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Regulation of Big Tech in the EU

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Regulation of Big Tech in the EU

1. Introduction

During the past few years, there has been a steeply increasing political interest in regulating Big Tech companies and digital platforms in general. For many years, from the establishment of the first Internet-based IT companies and onwards, the dominant political view has been that policymaking should, to a large extent, stay away from regulating or only lightly regulate the Internet-based industries. The risk of doing more harm than good would be too high – not having sufficient knowledge on how these industries would develop and risking constraining the innovativeness of the Internet-based industries.

This has clearly changed today. In Europe as well as the US and elsewhere around the world, policy initiatives are taken to regulate Big Tech and the Internet-based industries in general. This applies to the protection of individuals/users/consumers as well as regulating competition. The reason is that a consensus has been gaining ground that we now have sufficient experience not only with the benefits to the economy, to users, and society as such of the developments of Internet and Internet-based industries but also with the downsides in terms of harm to individuals/users/consumers and social and political relations and institutions and to small and upcoming innovative companies. This has led to an increasing surge in rules and regulations for the protection of individuals as well as the competitive conditions on markets.

The aim of this paper is to provide an overview of the ongoing and upcoming trends in Big Tech regulation with a focus on EU. Emphasis is on the Digital Markets Act (DMA) and the Digital Services Act (DSA) though it is well understood that there are other kinds of regulation that also affect digital platforms including Big Tech companies.

In order to situate the developments of regulatory measures in the EU, the paper includes a comparison with similar developments in the US. Two main questions are thus addressed: What is Big Tech regulation and which are the most important trends in the EU? Furthermore, which are the differences between the approaches to Big Tech regulation in the US and the EU?

The first question begs another question, namely what does Big Tech mean? The term is vague and generally refers to big US-based internationally operating IT companies and platforms such as Alphabet (Google), Meta (Facebook), Apple, Amazon and Microsoft. But it could just as well refer to the China-based equivalents such as Alibaba, Tencent and Baidu. Furthermore, in the legislative measures that are being discussed and decided upon it is not only the very largest companies that are being regulated but also the Internet-based industries in general.

The second question addressed deals with the differences and similarities between the regulatory measures taken in the EU and the US. The similarities are dominant and the overall intentions are to better protect individuals as well as small innovators in markets. There are, however, also differences, both with respect to how severe regulations will be, but also with respect to the kinds of measures to be applied (Schnitzer et al., 2021). There is more emphasis on social regulation in

the EU as compared to the US, while the anti-trust policy tradition is stronger in the US than in the EU and may point at more traditional anti-trust polices in the US when compared to the EU.

The theory framework for the analysis in the paper is based on literature on regulation from Stigler (1971) and Peltzman (1976) to Kahn (1988), Armstrong and Sappington (2007), den Hertog (2010) and Baldwin et al. (2011) and on Polanyi's Double Movement theory (1944) and the so-called Collingridge Dilemma (Collingridge, 1980). The methodology applied is primarily document analysis supported by news stories and analyses and academic papers that have been appearing lately.

Following an introductory section, the paper discusses theory on regulation. After this, there is a section on the similarities and differences between the policy initiatives in the EU and the US. This is followed by a section specifically addressing the EU DMA and DSA. Prior to an overall conclusion, there is an analytical section, putting the regulatory trends, the similarities and differences, and the various dimensions of the regulatory measures in perspective.

2. Theory and conceptualization

This section is concerned with the *what, why, how, when and who* of regulation – starting with the *when*:

In his book on 'The Control of Technology', Collingridge (1980) elaborated on what has come to be known as the Collingridge Dilemma. The dilemma is that in the early phases of development and diffusion of new technology systems, it may be difficult to know what the development trends and impacts will be, and regulatory intervention will be seen as premature. However, when technology systems have developed and have become widespread and impacts more well-know, it has also become more difficult to control and regulate the entrenched interests associated with these technologies.

This is exactly what has happened with Big Tech corporations and the platform economy in general. With respect to Internet as such, it was, for instance, decided in connection with the Telecommunications Act of 1996 in the US to consider Internet as an information service to be lightly regulated and not to be regulated as a common carrier as was the case with telecommunications. Later with the development of the platform economy, it was deemed to be potentially counter-productive to regulate this area, as it could become a barrier to the creativity and innovativeness of the new platform companies. All this may very well have been the best approach, as the platform economy has developed very quickly and innovativeness, indeed, has been very extensive. However, now that social problems and adverse implications for competition have also become known, there is strong resistance from parts of the industry towards state control and regulation.

In the tradition of regulatory theory, the lack of knowledge of policymakers and regulatory institutions has been dealt with in terms of the better information that suppliers of goods and services have on production costs and consumer demands, etc. than regulators (Armstrong and Sappington, 2007).

Polanyi (1944) was in his Double Movement theory concerned with the relations between market developments and policy and regulatory responses. When new market developments occur including new technologies and new business modes of operation, there will, at a point in time, be a social policy and regulatory reaction in order to rectify new economic and social injustices and problems. This is what we see currently with Big Tech and platform regulation. The mode of operation of Big Tech and platform companies has been influenced by trying new things out including activities with potentially adverse social and economic effects, and the new regulations are directed at countering such adverse effects. Polanyi's Double Movement theory and the Collingridge Dilemma complement each other well.

The most well-cited publications on theory of economic regulation are the 40-50 years old papers by Stigler (1971) and Peltzman (1976). These publications aimed at establishing the foundation for a theory of economic regulation countering what they conceived as the *deus ex machina* understanding of regulation that they found had hitherto dominated. The theoretical position of Stigler and Peltzman is a private interest theory of regulation. In fact, the main line of division in theories of regulation continues to be between theories based on a public interest approach putting most emphasis on market failures and theories based on a private interest approach putting most emphasis on policy failures (den Hertog, 2010). Obviously, analytical approaches will often be a mixture of public interest and private interest approaches, where a basically public interest approach, for instance, can be combined with the concept of regulatory capture. In the deliberations on the upcoming regulations of platform markets, such ideas of mitigating market failures and on the risk of policy failures are underlying the policy discussions and actual regulations.

With respect to what could be subject to regulation, the most important differentiation is between economic and social regulation (den Hertog, 2010). Clearly, this differentiation is somewhat blurry, as concrete pieces of regulation often will be a mixture of economic and social regulation. The EU General Data Protection Regulation (GDPR), for instance, has as its main purpose to protect individuals against abuses of personal data and is to be considered as a social regulation. However, not only may GDPR have strong economic implications, but the purpose is also to create a level playing field regarding the protection of personal data in the EU, thus equalizing market conditions in the EU, therefore, also being an economic regulation.

Regarding the regulation of Big Tech and platform markets in general, the differentiation between social and economic regulation is useful, as is, for instance, illustrated by the dual EU regulatory initiatives in the field with a Digital Services Act (DSA) as well as a Digital Markets Act (DMA). The DSA is primarily a social regulation (though an important purpose also is to strengthen the internal EU market), while the DMA is primarily an economic regulation.

When it comes to the *how* of regulation, the main issues are the following – see, for instance, Baldwin et al. (2011):

- General vs. sector specific
- Ex-post vs. ex-ante

- Structural vs. conduct

Such differentiations are primarily related to economic regulation – but also, to some extent, to social regulation.

General competition regulation applies to all economic sectors of society. The main objective of general competition regulation is to intervene when there are abuses of market power. This form of regulation is generally an ex-post kind of regulation, meaning that public authorities will not intervene in advance to prevent abuses of market power but will intervene when abuse is actually taking place. Sector specific regulation is directed at specific economic sectors, where it is anticipated that problems will occur. This kind of regulation is often of an ex-ante character.

Telecommunications regulation is a case in point. Following the liberalization of telecommunications – all over the world in the 1980s and 1990s – sector specific ex-ante regulation was implemented. This sector-specific regulation is not only economic but also has social elements. There are three main areas of regulations of telecommunications: Competition including interconnection regulation, regulation of natural resources including frequency regulation, and universal service regulation. The two first kinds of regulation are primarily economic regulations, while universal service regulation primarily is a social regulation.

Regarding the new Big Tech and general platform regulations, it has been pointed out, for instance, by Larouche and de Stree (2021) that the Digital Markets Act of the EU is a case of a combination of general and sector specific regulation. They explain that the platform markets cannot be considered as one sector. It is a mixture of different business areas – basically because of the convergence between IT, telecommunications, and media. The companies that are included under the term Big Tech and platforms cover different, however related, business areas and sector specific regulation is, therefore, challenged.

Concerning structural vs. conduct regulation, this differentiation partly overlaps with the two other types of differentiation – between general and sector specific regulation and between ex-post and ex-ante. Conduct regulation is clearly an ex-post type of regulation, while structural regulation is basically ex-ante. With respect to the differentiation between general and sector specific regulation, structural as well as conduct regulation can be general as well as sector specific.

This section on theory and concept of regulations has thus now dealt with the when, why, what, and how of regulation. Issues relating to the *who* of regulation, i.e. where the authority to enforce regulation rests, clearly show that there are differences between countries, where some countries will rely more on public agencies and others more on the courts. However, the most important issue is how the combination of state, co-, and self-regulation is constituted. Self-regulation has, for instance, been seen in the Big Tech area with Facebook's oversight board, which is supposed to assist the company in its freedom of expression policy. The impact of this oversight board has been difficult to see, and the emerging opinion among policy makers is that this type of self-regulation is insufficient in this field and that more hard state regulation is necessary.

Table 1 summarizes the main issues relating to the *what, why, how, when* and *who* of regulation. These issues will be dealt with in the analysis when discussing the two research questions posed.

Table 1: What, why, how, when and who of regulation

<i>What</i>	<ul style="list-style-type: none"> • Economic and/or social regulation
<i>Why</i>	<ul style="list-style-type: none"> • Public and/or private interest
<i>How</i>	<ul style="list-style-type: none"> • General and/or sector specific • Ex-post and/or ex-ante • Structural and/ or conduct
<i>When</i>	<ul style="list-style-type: none"> • Early or later in market developments
<i>Who</i>	<ul style="list-style-type: none"> • State, co-, and/or self-regulation

3. EU and US

The overall trends and initiatives in the EU and US with regard to Big Tech regulation

In recent years, both the EU and the US have taken steps to modify their regulatory frameworks to mitigate the risks posed by Big Tech companies. Policy measures have been introduced, focusing on competition, data privacy, data sharing, content moderation, and business conduct. These initiatives generally aim to strike a balance between addressing the risks associated with Big Tech and maintaining the advantages they offer in terms of market efficiency and innovation.

Safeguarding market competition has emerged as a top concern for EU and US regulators in order to deter large technology corporations from leveraging their supremacy in technology and data to swiftly dominate various market sectors and participate in unfair competitive behaviour. Proposals for competition policy include enhancing traditional ex-post enforcement tools and developing new ex-ante regulatory frameworks specific to Big Tech companies.

The EU has been in the lead in creating coherent regulatory frameworks for Big Tech. EU's legal framework for online services, originally established by the E-commerce Directive, serves as the foundation for regulating information society services. The digital services landscape has evolved significantly over the past two decades, especially with the rise of large online platforms and technological development. The EU has adjusted its regulations in response to evolving circumstances. Several laws and measures have been put in place by the EU to safeguard data privacy, prevent anti-competitive practices, and harmonize with current legislation in industries where high-risk AI systems are or may be utilized.

A prominent example is the General Data Protection Regulation (GDPR). The GDPR has been implemented to establish uniform standards for safeguarding individuals' personal data and ensuring the free flow of such information within the European Union (European Parliament,

2016). The Digital Services Act (DSA), the Digital Markets Act (DMA) are other examples, which aim to develop a protected digital space that upholds the fundamental rights of users and ensures a level playing field for businesses. Additionally, the upcoming EU Artificial Intelligence Act (AI) aligns well with existing EU legislation in sectors where high-risk AI systems are currently or potentially used. The EU AI Act aims to comply with the Charter of Fundamental Rights of the European Union (European Union, 2012), data protection, consumer protection, non-discrimination, and gender equality laws (European Parliament, 2021). It also complements the General Data Protection Regulation (GDPR) and the Law Enforcement Directive. The EU AI Act is, furthermore, consistent with EU legislation on services, including intermediary services regulated by the e-Commerce Directive and the Digital Services Act (DSA). In addition, it is closely linked to Data Governance Act (European Parliament, 2022) and the Open Data Directive (European Parliament, 2019). These initiatives reflect EU's commitment to fostering a fair and transparent digital environment.

The US has taken a more diversified approach to Big Tech regulation. There is no single, all-encompassing regulatory framework. The US government has been increasingly investigating tech giants for anti-competitive behaviour, privacy concerns, and content moderation. Various congressional hearings, antitrust lawsuits, and state-led investigations have put companies like Microsoft, Meta, Alphabet, Apple, and Amazon under the spotlight.

It is interesting to note that both the EU and the US prioritize the aspects of scope, in addition to scale, in their regulations when it comes to addressing the companies subject to regulation. The publication, 'Demand-Side Economies of Scope in Big Tech Business Modelling and Strategy', (Henten and Windekilde, 2022) sheds light on this trend and highlights that the majority of current regulatory measures in both the EU and US reflect this approach. This is evident in EU's Digital Markets Act (DMA) (2020/0374(COD)) and the US legislation such as the American Innovation and Choice Online Act (S.2992) and the Platform Competition and Opportunity Act (H.R.3826).

Even though both the EU and the US have been focusing on regulating Big Tech companies, there are some differences in their approaches and overall trends when it comes to:

- The key regulatory initiatives undertaken by the EU and the US respectively
- Social versus economic regulations approaches to Big Tech regulation in the US and the EU
- The balance between public and private interests
- Legislation processes

The key regulatory initiatives undertaken by the EU

EU has proposed and implemented comprehensive initiatives to regulate Big Tech companies. Some of these initiatives include:

General Data Protection Regulation (GDPR) was implemented in 2018. The GDPR is comprehensive and the strongest privacy and security law in the world (European Council, 2022) that applies to all companies operating in the EU. The GDPR also addresses the transfer of personal data to a third country or to an international organization (Intersoft Consulting 2023). It aims to give individuals

more control over their personal data, including the right to access, correct, delete, and transfer their data.

Regulation (EU) 2019/1150, also known as the Platform-to-Business (P2B, 2019) Regulation, is a legal framework established by the European Parliament and the Council on June 20, 2019, which became effective from June 12, 2020. Its main objective is to promote fairness and transparency for business users of online intermediation services (Eur-Lex, 2019), such as e-commerce platforms, app stores, and online booking systems. The P2B Regulation addresses issues arising from the imbalance of power between online platforms and businesses that use them. It requires platforms to be transparent about their terms of service, ranking methods, and any preferential treatment they give to their products or services. It also mandates that platforms establish internal complaint-handling systems and engage in mediation to resolve disputes.

The Digital Services Act (DSA) (European Parliament, 2022a) came into force on November 16, 2022, and will be directly applicable across the EU and will apply from January 1, 2024 (European Commission 2023). Digital Services Act encompasses a vast array of online offerings, ranging from basic websites to internet infrastructure services and online platforms. The regulations outlined in the DSA predominantly focus on online intermediaries and platforms, such as e-commerce marketplaces, social networking sites, content-sharing platforms, application stores, as well as online travel and accommodation platforms (European Commission 2023). The DSA also introduces a 'Know Your Business Customer (Taylor Wessing, 2022) requirement for platforms, ensuring that businesses using the platforms comply with EU laws.

Digital Markets Act (DMA) (European Commission 2023a) was also proposed in December 2020. The DMA targets large tech companies, known as 'gatekeepers', that have significant influence over the digital market. It establishes a set of 'do's and don'ts' to promote fair competition and prevent market abuses. Examples include preventing self-preferencing, ensuring interoperability, and allowing businesses to access data generated by their activities on the platform. Companies that fail to comply can face fines of up to 10% of their global annual revenue. The regulation entered into force on 1st November 2022 and became applicable on 2 May 2023.

There is close relationship between DMA and P2B regulations. The P2B Regulation and DMA aim to enhance transparency and fairness in the platform economy, but with different scopes and focuses. The P2B Regulation targets online intermediation service providers and search engines for transparency, while the DMA applies to a broader range of services and addresses more than just transparency. Unlike the P2B Regulation, the DMA specifically targets 'gatekeeper' platforms.

The key regulatory initiatives undertaken by the US

The US has a long history of antitrust enforcement, dating back to the late 1800s when Congress passed the Sherman Antitrust Law (FTC, 2013). Today, antitrust remains an important area of focus for US lawmakers. In 2021, the House of Representatives considered six antitrust reform bills that aim to strengthen US antitrust laws and increase the government's ability to regulate business practices that may harm competition (Clifford Chance, 2023):

- Merger Filing Fee Modernization Act (MFFM Act, 2022)
- State Antitrust Enforcement Venue Act (SAEV Act, 2022).
- The Augmenting Compatibility and Competition by Enabling Service Switching Act ('ACCESS Act') to promote competition, lower entry barriers, and reduce switching costs for consumers and businesses online (ACCESS Act, 2021).
- Platform Competition and Opportunity Act (PCO Act, 2021)
- American Choice and Innovation Online Act (AICO Act, 2022).
- Ending Platform Monopolies Act (EPM Act, 2021).

These bills cover a range of issues, including the power of large tech companies, the use of anticompetitive practices by dominant firms, and the ability of consumers to sue companies for antitrust violations.

Some of the most significant bills include the Platform Competition and Opportunity Act, which would make it easier for the government to challenge mergers and acquisitions by large tech companies (PCO Act, 2021), and the American Choice and Innovation Online Act, *'To provide that certain discriminatory conduct by covered platforms shall be unlawful, and for other purposes'* (AICO Act, 2022). The new bill makes it unlawful for an operator of a covered platform to engage in conduct that would harm competition in various ways, including unfairly prioritizing their own products or services over those of other businesses, discriminating in the enforcement of terms of service, and unduly restricting access or interoperability to the platform. It also prohibits conditioning access on the purchase of other products offered by the platform operator. Additionally, the law restricts platform operators from preventing users from uninstalling pre-installed software or changing default settings that direct users to their products or services.

Regulations pertaining to online content moderation in the United States emerged relatively earlier than those in the European Union. A prime example is Section 230 of the Communications Decency Act (CDA), Federal Law published in 1996. Section 230 titled *'Protection for Private Blocking and Screening of Offensive Material'* was established in the United States to handle the rapidly growing challenges of content moderation on the Internet. The act provides important legal protections for platforms and service providers in the online space. It states that *'No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider'* and that *'No provider or user of an interactive computer service shall be held liable on account of (A) any action voluntarily taken in good faith to restrict access to or availability of material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected'* (Telecommunication Act, 1996). The recent concerns over online misinformation, censorship, and illicit content have sparked a debate on the range of protections offered by Section 230. There have been numerous proposed amendments to this section, but none have been successfully implemented into law.

Starting in 2018, there has been an intensified focus on Consumer Data Protection regulations in the United States. The pioneering regulation of this kind, the California Consumer Privacy Act (CCPA), was introduced in California in 2020, followed by the California Privacy Rights Act (CPRA)

in 2023. On March 2, 2021, Virginia became the second state to formally implement a Consumer Data Protection Act.

Despite these state-level initiatives, there is currently no comprehensive Federal Data Protection law that provides a unified approach to data protection across the entire country. However, in July 2022, the American Data Privacy Protection Act (ADPPA, 2022) made progress as the first privacy bill to pass the House Energy and Commerce Committee with bipartisan support. Although this development was met with optimism, the bill has faced opposition from certain lawmakers and Big Tech companies, highlighting the ongoing challenge of establishing nationwide data protection regulations (Harding, 2022).

Social versus economic regulations approaches to Big Tech regulation in the US and the EU

In the US, the primary approach to regulating Big Tech has been through economic regulation. The Department of Justice (DOJ) and the Federal Trade Commission (FTC) (DOJ & FTC, 2023) have been investigating companies such as Google and Facebook for antitrust violations, such as monopolizing the market and using their power to destroy competitors.

In the EU, economic as well as social regulation is being used to regulate Big Tech. The EC has been using its power to enforce data protection laws, such as the GDPR, which requires companies to obtain user consent before collecting and using their data. Also, the DSA aims to protect all users of digital services and society at large. However, the EC has also been investigating companies such as Google and Amazon for antitrust violations. Regulation such as the DMA Act is an example of economic regulation, that aims to complement the enforcement of competition law and to contribute to 'the well-functioning of the market by laying down rules to ensure contestability and fairness for the markets in the digital sector in general' (Cyber Risk Gmb, 2023).

While both social and economic regulation have a role to play, the approach taken by the US and the EU differs. The US mostly focuses on economic regulation to promote competition, while the EU also focuses on social regulation to protect individual rights.

The balance between public and private interests

Public interest theory posits that regulation is developed and enforced by the government to protect and serve the public's best interests. Contrarily, the private interest theory argues that industries manipulate regulation to their own advantage, often at the expense of the public.

When we look at the Big Tech regulation in the EU, the EU has traditionally leaned towards a public interest approach to mitigate the dominance of Big Tech companies and prevent unfair competition, protecting consumers and small businesses. These regulatory moves reflect the EU's belief in strong regulatory frameworks to correct potential market failures and promote consumer welfare and competition.

The US, on the other hand, has shown tendencies towards the private interest approach, allowing the Big Tech giants to grow with minimal regulation. However, in recent years, there has been a shift with increasing public and political concerns over the power of Big Tech. This has led to calls for more substantial regulation to protect consumers' privacy, prevent misinformation, and

promote competition, thus tilting the scales somewhat towards the public interest approach. While the US is showing signs of moving towards a more public interest-focused regulatory approach, the theory of regulatory capture underscores the complex dynamics at play. Big Tech in the US invests significantly in efforts to influence regulatory decisions. They might do this through lobbying efforts, funding political campaigns, or by offering lucrative job opportunities. For example, Amazon, Apple, Google and Facebook spent more than 55 million dollars on lobbying the Federal Government in 2021 (Birnbaum, 2022). The consequence of regulatory capture is that agencies may act in ways that primarily benefit the industry interests they are supposed to regulate.

The similarities and differences in regard to legislation processes

In the EU, the European Commission holds the exclusive right to initiate legislative proposals, and, in most cases, the European Parliament and the Council co-legislate and jointly adopt legislation once they have reached consensus (Crisanto et al., 2021).

In the United States, any member of Congress can propose legislation even with little support beyond the initiating member (Malyshev, 2023). Accordingly, proposed legislation should not be viewed as indicative of any future law, which both houses of Congress must pass, and the president must approve before it can be enacted (Crisanto et al., 2021).

In the previous section various initiatives in the EU and the US were presented. GDPR, DSA, DMA, P2B are regulations in the EU. Regulations are legal acts. They apply automatically and uniformly to all EU countries as soon as they enter into force, without needing to be transposed into national law and are binding in their entirety on all Member States (European Commission, 2023b).

On the other hand, in the US, while there is some level of harmonization of regulations between states, individual states maintain significant autonomy in creating and enforcing regulations. As an example, the California Consumer Privacy Act, which is the State law, applies to people residing in California and regulates the protection of their personal data (Usercentrics CCPA, 2022). There is no federal law that will protect personal data of everyone in the US.

Table 2: Tech regulation in the EU and the US

Focus	Regulations EU	Entry into force	Application	Regulations US	Bill Introduced in House	Application
Privacy	GDPR ¹	24.05.2016	25.05.2018 ²	California Consumer Privacy Act (CCPA) (State) ³	28.06.2018	1. 01.2020
				California Privacy Rights Act (CPRA) (State) ⁴	3.11.2020	01.01.2023
				Virginia’s Consumer Data Protection Act (State) ⁵	2.03.2021	1.01.2023
				Colorado Privacy Act (CPA) ⁶	7.07.2021	1.07.2023 ⁷
				Utah Consumer Privacy Act (UCPA) ⁸	1.03.2022	31.12.2023
				American Data Privacy and Protection Act ⁹	21.06.2022 30.12.2022	
Consumer protection/	DSA ¹⁰	16.11.2022	01.01.2024	Section 230 of the Communications Decency Act of 1996 (Federal Law) ¹¹	1990	8.02.1996

Content moderation				21st Century Foundation for the Right to Express and Engage in Speech Act ¹²	Apr 28, 2022	
Competition	P2B ¹³	12.07.2019	12.07.2020	American Choice and Innovation Online Act ¹⁵	11.06.2021	
	DMA ¹⁴	01.11.2022	02.05.2023	The open App Markets App ¹⁶	Introduced in House (03/09/2022) 1.11.2022 ¹⁷	
				Merger Filing Fee Modernization Act (Federal Law) ¹⁸	11.06.2021	
				State Antitrust Enforcement Venue Act ¹⁸	21.05.2021	29.12.2022

Sources: ¹ GDPR, 2016. ² European Commission 2018. ³ CCP Act, 2018. ⁴ CPRA, 2020. ⁵ VCDPA, 2023. ⁶ CPA, 2021. ⁷ Pittman et al., 2023. ⁸ Utah, 2022. ⁹ ADPP Act, 2022. ¹⁰ DSA, 2022. ¹¹ Section 230, 1996. ¹² FS Act, 2022. ¹³ P2B, 2019. ¹⁴ DMA, 2022. ¹⁵ AICO Act, 2021. ¹⁶ OAM Act, 2022. ¹⁷ Congress, 2022. ¹⁸ MFFM Act, 2022. ¹⁸ SAEV Act, 2022.

The EU and US have both initiated measures to regulate Big Tech companies, addressing concerns such as competition, data privacy, data sharing, content moderation, and business conduct. Their efforts aim to balance managing the risks presented by these corporations and maintaining the benefits they offer in market efficiency and innovation.

The comparison between the Big Tech regulation initiatives of the EU and the US demonstrates their unique approaches to tackling challenges posed by Big Tech.

The EU has paved the way with a comprehensive, harmonized regulatory framework. The enforcement of GDPR, the introduction of the DSA, DMA, and the EU AI Act all evidence an integrated approach towards ensuring consumer data privacy, promoting fair competition and setting ethical standards for AI usage. By utilizing a social regulatory approach, the EU aims to foster a fairer and more transparent digital environment that prioritizes the fundamental rights of individuals and businesses. The US has taken a more fragmented approach to Big Tech regulation, with varying degrees of regulation and enforcement across different states. Its focus has primarily been on antitrust enforcement, as demonstrated by the multiple bills considered by the House of Representatives to limit the power of Big Tech companies. Although there are several noteworthy initiatives in the US, like the Platform Competition and Opportunity Act and the American Choice and Innovation Online Act, the absence of a unified, comprehensive federal law highlights the ongoing regulatory challenges in the US.

As presented previously, key differences in the regulatory approaches and trends of the EU and the US lie in their legislative processes, the scope of their initiatives, and the balance between public and private interest, where the lobbying effort is very strong in the US.

4. DMA and DSA

This section focuses on the EU Digital Markets Act (DMA) and Digital Services Act (DSA). There is, indeed, in the EU a number of other kinds of legislation that have or will have impacts on digital platform markets and Big Tech companies. However, DMA and DSA are considered as new cornerstones of the regulation of digital services and platforms and more specifically Big Tech companies.

Hitherto - for more than 20 years since the adoption of the EU E-Commerce Directive (Directive 2000/31/EC) in year 2000 - there have been three main pillars of EU regulation of Information and Communication Technology (ICT) markets, namely telecoms regulations (currently European Electronic Communications Code, EECC), audio-visual media regulation (Audio Visual Media Services Directive, AVMS), and on-line services, also called information society services (E-Commerce Directive). Telecoms regulation takes care of the regulation of telecoms infrastructures and services; the AVMS regulates broadcast-like services, meaning audio-visual media services that either are or resemble traditional broadcast services; and with the emergence of the web came a number of new online services, which became subject to the E-Commerce Directive.

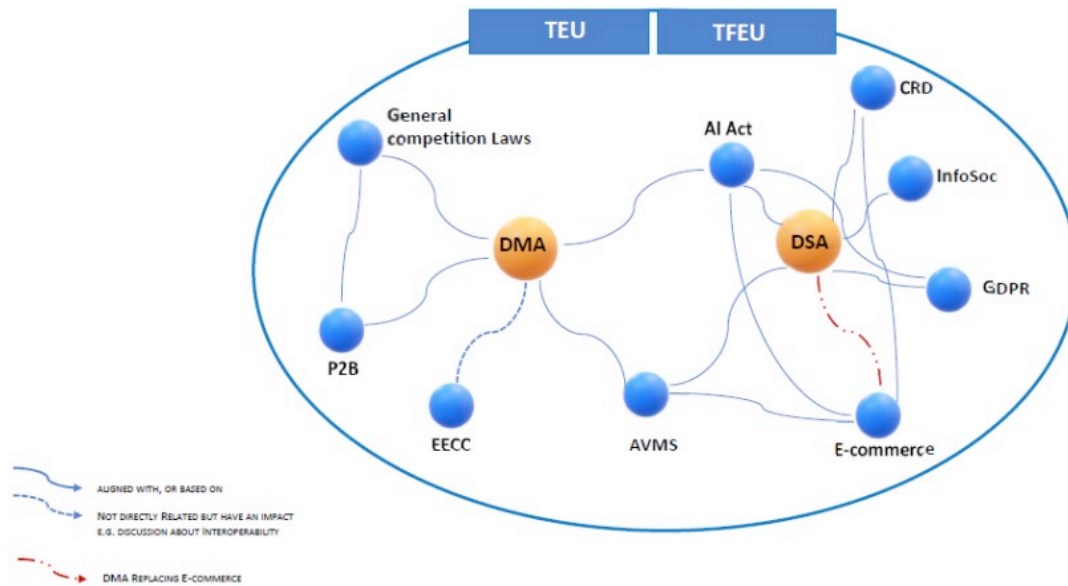
The most contested borderline between these areas of regulation has been the one between audio-visual media services and online services, as online services increasingly have become or include audio-visual services and broadcast-like services. This has meant that audio-visual and broadcast-like services that formerly were subject to the E-Commerce Directive gradually also have become subject to the stronger forms of regulation of the AVMS.

The DSA will now be replacing the E-Commerce Directive, as it is concerned with the same kinds of issues as the E-Commerce Directive has been dealing with, but with an enlarged scope and with more focus on hindering and limiting the societal downsides of online services that have become more visible during the past 20 years, such as mis- and disinformation and algorithmic manipulation.

While the DMA, in a distinction between economic and social regulation (den Hertog, 2010), clearly is an economic regulation – but as with all other economic regulation obviously also with social implications – DSA leans more towards a social regulation. An important aim of the DSA is to protect consumers and end-users when digitally active commercially and socially. However, the aim is also to create secure conditions for the development of the internal EU market by establishing the same basic conditions in all EU member states. This is clearly spelled out in the DSA and was also emphasized, for instance, in a report made for the European Parliament on the E-Commerce Directive with assessments of options for reform in the DSA by de Streel and Husovec (2020), entitled ‘The E-Commerce Directive as a Cornerstone of the Internal Market’.

The following figure illustrates the web of EU legislations that impact on digital intermediary and platform markets with the DMA and the DSA as the central pieces of legislation. There are many other types of legislation that in different manners affect the development of intermediary and platform markets. However, the legislations included in the figure are the ones that more specifically affect intermediary and platform market developments in different ways.

Figure 1: Web of most important EU legislation affecting platform market developments



Digital Markets Act

While the DSA is an upgrade of the E-Commerce Directive, the DMA is an entirely new regulation. It is an Act that aims specifically at regulating competition by ensuring contestability and fairness in complementary markets relating to digital platforms. As described by Larouche and de Stree (2021), the DMA is a blend of general and sector specific regulation. Whereas all business sectors are subject to general competition regulation, there are sectors that in addition are subject to sector specific regulations. This applies especially to what has traditionally been seen as societal infrastructures, such as electricity and telecommunications.

An important difference between general competition regulation and sector specific regulation is that general competition regulation mostly is an ex post type of regulation, regulating abuses of market dominance, while sector specific regulation generally is ex ante, meaning that regulatory intervention does not wait till abuses have been committed but hinders market dominance in being exploited in advance. The DMA includes ex ante as well as ex post elements and becomes a kind of mixture of general and sector specific competition regulation.

The reason that platforms cannot be considered as one sector is that the various kinds of platforms are based on different combinations of convergence of IT, telecoms and media. These are ICT areas that during the past decades have been converging in different manners and continuously have been a challenge for regulatory intervention. It has not only been the political 'sentiment' that state intervention in the new emerging digital markets should be avoided, so that their innovative powers could develop, that has prevented stricter regulation from being

developed. It is also because it has been difficult to see how interventions could be structured because of the ongoing convergence of IT, telecoms and media. The contested borderline between the AVMS and the E-Commerce Directive is an illustration of this.

The DMA aims at regulating two interdependent markets or sets of markets. One set of markets is where platforms compete with one another to become the dominant platforms. Another set of markets are the platforms themselves, which are used by content and service providers to reach end-users. In the latter case, it is the conditions that platforms offer to content and service providers, which is the issue. This applies, for instance, when a platform company constitutes the platform for third party content and service providers, and at the same time offers similar content and services over their own platform. The first set of markets could be considered as regulating competition *for* the markets. The other set of markets could be considered as regulating competition *in* the markets. However, in reality, it is two sets of interdependent and complementary markets, which are becoming regulated. The manner in which competition in the content and service markets is regulated will clearly affect the competition between platform companies. And, vice versa, the way that competition between platforms is regulated will affect the conditions on which third party content and service providers can use platforms as intermediaries. But it is not the same kinds of markets that are regulated. They are complementary markets.

The companies regulated by DMA are companies operating so-called 'core platform services'. The list of core platform services illustrate that we are not dealing with a sector in a traditional definition. The core platform services are the following:

- Online intermediation services
- Online search engines
- Social networking
- Video sharing platform services
- Number-independent interpersonal electronic communication services
- Operating systems
- Cloud services
- Advertising services (EU Commission: DMA Impact Assessment, 2020)

Within these areas, 'gatekeepers' will be designated, meaning the very large companies that will be subject to the regulation in the DMA. Three criteria apply when designating gatekeepers. These providers

- Must have significant impact on the internal market
- Must operate one or more important gateways to customers
- Must enjoy an entrenched and durable position in its operations (EU Commission: DMA Impact Assessment, 2020)

Significant impact is to be interpreted as having at least an annual EU turnover of 7.5 billion Euro in each of the last three financial years or having an average market capitalization of at least 75 billion Euro in the last financial year. Important gatekeepers are those that have at least 45 million

monthly active end-users and at least 10,000 yearly active business users in the EU in the last financial year. Furthermore, the entrenched and durable position means that the level of 45 million end-users and 10,000 business users must be in the last three financial years.

On a website entitled 'The Digital Markets Act: ensuring fair and open digital markets' (European Commission), the primary examples of 'do's' and 'don'ts' for gatekeepers are mentioned. Among the 'do's' mentioned are the following:

- Allow third parties to inter-operate with the gatekeeper's own services in certain specific situations
- Allow business users to access the data that they generate in their use of the gatekeeper's platform
- Provide tools and information necessary for advertisers and publishers to carry out independent verification of their advertisements hosted by the gatekeepers
- Allow business users to promote their offer and conclude contracts with their customers outside of the gatekeeper's platform (European Commission)

Among the 'don'ts' mentioned are the following:

- Treat services and products offered by the gatekeeper itself more favorably in ranking than similar services or products offered by their partners on the gatekeeper's platform
- Prevent consumers from linking up to businesses outside their platform
- Prevent users from un-installing and pre-installed software or app if gatekeepers wish so
- Track end users outside of the gatekeeper's core platform service for the purpose of targeted advertising without effective consent having been granted (European Commission)

As is illustrated by these core examples of 'do's' and 'don'ts', the primary aim of the DMA is to provide third party business users with a contestable and fair level playing field. This implies providing third party business users and end-users with a higher degree of independence towards the intermediating platforms.

Digital Services Act

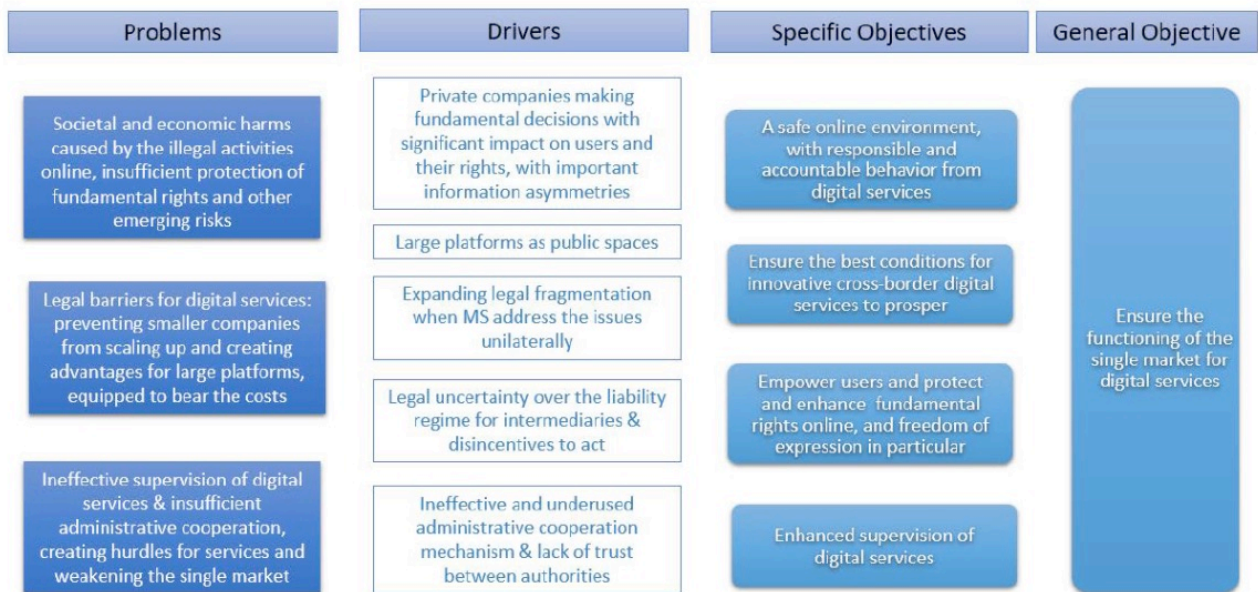
While the DMA primarily is an economic piece of regulation, aiming at creating a contestable and fair digital platform market, the DSA is, to a larger extent, a social type of regulation, but with important economic implications. In fact, the general objective of the DSA as described in the EU DSA Impact Assessment is to 'ensure the proper functioning of the single market, in particular in relation to the provision of cross-border digital services'. Four specific objectives are mentioned:

- Ensure the best conditions for innovative cross-border digital services to develop
- Maintain a safe online environment, with responsible and accountable behavior from digital services, and online intermediaries in particular
- Empower users and protect fundamental rights, and freedom of expression in particular
- Establish the appropriate supervision of online intermediaries and cooperation between authorities (European Commission: DSA Impact Assessment, 2020)

The first specific objective is to ensure the best conditions for cross-border digital services – which clearly is an economic aim. The two following objectives are of a more social nature. The reason for this prioritization of objectives is that the overall aim of the EU is to build and strengthen the single internal EU market. This is where the primary legitimacy of the EU flows from.

The EU DSA Impact Assessment includes a figure illustrating the intervention logic of the DSA.

Figure 2: Intervention logic of the DSA



Source: EU DSA Impact Assessment, 2020

The problems mentioned are that illegal online activities create societal and economic harms and that there is insufficient protection of fundamental rights; that there are legal barriers preventing smaller companies from scaling up; and, that there is ineffective supervision and insufficient administrative cooperation weakening the single market.

The drivers are that private companies make fundamental decisions with significant impacts on users and their rights; that the large platforms have become public spaces; that there is legal fragmentation when member states address these issues unilaterally; that there is legal uncertainty regarding the liability of intermediaries; and, that there is ineffective administrative cooperation.

The answers to these problems and their drivers are the specific objectives and the general objective of the DSA as mentioned above.

As with the E-Commerce Directive, the DSA is concerned with both goods and digital services offered on digital networks. Users are to be protected against illegal and harmful goods and services. In both cases, the core issue is the liability of digital service providers. Are the providers to be considered as mere conduits? Are they delivering caching services? Or are they providing hosting services? To the extent that providers are mere conduits, meaning being neutral, it

becomes difficult to claim liability. But if they are caching or hosting services, there is a more obvious case of liability.

The issue of liability has, all the while, been a central problem. With respect to content services, traditional publishers such as newspapers and broadcasters have generally been liable. There is editorial responsibility. But with Internet-based platforms, this is a problem, as content is uploaded without the knowledge and prior consent of platforms. This has, for instance, been the issue with respect to the borderline between the E-Commerce Directive and the AVMS.

With the DSA, one could claim that this issue has still not been resolved – the reason being that, to a large extent, it cannot be resolved with traditional rules for editorial responsibility. The manner in which it has been dealt with is to make service providers responsible for taking down illegal and harmful content and services when they become aware of it. The problem is how far regulations should order providers to hinder and take down content and services. If liability becomes too strict, the danger is that this may harm freedom of expression. There will always be a massive amount of content and services that can be considered as disinformation or misinformation or even harmful, however, hindering it may harm freedom of expression. This is the dilemma, where legislation has to find a balance, and it seems from the assessments in the DSA Impact Assessment that freedom of expression has a high priority - even though it can be claimed that the Russian attack on Ukraine and the new geo-political situation that this has created in Europe is shifting the balance in a more restrictive direction.

The general assessment made in the DSA Impact Assessment is that ‘the core principles of the E-Commerce Directive regulating the functioning of the internal market for digital services remain very much valid today’ (EU DSA Impact Assessment, 2020). The Impact Assessment also concludes that ‘the liability regime for online intermediaries continues to establish the key regulatory pillar enabling conditions for the existence and growth of intermediary services as well as for the fair balance in the protection of fundamental rights online’ (EU DSA Impact Assessment, 2020). Furthermore, the Impact Assessment concludes that ‘the evaluation shows that a series of transparency and consumer-facing provisions included in the Directive (*E-Commerce Directive*) are still relevant’ (EU DSA Impact Assessment, 2020). The main problems calling for an update in the form of the DSA are differences in the interpretation of the E-Commerce Directive in the different member states, which constitute an impediment to the single market development in the EU and calls for action.

It is only at the very end of the Main Conclusions and Issues Emerging from the Evaluation Report, that issues, that during the past few years have initiated a growing concern and public debate, are mentioned. The statement is the following: ‘Furthermore, the fundamental changes in the variety and scale of information society services, as well as of the technologies deployed and online behavior, have led to the emergence of new challenges, not least in terms of transparency of online advertising and algorithmic decision-making consumers and businesses are subject to’ (EU DSA Impact Assessment, 2020).

In spite of the evaluation that ‘the core principles of the E-Commerce Directive ... remain very much valid today’, there is, however, a long range of upgraded and enhanced initiatives in the

DSA. As the DSA includes a varied spectrum of different measures, it cannot be summarized in a few sentences. However, the main trend is to protect and empower users to a higher degree and to create more transparency.

The digital services being subject to the rules of the DSA are, in contrast to the DMA which is only aimed at the large gatekeepers, all digital services that act as intermediaries, connecting consumers with goods, services and content. The DSA is a horizontal legislation. There are, however, specific due diligence obligations that apply to platform services such as social networks and content-sharing platforms. And, the most far-reaching rules apply to so-called very large online platforms and very large online search engines, reaching at least 45 million users in the EU. In contrast to the DMA, where gatekeepers have not yet been designated, the very large online platforms and very large online search engines, subject to DSA rules, have already been designated in April 2023.

5. Analysis and discussion

The two empirical sections of the paper – on the comparison between EU and US and more specifically on the DMA and DSA – have gone into different aspects of the dimensions of regulation presented in the theory section. In this analysis and discussion section, we will concentrate on the following issues:

- The timing of the regulatory measures including how radical and new the measures are
- The fact that the convergence of IT, telecoms and media has reached a stage, where it has become clearer to policy makers and regulators how to regulate implications of this convergence
- The development where private platforms increasingly become societal infrastructures
- The combination of social and economic types of regulation
- General and sector specific regulation
- The attention to the regulation of the scope economies of platforms
- The similarities and differences between the EU and the US

Timing and radicalness

In the EU as well as the US and elsewhere, it has since the Internet became a globally widespread network with the web been the dominant political view that legislators and regulators should, to the largest possible extent, stay away from the Internet. This applies to almost all policy areas including important areas like competition policy and liability of digital service providers. Self-regulation has been the preferred mode of ‘regulation’.

The intension with this ‘hands-off’ policy has been to let this new means of communication grow and not to hinder the immense innovativeness that surrounds it. This policy has been a big success, but it has also allowed a great many problems regarding competition and protection of end-users to expand – some would say that problems gave gotten ‘out of hand’.

This is a well-known phenomenon regarding new technology developments that Collingridge (1980) already described more than 40 years ago and has accordingly been termed the

Collingridge Dilemma. Other theoretical frameworks can also be used for understanding the interaction and the timing of interventions in the relationships between market developments and policy actions. Cioffi, Kenney and Zysman in 2022 had a paper published, entitled 'Platform power and regulatory politics: Polanyi in the twenty-first century', where they used the work of Polanyi (1944) as a point of reference in their discussion of the new wave of platform regulations. One of the central ideas in Polanyi's work is the so-called Double Movement of marketization, on the one hand, and social protection, on the other. Businesses will pursue their business interests but will, at a point in time, be met with demands for social protection by other interests in society. There is not necessarily a longer time span between the marketization move and the social protection move, but there can be, as is illustrated by the long 'winter' of regulation in the case of platform economies.

Around the world, including the EU and the US, there is now a 'social protection' move, but the question is whether this social protection move is sufficiently strong and goes far enough – or is it 'too little – too late'. In mainstream economics and politics, the regulatory moves that especially the EU has taken in the past couple of years would be seen as strong and far reaching; however, when seen through the lens of, for instance, Cammaerts and Mansell (2020) in their paper on 'Digital platform policy and regulation: Towards a radical democratic turn', the EU initiatives do not change anything more fundamentally. Also referring to Zuboff (2015), the regulatory initiatives taken in EU and US will not do much to change the course of 'surveillance capitalism' as it evolves. The EU DSA, for example, certainly includes various strengthened regulations with respect to digital services and platforms, but the DSA is, to a large extent, not a radical but an incremental upgrade of the E-Commerce Directive from year 2000.

Convergence

An important aspect of the long 'hesitation' to regulate Internet and its many applications has been the ongoing convergence of IT, telecoms and media. It has seemed to be difficult to deeply understand the directions that this convergence has taken. There has for many years been a solid tradition for regulating telecommunications (in Europe now with the European Electronic Communications Code) and for regulating broadcast media (in Europe the Audio Visual Media Service Directive). But the third element in the ICT convergence, the IT area, has not been subject to any stringent sector specific regulation. There has been the E-Commerce Directive, but this has primarily had an effect on developing the internal market for digital services.

With the DMA and DSA, there is now more focus on the convergence of IT, telecoms and media with the IT part as the central and dominating part. In a paper from 2015, Henten and Tadayoni analyses how IT has become the dominant part of the convergence of IT, telecoms and media. This could not necessarily have been foreseen 20-30 years ago. But it turns out that most of the Big Tech companies today have their origin in companies coming from the IT industry. This is perhaps not surprising, as there is a special affinity with Internet, which has developed into *the* network, connecting the world. From the beginning of the century, there was still much focus on constraining the power of network infrastructure providers, especially telecoms providers – see,

for instance, net neutrality. However, this has changed today where one could say that there is more focus on 'platform neutrality'.

Societal infrastructures

A reason for the development towards regulating 'platform neutrality' is that the big platforms, to an increasing extent, are becoming the communication infrastructures in society. In a paper by Platin et al. (2018), entitled 'Infrastructure studies meet platform studies in the age of Google and Facebook', the infrastructuralization of platforms and, vice versa, the platformization of infrastructures is discussed. This infrastructuralization of platforms is also mentioned as one of the drivers necessitating the initiatives in the DSA under the heading of 'large platforms as public spaces'.

This conceptualization of platforms as new infrastructures of society has also become the general understanding in public discussions on the regulation of Big Tech. To the extent that big platforms become communicational infrastructures of society and not just any companies offering digital services, there will be an increasing requirement for regulating these platforms.

Social and economic regulation

Such a requirement applies to economic as well as social regulation. In this paper, we have put emphasis on the differentiation between economic and social regulation as proposed, for instance, by den Hertog (2010). In our view, this categorization helps in understanding an important dimension of the differences between different kinds of regulation – although one could with Polanyi (1944) and also with institutional economics and political economy (see, for instance, Chang, 2002) question the differentiation between economic and social issues. As has been discussed in the paper, there is not a clearcut line separating economic and social regulation. The DSA can just as well be seen as an economic regulation creating common rules in the EU market and, therefore, strengthening the internal market.

General and sector specific regulation

Another distinction that has been made in this paper is the difference between general and sector specific regulation. Traditionally, this distinction has been made with respect to economic competition regulation. However, it can also apply to social regulation. Many social regulations apply to all segments of society, for instance freedom of expression, but there are also regulations that pertain specifically to specific sectors, such as the AVMS that only applies to the audiovisual media.

There is also something in between. The DSA is by EU regulators seen as a horizontal regulation that applies not only to very big platforms, but to all providers of digital services – however, with stronger requirements on very large online platforms and very large online search engines.

In competition regulation, it is common to differentiate between general and sector specific regulation. In principle, this is simple, as general competition rules apply to all sectors, while sector specific regulation only applies to certain sectors. The difficulty encountered and mentioned in this paper, based on the discussion by Larouche and de Streel (2021), is that Big Tech companies and

platforms cannot be considered as one sector. The extent to which this is a serious problem depends on how one looks at it. From a strict legal point of view, it is a problem that the EU DMA is a mixture of general and sector specific regulation. However, whether this will be an actual regulatory problem will have to be seen.

Regulation of scale and scope

In the economic platform competition regulation put forward in the EU as well as the US, there is emphasis on the regulation of the scope of platforms. Scale is a criterion for who to regulate how, but the actual regulation is primarily scope regulation, hindering big platforms in taking advantage of their scope possibilities in the competition with third party providers. In anti-trust regulation as part of general competition regulation, there is focus on the scale as well as scope of companies. However, in the regulation specifically addressing platforms, regulatory measures are directed primarily towards the scope of companies.

In the EU DMA Impact Assessment, there is certainly mention of scope problems. However, it seems that when theorizing and analyzing problems related to platforms, most emphasis is actually on scale issues. This calls for an upgrade of the theoretical and analytical approaches to platform economics. The issues relating to scope need more theoretical and analytical attention.

EU and US

In the comparison between Big Tech regulation in the EU and the US, it is pointed out that the EU approach seems more concerted and coherent than the US approach. There has certainly been a lot of attention to Big Tech regulation in the past few years in the US, but the legislative tradition and the politically very polarized situation in the US has led to less concerted action than in the EU. The EU has simply gone further in its legislation than the US.

One of the explanations relate to the different institutional constructions of the EU and the US. While the US, indeed, is one country – however, with many states – the EU is a cooperation between different European countries. In order to institutionalize regulation at an EU scale, there needs to be coherent and concerted legislation. Not necessarily so in the US, where there is a long tradition for independent state initiatives and less strict federal legislation.

Another possible explanation is that there seems to be more focus on a public interest view on regulation in the EU, while a private interest view has more emphasis in the US. This leads to a view and practice of limiting public regulation in the US. This is connected with another dimension in politics and regulations between economic and social regulation. With the DSA, the EU is aiming at strengthening its social regulation regarding digital platforms. The EU is aiming at portraying itself as an international beacon of social regulation, see for instance GDPR, the upcoming AI Act, and the DSA. In the US, there is more focus on the economic regulation of competition in platform markets. The differences between the EU and the US could, however, also be associated with the fact that the large international Big Tech companies originate and have their headquarters in the US. This has for many years been an eyesore in Europe.

6. Conclusion

It is only during the past few years that more concerted regulatory initiatives have been taken regarding Big Tech and platform developments. However now, all around the world including EU and the US, various kinds of legislative initiatives are taken to secure fair competition conditions in platform market and protection of end-users against misuse of data and dis- and misinformation.

None of the issues taken up are entirely new and they have continuously been discussed during the past couple of decades. But it is only now that sufficient political will and clout has been assembled for actual initiatives to be taken. The reason is that the dominant opinion has been that regulations of Internet and platform developments could risk hampering innovativeness and fast digital market developments.

The platform markets are based on convergences between IT, telecoms and media in terms of technologies as well as markets. The implications are that former sector boundaries are being changed; platform markets including Big Tech corporations do not constitute one sector; they comprise many different business areas and markets. This is part of the reason for the hesitancy to intervene with regulations; it has been unclear how exactly to intervene.

The realization that has now been attained by sufficiently strong societal and political forces is that Big Tech platforms have become infrastructures in society both in terms of being communication and information infrastructures for societies as such but also in terms of constituting platform markets for a wide range of third-party providers of services and content. This calls for regulations of social as well as economic nature.

The regulations that are now on the agenda are, therefore, diverse comprising both social and economic regulations and different combinations thereof. The issues that policymakers and regulators wish to approach in terms of platform and Big Tech regulation cannot be dealt with by a single piece of regulation. It requires a wider range of different regulatory initiatives.

When comparing the regulatory developments in the EU and the US, the overall picture is that there are many similarities and that the same types of issues are dealt with – although the EU initiatives are more concerted and coherent than the US initiatives. However, it also seems that there is more emphasis on the protection of social rights in the EU as compared to the US. Economic types of regulation are on the agenda in both places, but social types of regulation are not as prioritized in the US as in the EU.

And even in the EU, one can discuss how far-reaching the DSA actually is in comparison with the former E-Commerce Directive. At a more general level, one can discuss whether the legislations which are now being implemented are 'too little – too late'. The economic regulations of competition conditions would seem to be addressing more forcefully the competition problems than the social types of regulations address social problems. However, in both areas, the current legislations can only be considered as a first step towards regulating platform markets and Big Tech.

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