

ENFORCING THE EU'S NEW COMPETITION RULES

OVERVIEW

EU member states came to an agreement this month on who will enforce new tech regulation. Government ministers decided to delegate sole enforcement authority to the European Commission for the proposed Digital Markets Act. The rejected alternative was to share enforcement powers among the national regulators.

BACKGROUND

The Digital Markets Act (DMA) was first introduced by the European Commission late last year. The DMA aims to make Europe's digital economy more competitive by requiring the largest tech platforms to comply with a list of rules that are meant to benefit competitors and consumers. Failure to comply with these rules could potentially result in fines up to 20% of a company's global annual sales, and/or structural remedies including forced divestitures.

The EU's legislative process requires the Council of the European Union – an EU legislative body made up of government ministers from each member state – to decide a common position on draft legislation. After a common position is reached, negotiations begin with the European Parliament.

WHY IS THIS IMPORTANT?

The DMA has generally received broad support from member states. On the matter of enforcement, however, there has been disagreement on whether powers should be centralized with the Commission or shared with national competition regulators. Those in favor of centralizing enforcement point to the failures of the EU's data protection law, the General Data Protection Regulation (GDPR). Under the GDPR, enforcement has been delegated to national data protection authorities. This has resulted in small and comparatively under-resourced countries, such as Ireland and Luxembourg, left to work through a backlog of cases against the world's largest firms that are headquartered there. The ineffectiveness of the GDPR's enforcement has been conceded by former Commission officials involved in its design. However, not all parties are in favor of the DMA being left solely to the Commission. In September 2021, representatives from France, Germany, and the Netherlands published a letter arguing that member states should play a larger role in enforcing the DMA to prevent it from undermining existing national competition laws. The letter also suggests that the Commission is not adequately resourced to enforce the DMA on its own – implying that the DMA will suffer from the same enforcement bottlenecks that have impacted the GDPR.

WHAT HAPPENS NEXT?

The EU's legislative process calls for the Council to use this common position to negotiate the final text of the DMA with the European Parliament. France will lead these negotiations as the Council's Presidency from January – June 2022. Expectations are that the negotiations should be resolved quickly, with the Commission's competition chief, Margrethe Vestager calling for urgency in passing the new rules even if they are not 100% perfect.