**DMA/DMU: What’s in a letter?**

Until very recently, the differences in the EU and UK regulatory approaches to Big Tech and competition appeared to be semantic. Both the Digital Markets Act (DMA) in Europe and the UK’s Digital Markets, Competition and Consumers (DMCC) Bill, empowering the Competition and Markets Authority (CMA) through the Digital Markets Unit (DMU), seek to restore competition in digital markets. And, crucially, from our perspective, they include banning the abusive practices of self-preferencing. Both can impose fines of 10% of global turnover for infringements. The DMA has opted for rules and the CMA for a code of practice. However, the reality is that both have their sights set on fair competition and an end to Big Tech’s market abuses that are crushing innovation and consumer choice. Only time will tell if the DMA and DMCC Bill objectives translate into genuine actions and bring tangible benefits for digital innovation in Europe.

Then there was Microsoft and its prospective $69 billion take-over of gaming company Activision Blizzard – and we had a sudden divide in approach. In a short two-week period, the UK’s CMA rejected the merger, and the European Commission approved it – both citing the impact on cloud game streaming as reasons for rejection/approval! Meanwhile, the Federal Trade Commission in the US is still considering the case in a process that can take up to a year.

Meanwhile, in the UK, we are keeping a close eye on the appeals process within the DMCC Bill. So far, the UK Government is holding fast to an approach we believe is essential if Big Tech is to be prevented from dragging out appeals and throwing its lobbying might behind long-winded campaigns that could potentially overturn DMU decisions. The CMA is insisting on a tougher appeals mechanism - judicial review - whereby companies can only appeal the process, and not the merit of the decision itself.

Speaking at Kelkoo Group’s webinar on *EU and UK approaches to digital markets* regulation on 8June, competition expert **Cristina Caffarra,** Vice Chair CEPR Competition Policy Research Network and Expert at Keystone, was adamant that the specifics of neither regulation themselves would affect radical change. Rather, she believes that the fatigue factor of senior execs having to constantly put out fires in multiple jurisdictions and the resulting distraction from other business priorities (AI, metaverse, for example) will prompt Big Tech to make small changes to business models. They will be changes that Big Tech can live with and will show compliance with regulation but won’t be anything that will bring about substantial change.

The other speakers, our CEO **Richard Stables**, **Euan MacMillan**, Director of the UK’s Digital Market Unit in the CMA and **Maria Ioannidou**, Senior lecturer in competition law at Queen Mary University in London, have more trust in the ambition and implementation of the new regulations to affect market change, with merits in the different approaches. As Euan MacMillan pointed out, we have multi-faceted problems and different solutions but, for most jurisdictions, there is more that unites us than divides us.

With the US dragging its regulatory feet, it was agreed that the size of the EU and UK markets, means that Big Tech will still have to play ball. Being a US company is no protection against being shut out of other important markets – Microsoft-Activision being a perfect example. Europe is a massive market, and the big players want to play in it. Big Tech may be based in the US, but it is made up of global titans. Companies will have to comply with individual jurisdictions so the similarities and differences between the different regulations really do matter. The gatekeepers will, of course, look for grounds to challenge and this may be harder in the UK, due to the more robust appeals process. In terms of self-preferencing, where Kelkoo has a particular stake, not all self-preferencing looks the same. Detection could come down to the level of algorithms. However, there are now new mechanisms to push Big Tech hard. With our experience in the Google Shopping case, we know that success, from our point of view, will boil down to effective remedies and enforcement together with just how hard regulators are prepared to push Big Tech. We are, however, optimistic that the European Commission has a shiny new tool and the conviction to use it.

Euan MacMillan is hopeful about what the UK legislation can achieve. He believes that it will not just make competition law work better and faster, but it will control market power and regulate the behaviour of the companies yielding that power. Music to our ears. For him, the in-built flexibility of the DMCC Bill is key, designed to be tailored to different tech, behaviours and issues and designed carefully with future-proofing in mind. The UK is committed to global coordination and in particular with the EU – to avoid “a spaghetti bowl of implementation.” Maria Ioannidou thinks the spaghetti bowl is inevitable because, even though everyone agrees that antitrust has failed and that new regulation is needed, the landscape of implementation is incredibly complex.

From where we stand, Big Tech has got away with dominating and abusing its market power for 20 years. However, we’ve seen a marked change in attitude from regulators and politicians in the UK, EU and indeed in the US over the past four to five years. There is a sense that they are now coming after Big Tech with a big stick. It feels very different from before and we see it as a massive opportunity. We are also hearing Big Tech say, “don’t worry about search and shopping - look over here at the new shiny AI and metaverse” and this is just a distraction tactic. We’re onto them and we hope regulators are too. The DMA and DMU are new tools that can, in theory, restore fairness and competition to digital markets. Maria Ioannidou agrees that these represent good intentions to address the fact that competition has failed, and remedies haven’t worked. She believes, however, that the execution of these tools, and just how hard the regulators are prepared to push Big Tech, is going to be key.

The important thing is that change happens, regardless of whether this results directly or indirectly from implementation and enforcement of these new regulations. If, as Cristina Caffarra contends, no rules will be smart enough to get one over on Big Tech, then pressure to change and to avoid bureaucratic interference in the day-to-day of product development and business models could result in the same outcome - a fairer digital marketplace with room for newcomers and incentive for innovation.

Governments and their regulators are working to do what’s right for their consumers. Euan MacMillan commented that there are 129 tech unicorns in the UK that say they are being held back by the damaging practices of Big Tech. Politicians want to facilitate change and there is concerted motivation, both in the UK and the EU, to make fundamental change. Indeed, there appears to be a consensus that something needs to be done with the Big Tech elephant. We agreed that Big Tech will still be around in 5-10 years but that these new regulations, the DMA in the EU and the DMCC in the UK, will begin to make an impact on its abusive behaviours, one bite at a time.