FIRST ASSESSMENT OF THE DIGITAL MARKETS ACT
In a nutshell

- Good start

- But still work for the European Parliament and Council
  - More flexibility and responsiveness
  - More collaborative enforcement and oversight
OBJECTIVES

• Market contestability (ex ante fairness)
  • Possibility of entry for new innovators
  • In line with problems identified in the digital economy
  • In line with European ordo-liberal tradition
    • Favour long term competition over short term efficiencies

• (Ex post) fairness
  • Balance between rights and obligations of gatekeepers and their business users
  • Beware of legal uncertainty and regulatory creep
GATEKEEPER DESIGNATION
GATEKEEPER DESIGNATION

• Three Criteria Test is sound

• Rebuttable presumption based on size speeds up designation and reduces information asymmetry
  • Financial and user size is not necessarily correlated with gatekeeper power

• Quantitative and qualitative indicators are sound
  • Need more legal predictability: Commission delegated act or Guidelines
OBLIGATIONS
(and prohibitions)
OBLIGATIONS (and prohibitions)

Rigid and backward looking
→ Need more **flexibility**
  • Limited **black list**
  • More **general grey list** based on theories of harm (to contestability and fairness)
    • Lack of transparency
    • Envelopment through bundling and self-preferencing
    • Lack access to platforms and data
    • Lack of users mobility

General application (one-size fits all)
→ Need more explicit possibilities of individualisation
  • Measure to comply with obligations should be **co-determined**
  • Possibility **not to impose** an specific obligation

No possibility of balancing the pros and cons of a practice
→ Need the possibility to bring contestability defence
INSTITUTIONAL DESIGN
Commission is becoming the EU FTC
- Need sufficient resources, independence, accountability
- Synergies with different powers, in particular antitrust and DSA
  - While being clear and predictable how they will be used
  - Joint CONNECT-COMP-GROW Task Force

Very limited role for national authorities in the Digital Markets Advisory Committee
- Need more role for independent National Authorities
  - To be designated by each Member States
  - Complaint, design of measures and remedies, monitoring
OVERSIGHT AND ENFORCEMENT MODES
Very adversarial and antitrust based
• Need to be more cooperative given the complexity and dynamic of the digital economy
• Better to align with DSA instead of antitrust
• Rely more on internal compliance: audit, compliance officer …

Clearer role for business users, competitors and complementors
• Complaints, design measures and remedies

Extensive investigation powers on data and algorithms
• Need ability to deal with data: staff and AI

Too little responsiveness
• Requirement of regular impact review of each individual gatekeepers’ measures
DISCUSSION