

The logo for CERRE, consisting of the word "cerre" in white lowercase letters on a dark blue square background.

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Centre on Regulation in Europe

FIRST ASSESSMENT OF THE DIGITAL MARKETS ACT

cerre.eu

Improving network and digital industries regulation

In a nutshell

- ▶ **Good start**

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

01

OBJECTIVES

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- **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

02

GATEKEEPER DESIGNATION

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- **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

03

OBLIGATIONS (and prohibitions)

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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

04

INSTITUTIONAL DESIGN

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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

05

OVERSIGHT AND ENFORCEMENT MODES

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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


06

DISCUSSION

The logo consists of the word "cerre" in a lowercase, sans-serif font, centered within a white square. The background of the slide features abstract geometric shapes in various shades of blue and white, creating a modern, layered effect.

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