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On December 15, 2020, the European Commission announced its Digital Markets Act ("DMA"), a proposal for the *ex ante* regulation for the big digital platforms, the so-called gatekeepers, which has as an objective to ensure that markets are contestable and fair. The DMA contains specific obligations for the gatekeepers and enables authorities to access directly relevant information on the platforms' infrastructure in order to evaluate their market strategies and their effects to consumer welfare.

This *ex ante* regulatory proposal is important in many aspects. First, it clarifies that if we want to design a fair distribution of the value created in digital platform ecosystems, we need to consider both business users (e.g. advertisers, app developers and external suppliers or producers of products and services) and consumers, the distinct sides that interact through the multi-sided gatekeeper platform. Fairness suggests a focus on the welfare redistribution issues with rules that prevent gatekeepers to extract disproportionally high value from the ecosystem at the expense of business users and consumers.

Second, it provides an interpretation of market contestability with emphasis on longer-run dynamic innovation by business users and on consumer choice. Hence, markets are contestable when business users and consumers can find alternative ways to interact with each other outside big gatekeeper platforms.

It is important to clarify the position of the DMA with respect to competition policy enforcement. Competition law's objective is to safeguard consumer welfare by protecting competition while considering efficiency gains that result from the process of innovation. In practice, competition enforcement emphasizes on the competition effects and efficiency gains of specific business strategies in the short run. The DMA, instead, adopts a longer horizon with emphasis on consumers' choice and autonomy. So, the new *ex ante* regulation is complementary to current market competition rules that are mostly applied *ex post* (with some exceptions like merger control).

This harmonic combination of *ex ante* and *ex post* rules is more likely to be successful in addressing the competition challenges of digital markets, because *ex post* enforcement alone does not suffice. It is too narrow and slow while in many cases the harm cannot be undone. The combination of features that we meet in big platform ecosystems such as, direct or indirect network effects, economies of scale and data driven economies of scope[2] can lead to a market tipping behavior which is difficult to be addressed by *ex post* enforcement. We need instead to carefully design deep structural solutions to ensure market contestability.

The DMA is a comprehensive proposal that in addition to the *ex ante* rules, it also provides a new promising model of market transparency with the aim to make *ex post* competition enforcement more efficient and effective. Enforcers are able to get direct access to data located at platforms' infrastructure as well as to platforms' algorithmic systems. In this way, they can check in a timely manner whether algorithmic bias exists and whether it leads to an unfair treatment of business users or consumers. That in turn can improve the adopted decisions with the inclusion of good qualitative remedies that address the competition concerns in question. This is

[1] Massachusetts Institute of Technology, Bruegel, and Stanford University.
[2] See for example: Parker, Geoffrey, Petropoulos, Georgios & Van Alstyne, Marshall W., "Digital Platforms and Antitrust," (May 22, 2020). Available at SSRN: http://dx.doi.org/10.2139/ssrn.3608397.

particularly important as in digital markets there are great information asymmetries between platforms and authorities.

This model provides authorities with new possibilities for running behavioral online experiments to test platforms' algorithms and better understand how a platform's practices affect its users and competitors. It can become a major innovation in antitrust enforcement as we can end up with significantly shorter periods of investigation increasing authorities' capacity to investigate more cases at the same time.

As the DMA proposal continues its journey with an expectation to become a regulation applicable in the EU markets in a couple of years, there is certainly room for improvement. At the current stage, many obligations listed in the DMA apply to all platforms that will be identified as gatekeepers without considering the specific characteristics of their business models. However, the business model of an app store has many differences from an online search platform model or a social media network.[3] This implies that a regulatory obligation may have different welfare impact when it applies to different models. When analyzing this impact, we should put particular emphasis on the small business users and their ability to innovate and scale up strengthening in this way the ability of consumers to find high quality, alternative (to big platforms') products and services.

EU competition law, in fact, incorporates such (case-by-case) analysis: A business practice that has as an object or effect the restriction of competition may be allowed if i) it leads to substantial efficiency gains; ii) the practice is necessary to achieving these efficiency gains; iii) a fair share of these efficiency gains is allocated to consumers and; iv) it does not completely eliminate competition. Block exemption regulations and guidelines have also been adopted in the EU to clarify how these criteria should be applied in practice (with the imposition of both qualitative and quantitative thresholds). Business practices whose ultimate objective is to restrict competition (restrictions by object or hard-core restrictions, such as market cartels) are in practice black-listed and are very difficult to be allowed through the use of such an efficiency defense mechanism.

In an analogous way and given that the obligations/prohibitions of the new regulation will be relevant for only a small number of big platforms, we could define two categories of prohibitions that refer to black-listed and grey-listed platform practices. The black-listed practices should be strictly prohibited for all gatekeeper platforms. For the grey-list practices, a burden of proof should be imposed on the gatekeepers to objectively justify with undisputed evidence why they should be exempted from specific *ex ante* rules, namely, whether their exemption generates efficiency benefits in the long-run that increase the welfare of both the business users and consumers. That approach would also bring the DMA closer to the UK's code of conduct approach[4] (which is currently work in progress) leading to a more similar regulatory treatment between the two jurisdictions.

Ensuring fair and contestable digital ecosystems is of vital importance for the prosperity of European citizens. The DMA proposal is a good step forward for achieving that. We should work with similar determination and vision to finalize it as a new regulation for the EU.

[3] For an economic analysis that takes into account the specificities of big platform core business models see: Cabral, L., Haucap, J., Parker, G., Petropoulos, G., Valletti, T. & Van Alstyne, M., "The EU Digital Markets Act," Publications Office of the European Union, Luxembourg, 2021, ISBN 978-92-76-29788-8, doi:10.2760/139337, JRC122910.

[4] Its broad principles are described at: Furman, J., Coyle, D., Fletcher, A., Marsden, P. & McAuley, D., "Unlocking Digital Competition," Report of the Digital Competition Expert Panel, UK HM Treasury, 2019, ISBN 978-1-912809-44-8, PU2242.