian Gigabit project, the Commission approved under EU State aid rules a national project to deploy very high capacity networks in six municipalities. The aid aims at bringing very fast broadband to customers in areas where the market does not provide such access, in line with the EU broadband connectivity goals. This decision is relevant because for the first time the Commission has looked at a support measure in the context of the objectives of the Gigabit Communication and, in particular, is the first support measure involving a "step change".

In the Greek Superfast Broadband (SFBB) Project the Commission approved, for the first time, a national demand aid scheme providing vouchers to support increased take-up by covering part of the costs for the set-up as well as the monthly fee for a maximum of 24 months.

Considering the new focus of the Code on the development of very high capacity networks, the question is whether the current Broadband Guidelines remain fit for the new challenge, or if it should be revised.

With respect to the so-called digital switchover, which is the migration to digital broadcasting, the Commission in principle supports the idea to grant State aid to achieve a quick switchover to free up spectrum for alternative uses. However, aid must be necessary and appropriate and should not impact platform competition between terrestrial, cable and satellite TV providers.

That was not the case in *Comunidad Autónoma de Galicia, Redes de Telecomunicación Galegas Retegal SA (Retegal) v Commission*. In this case, the Commission considered that the aid to switch from analogue to digital terrestrial TV in Spain was not compatible in part because the "vast majority" of tenders were not technologically neutral. This was confirmed by the Luxembourg Court: in the absence of robust studies justifying the choice for a particular technology, tenders that are not technologically neutral cannot be allowed.

Outlook for State aid cases

Despite a number of positive Commission decisions, broadband goals are far from being achieved and it is likely that more aid will be needed to fulfil the targets. In that regard, the European Court of Auditors has stated in a report that the Commission should clarify the way in which it interprets the State aid rules in the broadband sector, as some Member States seem to adopt a more restrictive approach, resulting in less aid being granted.

At the same time, Johannes Laitenberger stated that "of 38 billion euros' worth of projects cleared under State aid since 2009, only 30% resulted in spending and the rollout of broadband infrastructure in Member States". The question is therefore also whether more aid will necessarily be enough, or whether better implantation plans are needed.

2.6 Conclusion

Critics claim that the competition rules are not adapted to deal with the challenges of the digital economy. However, in our view, competition law is an open-ended and flexible tool which can adapt to the changing circumstances in the digital world. We share the view of Deputy Director-General at the Directorate-General for Competition Cecilio Madero, who, speaking in a personal capacity, urged for caution when calling for "fundamental changes".

In addition, it should be kept front of mind, as Commissioner Vestager warned at an AmCham EU conference in November 2018, that "competition rules are not a panacea to address all challenges raised by the digitisation of the economy." She posed that we need rules that go further than competition: "[competition] can help to make sure companies serve people better [...] but on its own, that's not enough to give people confidence that technology is safe. We also need rules to protect other fundamental values." She has also indicated that trade defence instruments, rather than competition law, should be the first option to safeguard European industry from unfair practices by third countries.

Of course, while certain challenges exist, tweaks to the competition law framework may be necessary. Traditional approaches, such as leniency applications, may for example become less effective, or evidence of infringement may be harder to find (since algorithms do not keep a record of pricing decisions, for example). Authorities may also have to adapt their enforcement toolbox and search for evidence through novel methods, such as computer labs.

Finally, in the area of merger control, the jurisdictional thresholds may have to be amended to capture important data-driven transactions and to avoid killer acquisitions.

3. FINAL OBSERVATIONS

These are interesting times and the challenges that the current Commission is confronted with will remain a point of contention for the new Commission following the May 2019 elections.

Importantly, the interplay between regulation and competition policy remains as topical as ever. The choice between regulation of the digital sector *ex ante* (via regulatory measures) or *ex post* (via competition law) remains heavily debated.

ANNEX - OVERVIEW OF EU LAWS DISCUSSED AND KEY COMPETITION CASES**1. EU LEGISLATION**

- Directive 2000/31/EC of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce') (OJ L 178, 17 July 2000, p. 1–16)
- Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: a Digital Single Market Strategy for Europe, COM(2015) 192 final, Brussels, 6 May 2015
- Regulation (EU) 2015/2120 of the European Parliament and of the Council of 25 November 2015 laying down measures concerning open internet access and amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services and Regulation (EU) No 531/2012 on roaming on public mobile communications networks within the Union (OJ L 310, 26.11.2015, p. 1–18)
- Regulation (EU) 2016/679 of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4 May 2016, p. 1–88)
- Regulation (EU) 2017/920 of 17 May 2017 amending Regulation (EU) No 531/2012 as regards rules for wholesale roaming markets (OJ L 147, 9 June 2017, p. 1–8)
- Regulation (EU) 2017/1128 of 14 June 2017 on cross-border portability of online content services in the internal market (OJ L 168, 30 June 2017, p. 1–11)
- Regulation (EU) 2018/302 of 28 February 2018 on addressing unjustified geo-blocking and other forms of discrimination based on customers' nationality, place of residence or place of establishment within the internal market and amending Regulations (EC) No 2006/2004 and (EU) 2017/2394 and Directive 2009/22/EC (OJ L 60I , 2 March 2018, p. 1–15)
- Directive (EU) 2018/1972 of 11 December 2018 establishing the European Electronic Communications Code (OJ L 321, 17 December 2018, p. 36–214)
- Proposal for REGULATION on ENISA, the "EU Cybersecurity Agency", and repealing Regulation (EU) 526/2013, and on Information and Communication Technology cybersecurity certification ("Cybersecurity Act") COM/2017/0477 final - 2017/0225 (COD)
- Proposal for a DIRECTIVE on copyright in the Digital Single Market COM/2016/0593 final - 2016/0280 (COD)
- Proposal for a REGULATION on promoting fairness and transparency for business users of online intermediation services COM/2018/238 final - 2018/0112 (COD)
- Proposal for a REGULATION concerning the respect for private life and the protection of personal data in electronic communications and repealing Directive 2002/58/EC (Regulation on Privacy and Electronic Communications) COM/2017/010 final - 2017/03 (COD)

- Proposal for a Regulation of the European Parliament and of the Council on preventing the dissemination of terrorist content online COM/2018/640 final - 2018/0331/(COD)
- Proposal for a REGULATION of the European Parliament and of the Council laying down rules on the exercise of copyright and related rights applicable to certain online transmissions of broadcasting organisations and retransmissions of television and radio programmes COM/2016/0594 final - 2016/0284 (COD).
Note: the final compromise text also includes the change of the legal nature of the instrument from Regulation into Directive to give Member States the necessary flexibility to implement the provision on direct injection into their national legislation.

2. CASE LAW

2.1 European Commission

- Case AT.37990 Intel, Commission decision of 13 May 2009
- Case SA.28599 Aid for the deployment of digital terrestrial television (DTT) - Spain (with the exception of Castilla-La Mancha), Commission decision of 29 September 2010
- Case M.7194 Liberty Global/Corelio/W&W/De Vijver Media, Commission decision of 24 February 2015
- Case M.7421 Orange/Jazztel, Commission decision of 19 May 2015
- Case M.7419 Teliasonera/Telenor/JV, Commission decision of 11 September 2015
- Case M.7637 Liberty Global/Base Belgium, Commission decision of 04 February 2016
- Case M.7612 Hutchison 3G UK/Telefonica UK, Commission decision of 11 May 2016
- Case M.7978 Vodafone/Liberty Global/Dutch JV, Commission decision of 03 August 2016
- Case M. 7758 Hutchison 3G Italy/Wind/JV, Commission decision of 01 September 2016
- Case M.8131 Tele2 Sverige/TDC Sverige, Commission decision of 07 October 2016
- Case M.8228 Facebook/Whatsapp (Art. 14.1 proc.), Commission decision of 17 May 2017
- Case M.8465 Vivendi/Telecom Italia, Commission decision of 30 May 2017
- Case AT 39740 Google Search (Shopping), Commission decision of 27 June 2017
- Case M.8251 Bite/Tele2/Telia Lietuva/JV, Commission decision of 19 July 2017
- Case M.7000 Liberty Global/Ziggo, Commission decision of 30 May 2018
- Case M.8808 T-Mobile Austria/UPC Austria, Commission decision of 09 July 2018

- Case AT 40099 Google Android, Commission decision of 18 July 2018
- Case M.8883 PPF Group/Telenor Target Companies, Commission decision of 27 July 2018
- Case M.9041 Hutchison/Wind Tre, Commission decision of 31 August 2018
- Case M.8788 Apple/Shazam, Commission decision of 06 September 2018
- Case M.8842 Tele2/Com Hem Holding, Commission decision of 08 October 2018
- Case M.8944 Liberty Global/De Vijver Media and Liberty Global (SBS)/Mediahuis/JV, Commission decision of 23 November 2018
- Case M.8792 T-Mobile NL/Tele2 NL, Commission decision of 27 November 2018
- Case M.8864 Vodafone/Certain Liberty Global Assets, Commission decision of 11 December 2018
- Case SA.49614 Development of Next Generation Access Infrastructure/RAIN 3/Lithuania, Commission decision of 12 October 2018
- Case M.8677 Siemens/Alstom, Commission decision of 06 February 2019
- Case AT. 40023 Cross-border access to pay-TV, NBC Universal / Paramount Pictures C / SKY (UK) / Sony Pictures Entertainment / The Walt Disney Company / Twentieth Century Fox Int Ltd / Warner Bros Entertainment UK Ltd

2.2 European Court of Justice

- Case T-286/09 – *Intel Corp. v European Commission*, Judgment of the General Court (Seventh Chamber, Extended Composition), 12 October 2014
- Case C-74/14 "*Eturas*" *UAB and Others v Lietuvos Respublikos konkurencijos taryba*, Judgment of the Court (Fifth Chamber) of 21 October 2016
- Case C-413/14 P – *Intel Corp. v European Commission*, Judgment of the Court (Grand Chamber) of 6 September 2017
- Case C-70/16 P, *Comunidad Autónoma de Galicia and Redes de Telecomunicación Galegas Retegal, SA (Retegal) v European Commission*, Judgment of the Court (Fourth Chamber) of 20 October 2017
- Case C-230/16 - *Coty Germany GmbH v Parfümerie Akzente GmbH*, Judgment of the Court (First Chamber) of 6 December 2017

3. OTHER

- Self-regulatory Code of Practice on Disinformation, European Commission news article of 26 October 2018
- Margrethe Vestager, Competition and fairness in a digital society, AmCham EU 35th Competition Policy Conference, Brussels, 22 November 2018 (available at: https://ec.europa.eu/commission/commissioners/2014-2019/vestager/announcements/competition-and-fairness-digital-society_en)

- Johannes Laitenberger, Closing remarks at the "Shaping competition policy in the era of digitisation" conference, DG Competition, Brussels, 17 January 2019 (available at: http://ec.europa.eu/competition/speeches/text/sp2019_01_en.pdf)
- Jean Tirole, Keynote speech at the "Shaping competition policy in the era of digitisation" conference, DG Competition, Brussels, 17 January 2019 (available at <https://webcast.ec.europa.eu/shaping-competition-policy-in-the-era-of-digitisation#>)
- Link to general webcast of the "Shaping competition policy in the era of digitisation" conference, DG Competition, Brussels, 17 January 2019: <https://webcast.ec.europa.eu/shaping-competition-policy-in-the-era-of-digitisation#>
- Nick Clegg, "A discussion with Nick Clegg", Brussels, 28 January 2019 (available at: <https://newsroom.fb.com/news/2019/01/a-discussion-with-nick-clegg/>)
- Margrethe Vestager, Making the Data revolution work for us, Mackenzie Stuart Lecture, Cambridge, 4 February 2019 (available at: https://ec.europa.eu/commission/commissioners/2014-2019/vestager/announcements/making-data-revolution-work-us_en)
- Final Report on "Competition Policy for the Digital Era", Jacques Crémer, Yves-Alexandre de Montjoye, Heike Schweitzer, 4 April 2019 (available at <http://ec.europa.eu/competition/publications/reports/kd0419345enn.pdf>)