

INNOVARTE NEWS

COMPETITION AND DIGITAL PLATFORMS NEWSLETTER

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NEWSLETTER

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REGULATION

European Union

16/11/2022

Digital Services Act: EU's landmark rules for online platforms enters into force

- A new set of EU rules, which will apply to all digital services that connect consumers to goods, services, or content, enters into force with the Digital Services Act.
- Its purpose is limiting the spread of illegal content and products online, increasing the protection of minors, allowing users more choice and better information.
- It includes: (i) New responsibilities for digital services (obligations of different players match their role, size and impact in the online ecosystem); (ii) enhanced safeguards for fundamental rights online and (iii) new supervisory powers for the Commission.
- Online platforms now have until February 17th, 2023, to report the number of active end users on their websites, for the Commission to make an assessment as to whether a platform should be designated a very large online platform or search engine.

15/11/2022

Digital rights and principles: a digital transformation for EU citizens

- The Commission welcomes the agreement reached with the Parliament and the Council on the European declaration on digital rights and principles, which builds on key EU values and freedoms.
- The declaration focuses on six key areas: putting people at the center of the digital transformation; solidarity and inclusion; freedom of choice; participation in digital life; safety and security; and sustainability.

10/11/2022

Cybersecurity: Parliament adopts new law to strengthen EU-wide resilience

- The legislation will set tighter cybersecurity obligations for risk management, reporting obligations and information sharing. The requirements cover incident response, supply chain security, encryption and vulnerability disclosure, among other provisions.
- "Essential sectors" such as the energy, transport, banking, health, digital infrastructure, public administration and space sectors will be covered by the new security provisions.
- The new rules will also protect so-

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called “important sectors” such as postal services, waste management, chemicals, food, manufacturing of medical devices, electronics, machinery, motor vehicles and digital providers.

competition in the metaverse may look like and c) what challenges may arise for competition law enforcers.

25/10/2022

Parliament hosts Uber files whistleblower

- MEPs will hear from Uber’s former Head of Public Policy Mark MacGann about the company’s former lobbying practices and discuss how European workers’ rights have been affected.
- The hearing aims to set out the issues in the Uber files objectively and to give an overview of the current situation of Uber drivers in Europe.

18/10/2022

Commission adopts its Work Programme for 2023: Tackling the most pressing challenges, while staying the course for the long-term

- The Commission aims at supporting people and businesses – whether by reducing energy prices, securing the supplies critical for Europe’s industrial competitiveness and food security, or reinforcing its social market economy.
- This Work Programme contains 43 new policy initiatives across all six of the headline ambitions of President Von Der Leyen’s Political Guidelines: (i) A European Green Deal; (ii) A Europe fit for the digital age; (iii) An economy that works for people; (iv) A stronger Europe in the world; (v) Promoting our European way of life and (vi) A new push for European democracy.

17/10/2022

Understanding the metaverse – a competition perspective – DG Comp article

- Competition gives a brief overview of: a) current conceptions of the metaverse and its main components, b) what

12/10/2022

Compendium of approaches to improving competition in digital markets

- An updated version of the 2021 compendium, developed by G7 and guest competition authorities, provides an overview of how different authorities are working to promote competition in digital markets.

12/10/2022

The Digital Markets Act has been published in the Official Journal

- The European Commission (EC) will be able to adopt implementing acts specifying certain key practical aspects, such as further details about gatekeepers’ notifications, submissions and requests, as well as the procedural aspects of the DMA’s implementation including in relation to the cooperation between the EC and national authorities.
- The provisions on gatekeeper designation, as well as the vast majority of all other provisions in the DMA, will kick in on 2 May 2023.
- For gatekeepers actually to be subjected to any of the substantive obligations in the DMA in Articles 5, 6 and 7 (for example, the ban on self-preferencing or the obligation to allow the sideloading of apps on gatekeepers’ operating system): the EC must first designate them as gatekeepers.
- Companies who meet the quantitative thresholds to be presumed as such have up to two months to submit a notification to the EC providing the relevant data.
- Designated gatekeepers must take

measures to start complying with the obligations of the DMA, but will have six months to ensure compliance.

UK

10/11/2022

Web 3.0 and distributed ledger technologies – A regulatory perspective

- In October 2022, the DRCF brought together representatives from academia, industry, government and regulators at its Web 3.0 Symposium
- Reflecting on the questions arising from the symposium, the DRCF intends to publish an Insights Paper reflecting on Web 3.0 and associated technologies.

25/10/2022

Report: Consumers ‘at risk’ if Digital Markets Unit not given teeth, say MPs

- A new report by MPs on the influential Business, Energy and Industrial Strategy Committee has urged the Government to publish a draft Digital Markets Competition and Consumer Bill to help deter predatory practices by big tech firms ‘without delay’.
- It concluded that fines have been viewed as ‘a small business cost’ by large companies and announced measures that would empower the CMA’s Digital Markets Unit (DMU) by: a) dropping the turnover threshold for immunity from financial penalties from £50 million to £20 million, and b) hiking potential maximum fines to 10% of global annual income.

25/10/2022

FCA launches discussion on competition impacts of Big Tech on financial services industry

- Big Tech firms’ presence in UK financial services markets has been steadily

increasing, with the potential to expand further and change markets quickly.

- To begin the discussion, the FCA has published an analysis focusing on the potential competition impacts of Big Tech’s entry in four vital retail sectors: payments, deposit taking, consumer credit and insurance.
- It believes that by combining financial services with their existing business, Big Tech firms can bring benefits to consumers but, in the longer term, these could pose competition risks if they rapidly gain market share and the ability to exploit market power.
- No regulatory changes are being proposed at this stage, and the paper aims to stimulate discussion to inform the FCA’s approach to Big Tech firms as part of the new UK pro-competitive regime for digital markets

Germany

12/10/2022

G7 competition summit brings together policy makers and enforcers to exchange on future-proof enforcement in digital markets

- The representatives of the G7 member states (Canada, France, Germany, Italy, Japan, UK, USA) and the European Commission discussed the state of legal reforms around the globe, digital enforcement and the intersection of competition law and other fields of law and policy.

Belgium

05/10/2022

Belgian NCA imposes interim measures to remedy the disregard of the competition rules applicable to the development of a standard for Cloud applications

- According to the Authority, the 2022 standard governing the development of registration systems for pigeon races (ETS) would breach the TFEU.
- It, therefore, imposed interim measures to ensure the transparent and non-discriminatory determination of this standard for 2023 season.

United States

21/10/2022

DOJ Antitrust Division Policy Director Keynote at Brigham Young University Law Conference “Tech Platforms in a New Age of Competition Law”

- A strong majority of Americans supports more aggressive and effective antitrust enforcement, since lately they’ve seen: a) dramatically increased price-cost markups; b) a decrease in new firm formation, and c) rising indicators of concentration.
- Consequently, the Merger Filing Fee Modernization Act passed by a remarkable margin of 242-184.
- The Department of Justice has indicated its strong support for passing the American Innovation and Choice Online Act in this Congress.

12/10/2022

Federal Trade Commission and Justice Department Meet with Fellow G7 Enforcement Partners on Competition in Digital Markets

- The FTC and the DOJ were present in the G7 Joint Competition Policy Makers & Enforcers Summit (Summit) as part of the 2022 G7 Digital and Technology Track.

Australia

11/11/2022

ACCC calls for new competition and consumer

laws for digital platforms

- The fifth report of the ACCC’s five-year Digital Platform Services Inquiry has proposed that platforms: a) provide user-friendly processes for reporting scams, harmful apps, and fake reviews, and to respond to such reports; b) reduce the risk of scams by verifying certain business users such as advertisers, app developers and merchants; c) publish review verification processes to provide important information to readers of online reviews to help them assess the reliability of reviews on the platform; d) report on scams, harmful apps and fake reviews on their services, and the measures taken to address them and e) ensure consumers and small businesses can access appropriate dispute resolution.
- Also, mandatory codes of conduct for certain platforms and services to protect and promote competition could be relevant to: a) prevent anti-competitive self-preferencing, tying and exclusive pre-installation arrangements; b) address data advantages; c) ensure fair treatment of business users and d) improve switching, interoperability and transparency.
- In addition to consumer and competition recommendations for digital platforms, the ACCC reiterates its support for a new economy-wide unfair trading practices prohibition.

MERGER CONTROL

European Union

08/11/2022

Mergers: Commission opens in-depth investigation into the proposed acquisition of Activision Blizzard by Microsoft

- Microsoft and Activision Blizzard are

both developers and publishers of games for PCs, game consoles and mobile devices as well as distributors of games for PCs.

- In addition, Microsoft also distributes games for consoles, the Xbox gaming console and related services, as well a wide range of products and services, including the PC operating system “Windows” and the cloud computing service “Azure”.
- In relation to multi-game subscription services and/or cloud game streaming services, the Commission is concerned that, by acquiring Activision Blizzard, Microsoft may foreclose access, to the detriment of its rival distributors of console and PC video games that offer such services (by either preventing distribution or degrading the terms and conditions for their use).
- According to the Commission, these are key for the provision of the nascent services of multi-game subscription & cloud game streaming.
- The Commission has until the 23rd of March, 2023, to make a decision.

UK

09/11/2022

Facebook, Inc (now Meta Platforms, Inc) / Giphy, Inc merger inquiry – CMA notice of an intention to make an order

- On December 1st, 2022, the CMA gave notice of intention to make an order and invited comments by December 30th, 2022.
- This, in the context of a CMA investigation regarding the completed acquisition by Facebook, Inc. (now Meta Platforms, Inc) of Giphy, Inc., which may raise competition concerns in both: a)

the supply of display advertising in the UK, and b) in the supply of social media services worldwide (including in the UK).

20/10/2022

CMA investigation into the Microsoft and Activision Blizzard merger

- The CMA will analyze the impact of the merger on: a) other console gaming platforms (including, on: full exclusivity; timed exclusivity; poorer quality and pricing) b) multi-game subscriptions (ensuring it won't result in higher prices, lower quality, or reduced choice for gamers who choose to use subscription services) and c) the future of cloud gaming.

United States

08/12/2022

FTC Seeks to Block Microsoft Corp.'s Acquisition of Activision Blizzard, Inc.

- Agency alleges that maker of Xbox would gain control of top video game franchises, enabling it to harm competition in high-performance gaming consoles and subscription services by denying or degrading rivals' access to its popular content.

05/10/2022

CADE clears Microsoft's acquisition of Activision Blizzard

- horizontal overlaps between the merging parties' activities of development, publishing, and distribution of video games and related services (such as online advertising and merchandising).
- CADE considered that although some users of the Sony PlayStation console could switch to Xbox in the hypothesis of Activision Blizzard's games being

exclusive to Microsoft (especially Call of Duty), it did not find evidence that this alone could translate into a competitive risk for the console market as a whole.

pricing control mechanisms towards marketplace sellers, the second deals with the brand-gating issue (possible disadvantages by various instruments applied by Amazon, e.g. agreements with (brand) manufacturers on whether individual sellers can or cannot sell (brand) products on the Amazon marketplace).

ANTITRUST ENFORCEMENT

Germany

23/11/2022

Meta responds to the Bundeskartellamt's concerns – VR headsets can now be used without a Facebook account

- Users who want to use the Quest 2 VR headset (and the new Quest Pro) offered by Meta Quest (formerly Oculus) no longer need a Facebook account to do so. Meta has responded to the Bundeskartellamt's competition concerns and now also offers the possibility to set up the headset using a separate Meta account.
- The proceeding is not yet concluded. In addition to the specific choice architecture, the authority also examines whether and how data processed in the context of different Meta services are combined.

14/11/2022

Extension of ongoing proceedings against Amazon to also include an examination pursuant to Section 19a of the German Competition Act (GWB)

- After having determined Amazon's paramount significance for competition across markets (appealed), the Bundeskartellamt now extended two ongoing abuse control proceedings against Amazon to also include the application of the new instrument for more effective oversight over large digital companies (Section 19a GWB).
- While the first proceeding relates to

Australia

07/12/2022

Court dismisses ACCC case against Google

- The Federal Court has dismissed the ACCC's case, finding that Google LLC (Google) did not mislead Australian consumers when it published an on-screen notification to Australian users, and changed its privacy policy to expand the scope of its use and collection of personal data.
- The ACCC had alleged that the notification was misleading because it did not adequately inform consumers about these changes.

07/12/2022

Uber to pay \$21m for misleading representations about Uber Taxi fares and cancellation fees

- Uber admitted it breached the Australian Consumer Law by engaging in misleading conduct and making false or misleading representations in relation to cancellation messages and the price of Uber Taxi rides. Uber agreed that more than two million consumers saw the misleading cancellation message.
- Uber also admitted the price range estimate for an Uber Taxi ride (a service available only in Sydney) displayed to consumers on Uber's app and website from July 2018 until the service was

discontinued in August 2020, was false and misleading.

Chile

23/11/2022

Fiscalia Nacional Económica initiates an investigation for presumptive restrictive trade practices against Apple Inc. and Google LLC

- After collecting and reviewing relevant records, the FNE considered Google might be restricting competition by conditioning app distributors to use Google's invoice system for non-free downloads or sales inside their apps.
- Similarly, the FNE considered Apple might be limiting most app developers to use their own API for payments related to downloads and in-app purchases (or others determined by Apple).
- Both companies would charge between 15% and 30% of all sales.
- The FNE will now look further into the details of these behaviors to determine whether they have restricted -or tend to restrict- competition in Chilean markets.

Mexico

30/09/2022

COFECE investigates presumptive restrictive practices in the development, distribution and processing of mobile app payments and digital content and related services

- Investigation is taking place against undetermined economic agents.
- If found guilty, each investigated party may receive economic sanctions of up to 8% of its income + the order of suppressing the conduct.

BLOGS/ARTICLES

Competition Law 360: 'Metaverse' Antitrust Issues May Look Familiar

CPI Antitrust Chronicle: Cooperation on Digital Competition

- Cooperation on Digital Competition: From Cooperation to Enhanced Cooperation.
- Proposals for International Cooperation for Competition in Digital Markets.
- Designing a Cooperation Framework for Regulating Competition in Digital Markets.

Disruptive Competition Project:

- [The Digital Services Act's Moment of Truth: Implementation](#)
- [Digital Markets Act: More Resources Needed to Get The Job Done Right](#)

European Competition Law Review:

- [New Antitrust Tools for the Digital Economy in China and the EU](#)

European Competition Journal:

- [Virtual assistants as gatekeepers for consumption? – how information intermediaries shape competition](#)
- [The DMA in the broader regulatory landscape of the EU: an institutional perspective](#)

GCR:

- [DG Comp officials explore metaverse antitrust enforcement](#)

Heinrich Boll Stiftung:

- [Digital regulation at a crossroads](#)
- [Creating a coherent strategy for digital policy: Tensions and overlaps in emerging regulatory initiatives in the digital space](#)
- [Institutional challenges for the UK and](#)

[EU digital policy: Meeting the need for regulatory capacity and regulatory co-operation](#)

- [Strengthening competition policy for effective regulation of digital platforms: Contrasting EU and UK approaches](#)
- [Regulating big tech platforms: Content moderation requirements in the UK Online Safety Bill and the EU Digital Services Act](#)
- [UK data protection reform and the future of the European data protection framework](#)

How to crack a nut:

- [Will public buyers be covered by new EU cybersecurity requirements?](#)

Kluwer blog:

- [The Digital Services Act, Published: A Good Start And – Yet – Just A Start](#)
- [A New Age for Digital Markets in Turkey? The Draft Amendment to the Law No. 4054 on the Protection of Competition](#)

Platform Law blog:

- [The DMA has been published: Now the real challenges start](#)
- [Why it is now clear that the Australian ex ante regime will be much closer to the proposed UK regime than the EU Digital Markets Act](#)

Competition Policy International:

- [Apple Wins Appeal Of App Maker’s Patent Antitrust Suit](#)
- [Australia Fines Uber For Misleading Consumers](#)
- [FTC Examines ‘Possible Misconduct’ In Crypto Ads](#)
- [Meta Goes To Trial to Defend VR Deal From FTC Probe](#)
- [DC Attorney General Sues Amazon For Over Driver Tips](#)
- [FTC Files Suit To Block Microsoft’s](#)

[\\$69B Activision Dea](#)

PRESS

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[EU Looks To Create AI Definition & Data Act Amendments – CPI](#)

8/11/2022

[Microsoft Faces New EU Antitrust Complaint on Cloud Computing Practices – U.S.News](#)

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[Dark patterns: Shedding light on Big Tech’s tactics that reel us all in – Politico](#)

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[Meta forced to sell Giphy as the CMA falls for the myth of ‘big is bad’ – CityAM](#)

22/10/2022

[DMA enforcement triggers restructuring in EU’s antitrust directorate – Mlex](#)

18/10/2022

[Meta to sell Giphy after UK regulator blocks \\$315mn deal – Financial Times](#)

17/10/2022

[EU lawmakers accuse Big Tech of “astroturfing” to sway DMA – GCR](#)

13/10/2022

[Google faces EU antitrust charges over its digital adtech business – Reuters, Foo Yun Chee](#)

10/10/2022

[The US Publishes AI Bill of Rights – CPI](#)

CONFERENCES

15/12/2022

[Tilburg Law and Economics Center Workshop on the Digital Markets Act – speakers include: Andreas Schwab, Zsuzsa Cserhalmi \(Deputy](#)

Head of the European Competition Network & Private Enforcement Unit, DG COMP).

05/12/2022

[DG Competition First DMA stakeholders' workshop](#)

07/11/2022

[Press conference on draft findings of EP spyware inquiry](#) - Press Room EU Parliament