**“Will Big Tech’s AI distractions derail the DMA?”**

**Five stellar panellists discuss the concerns and challenges around DMA compliance**

The European Commission must designate more services [in the DMA] and have more resources to deal with the complexities of digital technology. Big Tech’s dominance could be further entrenched by generative AI; there is a big battle [on compliance] ahead; we must regulate generative AI now - inaction is not an option.

These and many other points were made by five stellar panellists on the recent Kelkoo Group webinar, **“Will Big Tech’s AI distractions derail the DMA?,”** chaired by Bloomberg’s EU news, anti-trust and competition reporter, Samuel Stolton. The speakers concluded with measured optimism on the potential for the Digital Markets Act (DMA) to achieve fairer and more contestable digital markets, including where fast-evolving technology such as generative AI is concerned, but voiced many concerns and outlined the challenges ahead.

**MEP Andreas Schwab**, known as the father of the DMA for his leadership on the historic piece of legislation, hopes the regulation will have the flexibility to look at any new tech, generative AI included, and be in a position to hamstring future potential market abuses.

Mr Schwab pointed out that at the first start of the DMA application, the designation was about search and social media - the low hanging fruits. Now, he said, there will be a second step, and the Commission will have to invest more time to go into the smaller services, into the more complicated areas. *“We have to push the Commission to go deeper and designate further services. We have to push the Commission to see how the DMA interacts with the Google Shopping case and other cases that have been already settled before, and we have to push the Commission to move quickly into AI, which can be easily covered under the DMA… We have, as policy makers, to make sure that the basic principles are there, and if someone steps far beyond his limits, he will be trapped,”* he said. “*There is a task for the Commission to be more ambitious, more courageous, and even to get on the nerves of the CEOs of the gatekeepers…..the [gatekeeper] plans need to prove that they offer more in competition in gatekeeper services.”*

MEP Schwab said it’s all about money and we can’t expect the gatekeepers to give up any of their revenue without a fight – they will offer the option that does them the least harm, not the option that is best for the public. He called for more digital expertise within the Commission to ensure that lawmakers understand the complicated technology. Mr Schwab said he wanted to see the DMA as a living rule book, which would adapt to new technology.

**BEUC’s senior adviser on competition, Vanessa Turner**, unimpressed by recent compliance proposals from several gatekeepers, said that resources were important if the DMA was to be a truly helpful tool for fair digital markets. She urged business users and enforcers not to forget the user side of compliance: *“You're going to need consumers to be willing and able to choose new products because, without such uptake, business users can't succeed in getting the business that the DMA is supposed to give them the opportunity to achieve, and the DMA won't succeed in its objectives,”* she said.

Ms Turner cited a comment made recently by US FTC Commissioner Slaughter, that inaction is not an option on the part of regulators in the AI era and that lessons must be learned from the mistakes of the first digital era. She contended that the risk that Big Tech dominance could be further entrenched through generative AI was significant and that it was therefore “incumbent on regulators to act, to counter market developments that would leave this technology open to only a few and thus further reducing consumer choice both in existing and in fact in new markets.”

**Ian Brown, visiting professor at Rio de Janeiro's FGV law school,** is certain that the DMA contains mechanisms by which the Commission can add new core platform services, and add or remove additional obligations and prohibitions on those services. With regard to the current gatekeepers, he thinks there will be questions around them bundling generative AI with their existing very large-scale services. Potentially, he thinks those AI-driven services might get big enough to be designated as gatekeepers in their own right at some point. “*An issue could be Microsoft or Google using their current dominance to train generative AI systems in a way that is not open to competitors, for example” he* said.

**Damien Geradin, founding partner of Geradin Partners law firm**, said that a challenge for any new legislation was futureproofing, but he was keen to stress that the DMA is not meant to be a static piece of legislation and it can be updated on a regular basis. He said that, from a competition perspective, we are in a better place, largely thanks to the new tools provided by the DMA. However, he warned that implementation and enforcement would not be as quick as anticipated or wished for by challengers. He said that speed was meant to be an advantage of the DMA, but it would be relative because the Commission is facing companies with unlimited resources and where it’s all about revenue. He doubted whether the Commission could handle more than two or three infringement proceedings at a time. “*I think we’re up for a big battle. I think the Commission should be ready and be strict, otherwise nothing will have changed.”* However, Mr Geradin also pointed out that challengers could drive the process. He emphasised that the Commission is not the only route to enforcing the DMA: as the DMA is a regulation, any victim of a breach can take a case to court to enforce their right.

**Richard Stables, CEO of Kelkoo Group**, said the Commission and the European Parliament’s actions to tackle Big Tech to date are crucial. “*We just can't have another system where we say, well, you know, there's a new digital age. We'll sit, watch, and wait another five, ten years before we decide to do anything.”*

Mr Stables was unimpressed by what he’s heard from gatekeepers so far and said they’d come kicking and screaming to the new [DMA] world. They would be making small changes, make things as complicated as possible, and will say what they’re doing is in the consumer interest – even though it isn’t. Saving their revenue is their number one priority and they’ll be trying to do just enough to go under the radar and avoid the Commission coming after them for non-compliance. He said that what he was seeing was gatekeepers hoping other companies’ compliance issues would eat up the resources of the Commission and merely paying lip service to the DMA. Mr Stables was hopeful that the shorter timeframe for DMA enforcement would be a plus – 6-12 months compared to the many years in anti-trust cases. He said: “The European Parliament has given the Commission a really powerful tool that they need to use.”

Concluding the event, he said: “*This is all about consumers. It's all about consumer choice. And it's all about markets working.”*

*“And it's about taking back the Internet and freeing it up from effectively six companies at the moment who are dominating, and, you know, using it as their basic way of generating enormous amounts of money for themselves at the expense of consumers and competition. Despite the challenges, however, I am very optimistic that the tool is being put in place to enable the Commission to do what is needed to bring freedom back to the Internet.”*