

**DENTONS**

# Regulating, regulating, regulating

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Grow | Protect | Operate | Finance



# Regulating digital services - polycymaking point of view

- **Managing negative externalities** with the benefits that we get from digital platforms in our everyday life.
  - Governments' goals: achieve societal objectives, such as keeping citizens safe, preserve privacy, tackle crime or safeguard/improve competition.
  - Citizens' objective: more choice, lower prices
  - Companies' objectives: profit maximization
  - Lawyers', consultants', advisors' objectives: help compliance, represent clients before agencies, courts, in arbitration/mediation procedures, but... to **earn fees**.
- Challenges are ...
  - global, not regional. **Hence: regulatory protectionism and nationalistic economic thinking is the wrong way.**
  - challenges are also cross-sectoral. Recent (good) example is the UK's Digital Regulation Cooperation Forum (DRCF), which has four regulators – ICO, Ofcom, CMA, FCA –, which has just set out its long-term, 3-year vision. Central elements: responsible innovation, AI governance, Protecting and empowering people online, unlocking digital innovation and economic growth, supporting regulator effectiveness, leading domestic and international discussions, anticipating future developments. **What is our example?**

# Regulating digital services - a compliance point of view

- **Regulatory insight:** understand what's cooking? Where are all the obligations, requirements on AI, privacy, data sharing, content, safety // antitrust and cyber. Businesses don't like regulation but what they like even less is uncertainty about regulation, so they are interested in accessing new and existing information on regulators' responsibilities, remits and priorities. Regulatory clarity is gold.
- **Engagement:** regulatory insight comes with engagement with policymakers, regulators, agencies.
  - Drumbeat is louder because of the new consultations, policies, announcements, reports, social media updates.
  - Research on future technologies becomes increasingly important: quantum, post quantum, deepfakes, digital identity.
- **Risk management:** adopt or not to adopt? follow or lead or wait, and see?
- **Provision of a global service:** EU, Japan, US, Korea, Australia, India all adopt – enforce increasingly similar rules. Therefore, compliance is similar.

# Regulating digital services - a risk-taking point of view

- “Paradox of thrift” — the paradox being that an individually virtuous act (greater saving) was collectively calamitous (economic slump).
- Currently:
  - ***Risk-aversion is rife. Security is exceeding opportunity.***
  - Economies face a “***paradox of risk***”.
  - Regulations put in place to curb risk are having the same, paradoxical, impact.
  - “Defensive mind-set”. There is “no creative destruction”, Schumpeter-style.
  - “Reallocation rate” – job creation and destruction: fallen sharply among OECD countries since 2000.
  - Productivity has been growing half-rate pre-crisis.
  - There are less business start-ups, which means less innovative companies with higher productivity. Motto: “surviving but not thriving”.
- ***Regulatory rules around competition and digital markets have had a chilling effect on boardroom risk appetite.*** They now need to be adjusted (sustainable growth, safe environment, happiness).

# General approach to (*new*) economic regulation of digital markets

- Economic thinking, public policy-making and hence market regulation has mainly been driven by the **neoclassical** economic philosophy: **isolating system components**.
  - Similarly, a focus on maximising economic growth of individual countries or economic regions (EU, US, China) assumes that the wellbeing in those countries is independent of the wellbeing in others.
  - This should no longer be the case: established global value chains, intertwined dependencies of regions and the effect of human activities on the environment do not let this thinking to prevail.
- When making **public policy and deciding about regulation, the price signal of creating new blocs** (i.e. by the DMA or by the DSA) **should be well understood**.
  - What is the externality that we are to account for by designating gatekeepers?
  - Are, in the long term, such externalities being considered?
  - Are we considering a component of the system (digital markets) and in a particular part of the world (EU) independent of the complex Earth ecosystem?
  - Check New Zealand's Living Standards Framework (four capitals: natural, human, social, financial).
  - International cooperation between governments is mandatory.
- Considering such principles at ***pre-compliance level*** and ***testing them in real environment*** would likely influence how enforcement and the supervision of that first-hand enforcement is completed in the Courts.
- ***Insulation of competition policy*** from the broader global economic agenda is not a good navigator for the DMA, DSA regimes.

# Take-aways?

1. Should **policy-making *comply*** with **risk-taking**?
2. **Belgian Council Presidency conclusions** (May 2024) on the priorities for the next mandate
  - Effective, coherent and efficient implementation
  - Minimum administrative burden for companies
  - Common EU approach to innovative technologies
  - Economic openness and dynamism
  - Safe, trustworthy and responsible environment
  - Digital and green transition hand in hand
  - Digitally skilled workforce, particularly women
  - International dimension of digital policy through partnerships, digital trade agreements
  - More coordinated approach, more proactive actions
3. Labour shortage-technical skills-digital skills/issues vs digital markets, digital market regulation
4. Re-allocation, re-skilling, migration policy
5. **Digital innovation**
  - Lack of access to finance, lack of access to skills, incomplete single market, burdensome regulation.
  - Lots of law aiming at cross-border type of actions. Eurostat data shows: noting changed.
  - Solutions: trusted EU structure for investment instruments –pension funds and insurance should be able to invest in pre-IPO risk capital – insolvency laws to change.
  - Pruductisation vs basic research.
  - Simple easing of competition rules (with a specific telecom aim) is not the solution.
  - Regulation: slow down in enacting new laws, use the „better regulation” process.
  - Evaluation of existing laws should not be with the Commission but instead with CoA?