

## TOWARDS FAIR AND INCLUSIVE DIGITAL MARKETS.

### The DMA and the balance between competitiveness and innovation

VideoTalk, April 27, 17:00 – 18:00 | Zoom

“Towards fair and inclusive digital markets. The DMA and the balance between competitiveness and innovation” is the title of the VideoTalk held on April 27 with the guest speaker Andreas Schwab, Rapporteur on the DMA, IMCO Committee.

The event was kicked off by I-Com President **Stefano da Empoli**. Then, the Senior Research Fellow of I-Com, **Lorenzo Principali**, took the floor to recall some of the key points of the proposed regulation and proceeded to moderate the event. The VideoTalk continued with a speech by Mr Andreas Schwab, followed by a question time.

Bringing together EU and national institution representatives, companies, research and business organisations, trade and consumer associations and other relevant stakeholders, the event offered a forum to discuss the challenges and perspectives on the new Digital Market Act (DMA), one of the centrepieces of the European Digital Strategy Shaping Europe’s Digital Future. A particular focus was placed on the need to create a safer and more competitive market, by establishing a set of objective criteria for qualifying a large online platform as a so-called “gatekeeper”, which SMEs can also access.

#### PICTURES



Quite a few issues emerged during the discussion. Namely, is the present regulatory framework effective in clearly outlining the different kinds of platforms where boundaries have been blurred by phenomena such as digital convergence and international competitiveness? Could a shift from a purely ex-post approach to an ex-ante monitoring and enforcement mechanism help speed up public intervention and facilitate early intervention by authorities? Are there points of friction with the current regulatory framework? Would it be useful to adopt a single text including all the legislation impacting platforms? Also, how should the EU balance the regulatory framework of the internal European market between the need to foster European leadership and the necessity to avoid protectionist measures that can limit innovation and development? What is the geopolitical dimension at stake?

## MAIN TAKEAWAYS

**I-Com views:** Following Stefano da Empoli's introductory remarks, Lorenzo Principali introduced the theme by shedding light on both the opportunities and criticalities raised by DMA detractors. It was underlined that the proposal is coherent with the Commission's digital strategy mentioned in the Communication 'Shaping Europe's digital future', as well as with other regulatory measures suggested by the EU such as the proposal for a Digital Services Act (DSA). The moderator then recalled the main objectives of the proposed regulation: (i) ensuring digital market contestability to guarantee access for all possible entrants and innovators, offering digital services to replace or complement the services already offered by existing platforms; (ii) ensuring a fair B2B relationship between market gatekeepers and their users; (iii) strengthening the internal market, to ensure greater uniformity at EU level by providing harmonised rules. The moderator also commented on the boundaries and the classification outlined by the DMA, on the potential paradoxical effects of favouring platforms which are more geographically widespread at the EU level while holding lower market shares in those same countries, and on the risk of the "migration" of illegal content and behaviour to smaller, less regulated platforms.

**Defining Gatekeepers.** Central to the discussion was the definition of gatekeepers.

According to Article 3 of the proposed regulation, a provider of core platform services qualifies as a gatekeeper if it has: (i) a strong economic position, a significant impact on the internal market and is active in multiple EU countries; (ii) a strong intermediation position, meaning that it links a large user base to a large number of businesses; (iii) an entrenched, durable and stable market position. Gatekeepers can be determined by quantitative metrics as well as on a case-by-case qualitative assessment conducted through market investigations. Given the speed at which digital markets evolve, there is the need to keep on updating these assessments for gatekeepers to be qualified correctly.

**Do's, Don'ts and Remedies.** The DMA regulation proposal aims at tackling unfair business practices of gatekeepers and their negative consequences, such as weakened platform market contestability. It envisions pro-competition regulations with serious penalties for noncompliance. Remedies have been set in place in order to make big tech firms fulfil their obligations. Indeed, pursuant to Article 26 of the proposal, the Commission may impose fines up to 10% of a gatekeeper's total turnover of the preceding financial year, where it does not comply with the DMA provisions.

**Main Objective.** The Commission's main objective is to ensure fair competition within the digital single market while promoting innovation and participants discussed the introduction of a code of conduct to discipline gatekeeper platforms. Concerns were raised over the benefits of a single code of conduct versus the introduction of tailored codes for each platform, following the UK lead.

**Towards Harmonisation.** The DMA proposal was foreseen as a complementary tool to existing national and EU competition rules. Currently, Member States (MS) are applying national rules to tackle issues arising from unfair conduct of large platforms, and the lack of contestability within the digital field. Resorting to different national provisions is creating a regulatory fragmentation within the EU's legislative frameworks, and while some MSs have started working on specific domestic provisions, others have still not addressed the issue. Fragmentation, in the long run, could undermine the functioning of the single market for digital services, as well as of digital markets as a whole. Moreover, it could put at risk the scaling-up of start-ups and smaller businesses and their ability to thrive in digital markets. As such, the participants agreed on the necessity to promote harmonisation at the EU level. Any measures taken in this direction would be taken on the legal basis of Article 114 of the Treaty on the Functioning of the European Union (TFEU).

**Urging for a Regulatory Dialogue.** Another issue emerged during question time. Namely, the need to increase the dialogue on specific circumstances between gatekeepers and EU policy makers. Direct consultation with gatekeepers by the Commission, or their engagement in the relevant debate, would allow for provisions taking into consideration big tech firm positions and avoid one-sided regulations.