



Research essay

The new digital economy unit of the French competition authority

Under the direction of Professor David Bosco

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Summary

Who could have imagined, 15 years ago, the changes brought about by digital technology? Digital technology has indeed changed our lives, is changing them now and will continue to change them in the years to come, to the point that some people do not hesitate to talk about a fourth industrial revolution.

Many positive effects can be attributed to digital technology, but it also has less desirable effects and disrupts many branches of law. Competition law is not spared from these changes. We are in a key period where national and international political powers are thinking about the development of new laws to ensure that competition remains free and undistorted in digital markets.

If the European Union has presented a proposal for a regulation (DMA) to replace the old e-commerce directive, France currently believes that its national law allows to understand the new behaviors related to digital.

However, the French authorities recognize the need to develop an in-depth knowledge, and have decided to create a digital economy department within the competition authority.

Created barely a year ago, this small department currently composed of 4 people will grow over time and has many responsibilities to ensure the *contestability* of the online market. This department is dedicated to intervene on all the files involving from near or far the digital. The objective of this report is to demonstrate the Digital Economy Unit's means of action but also its vision of future competition law.

Abbreviations

CJEU: Court of Justice of the European Union

CMA: Competition and Markets Authority

DEU: Digital Economy Unit

DMA: Digital Market Act

DSA: Digital

EU: European Union

FCA: French Competition Authority

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Gratitude

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Introduction

The digital technology has changed and is changing the world and traditional economic models. The digital technology is seen as the fourth industrial revolution¹ and thus, this revolution has a major impact on the economy and competitive dynamics.

In the past few months and years, many opinions have been expressed on how to deal with the challenges of the digital economy and how to adapt competition policy to these challenges. To name a few, there is the “Furman” report submitted to the British government², the “Crémer” report commissioned by the European Commission³, the “Stigler” report⁴, the ACCC report⁵. Even in the Popular Republic of China, on the 10th of November 2020, the State Administration for Market Regulation of China issued the draft "Platform Economy Anti-Monopoly Guidelines" to prevent and stop the platform economy Monopolistic behavior in China. In February 2021, these Guidelines was promulgated with immediate effect. The time required to finalize the guidelines is very short, which shows that China feels an urgent need to regulate its fast-growing digital economy to prevent and stop monopolistic behavior and promote the sustainable and healthy development of online commerce⁶. A few days ago, the big tech company Alibaba has been fined for abuse of dominant position with a fine of 2.33 billions euros⁷.

¹ See in this regard the contribution of the World Economic Forum. Klaus Schwab, “The Fourth Industrial Revolution: what it means, how to respond”, World Economic Forum, 14 January 2016, <https://www.weforum.org/agenda/2016/01/the-fourth-industrial-revolution-what-it-means-and-how-to-respond/>

² Digital Competition Expert Panel, “Unlocking Digital Competition”, March 2019

³ Jacques Crémer, Yves-Alexandre de Montjoye, Heike Schweitzer, “Competition policy for the digital era”, <https://ec.europa.eu/competition/publications/reports/kd0419345enn.pdf>

⁴ Stigler Center for the Study of the Economy and the State, “Stigler Committee on Digital Platforms”, 16 September 2019

⁵ Australian Competition & Consumer Commission, “Digital platforms inquiry - final report”, 26 July 2019

⁶ In recent months, a series of investigations and penalties on Chinese Internet companies, including leading e-commerce giants, show that China is serious about regulating the Internet industry to promote fair competition and double monopoly practices. The implementation of the "Platform Economy Antitrust Guidelines" will strengthen the monitoring and supervision capabilities of the financial and local industry authorities. For instance, the investigation launched against Alibaba for potential monopolistic practices by the group. <https://www.nytimes.com/2020/12/23/business/alibaba-antitrust-jack-ma.html>

⁷ Ryan McMorrow, Yuan Yang, “Chinese regulators fine Alibaba record \$2.8bn”, Financial Times, 10 April 2021, <https://www.ft.com/content/bb251dcc-4bff-4883-9d81-061114fee87f>

There is more and more mistrust in the GAFAM⁸ which raise more and more investigations for potential abuses⁹. It is also calling into question certain traditional models. Since the end the 1960s, anti-competitive practices were analyzed on their impact of the price for the consumers. More and more jurists think that this criterion is not in accordance with the digital due to the fact that lots of services are perceived as free. This mutation has thus a profound impact into legal systems and calls for changes.

These debates confirm that the emergence of systemic players with unprecedented power markets makes it necessary to adjust the tools, as well as the means available to competition authorities. In this case, it is useful or even necessary to enhance human resources dedicated to detecting and analyzing the behaviors involved in the digital department.

The phenomenon has been accelerated by the COVID-19¹⁰ pandemic. In 2020, in France, the share of online sales in retail trade rose from 9.8% to 13.4% which is tremendous in comparison with the 1% evolution per years before. Indeed, as explained by the *Fédération e-commerce et ventes à distance* (“FEVAD”)¹¹, the total amount of online transactions was 112 milliards euros¹² for the last past year. In comparison, this amount was 62.9 in 2019¹³. As pointed out by the Organisation for Economic Cooperation and Development, despite persistent cross country differences, the COVID-19 crisis has enhanced dynamism in the e-commerce landscape across countries and has expanded the scope of e-commerce, including through new firms, consumer segments as elderly and products as for instance

⁸ Google, Amazon, Facebook, Apple, Microsoft

⁹ We do not have to forget that a lack of competition can harm consumers and business through reduced innovation, higher prices for goods and services or a reduced quality.

¹⁰ For detailed numbers, the *United Nations Conference on Trade and Development* wrote an article with the growth by geographic zones. UNCTAD: "How COVID-19 triggered the digital and e-commerce turning point", 15 march 2021, <https://unctad.org/news/how-covid-19-triggered-digital-and-e-commerce-turning-point>

¹¹ This non-profit organization gathers especially online operators whose purpose is to promote a sustainable and ethic development of French e-commerce.

¹² FEVAD, Bilan du e-commerce en 2020, 4 février 2021, <https://www.fevad.com/bilan-du-e-commerce-en-2020-les-ventes-sur-internet-atteignent-112-milliards-deuros-grace-a-la-digitalisation-acceleree-du-commerce-de-detail/>

¹³ FEVAD, chiffres clefs e-commerce 2020

groceries. Meanwhile, e-commerce transactions in many countries have partly shifted from luxury goods and services towards everyday necessities, relevant to a large number of individuals¹⁴. For instance in China, since the beginning of the COVID-19 pandemic, queries on the Baidu¹⁵ search engine containing the keywords "Chanel bag", "LVMH bag" and "airline tickets" have fallen sharply to be replaced by purchases of everyday products and groceries¹⁶.

At the European Union ("EU") level, the digital single market strategy proposed by the European Commission in 2015 laid the foundation for the establishment of a unified and sustainable European digital society. This strategy aims to ensure that the European economy, industry and society fully benefit from the new digital age and is an integral part of the EU's "Digital Europe" agenda¹⁷. The stakes are important because full-featured digital market can bring up to 415 billion euros in revenue to the EU economy every year and it can also make the European Union a major global digital player. To unleash this potential, the EU is undergoing far-reaching reforms, from a new copyright framework to regulations on territorial restrictions and end of roaming charges. In addition to national initiatives¹⁸, the European Commission understood that EU law must be modernized. Indeed, e-commerce rules in the EU are harmonized by an old directive of 2000¹⁹ which is no longer in line with all the developments of the last 15 years. That is why it proposed the Digital Markets Act²⁰ ("DMA") which is meant to counterbalance the powers of the internet's gatekeepers.

¹⁴ OECD, E-commerce in times of COVID-10, 7 October 2020.

¹⁵ It is the equivalent of Google.

¹⁶ Michel Lefebvre, "40 cartes pour comprendre la Chine", *Le Monde Hors-Série*, mars-mai 2021, page 88

Daniel Zipser, Felix Poh, "Understanding Chinese Consumers: growth engine of the world", *China consumer report 202*, McKinsey & Company, November 2020, pages 38-50

¹⁷ Amy McGourty, Mariusz Maciejewski, Christina Ratcliff, "Digital agenda for Europe", *Fact Sheets on the European Union*, 2021, https://www.europarl.europa.eu/ftu/pdf/en/FTU_2.4.3.pdf

¹⁸ We will discuss further on the new Digital Markets Unit in the United Kingdom and the recent modernization of the law in Germany.

¹⁹ Directive 2000/31/CE of the European Parliament and of the Council of 8th June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market known as the Directive on electronic commerce.

²⁰ Proposal for a Regulation of the European Parliament and of the Council on contestable and fair markets in the digital sector from the 15th December 2020.

The DMA²¹ “ establishes a set of narrowly defined objective criteria for qualifying a large online platform as a so-called “gatekeeper”²². These criteria will be fulfilled if a company has a strong economic position, significant impact on the internal market and is active in multiple EU countries, has a strong intermediation position, meaning that it links a large user base to a large number of businesses, has (or is about to have) an entrenched and durable position in the market, meaning that it is stable over time.

Digital is not forgotten at the national level. Indeed, digital challenges have been a priority for the French Competition Authority (“ FCA “) during the last past years and it is still true for 2021²³. The FCA also contributed to this debate with a contribution on the digital challenges with a contribution in February 2020²⁴. The Authority underlines that the “development of worldwide digital platforms, new digital services (algorithms, cloud, artificial intelligence, blockchain), the disruption of some traditional economy sectors by new online operators confront competition authorities with new challenges in the implementation of competition law”²⁵.

As a consequence, the Authority is facing new challenges such as for instance apprehending competition issues in regard to new business models based on data and the algorithms’ role. Nevertheless, the FCA position is that competition law is an efficient mean to maintain the competition dynamic in

²¹ There is also the Digital Services Act but it is less relevant for competition law. That is why I decide to not talk about it. It is the Proposal for a Regulation of the European Parliament and of the Council on a Single Market For Digital Services (Digital Services Act) and amending Directive 2000/31/EC. COM/2020/825 final

²² https://ec.europa.eu/info/strategy/priorities-2019-2024/europe-fit-digital-age/digital-markets-act-ensuring-fair-and-open-digital-markets_en

²³ In the presentation of its priorities for 2020, the FCA stated "Several topics that were among the Autorité’s priorities for 2019 will remain at the forefront of its action in 2020. They remain strategic in ensuring that competition is strong, benefiting both businesses and consumers, and include: digital challenges (...)"²⁴. In its presentation of 2021,

²⁴ French Competition Authority, “The *Autorité de la concurrence*’s contribution to the debate on competition policy and digital challenges”, 19th February 2020

²⁵ French Competition Authority, “The *Autorité de la concurrence*’s contribution to the debate on competition policy and digital challenges”, 19th February 2020, page 1

the digital economy²⁶ without a required intervention of the legislator. The Authority insisted on the urgency of adaptation to a society in perpetual movement. This is why the FCA is devoting significant resources to unravel these issues: it is a question of assessing the economic changes brought about by the digital revolution as well as preventing or sanctioning new types of cartels or dominance position. In this regard, the Authority had reinforced the number of people committed to detecting and analyzing the actions of digital operators. The result of this reflexion is the development of a new dedicated department: the Digital Economy Unit (“**DEU**”). It will report directly to the Authority’s General Reporter and this unit will be in charge of building in-depth experience in these areas and assisting in cases with a strong digital dimension, whether they are company mergers or competition law investigation.

As we can easily understand, we are at the beginning of a new era with lots of changes in the next coming months and years. This essay will try to answer to the difficult question of what is the new Digital Economy Unit of the French Competition Authority and how it will be able trying to deal with new issues raised by the digital technology especially by the big online operators.

We will start by explaining why the coming of digital technology tremendous consequences to antitrust law and the French forward-looking position in the raised issues (I). After that, an in-depth analysis will be made of how the new unit will try to counterbalance big operators power. We will finish by comparing the situation of France with the UK which is also setting up such an unit but also with Germany where the choice has been made to adapt the law without touching to the organization of the *Bundeskartellamt*²⁷ (II).

²⁶ Autorité de la concurrence, Communiqué de presse du 21 février 2020, “ L’autorité publie sa contribution au débat sur la politique de la concurrence face aux enjeux posés par l’économie numérique “

²⁷ This is the German Competition Authority

I. An upheaval in competition law brought by the advent of digital technology

After an overview of the questions raised by the digital environment and an explanation of the needs for the creation of a new unit dedicated to it, a presentation of the digital economy unit itself will be made.

Chapter 1: Advantages of the digital technology and its new challenges that can lead to anti-competitive effects

Digital has allowed us to adopt new behaviors and makes our life easier in different aspects (§1). However, these advantages are accompanied by new challenges, some of which are not easy to grasp (§2).

§1: The particularities and advantages of the digital economies for the companies and the consumers

Many of the changes brought by the digital have a positive impact for the consumers and their welfare. Indeed, these changes provide individuals with convenient access to information and can establish contact with family, friends and groups to support each other in an unprecedented way. They also allow for more effective advertising, connecting companies with consumers who want to buy their products and services. For example, it has never been easier to find out which store or website offers the best price thanks to online price comparison sites. This allows people living in remote areas or areas that are not always well-stocked to buy from online shopping sites without missing anything.

Undoubtedly, the digital economy is shaking up the organization of the market and the way the economy operates. By turning some hobbyists into professionals, turning companies into intermediaries, and using these new business models to face traditional economic fields, digital technology has led to the development of a rich and complex ecosystem.

The particularity of digital companies is that they usually operate in two-sided or multi-sided markets. In other words, these companies position

themselves as intermediaries between different categories of customers or users. Therefore, their business model is based on the use of different types of customers. Let's take the example of Google. The market of its search engine is two-sided since on one hand Google interacts with the users of this market and on the other hand with the advertisers who pay to get advertisements on it in order to reach the users.

Digital technology is the source of growth for big tech companies by promoting interactions, matching supply and demand thanks to information obtained with data collected and reducing costs²⁸. These advantages are accompanied by another source of efficiency which can be achieved through increased economies of scale or increased returns, which means that the more customers a company has, the more capable it is to provide them with better quality at the same price. As new customers are acquired and the quality provided has been improved, this effect becomes meaningful. This is due to the fact that the perceived quality of the service provided directly depends on the number of its users, which makes the network effect play a role. This phenomenon has already existed in the traditional economy, but digital companies connect two or even several types of users through multiple platforms to make more use of this phenomenon.

§2: The challenges brought by the digital economy pointed out by reports throughout the world

The digital sector is today as much an asset as a weakness for the European economy, which is faced with two major challenges: unifying the rules on European territory to allow the proper functioning of the internal market; and curbing American supremacy to allow the emergence of new European forces. Algorithms are one of the most important technological drivers in this process, which can make companies more innovative and efficient. However, debates have emerged as to whether and to what extent

²⁸ We think especially about the transaction costs which are the costs incurred in undertaking an economic exchange.

algorithms may have a harmful effect on the competitive function of the market, especially by promoting collusive behavior.

As exposed by the *Cremer* Report, there are key characteristics of digital economy. The first one is the extreme return to scale. Indeed, the production cost of digital services is much lower than the ratio proportional to the number of customers served. Although this aspect is not new (larger factories or retailers are usually more efficient than smaller ones), the digital world has pushed it to extremes, which may give incumbents a huge competitive advantage.

The second one are the network externalities. The convenience of using a technology or service increases as the number of users adopting the technology or service increases. Therefore, the quality and/or price offered by new entrants lower than incumbents is not enough; it must also convince existing users to coordinate their migration to their own services. Therefore, network effects may prevent advanced platforms from replacing established incumbent operators. The scale of this "on-the-job advantage" depends on many factors, including the possibility of multi-hosting, data portability, and data interoperability.

The third one is the predominant role of the data. With the development of technology, companies can collect, store and use large amounts of data. Data is not only one of the key elements of artificial intelligence, but also an important input for many online services, production processes and logistics. Therefore, the ability to use data to develop new innovative services and products is a competitive parameter, and its relevance will continue to increase. The result of these characteristics is the existence of a strong "economy of scope", which is conducive to the development of the ecosystem and gives existing companies a strong competitive advantage.

The Authority stated that the competition law is an efficient way to maintain a competitive dynamic within the digital economy because its

concept can be adapted without legislative intervention. First of all, the FCA thinks about the possible adaptations of two cornerstone notions: essential facilities and dominance. Indeed, these must be adapted to the particularities of digital such as the weight of data and large users. It also underlined the the relevance of using interim measures and commitment procedures in the digital sector, which enable swift and proportionate intervention. The *Autorité* is in favor of greater use of interim measures at European level, which could entail a modification of the applicable legal standard. In June 2020, the French competition authority published a new study on competition and e-commerce. This study embraces the different issues created by this relatively new digital environment but also states the vision of the *Autorité* to help businesses whose purpose is to help businesses to understand its position on the subject. This study does not introduce any new element, but the Authority makes a description of how it deals with the digital and presents some of the most important cases. The study was published during a time of deep reflections about the adoption of a *new competition tool* (“NCT”) which was “designated to empower competition authorities to intervene on the market in the absence of any antitrust infringement or merger operation”. These reflections led to the Digital Market Act which ultimately differs greatly from the NCT. In its study, the Authority started to highlight the impact of the internet which permitted the creation of new actors (especially the pure players), new products and services, new consumers’ behaviors. The study also states that the internet can modify the competition process by reducing transactional costs and distribution costs as producers can sell their products through their own website without the intervention of a wholesaler or dealer. Later, in the conclusion of its study on e-commerce and competition²⁹, the Authority explains that its current analysis grid allows to apprehend these new behaviors and a in-depth analysis must be developed. This will be done by this new unit.

Also, an important phenomenon is the “killer acquisitions” which are “ incumbent firms may acquire innovative targets solely to discontinue the

²⁹ French Competition Authority, “ Competition and e-commerce “, Les essentiels, Juin 2020

target's innovation projects and preempt future competition³⁰ “. These acquisitions cannot be dealt with the concentration rules due to the thresholds of the regulation n°139/2004³¹. That is why there are current reflexions about the possibility to use the article 22 of this regulation. Indeed, Ms. Vestager announced a new interpretation of this article which allows national competition authorities to submit non-European cases to the Commission. From now on, even if the transaction does not meet the threshold of controllability, but the transaction is not within the authority of the national competent authority, the committee will accept the referral. This new interpretation is intended to allow the referral of acquisitions of small innovative companies with no or limited turnover to the committee³².

The European Commission pointed out the existence of “ structural competition problems “³³ caused by the digital dynamics. These are in particular caused by “ extreme economies of scale and scope, strong network effects, zero pricing and data dependency “³⁴. It is in the light of these elements that the European Commission has presented the Digital Market which is supposed to regulate digital platforms. As pointed out by Professor Bosco, this text differs from the New Competition tool (“ NCT “)³⁵.

All these challenges requires to perfect the knowledge of national authorities as they become more and more complex. With wishes of efficiency, the FCA decided to create a brand-new unit which will be dedicated at 100% to the digital.

³⁰ Colleen Cunningham, Florian Ederer, Song Ma, “ Killer acquisitions “, *Journal of Political Economy*, Vol. 129, No. 3, pp. 649–702, March 2021

³¹ Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation) (Text with EEA relevance) Official Journal L 024 , 29/01/2004 P. 0001 - 0022

³² David BOSCO, “ Le “ nouvel “ article 22, un forçage du règlement européen sur les concentrations “, *Contrats - Concurrence - Consommation* n° 11, November 2020, Lexis Nexis, page 1

³³ Speech by European Commission Vice-President Margrethe Vestager, 29 October 2020 – https://ec.europa.eu/commission/commissioners/2019-2021/vestager/announcements/speech-executive-vice-president-vestager-building-trust-technology_en

³⁴ Ibid

³⁵ M.-S. Garnier, *The New Competition Tool : A Trojan Horse to win the war against liberty* : Competition Forum, 2020, art. n° 0005, <https://www.competition-forum.com>

Chapter 2: A complexity requiring the establishment of a new unit within the French competition authority: the Digital economy unit

The French competition Authority has been the first national competition authority to set up a new specialized unit which will develop in-depth expertise into the digital sector and will cooperate in the investigations of anticompetitive practices in the digital economy. The ³⁶ organizing the FCA defines this new Unit as “ the unit which “contributes to studies on digital technology subjects. It is in charge to develop new digital investigation tools based especially on algorithmic technologies, big data, artificial intelligence. It also intervenes in support to all investigations and instruction services of the Authority “³⁷.

So, we can understand that the DEU will intervene into cases about competition law issues with a string digital element. It will also develop new digital tools to apprehend more effectively digital platforms’ economy, participate to sectorial inquiries, contribute to studies and think-tank initiated and upcoming. This Unit will also cooperate with academics, research institutions specialized in the digital technology and with other competition authorities.

Currently, this unit is composed by four people but it will grow in a near future. In addition to the department head, there are three case handlers specializing in digital legal technical issues who have been recruited. In the next coming months and years, the unit will be compose by a variety of profiles such as lawyers, economists, data science specialists, engineers etc. The current head of DEU is Yann Guthmann who is a former lecturer in telecoms economics and has held positions at the ARCEP³⁸, French Competition Authority and the competition authority of New Caledonia. I

³⁶ Décision du 22 juillet 2020 portant organisation de l’Autorité de la concurrence

³⁷ Free translation of the article 14

³⁸ This is the French Telecommunication and Posts Regulator

decided to contact him because no one else is in a better position to present the DEU and he accepted to answer my questions³⁹.

When I talked to M. Guthmann he really insisted on the fact that the FCA did not wait for the creation of the digital economic unit to “ tackle digital issues “. To illustrate his point, he mentioned previous cases such as the press editors case in which the FCA has granted interim measures against Google⁴⁰. He also cited the first examination of the merger between two online platforms by the FCA in 2018⁴¹ and the 150-million fine for abuse of a dominant position against Google⁴².

As explained by the head of the unit, the DEU will have four main objectives. These may evolve over the years, since it is possible that new features may appear that are still unknown today.

§1: Development of new tools for a better understanding of the digital economy.

The DEU will develop new investigative methods and technical tools to allow the FCA to effectively understand the digital economy.

Unfortunately, there is not a lot which can be said as these tools are in the development phase but at this stage it may be mentioned that the Authority wishes to invest in knowledge. As explained by Isabelle Da Silva, President of the FCA, the belief of the FCA is that in order to properly measure these changes and adapt to the way of implementation the competition regulatory tools, the FCA must invest in knowledge and engage in interdisciplinary discussions. A deeper understanding of these phenomena and technologies is needed in order to take the first step and predict the new problems that may arise in different markets tomorrow. The FCA needs to understand new fields

³⁹ Once again, I would like to thank him for his time.

⁴⁰ <https://www.autoritedelaconurrence.fr/en/press-release/related-rights-autorite-has-granted-requests-urgent-interim-measures-presented-press>

⁴¹ <https://www.autoritedelaconurrence.fr/en/communiqués-de-presse/01-february-2018-online-property-advertising>

⁴² <https://www.autoritedelaconurrence.fr/en/press-release/autorite-de-la-concurrence-hands-down-eu150m-fine-abuse-dominant-position>

based on digital technology, such as what is done in online advertising or audiovisual fields, such as the revolution of over-the-top media services such as Netflix. Thus, we can understand that this highly technical and purely internal work of the authority will require some time. However, its cooperation with other institutions allows it to benefit from the use of programs developed by them.

§2: Cooperation with the Authority's teams involved on digital matters in order to strengthen our expertise within the Authority

The DEU is a transversal support unit to the functional units. There are eight functional units: five antitrust units, a merger unit, a regulated professions Unit and an Inspections Unit. The head of the Unit told me that “ our unit will intervene either alone or, and probably most frequently, in cooperation with other services in cases involving a strong digital component, whether these are business mergers or investigations relating to compliance with competition law. “

Investigation services



Because a picture is worth a thousand words, this diagram⁴³ clearly demonstrates the strategic role of the new department. Its central position on the latter demonstrates its importance and its supporting role to other services.

The cooperation is not limited to the other services of the FCA. Indeed, another objective of the DEU is to cooperate with other services of the French government but also with national authorities of EU Member States and beyond.

§3: Close cooperation with other competition or regulatory authorities in Europe or beyond. The unit will also work in close cooperation with relevant services within the government

The first cooperation to mention is the one with the brand-new *Digital Regulation Expertise Center*. It will have strong relations with the “*Pôle d’expertise de la régulation numérique*”⁴⁴ (PEREN). Its mission is to support the government services involved in the regulation of digital platforms by designing, implementing and evaluating the future regulations⁴⁵. Created by the Ministry of Economy and Culture and the Secretary of State in charge of the digital economy six months ago, this team of 7 experts is affiliated with the company’s Directorate General and aims to help government departments as well as CNIL, CSA, ARCEP and the FCA to implement its Supervision tasks for major digital companies. So, the PEREN is a cross-services data unit. As explained by the head of the DEU, “ This service is intended to constitute a center of expertise in data sciences shared between the various government services involved in digital matters. This service will aim to pool resources,

⁴³ This diagram has been created and published by the French Competition Authority. It is available here: <https://www.autoritedelaconurrence.fr/en/press-release/autorite-creates-digital-economy-unit>

⁴⁴ This a new service created by a Décret n° 2020-1102 du 31 août 2020 portant création d'un service à compétence nationale dénommé “ Pôle d'expertise de la régulation numérique “ (PEReN)

⁴⁵ If requested, it will also provide technical input and expertise in the context of controls, survey or studies conducted on digital platforms. It will conduct regular exchanges to promote the sharing of information, source codes and analyses of regulations of digital platforms. Finally, it will animate a network of public experts in data sciences and algorithmic processing, by association research representatives and in particular in connection with the *Interministerial Directorate of Digital Technologies*.

for example in terms of data analysis, source codes, computer programs, algorithmic processing and auditing of the algorithms used by platforms “.

Its director is Nicolas Deffieux. Since 2012, he was “ rapporteur général adjoint “ at the French Competition Authority, specializing in the telecom and digital sectors. In particular, he worked on the sanction against Apple⁴⁶ and wholesalers and that against Google in online advertising⁴⁷. Previously, he spent eleven years at ARCEP⁴⁸. The first contribution of the PEREN is the creation of a dashboard of the general conditions of use of digital companies, developed at the initiative of the digital ambassador Henri Verdier⁴⁹, and which makes it possible to follow their evolution over time. About twenty other projects are underway, including a tool for reverse engineering of recommendation algorithms. As explained by Nicolas Deffieux, this is above all a matter of mutualizing resources. "Instead of having experts scattered in different units, we are going to build a cluster with a critical mass to enable us to carry out cutting-edge work and have a strike force on each of the subjects on which we will have a request for assistance."⁵⁰

Here, we can potentially think about an articulation problem. Indeed, the administrative authorities have their own experts. Let us remember that the DEU is in charge of "developing new digital investigation tools, based in particular on algorithmic technologies, mass data and artificial intelligence". However, this is not redundant according to Yann Guthmann, who "assumes

⁴⁶ FCA, Decision 20-D-04 of March 16, 2020 regarding practices implemented in the Apple products distribution sector

⁴⁷ FCA, Decision 19-D-26 of December 19, 2019 regarding practices implemented in the sector of online search advertising sector

⁴⁸ The Autorité de régulation des communications électroniques, des postes et de la distribution de la presse is an independent administrative authority responsible for regulating electronic and postal communications and press distribution in France.

⁴⁹ He has been *Directeur interministériel du numérique et du système d'information de l'Etat français et administrateur général des données* (AGD). Since October 2018, Henri Verdier is *Ambassadeur pour le Numérique* as confirmed by the Compte rendu du Conseil des ministres du 24 octobre 2018. As the digital Ambassador, Henri Verdier will participate to multilateral negotiations dealing with the Internet: its governance, freedom of expression, propaganda, cybersecurity or intellectual property. These discussions are held with other States but also with the big tech companies.

⁵⁰ Samuel Kahn, “ le PEReN, l’arsenal anti-Gafa de Bercy qui peine au décollage “, Contexte numérique, contexe.com, 22 mars 2021. https://www.contexte.com/article/numerique/le-peren-larsenal-anti-gafa-de-bercy-qui-peine-a-passer-la-seconde_128866.html

that there is strength in numbers". His department has thus taken over the tool for detecting changes to the UGC.

Under an open license, this new tool, called Open Terms Archive⁵¹, makes available the contractual conditions of 174 service providers, for a total of 367 documents. The objective is to facilitate the monitoring of changes. The project, which is intended to be a contributory community, is aimed at both "slightly geeky" users, authorities in charge of controlling TOS and regulators. It "creates transparency in the practices of digital actors, in line with the first recommendations discussed in the DSA and the DMA ". " Not every administration needs to reinvent the digital wheel " notes Yann Guthmann. The digital economy department of the French Competition Authority serves as a bridge between the authority and PEReN. We are the first point of contact.

Another cooperation will be made with the *Fintech, Innovation and competitiveness* of the French Market Regulator⁵² (Autorité des Marchés Financiers) and the Fintech Innovation division of the Autorité de contrôle prudentiel et de Résolution⁵³. Unfortunately, there is no detail available for the moment except the publication about finch coming soon.

At the European level, the task is also particularly arduous since the ambition is to adopt the DMA during the French presidency of the Council of the European Union in the first semester of 2022. Indeed, this was stated by Margrethe Vestager during her exchanges with the President of the Competition Authority, Isabelle Da Silva, at the 20th International Conference on Competition⁵⁴.

⁵¹ The tool can be used by everyone. It is available here: <https://disinfo.quaidorsay.fr/fr/open-terms-archive>

⁵² Its objective is to analyze innovations in the investments services sector and identify issues of regulation and competitiveness. For more details, <https://www.amf-france.org/fr/actualites-publications/communiqués/communiqués-de-lamf/lamf-annonce-la-creation-dune-division-fintech-innovation-et-competitivite-et-la-nomination-de>

⁵³ It acts as an intermediary between project leaders and the relevant ACPR departments, as well as the Banque de France (for files involving payment services) and the Autorité des marchés financiers (for files involving investment services). For more details, check <https://acpr.banque-france.fr/autoriser/fintech-et-innovation/le-pole-fintech-et-innovation>

⁵⁴ This International Conference took place on the 4th March 2021.

At the international level now, the DEU will also pursue common discussions with competition authorities of the G7 countries within the framework of the common understanding concluded in 2019. Indeed, during the G7 2019, the FCA initiated a common understanding “Digital and Competition” between the G7 competition Authority⁵⁵. This has been made because it is important to have a common approach on the digital issues for competition rules. A conference was scheduled during the last semester of 2020 but due to the COVID, it has been postponed.

Finally, the DEU will also cooperate with the academic world and institutions specialized in digital technology.

§4: Develop contacts with the academic world and research institutions specializing in digital technology

This last objective was not detailed in my conversation with Yann. Indeed, it seems that this one is not yet clearly defined. What can be said at this stage is that such a cooperation would allow this unit, which is still young and relatively small since less than a dozen people currently compose it, to have additional means. Indeed, the academic world and the institutions specialized in digital are full of experts in particularly complex and technical fields. Thus, in case of a new question or a necessary deepening, such a cooperation would allow to achieve this goal.

We therefore understand that we are in a pivotal period where our knowledge of digital technology and the perception of its problems for competition law are improving day by day. These new challenges have demonstrated the need to create such a unit which has precise objectives although it is relatively young. It is now necessary to explain the means of action that it has to achieve them.

⁵⁵ The Federal Trade Commission and the Department of Justice in the USA, Canada national authority, Italian, CMA of the UK, Japan, Germany, EU Commission.

II. The Digital Economy Unit: the last defense line of healthy competition in the digital ?

Although currently small, this support unit is now fundamental to the FCA organization. Its means of action will be studied initially before comparing it to other systems in order to be able to compare if the solution retained by France makes it possible to fulfill these objectives which should not be utopian.

Chapter 1: The means of action of the DEU convinced of the need to modernize European law

Given the young age of this unit, as Yann Guthmann explained to me, its means of actions are in full expansion phase. However, one thing has already been established: the importance of data analysis.

§1: The fundamental role played by data

a. Data as the core of prevention and detection of anti-competitive practices

Data analysts have been recruited and others will be hired in the future as the unit expands. Mr. Guthmann explained that their role is crucial since they will be able to analyze the data obtained thanks to the software developed by the software engineers in order to detect potential anti-competitive behavior.

This could be particularly useful in public procurement because in these markets, it is not uncommon to see big rigging behaviors. These behaviors are adopted by competing parties who collude to determine the winner of a tender. This bid-rigging manipulates the market and thus undermines the bidding process and may result in a higher price than that resulting from a bidding process in a market where competition is free and undistorted⁵⁶. Thus, it constitutes a cartel prohibited by national or European competition law In

⁵⁶ The Organisation for Economic Co-operation and Development tried to tackle the problem in 2012 with a report: OCDE (2016), Lutte contre les soumissions concertées dans les marchés publics: Rapport sur l'implémentation de la Recommandation de l'OCDE.

2020, the public procurements were a priority of the FCA which explained that: “ in collaboration with the Ministry of the Economy and Finance, the Autorité is working to implement tools to allow the automatic collection and analysis of data of government contracts and thereby detect collusive behaviour more accurately and exhaustively. The Autorité will also remain particularly vigilant on construction sites relating to major infrastructures requiring major public contracts⁵⁷. One landmark decision in this field was related to high schools in the Ile de France region⁵⁸.

If we look at the situation in foreign countries, it turns out that there is a lot of digital data on these markets and that the national competition authorities have access to it in order to map the national territory and develop an artificial intelligence capable of detecting illegal behavior. This already exists in Spain. This is a very valuable help for the authorities because these behaviors are very difficult to prove, especially because companies use encrypted messaging applications and have few or no face-to-face meetings. During a seminar, Mr. Pigeas, current legal director of the French Competition Authority, underlined that the problem in France is the lack of transparency of the public authorities on the access to the data of the calls for bids on these markets.

b. The technical means of data collection used by the DEU

Yann Gutthman told me that “ one way to better understand them for competition authorities is to collect data through digital and automated tools “. One possibility is to make more use of natural language processing techniques

⁵⁷ Autorité de la concurrence, “ L’*autorité de la concurrence* annonce ses priorités pour l’année 2020 “, 9 January 2020, <https://www.autoritedelaconcurrence.fr/fr/communiqués-de-presse/lautorite-de-la-concurrence-annonce-ses-priorites-pour-lannee-2020>

⁵⁸ Cons. conc., déc. n° 07-D-15 du 9 mai 2007 relative à des pratiques mises en œuvre dans les marchés publics relatifs aux lycées d’Île-de-France

(NLP) like TextRank⁵⁹ or Bert⁶⁰, and even CamemBert⁶¹ for the French equivalent. This techniques could be very useful to digest large chunks of reports and non-numerical data.

One promising application could be to invest on NLP to dissect public tenders and look for hints of collusion. Another possibility is to develop the use of web scraping⁶². This is the work we are currently doing with the PEREN. It is very important for competition authorities to be able to collect data independently from the main actors, to show we are re up to the challenge on technical aspects. And the data collected will greatly improve our understanding of the specific market. “

We thus understand that the data that are at the heart of the big tech business are also of fundamental importance in the search for potential illegal behavior related to digital.

§2: Real-time monitoring of the general conditions of use of digital platforms

Then, I asked Mr. Guthmann to detail the tool for real-time monitoring of the general conditions of use of the platforms. He started to remind me that “ the use of any digital service is subject to terms of services (ToS, or Conditions générales d’Utilisation in French) which are defined as a set of contractual documents that frame the interactions between the service provider and its users “. Large digital companies hold today a central position, enabling them, through their ToS, to transform their practices and values into de facto

⁵⁹ TextRank can be defined as “an algorithm which is often used in keyword extraction and text summarization “. Xu LIANG - Understand TextRank for Keyword Extraction, 18 February 2019, Towards Data Science. <https://towardsdatascience.com/textrank-for-keyword-extraction-by-python-c0bae21bcec0>

⁶⁰ Bidirectional Encoder Representations from Transformers (BERT) is “ a neural network-based technique for natural language processing pre-training. It can be used to help an organism or company better discern the context of words in search queries “. George Nguyễn, “ FAQ: All about the BERT algorithm in Google search “, November 5 2019, Search Engine Land. <https://searchengineland.com/faq-all-about-the-bert-algorithm-in-google-search-324193>

⁶¹ This has been created by a team of the *Institut National de recherche dédié aux sciences du numériques* and is also an algorithm of contextual models of languages focused on French.

⁶² Web scraping is an indexation technique and consists of extracting data from websites and saving them for analysis or other uses. Scraping allows for the collection of quite different types of information.

standards which are at the heart of many aspects of our existence and our economies. However, while a rigorous understanding of ToS and of how they have evolved over time has become essential to appreciate the practices and loyalties of these digital players, their communication around these ToS is insufficiently clear, regular and readable. “ That is the reason why we have been working alongside France Diplomacy in order to allow case handlers within the Authority to follow the evolution of the terms of services of the main online service providers by recording in real time each publication for each new version of the documents, specifically displaying changes applied to documents, having a documentary corpus of their history available “⁶³.

This tool has been implemented at the FCA since November and the ambassador for digital affairs has released it to the public last month. This understanding is necessary to the authorities which need to verify the compatibility of these contractual frameworks with national and supranational laws, especially with the development of the latter. It is also needed by the Regulators who can not only evaluate the work of the platform, they can also ensure that they say what they are doing and that they act according to their wishes.

It is obvious that these means will evolve over time given the constant evolution of digital. Since we are in a key period with the recent proposal of DMA by the European Commission, I thought it was important to discuss these issues with Mr. Guthmann.

§3: The Digital Economy Unit's perception of the future of competition law and its thoughts on its adequacy to technological developments.

We addressed the subject of European law, which is fundamental for competition law since, let's remember, European harmonization is very strong for abuses of dominant position and cartels.

⁶³ Interview of Yann Guthmann

The head of the DEU started to explain that "according to the first recommendation discussed in DSA and DMA, it establishes transparency in the practice of digital roles. That is why the development of an open terms archive that can track the development of the terms and conditions of major online service providers in the following ways. It records the new version of each publication in real time, Specific display of changes applied to the document, A collection of documents with their history ". Thus, reading these lines, we understand that the DEU did not wait for the future transposition of these texts to act.

I asked him what his thoughts are about the future of the EU law and more specifically the DMA. He told me that " it is likely that the proposed regulations will evolve over the course of the next few months but we can already say that this is a very positive step and very much in line with the Autorité's contribution to the debate issued a year ago ". Indeed, in this contribution⁶⁴, the FCA has a similar approach than the DMA one. Unfortunately, the French law-makers did not integrate this approach in the law.⁶⁵

Focusing on the proposed DMA, which deals more specifically with antitrust issues, the draft legislation provides for an ex ante regulation to "*complement*" the current competition toolkit⁶⁶. M. Guthmann told me that " complementarity between competition law and regulation is key ". " Indeed,

⁶⁴ FCA, "Contribution de l'Autorité de la concurrence au débat sur la politique de concurrence et les enjeux économiques", 19 February 2020, 14 pages

⁶⁵ Laurence Idot, " La loi DDADUE: simple adaptation ou réforme du droit français de la concurrence ? ", Concurrences on-topic, n° 1-2021, page 23

⁶⁶ The Recital 10 of the DMA: " Articles 101 and 102 TFEU and the corresponding national competition rules concerning anticompetitive multilateral and unilateral conduct as well as merger control have as their objective the protection of undistorted competition on the market. This Regulation pursues an objective that is complementary to, but different from that of protecting undistorted competition on any given market, as defined in competition-law terms, which is to ensure that markets where gatekeepers are present are and remain contestable and fair, independently from the actual, likely or presumed effects of the conduct of a given gatekeeper covered by this Regulation on competition on a given market. This Regulation therefore aims at protecting a different legal interest from those rules and should be without prejudice to their application. "

competition authorities have relied on an evolving decision-making practice and on tools that have proven to be both effective and flexible “.

In doing this, competition authorities have demonstrated their ability to take on the behavior of digital players, including by using innovative reasoning or by applying well-established solutions to ‘new objects’. He given the example of the following cases to illustrate his words: The EU Commission Google Android decision⁶⁷ of 2018 about an operating system, the Google Gibmedia decision of 2019⁶⁸ from the FCA and the AdSense decision⁶⁹ of the EU Commission about online advertising services, the Google Shopping decision⁷⁰ about a vertical search engine and the Facebook decision⁷¹ of the *Bundeskartellamt* about social networks and data collection.

M. Guthmann also insisted on the point that “ the DMA aims at a harmonized enforcement across all Member States and ensuring fair and contestable digital markets “⁷². He thinks that “ it is a positive step for digital players – one set of rules, avoidance of inconsistent findings or enforcement action across Member States – and for consumers – a high level of protection no matter where they are located “.

⁶⁷ Commission Decision of 18.7.2018 relating to a proceeding under Article 102 of the Treaty on the Functioning of the European Union (the Treaty) and Article 54 of the EEA Agreement (AT.40099 – Google Android)

⁶⁸ Decision 19-D-26 of December 19, 2019 regarding practices implemented in the sector of online search advertising sector

⁶⁹ EU Commission Decision of 20 March 2019 relating to a proceeding under Article 102 of the Treaty on the Functioning of the European Union and Article 54 of the EEA Agreement (Case AT.40411 – Google Search (AdSense))

⁷⁰ Commission decision of 27 June 2017 relating to a proceeding under Article 102 of the Treaty on the Functioning of the European Union and Article 54 of the EEA Agreement (Case AT.39740 — Google Search (Shopping))

⁷¹ Bundeskartellamt, Decision B6-22/16, 6 February 2019

⁷² Indeed the Article A(5) states that Member States shall not impose on gatekeepers further obligations by way of laws, regulations or administrative action for the purpose of ensuring contestable and fair markets. This is without prejudice to rules pursuing other legitimate public interests, in compliance with Union law. In particular, nothing in this Regulation precludes Member States from imposing obligations, which are compatible with Union law, on undertakings, including providers of core platform services where these obligations are unrelated to the relevant undertakings having a status of gatekeeper within the meaning of this Regulation in order to protect consumers or to fight against acts of unfair competition.

After that, we discussed about the European Competition Network (ECN)⁷³ in which the Autorité has been heavily involved in its development and operation. “ This discussion forum, the rules of which were established by Regulation (EC) No 1/2003, is a key factor in the uniform enforcement of European competition law throughout the single market “ according to the head of the DEU.

The Autorité participates actively in the ECN’s work and is one of the most pro-active national competition authorities. “ It stands out as one of the most active members in terms of European competition law enforcement, in particular being the authority that has opened the largest number of investigations based on EU law “.

The DEU also welcomes the new interpretation of Article 22 of the Merger Regulation⁷⁴ allowing national competition authorities to refer transactions below the national (and thus necessarily below the European) thresholds to the European Commission where they are sensitive⁷⁵. Indeed, this new interpretation presented by Margrethe Vestager will allow to apprehend mainly digital business especially in the context of potential killer acquisitions.

This new possibility has been used very recently since, following the joint request for referral from the French, Belgian, Greek, Icelandic, Dutch and Norwegian competition authorities, the Commission has decided to open a procedure to examine the acquisition of Grail by Illumina⁷⁶.

⁷³ This network has been established by the Council Regulation (EC) no 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty. It is important to note that this regulation will be really soon replaced by the Directive (EU) 2019/1 of the European Parliament and of the Council of 11 December 2018 to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market.

⁷⁴ Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation)

⁷⁵ In this regard, see David Bosco, “Brief remarks on new interpretation of Article 22 of the European Merger Regulation”, Competition Forum, 2020, art. n° 0001, <https://competition-forum.com>.

⁷⁶ French Competition Authority, “ The European Commission opens a review of Illumina's acquisition of Grail under the procedure of Article 22 of the 2004 Merger Regulation “, 20 April 2021, <https://www.autoritedelaconcurrence.fr/en/press-release/european-commission-opens-review-illuminas-acquisition-grail-under-procedure-article>

As emphasized on several occasions, cooperation between authorities is fundamental. Thus, a comparison between different States seems appropriate in order to place the French model in relation to other models adopted.

Chapter 2: A growing understanding of the digital challenges by competition authorities: example of Germany and the UK

The FCA decided to set up a new service and adapt its current analysis grid without creating a new set of legal rules. The FCA also plays a high-profile, influential role within the international competition community (ICN). It maintains close relationships with many competition authorities in the context of bilateral and multilateral activities, and works with them to promote convergence of approaches and tools. M. Guthmann told me that “ with respect to the digital economy specifically, we are cooperating on a regular basis with the DATA unit of the CMA but also with other data units/ competition authorities around the world through private exchanges and seminars “.

Antitrust is a challenge beyond borders. I have decided to talk about Germany which chosen to adopt a modernized law rather than a new unit, the UK which will set up a brand-new unit and a new set of rules but also about the USA where the big tech companies are more and more under the field of intervention of the legislators.

Section 1: The German approach based on adaptation of the law without the creation of a new unit

The Bundeskartellamt and the FCA have a very close relationship. One example is a joint study on algorithms in which the two authorities studied the potential competition risks that may be associated with algorithms⁷⁷. Indeed, they explained the concept of algorithms and different types and application

⁷⁷ Autorité de la Concurrence and Bundeskartellamt, “ Algorithms and Competition “, November 2019, https://www.bundeskartellamt.de/SharedDocs/Publikation/EN/Berichte/Algorithms_and_Competition_Working-Paper.pdf?__blob=publicationFile&v=5

areas. In their research, the two institutions paid special attention to pricing algorithms and collusive pricing, but also considered the potential interdependence between the algorithms and the market power of the companies using them, as well as the practical challenges of investigating algorithms⁷⁸. In 2016, the two authorities had already published a joint study on data and its challenges for competition law enforcement⁷⁹. “ This joint work is a prime example of close cooperation between two major national competition authorities in a field of growing interest for firms, authorities and citizens alike. It also provides some food for thought in the context of the ongoing policy debate on the so-called digital platforms’ economic role. “⁸⁰

A comparison between the two systems is therefore particularly interesting since the approaches are only slightly different. A few weeks ago, Germany adopted a new law whose purpose is the “ digitalization of the antitrust law “⁸¹. So, Germany has a different approach in comparison with France⁸². In its 9th amendment to the Competition Act⁸³, the German legislator introduced a catalogue of factors to be considered when assessing market positions of multi-sided platforms. The 10th amendment⁸⁴ strengthens abuse controls vis-a-vis undertakings of paramount significance for competition across market. The Digitalization Act substantially extends the scope of German antitrust law to tackle presumed enforcement challenges in the digital economy and raises merger control thresholds across all industries. It also

⁷⁸ Press office Bundeskartellamt, 2019. *Joint press release: The French Autorité de la concurrence and the German Bundeskartellamt present their joint study on algorithms and competition*. [online] Available at: <https://www.bundeskartellamt.de/SharedDocs/Publikation/EN/Pressemitteilungen/2019/06_11_2019_Algorithms_and_Competition.pdf?__blob=publicationFile&v=2> [Accessed 28 March 2021].

⁷⁹ Autorité de la concurrence and Bundeskartellamt, “ Droit de la concurrence et données “, 10 mai 2016, <https://www.autoritedelaconcurrence.fr/sites/default/files/rapport-concurrence-donnees-vf-mai2016.pdf>

⁸⁰ Press release, *10 May 2016: Big Data* <https://www.autoritedelaconcurrence.fr/en/communiqués-de-presse/10-may-2016-big-data>

⁸¹ The Digitalization Act is the 10th amendment of the German Competition Act (GWB), the so-called GWB10, entered into force on January 19, 2021.

⁸² As explained previously, the FCA stated that the current law is fit enough. Contribution “ Le droit de la concurrence est (...) un droit plastique dont les concepts peuvent s’adapter à de nouvelles pratiques, sans nécessiter d’intervention du législateur. “

⁸³ 9th amendment of the GWB pursuant to Article 82(2)(1) of the German Fundamental Law

⁸⁴ Latham & Watkins Antitrust & Competition Practice, *The New German Digitalization Act: An Overview*, January 20, 2021, Number 2849, <https://www.lw.com/thoughtLeadership/the-new-german-digitalization-act-an-overview>

provides a new quasi-regulatory tool to prohibit certain conduct patterns of platforms on multi-sided markets and networks. This new tool is combined with a shortening of the judicial review process because appeals can now only be heard by the Federal Court of Justice. There is also a new ex ante tool that, in essence, prohibits conduct that may amount to a tipping off the market as “unfair impediment of competitors”. The third major change is higher merger control thresholds that will significantly reduce the number of notifiable transactions across all industries.

I had the chance to talk with someone⁸⁵ with a depth knowledge of German competition law. This person explained to me that an existing policy unit took over most of the conceptual digital work in 2016 and told me that it is considered as “the birth of our dedicated Digital Economy (policy) unit”. In 2019, a restructuration of the *Bundeskartellamt General Policy Division* has been operated and as a consequence, nowadays a policy unit exclusively focused on digital matters exists. So, we can say that even from a formal approach no digital economy unit exists, the reality differs. Today, in Germany, there is a policy unit exclusively focusing on digital matters. However, when comparing approaches in different jurisdictions/agencies, the structure of the respective agencies (for example, in the *Bundeskartellamt*, Decision Divisions investigate and decide cases, and several of them deal with digital cases) and the nature of the digital units should be taken into account. I believe that the British DMU, for example, might have another function than our policy unit.

As explained by the President of the *Bundeskartellamt*, an internet think-tank as been launched in 2015. In 2016, an interdisciplinary team in the previous unit “Digital Economy, Regulation and Competition, Procurement Law” within the General Policy Division. On this basis the “Digital Economy” unit was created in the course of a restructuring of the Policy Division in 2019. The already well-established team works on conceptual projects and in

⁸⁵ This person prefers to stay anonymous.

particular supports the Decision Divisions in their work regarding the digital economy. It does this by also collaborating with other internal support units such as IT Forensics and Data Science and engaging in exchange with other authorities.”⁸⁶

We also talked about the DMA and the differences with the German law. He underlines the fact that the German approach also includes a list of conducts that can be prohibited but without a need of something like a prior sector inquiry. Furthermore, this person explained that the German Section 19a seems more flexible, “ as its subsection 2 includes a combination of more abstract types of conduct/theories of harm and concrete rule examples (some of the latter seem similar to certain DMA rules) “. Then, we talked about the fast changes in digital markets. About this issue, this person told that an advantage of the German tool seems to be that it can already be used, while it will still take some time before the DMA becomes effective.

We can see that in reality, Germany does have a unit comparable to that of the DEU in France, even though there has been no communication on this subject. This service has been active for several years and has helped to modernize German law by taking into account the challenges of digital technology. Perhaps France will follow this path.

From now on, it is advisable to take an interest in England which decided to create a service comparable to the DEU as well as a new regulation.

Section 2: The UK approach relying on the creation of a new unit and a new set of rules

Since 2018, as a consequence of the Furman report which propose the creation of a dedicated unit, the UK Government is planning to set up such a unit. This has been done in April 2021 as the Digital Markets Unit started to

⁸⁶ *Bundeskartellamt - Homepage - The French Autorité de La Concurrence and the German Bundeskartellamt Present Their Joint Study on Algorithms and Competition.* https://www.bundeskartellamt.de/SharedDocs/Meldung/EN/Pressemitteilungen/2019/06_11_2019_Algorithms_and_Competition.html?nn=3591568. Accessed 28 Mar. 2021.

work from the 7th April 2021. This Unit is within the Competition and Markets Authority⁸⁷.

However, we should not think that nothing like this existed before. Indeed, as indicated by a publication on the UK government website dated May 2018, Stefan Hunt was appointed to head the new data unit⁸⁸. “ As part of his role as Chief Data and Digital Insights Officer, Stefan will help develop and deliver an effective data and digital insight strategy to allow the Competition and Markets Authority (CMA) to better understand the impact that data, machine learning and other algorithms have on markets and people “. The unit, which was announced as part of the CMA’s 2017-18 annual plan, will focus on understanding how firms use data and algorithms in their business models and what implications this might have for competition and consumers, developing how the CMA obtains and uses data in its ongoing work, engaging with the tech business, academic research and government data communities in the UK and internationally⁸⁹.

This unit will be in charge to monitor and enforce a new regulatory regime which will be applicable to the biggest digital operators. This will be done via a code of conduct. The UK Department for Business, Energy and Industrial strategy explains⁹⁰ that this Unit will “ oversee a pro-competition regime for platforms including those funded by digital advertising, such as Google and Facebook “. The new code of conduct will allow the consumers to have more choices and a better control over their data and the ways it is used. It is mean to be sure that consumers and small business are not disadvantaged according to the Department.

What is interesting is that this new unit will be empowered to “suspend, block and reverse decisions of tech giants, order them to take certain actions to

⁸⁷ This is the British competition authority

⁸⁸ <https://www.gov.uk/government/news/cma-appoints-stefan-hunt-to-top-digital-role>

⁸⁹ *ibid*

⁹⁰ The explanation can be found on its website: <https://www.gov.uk/government/news/new-competition-regime-for-tech...d-control-over-their-data-and-ensure-businesses-are-fairly-treated>

achieve compliance with the compose and impose penalties for non-compliance”.

Michelle Meagher⁹¹ accepted to answer my questions about this. My first question was about the scope of this modernization which seems to be narrow. Indeed, this is presented by the UK Government as applicable only to platforms funded by digital advertising and which have a “strategic market status”. If Facebook and Google are obvious subjects to the reform, the answer is much more difficult for other platforms. She told me that “the initial focus for the DMU is Facebook and Google's advertising business partly because it follows from the recommendations in the *Furman review* and the *Online Advertising market study*. I would certainly hope that strategic market status is not limited to FB and Google, and not just to consideration of advertising, which as you say would be too narrow. I think reform and regulation will be tricky for any of the platforms and each of Apple, Amazon, Facebook, Google and Microsoft occupy multiple sectors and markets, complicating things. More market studies will help authorities gain a wider and deeper picture of the dynamics at play, but must be followed by enforcement action (unlike the online advertising market study which deferred interventions to the yet-to-be-created DMU). “

Then, we talked about the timing of setting up such units. Is it too late ? Michelle thinks that it is probably too late but she supposes that “ better late than never “. Also, we discussed about the different ways chosen by France and the UK. She told me that “ the different jurisdictions are experimenting and we do not know yet what setup will work best, although new laws and a new specialized unit (adequately resourced and staffed) does seem like a sensible approach. Either way, the regulators have their work cut out for them. And it all depends what the new laws (or old laws) say and how they are

⁹¹ Michelle is the author of *Competition Is Killing Us* (Penguin Business), a book about corporate power and accountability and the myths embedded in free market capitalism and shareholder primacy. She has worked as a lawyer in private practice for global law firms (Linklaters LLP, Allen & Overy LLP), national regulators (the Office of Fair Trading in the UK and the Federal Trade Commission in the US) and the International Finance Corporation (World Bank Group).

enforced: the News Media Code debacle in Australia shows us that what seems like a progressive law to make tech platforms pay for scraping news can actually be manipulated by the tech companies and act to serve the interests of other big players, to the detriment of smaller players“.

Ms. Meagher was interviewed by an Italian journalist and she talked about the New Competition Tool as a missed opportunity. Now this has changed as the NCT seems to be forgotten and replaced by the DMA. I asked for details about that. She told me that “ what I meant by missed opportunity was that the early consultations on the New Competition Tool indicated that it could have been a broad tool for market investigations applicable to any sector, not just digital. This would have been helpful because if the Commission identified problems in the course of such a market investigation then it could impose remedies on the industry without having to meet the sometimes impossible and paradoxical standards for proving an infringement under Articles 101 and 102. In other words it would have been a way to leave behind some of the baggage of precedent that makes it difficult for the Commission to serve the public interest and allow them to develop a new line of case law on issues such a privacy and sustainability that do not always fit neatly into the consumer welfare framework. Instead, the NCT was neutered down into a tool to identify new gatekeepers in digital markets (on the last version of the documents I saw). In my view this leaves the Commission always playing catch-up with one hand tied behind its back and never able to get the wider view it would need to keep up with the pace of technological change. “

Afterwards, we talked about the cooperation between the UK and EU Member States on competition issues. She thinks “ there ought to be much more international cooperation, not just on individual cases but also in coordinating regulatory strategy. Otherwise dominant, global companies are playing the regulatory game with a huge advantage because countries are not exercising the potential might of their sovereign collective power. “

To conclude our discussion, I asked a question about her book in which she explains the the six myths about competition and one of them is that free market is competitive. Indeed, she explained that the phenomenon of concentration has never been so important. The digital world is a perfect example of this. I asked her what are her thoughts about these first initiatives by legislators. Is it a lost battle or on the contrary will it allow new competitors to offer better quality products and services, thus improving consumer welfare? She does not trust “ that competition or more competitors serves consumer welfare. Indeed I think that consumer welfare is a secondary concern or just one element of what we should be concerned about. I argue that the fundamental threat posed by concentration is the accumulation of corporate power and the harms that come from such imbalances of power in the economy and society. Yes the products absolutely could be better (i.e. less extractive and exploitative) and no doubt would be if consumers had more choice, which means that competition will likely improve things. But my concern with privacy stems more from a concern with power than the quality of the products or consumer welfare per se “. As we understand it, there are many issues that have not been answered and will only be answered in the coming months or year. Let's hope that they are satisfactory and that it is not too late to change things.

Conclusion

We are in a pivotal period in which it is still possible to change things. Although it has many positive aspects and advantages, digital technology poses new challenges for competition law and even for law in general. Political powers around the world have decided to act even if some wonder if it is not too late.

We see that different approaches have been put in place. Indeed, the UK decided to create a dedicated digital department within the national competition authority with a modernization of antitrust law while Germany prefers to focus on the modernization of its antitrust law. Even in the United States, big tech companies are under the spotlight following the various antitrust procedures that have been launched against them and the recognition by the American political powers of their potential harmfulness. Indeed, GAFAMs are more and more under fire and investigations for potential antitrust violations are launched against them. In addition, President Joe Biden plans to appoint to the Federal Trade Commission Lina Khan⁹² who is very critical of digital companies. She is not the only critic of Big Tech companies within the Biden administration which is setting up a likely hard-line stance against the powerful industry⁹³. Politico explained that Biden is poised to pursue an aggressive regulatory agenda when it comes to Amazon, Google, Facebook and other tech giants “⁹⁴.”

The European Union, which has been very active in the pursuit of competition law infringements in the digital sector, is also on all fronts,

⁹²Khan, Lina M. *Amazon's Antitrust Paradox*. <https://www.yalelawjournal.org/note/amazons-antitrust-paradox>. Accessed 27 Mar. 2021. In his 2017 paper, Khan proposed a method of studying antitrust. This method not only examines the short-term impact on consumer prices. For decades, this has been the cornerstone of the interpretation of American antitrust policies. She showed how Amazon can control its competitors at a low cost-which seems to benefit consumers in the short term, but also has a profound impact on other aspects of the entire industry.

⁹³ There are also Tim Wu, who is working on competition and technology policy on the National Economic Council, and Vanita Gupta, who has advocated for civil rights change in Big Tech for a role as associate attorney general at the Justice Department.

⁹⁴ Lizza, Ryan, et al. “POLITICO Playbook: Scoop: Biden Taps Another Big Tech Trustbuster.” *POLITICO*, <https://politi.co/2OdiHTW>. Accessed 27 Mar. 2021.

notably with its "DMA" regulation proposal presented last December and whose ambition is to be adopted in the first half of 2022.

Globally, there is a reflection on the possible need to transcend the current boundaries of competition law by including, for example, environmental protection or the fundamental right to privacy in its scope of action. Indeed, the resounding decision of the Bundeskartellamt where an abuse of dominant position by Facebook following the exploitation of user data risks having repercussions beyond the borders of Germany.

The French competition authority, on the other hand, believes that the current law allows for the apprehension of new digital behaviors without the need for legislative intervention due to the flexibility in the drafting of this law. Digital technology has been a priority for the Authority for several years and in order to reinforce the human resources dedicated to it, it was decided to create a unit dedicated to digital technology: the Digital Economy Unit. France was a forerunner in being the first national authority to create a department dedicated to the digital economy. Although young, we can see that this unit will be a real Swiss army knife for the authority since it will be involved in all the cases and reflections related to digital. This ambition seems excessive for only 4 people.

This is why this service can count on the cooperation with other national actors (professionals and academics) but also international ones since other authorities are setting up this kind of service. Moreover, the ECN can be seen as a springboard in view of the important role played by the competition authority within it and therefore, allow a movement of digital expertise.

We are only at the beginning of a movement that is likely to grow over the next few months and years as the DEU looks set to expand further and further by developing new tools and recruiting more specialists, perhaps in areas we don't even know exist today.

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Bibliography

Books

Ariel Ezrachi, Maurice E. Stucke, "Virtual competition: the promise and perils of the algorithm-driven economy ", Cambridge, Harvard University Press, 2016, 349 pages

Ariel Ezrachi, Maurice E. Stucke, "Competition overdose : how free market mythology transformed us from citizen kings to market servants" , New York, NY: Harper Business, HarperCollinsPublishers, 2020, pages X

André Decocq, Georges Decocq, " Droit de la concurrence : droit interne et droit de l'Union européenne ". Issy-les-Moulineaux: LGDJ, Lextenso, 2018,

Jones Alison, B. E. Sufrin, " EU competition law : text, cases, and materials ", Oxford, United Kingdom New York, NY: Oxford University Press, 2016,

Michel Lefebvre, " 40 cartes pour comprendre la Chine ", Le Monde Hors-Série, mars-mai 2021 , 114 pages

Nathalie Doury, Laurence Idot, André Marie, " Les inspections de concurrence des autorités françaises ". Paris: Institut de droit de la concurrence, 2019,

Review Articles

Anne-Sophie Choné-Grimaldi, "Digital Services Act Vers un nouveau droit de la concurrence et de la régulation applicable au secteur numérique ? ", La Semaine Juridique Edition Générale n° 49, 30 Novembre 2020, doctr. 1360

Colleen Cunningham, Florian Ederer, Song Ma, "Killer acquisitions" , Journal of Political Economy, Vol. 129, No. 3, March 2021, 97 pages

Godefroy de Moncuit de Boiscuillé, "Commerce en ligne : L'Autorité de la concurrence publie une étude intitulée "Concurrence et commerce en ligne" ", Concurrences N ° 4-2020

David BOSCO, " L'ère de la " post-modernisation ouverte par l'Autorité de la concurrence " , Contrats concurrence consommation, n° 3, March 2020, Lexis Nexis, 2 pages

David Bosco, " L'Autorité de la concurrence propose de créer un droit spécial pour les plateformes numériques dites " structurantes " ", Contrats Concurrence Consommation n° 4, Avril 2020, comm. 69, 2 pages

David BOSCO, " Le " nouvel " article 22, un forçage du règlement européen sur les concentrations " , Contrats - Concurrence - Consommation n° 11, November 2020, Lexis Nexis, 2 pages.

David Bosco, "L'avenir du droit de la concurrence ", contrats-concurrence-consommation, N°12, 20 décembre 2020

David Bosco, " La Commission dévoile ses propositions pour façonner l'avenir digital de l'Europe ", Contrats Concurrence Consommation n° 2, Février 2021, comm. 27

Emmanuelle Claudel, "Numérique : le droit de la concurrence français à l'offensive", RTD Com. 2020, p.806

Jacques Crémer, Jorge Padilla, " How to make competition policy fit for the digital age? ", Concurrences N° 2-2020, www.concurrences.com

Jean-Christophe Roda , " Google dans la tourmente concurrentielle " , Recueil Dalloz 2020, Cahiers de droit de l'entreprise n° 3, Mai 2017, dossier 17, p.2176

Jean-Christophe Roda, " l'entente algorithmique ", la semaine juridique - édition général, n°28, 15 July 2019, Lexis Nexis, 7 pages

Khan, Lina M, " Amazon's Antitrust Paradox ", The Yale Law Journal, Volume 126, N°3, 564-907, January 2017, <https://www.yalelawjournal.org/note/amazons-antitrust-paradox>.

Latham & Watkins Antitrust & Competition Practice, " The New German Digitalization Act: An Overview ", Client alert New Flash n° 2849, 20 January 2021

Laurence Idot, Guillaume Daieff, Isabelle Da Silva, Linda Arcelin, Mathilde Boudou, Jean-Louis Fourgoux, Yann Utzschneider, Anouk Clamens, Christophe Lemaire, " La loi DDADUE: simple adaptation ou réforme du droit français de la concurrence ? ", Concurrences on-topic, n° 1-2021, pages 22-62
Linda Arcelin, "Le droit de la concurrence mis à l'épreuve par le numérique ", La semaine juridique entreprise et affaires, n°45, 7 novembre 2019, 1493

Maouche Samia, "Zoom sur le nouveau service de l'économie numérique de l'Autorité de la concurrence"

Muriel CHAGNY, "L'intermédiaire - Les plateformes numériques et le droit de la concurrence ",

O. de M. "La politique de concurrence face aux enjeux posés par l'économie numérique ", *Cahiers de droit de l'entreprise* n°2, mars 2020, act. 13

Osborne Clarke, "Digital regulation 2.0: UK to set up new competition regime for digital markets", Lexology, January 11 2021

Walid CHAIEHLOUJ, " Quels outils efficaces pour les autorités de concurrence dans l'économie numérique ? ", *Contrats-concurrence-consommation*, N°3, mars 2020, LexisNexis 15 pages

William Kovacic, Carl Shapiro, " Antitrust Policy: A century of Economic and legal thinking ", *The journal of economic perspectives*, vol. 14, n°1, 2000, 17 pages

Press Articles and Press releases

Autorité de la concurrence, " L'autorité de la concurrence annonce ses priorités pour l'année 2020 ", 9 January 2020, <https://www.autoritedelaconcurrence.fr/fr/communiqués-de-presse/lautorite-de-la-concurrence-annonce-ses-priorites-pour-lannee-2020>

Autorité de la concurrence, “ Après une année très soutenue en 2020, l’Autorité de la concurrence annonce ses priorités, pour 2021, qui seront centrées sur l’économie numérique “, 13 December 2020, <https://www.autoritedelaconcurrence.fr/fr/communiqués-de-presse/apres-une-activite-tres-soutenue-en-2020-lautorite-de-la-concurrence-annonce>

Competition and Markets Authority, “CMA appoints Stefan Hunt to top digital role“, 18 May 2018, <https://www.gov.uk/government/news/cma-appoints-stefan-hunt-to-top-digital-role>.

Press office Bundeskartellamt, 2019. *Joint press release: The French Autorité de la concurrence and the German Bundeskartellamt present their joint study on algorithms and competition*, https://www.bundeskartellamt.de/SharedDocs/Publikation/EN/Pressemitteilungen/2019/06_11_2019_Algorithms_and_Competition.pdf?__blob=publicationFile&v=2

Online articles

Alex Hern, “ Digital Markets Unit : what powers will new UK tech regulator have ?”, The guardian, 14 decembre 2020

Anais Moutot, “ Face aux Gafa, la nécessaire refonte des lois antitrust “, Les Echos, 13 juin 2019

Corine Lesnes, “Les PDG de Facebook, Google et Twitter en accusation devant le Congrès américain pour leur rôle dans la désinformation.” Le Monde, 26 March 2021, https://www.lemonde.fr/economie/article/2021/03/26/zuckerberg-pichai-dorsey-les-pdg-des-reseaux-sociaux-en-accusation-au-congres_6074545_3234.html.

Edmond Baranes, Andreea Cosnita-Langlais, “ Les défis posés par l’économie numérique aux politiques de concurrence “, *Annales des Mines - Réalités industrielles*, 2016/3 (Août 2016), p. 28-31. DOI : 10.3917/rindu1.163.0028. URL : <https://www.cairn.info/revue-realites-industrielles-2016-3-page-28.htm>

Frédéric Schaeffer, “ Pékin inflige une amende record à Alibaba “, Les Echos, 10 avril 2021, <https://www.lesechos.fr/industrie-services/conso-distribution/pekin-inflige-une-amende-record-a-alibaba-1305749>

Herbert Hovenkamp, “Review, The Regulatory. *Antitrust Remedies for Big Tech*“, The Regulatory Review, 18 January 2021, <https://www.thereview.org/2021/01/18/hovenkamp-antitrust-remedies-big-tech/>.

Kirrage, Osborne Clarke-Katherine, Lucy Paull. “Digital Regulation 2.0: UK to Set up New Competition Regime for Digital Markets“, Lexology, 11 January 2021, <https://www.lexology.com/library/detail.aspx?g=af2d590e-62a8-4202-9443-6236588fc796>.

Lauren Feiner, “Biden Is Loading up His Administration with Big Tech’s Most Prominent Critics.” CNBC, 9 March 2021, <https://www.cnbc.com/2021/03/09/biden-loads-administration-with-big-techs-most-prominent-critics.html>.

Melissa Cyrill, “What is made in China 2025 and why has it made the world so nervous ?”, China Briefing, Dezan Shira & Associates, 28 décembre 2018, <https://www.china-briefing.com/news/made-in-china-2025-explained/>

Paul Kari, “This Is Big: US Lawmakers Take Aim at Once-Untouchable Big Tech.” The Guardian, 19 December 2020, <http://www.theguardian.com/technology/2020/dec/18/google-facebook-antitrust-lawsuits-big-tech>.

Rupprecht Podszun, “Facebook: Next Stop Europe.” *D’Kart*, 25 Mar. 2021, <https://www.d-kart.de/en/blog/2021/03/25/facebook-next-stop-europe/>

Rachel Lerman, “Biden to Nominate Big Tech Critic Lina Khan to Federal Trade Commission.” *Washington Post*. www.washingtonpost.com, <https://www.washingtonpost.com/technology/2021/03/09/lina-khan-biden-ftc/>. Accessed 27 Mar. 2021.

Ryan McMorrow, Yuan Yang, “Chinese regulators fine Alibaba record \$2.8bn”, Financial Times, 10 April 2021, <https://www.ft.com/content/bb251dcc-4bff-4883-9d81-061114fee87f>

Sofia Baruzzi, “China Enforces Antitrust Guidelines on its Online Economy”, China Briefing, Dezan Shira & Associates, 19 February 2021. <https://www.china-briefing.com/news/china-antitrust-guidelines-enforcement-online-economy/>

Sofia Baruzzi, “China releases anti-monopoly guidelines for its platforms economy”, China Briefing, Dezan Shira & Associates, 16 December 2020. <https://www.china-briefing.com/news/china-releases-anti-monopoly-guidelines-for-its-platform-economy/>

Steve Lohrs. “What Is Happening With the Antitrust Suit Against Google?” *The New York Times*, 20 Oct. 2020. [NYTimes.com](http://www.nytimes.com), <https://www.nytimes.com/2020/10/20/technology/antitrust-google.html>.

Thibault Schrepel, “L’intelligence artificielle, précieuse alliée de la lutte contre les pratiques anticoncurrentielles”, *Le Monde*, 15 février 2021

Tony Romm, “House Investigation Faults Amazon, Apple, Facebook and Google for Engaging in Anti-Competitive Monopoly Tactics.” *Washington Post*. www.washingtonpost.com, <https://www.washingtonpost.com/technology/2020/10/06/amazon-apple-facebook-google-congress/>. Accessed 27 Mar. 2021.

Tony Romm, “U.S., States Sue Facebook as an Illegal Monopoly, Setting Stage for Potential Breakup.” *Washington Post*. www.washingtonpost.com, <https://www.washingtonpost.com/technology/2020/12/09/facebook-antitrust-lawsuit/>. Accessed 28 Mar. 2021.

Tony Romm, et al. “House Investigation Faults Amazon, Apple, Facebook and Google for Engaging in Anti-Competitive Monopoly Tactics.” *Washington Post*. www.washingtonpost.com, <https://www.washingtonpost.com/technology/2020/10/06/amazon-apple-facebook-google-congress/>. Accessed 27 Mar. 2021.

Reports

Daniel Zipser, Felix Poh, “ Understanding Chinese Consumers: growth engine of the world “, China consumer report 202, McKinsey & Company, November 2020, 156 pages

Departement for Business, Energy & Industrial Strategy, “New competition regime for tech giants to give consumers more choice and control over their data, and ensure businesses are fairly treated“, 23 December 2020

German Federal Ministry for Economic Affairs and Energy, “ A new competition framework for the digital economy “, Report by the Commission “ Competition Law 4.0 “, September 2019, 88 pages

Jacques Crémer, Heike Schweitzer Montjoye, “Competition policy for the digital era“, Publications Office of the European Union, Luxembourg, 2019

Subcommittee on antitrust, commercial and administrative law of the committee on the judiciary: “ Investigation of competition in digital markets “, US House of Representatives, 2020, 450 pages

OECD, “E-commerce in the times of COVID-19“, 7 October 2020, 10 pages, https://read.oecd-ilibrary.org/view/?ref=137_137212-t0fjgnerdb&title=E-commerce-in-the-time-of-COVID-19

EU and International texts

Directive 2000/31/CE of the European Parliament and of the Council of 8th June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market known as the Directive on electronic commerce.

Council Regulation (EC) no 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty.

Directive (EU) 2019/1 of the European Parliament and of the Council of 11 December 2018 to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market.

Directive 2000/31/CE of the European Parliament and of the Council of 8th June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market known as the Directive on electronic commerce.

Proposal for a Regulation of the European Parliament and of the Council on a Single Market For Digital Services (Digital Services Act) and amending Directive 2000/31/EC. COM/2020/825 final