The Regulation of Big Tech: Antitrust Challenges in the Digital Economy

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Abstract

Traditionally, competition is closely linked to a number of economic indicators, such as consumption, the relevant market, competing companies, production and distribution chains, etc. A healthy competitive environment operates on the basis of supply and demand. However, we cannot speak of perfect competition, in which demand coincides with supply, which leads to some market dysfunctions, and the battle between competitors is not always a fair one, based on economic concepts. There has always been a tacit battle for expansion between competitors, whether vertical or horizontal. In addition, the pandemic has brought about many changes in consumer behavior, leading to a migration of consumers to the online environment. A new concept was born, that of the digital economy, where large technology companies — generically known as Big Tech — already had a significant influence on information flows and economic and social decision-making processes. The rapid growth of these platforms has created major challenges for competition authorities whose legal instruments were designed in a pre-digital economic context. In this study, we aim to analyze the main difficulties encountered in applying competition law in relation to tech giants. To this end, we will analyze the extent to which the recent Digital Markets Act and Digital Services Act regulations respond to current challenges. We propose to use a qualitative-comparative methodology based on a normative analysis of the European and American legal framework, correlated with an examination of relevant cases from the case law of the European Union and the United States (Google, Amazon, Meta, Apple, Microsoft), in order to illustrate the current and relevant overview of how traditional competition law paradigms work in the digital environment.

Keywords: *Big Tech, competition, digital economy, Digital Markets Act, regulation, abuse of dominant position, antitrust.*

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1. Methods

In this study, we propose to use a series of methodological tools specific to legal sciences. First, the fundamental concepts of competition law (relevant market, dominant position, abuse of economic power) will be analyzed using logical methods in the

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context of the new digital economy.

Secondly, comparative and historical methods are applied to identify global trends in the control of digital platforms. Equally, the research is based on an interdisciplinary analysis, integrating economic concepts (relevant market, digital market, demand, supply, monopoly, etc.) and legal concepts to highlight how these characteristics affect the assessment of market power and anti-competitive behavior. The research also uses a prospective method, aiming to identify possible directions for the evolution of the legal framework applicable to large digital platforms. By observing current trends in legislation and case law, the analysis seeks to predict plausible scenarios for adapting competition law to the realities of the data-driven economy. The comparative dimension of the research aims to highlight the regulatory divergence between the European Union's proactive ex ante regulatory model and the more litigation-oriented antitrust approach traditionally adopted in the United States.

2. Introduction

Traditionally, competition law is seen as a beacon that watches over markets and ensures that economic operators compete on price, quality, and innovation, in accordance with the principles of free competition and the open market. In particular, compliance with fair competition rules involves preventing and combating restrictive agreements between competitors, preventing abusive behavior by large economic players that occupy a significant part of a market and a dominant position, and preventing and controlling economic concentrations that may lead to a dominant position. In this context, it is particularly important to identify the relevant market in which an undertaking holds a dominant position or engages in other anti-competitive behavior. Therefore, we can generically define the market as the place where supply meets demand and whose balance is maintained, in Adam Smith's view, by an *invisible hand*.

Over time, the development of trade has led to the expansion of markets, from local, regional, and national to global. In this context, supervising and enforcing general rules of fairness for all actors involved has become a real challenge. The relevant market is a concept specific to competition law and should be understood as the place where economic operators carrying out similar activities meet, more precisely the place where both the demand and supply of goods and products that are substitutable for each other are found. Determining the relevant market is important in the context of competition authorities applying competition rules to identify whether and to what extent the economic activity of the economic operators involved affects the balance between supply and demand for certain products and/or services. The aim is thus to determine the range of products and/or services for which producers or suppliers compete with each other.

Recent developments in the global economy have led to a change in approach to how competition operates and should be analyzed and subsequently regulated. It can be observed that the classic concepts of product, service, price, location, relevant market, etc. have become increasingly difficult to identify and monitor in the context of

the emergence and development of a digital economy that operates with digital data and markets. The classic mechanisms used by competition authorities have proven increasingly difficult to apply and sometimes even ineffective in the case of online platforms, which operate simultaneously in several market segments, connect users globally, and operate with data instead of goods and/or services. The internal market, defined in the Single European Act of 1986[2] as "an area without internal frontiers, where the free movement of goods, persons, services, and capital is ensured in accordance with the provisions of this Treaty" (Treaty of Rome), has thus become a digital market.

In the context of digitization, the European Commission has emphasized that a digital single market would enable consumers and businesses to fully benefit from the opportunities offered by the internet and digital technologies. Therefore, in the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee, and the Committee of the Regions entitled 'A Digital Single Market Strategy for Europe', the digital single market is described as one in which 'the free movement of goods, persons, services, and capital is ensured, and individuals and businesses, regardless of their nationality or place of residence'; they 'can enjoy uninterrupted access to online activities and can engage in such activities under conditions of fair competition and a high level of consumer and personal data protection'[3]. However, the Covid pandemic has been a point of reflection for European authorities. For a significant period of time, everyone's lives, globally, micro and macro, moved online. The experience of that period revealed all the imperfections of the European Digital Single Market and highlighted the need to create functional mechanisms to ensure greater protection for all those involved[4]. Starting in 2020, as part of the European Digital Strategy - 'A Europe Fit for the Digital Age', on December 15, the European Commission published the legislative package on digital services, consisting of two regulatory proposals: the Digital Services Act (DSA)[5] and the Digital Markets Act (DMA)[6].

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[2] Single European Act, art. 13 (inserting art. 8a into the EEC Treaty), *Official Journal of the European Communities* L 169 (June 29, 1987): 1–28, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:11986U/TXT.

[3] European Commission, *A Digital Single Market Strategy for Europe*, COM(2015) 192 final, May 6, 2015, sec. 1, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52015DC0192.

[4] Carsten Schmidt and Robert Krimmer, "How to Implement the European Digital Single Market: Identifying the Catalyst for Digital Transformation," *Journal of European Integration* 44, no. 1 (2022): 59–80, https://doi.org/10.1080/07036337.2021.2011267.

[5] Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services and Amending Directive 2000/31/EC (Digital Services Act), *Official Journal of the European Union* L 277 (October 27, 2022): 1–102, https://eur-lex.europa.eu/eli/reg/2022/2065/oj/eng; for the proposal published on December 15, 2020, see European Commission, *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, December 15, 2020, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52020PC0825.

[6] Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on Contestable and Fair Markets in the Digital Sector and Amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act), *Official Journal of the European Union* L 265 (October 12, 2022): 1–66, https://eur-lex.europa.eu/eli/reg/2022/1925/oj/eng; for the proposal published on December 15, 2020, see

Also with a view to creating a strong single market, fair competition, and functional trade based on rules, on March 9, 2021, the European Commission adopted a new Communication: '*2030 Digital Compass: The European way for the digital decade*'[7], which will monitor the pace of digital transformation, gaps in strategic digital capabilities, and the implementation of digital principles across the European Union in four main areas, focusing on digital capabilities in infrastructure, education, and skills, as well as the digital transformation of businesses and public services. By 2030, in the context of intensified digital trade through secure networks, European businesses will have the opportunity to become more competitive and operate in a fair and competitive digital economy.

Thus, the emergence of digital markets has not replaced the concept of the relevant market, which remains a fundamental analytical tool in competition law. However, the digitalization of economic activities has significantly complicated the process of market definition. Digital platforms often operate simultaneously on multiple interdependent markets, characterized by network effects, data accumulation and multi-sided interactions, which challenge traditional approaches to market delineation used in competition law[8].

Faced with these challenges, a dual trend is emerging. On the one hand, concepts such as 'relevant market', 'dominant position', and 'abuse' need to be rethought and integrated into the specificities of the digital environment. On the other hand, legislative instruments such as the Digital Markets Act (DMA) and the Digital Services Act (DSA) must prevent abuse by establishing very strict rules of conduct for tech giants.

3. Theoretical Challenges of Competition Law in Digital Markets

Digital markets operate predominantly through multi-sided platforms that facilitate interactions between distinct groups of users, such as consumers, advertisers, and business partners. As economic literature has shown, platforms internalize cross-group network effects, meaning that the value of the service increases as the number of users on one side of the platform grows. This dynamic can lead to market concentration and tipping effects, where a single platform becomes dominant and difficult to challenge by potential competitors.

In addition, the accumulation of vast amounts of user data has become a structural barrier to entry. Data allows incumbent platforms to improve algorithmic recommendation systems, personalize services, and refine targeted advertising

European Commission, *Proposal for a Regulation of the European Parliament and of the Council on Contestable and Fair Markets in the Digital Sector (Digital Markets Act)*, COM(2020) 842 final, December 15, 2020, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52020PC0842.

[7] European Commission, *2030 Digital Compass: The European Way for the Digital Decade*, COM(2021) 118 final, March 9, 2021, sec. 3, https://commission.europa.eu/system/files/2021-09/communication-digital-compass-2030_en.pdf.

[8] Michelle Cini and Patryk Czulno, "Digital Single Market and the EU Competition Regime: An Explanation of Policy Change," *Journal of European Integration* 44, no. 1 (2022): 41–57, https://doi.org/10.1080/07036337.2021.2011260.

strategies. As a result, potential competitors face significant obstacles when attempting to enter digital markets where incumbents benefit from strong network effects and data-driven advantages.

These characteristics raise significant challenges for traditional competition law tools, which were designed primarily for single-sided markets and price-based competition. In digital environments, services are often offered free of monetary charge, while value is generated through data extraction and attention-based business models.

4. The Importance of Big Tech in the Digital Economy

In a digital market economy, legal mechanisms for maintaining fair competition must adapt to an economy based on platforms, algorithms, and data, where traditional notions of relevant market and price no longer provide a sufficient benchmark for assessing anti-competitive behavior.

In this context, we need to identify the major players in digital markets and clarify how they operate.

The term "Big Tech"[9] is commonly used in academic and policy debates to describe large technology companies that operate global digital platforms and possess significant market power derived from network effects, data accumulation, and control over digital infrastructures. Scholars such as Shoshana Zuboff and Nick Srnicek have emphasized that these companies exercise structural influence within the digital economy by controlling key infrastructures of data extraction and platform-based economic interactions. The name is inspired by other concepts such as Big Pharma or Big Oil, which refer to companies with significant market power due to network effects, the huge volume of data collected, the ability to integrate services, and the role of indispensable intermediary in accessing consumers. In academic literature, the power of Big Tech companies is often compared to that of states, due to their size and financial dominance. For example, Facebook's size is regularly compared to that of a country with a growing population, while the combined revenues of Alphabet Co., Amazon,

[9] Microsoft develops desktop operating systems, productivity software and enterprise and cloud services. As of 2024, its products include Microsoft Windows, the Microsoft Office and Microsoft Teams business communication. Apple designs and sells electronics and software, including iPhones, Mac computers, and Apple Watches. It also offers services such as the App Store, iCloud, and Apple Music. Alphabet is the parent company of Google, which operates some of the world's most widely used internet services. As of 2024, Google is a major provider of online advertising (Google Ads), web search (Google Search), video sharing (YouTube), email (Gmail), web browsers (Google Chrome), web mapping (Google Maps and Waze), mobile operating systems (Android), and cloud storage (Google Drive). Its cloud computing division, Google Cloud Platform, ranks third in global market share. Amazon is one of the largest global e-commerce companies and operates several other business lines, including cloud computing, digital streaming and artificial intelligence. As of 2024, Amazon accounts for 38% of e-commerce market share in the United States. Meta Platforms owns and operates major social media and messaging services, including Facebook, Instagram, Threads and WhatsApp. Meta generates most of its revenue through advertising, which accounted for 97.65% of total revenue in 2024. For Meta's 2024 advertising and total revenue figures, see Meta Platforms, "Meta Reports Fourth Quarter and Full Year 2024 Results," January 29, 2025, table "Segment Information," https://investor.atmeta.com/files/doc_financials/2024/q4/Meta-12-31-2024-Exhibit-99-1-FINAL.pdf.

Facebook, and Apple rival the gross domestic product of a state. Another indicator of Big Tech's power is their social influence, which has been highlighted in election campaigns in countries such as the US, Romania, Poland, Moldova, and Germany. These companies therefore represent systemic digital intermediaries whose economic influence extends across multiple sectors of the digital economy[10].

Their economic power derives not only from their financial size or market capitalization, but above all from their ability to create and control digital infrastructures that support the functioning of the digital economy — from search engines and social networks to e-commerce ecosystems, operating systems, and cloud computing services. In addition, these companies allocate significant resources to research and innovation in order to identify and develop new economic sectors, such as online platforms, digital entrepreneurship, and data control. A defining feature of Big Tech's power is its access to vast amounts of personal data, which allows these companies to program increasingly sophisticated algorithms, personalize services, and anticipate consumer trends with unprecedented accuracy. Data has thus become a particularly valuable economic asset, as those who collect it gain a competitive advantage (when gathering data from their direct competitors) and thereby consolidate their dominant position. In addition, data can be traded, and data trading has expanded. Therefore, we can say that Big Tech has gained a dominant position in digital markets precisely through the platformization of the economy. All Big Tech companies are online platforms that have had and continue to have access to data, which they collect and analyze to develop algorithms that shape consumer preferences and behaviors, steering buyers' decisions in directions that are profitable for the platform and consolidating a competitive advantage.

To identify Big Tech companies in legal and legislative terms, the Digital Markets Act (DMA) and Digital Services Act (DSA) use the term "Very Large Online Platforms" (VLOP) to designate entities that reach a certain threshold of users and systemic influence or gatekeepers[11]. Although the Digital Markets Act and the Digital Services Act form part of the same regulatory package for digital services, they pursue distinct legal objectives. The Digital Markets Act establishes ex ante competition obligations for designated gatekeepers in order to prevent unfair market practices and ensure contestability of digital markets. By contrast, the Digital Services Act focuses primarily on transparency, accountability and risk management obligations for online platforms, including Very Large Online Platforms.

'Online platforms', such as social networks or online platforms that allow consumers to enter into distance contracts with traders, means 'a hosting service that, at the request of a recipient of the service, stores and disseminates information to the public, unless that activity is a minor and purely ancillary feature of another service or a minor functionality of the principal service and, for objective and technical reasons,

[10] Aurélie Leclercq-Vandelannoitte and Emmanuel Bertin, "How to Deal with Big Tech Power? The 'Big Tech Raj', a New Form of Biopower in the Digital Age," *Technological Forecasting and Social Change* 208 (2024): 123732, https://doi.org/10.1016/j.techfore.2024.123732.

[11] Carmelo Cennamo et al., "Digital Platforms Regulation: An Innovation-Centric View of the EU's Digital Markets Act," *Journal of European Competition Law & Practice* 14, no. 1 (2023): 44–51, https://doi.org/10.1093/jeclap/lpac043.

cannot be used without that other service, and the integration of the feature or functionality into the other service is not a means to circumvent the applicability of this Regulation' (Art. 3 lit i DSA). 'Very Large Online' Platforms (VLOPs) and Very Large Online Search Engines (VLOSEs) are defined as platforms and search engines with more than 45 million monthly active users in the EU and are subject to the highest tier of regulatory requirements under the Digital Services Act.

"Gatekeeper" means an enterprise that provides essential platform services. A gatekeeper is identified on the basis of objective criteria, such as an annual turnover in the Union of EUR 7.5 billion or more in each of the last three financial years, the number of business users using the essential platform service to reach end users and the number of end users, network effects and data advantages, economies of scale and scope effects enjoyed by the undertaking, the placement of the business user or end user in a captive customer situation[12].

Currently designated gatekeepers include Alphabet, Apple, Meta, Amazon, Microsoft, ByteDance, and Booking.com[13]. These companies' control over core platform services gives them a strategic advantage, allowing them to influence market behavior, shape consumer decisions through data-driven algorithms, and maintain both profitability and dominant market positions. In total, 23 core platform services provided by those gatekeepers are currently designated, namely[14]:

- Social network platforms: TikTok, Facebook, Instagram, Linkedln;
- Intermediation platforms: Google Maps, Google Play, Google Shopping, Amazon Marketplace, App Store, Booking.com. On 23 April 2025, Meta was undesignated for its online intermediation service Facebook Marketplace.
- Number-independent interpersonal communication services (N-IICS) platforms: Whatsapp, Messenger;
- Video-sharing platforms: Youtube;
- Search platforms: Google Search;
- ADS platforms: Google, Amazon, Meta;
- Browser platforms: Chrome, Safari;
- Operating system platforms: Google Android, iOS, iPadOS, Windows PC OS.

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[12] Oles Andriychuk, "Do DMA Obligations for Gatekeepers Create Entitlements for Business Users?," *Journal of Antitrust Enforcement* 11, no. 1 (2023): 123–32, https://doi.org/10.1093/jaenfo/jnac034; Jörg Hoffmann et al., "Gatekeeper's Potential Privilege—the Need to Limit DMA Centralization," *Journal of Antitrust Enforcement* 12, no. 1 (2024): 126–47, https://doi.org/10.1093/jaenfo/jnad040; see also Regulation (EU) 2022/1925 (Digital Markets Act), art. 3.

[13] European Commission, *Annual Report on Regulation (EU) 2022/1925 of the European Parliament and of the Council on Contestable and Fair Markets in the Digital Sector and Amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act)*, COM(2024) 106 final, March 6, 2024, https://digital-markets-act.ec.europa.eu/document/download/a7463f7c-02b4-4588-bc03-9e65c11e8086_en?filename=COM_2024_106_1_EN_ACT_part1_v4.pdf; for the current designations, see European Commission, "DMA Designated Gatekeepers," accessed September 14, 2026, https://digital-markets-act.ec.europa.eu/gatekeepers-portal_en.

[14] Friso Bostoen and Giorgio Monti, "The Rhyme and Reason of Gatekeeper Designation under the Digital Markets Act," *Journal of Antitrust Enforcement* 14, no. 2 (2026): 241–67, https://doi.org/10.1093/jaenfo/jnae054; for the updated list of 23 services, see European Commission, "DMA Designated Gatekeepers."

5. How Algorithms Work

In general, an algorithm is a set of logical instructions designed to produce a desired result based on certain input data. Algorithms are characterized by their ability to select, analyze, and process large volumes of data in a very short period of time. For example, the Google search engine works on the basis of algorithms which, starting from keywords entered by the user, select, sort and display the results considered most relevant.

In the digital economy, algorithms are proving to be a useful tool for processing large amounts of data; used responsibly, algorithms can help personalize commercial offers, tailoring them better to the individual needs and preferences of users. Algorithms can also help consumers make decisions by helping them identify the best products at competitive prices.

Algorithms are typically used in machine learning to assist technology in mimicking the human learning process. Machine learning is a process whereby an algorithm evaluates and improves its performance without the intervention of a programmer, repeating its execution on data sets until it consistently achieves relevant results. Algorithms are characterized by a number of properties, including: correctness (they always provide correct results), uniqueness (based on the same analyzed data, the result is always the same), clarity (they describe accurately and unambiguously the steps to be taken in solving the problem), verifiability (each step can be analyzed by humans), efficiency (the algorithm leads to a result in a very short time, even though it analyzes a large volume of data). For example, ideally, the algorithm should suggest to consumers the ideal offers that match the requirements entered by the user (through keywords), thus saving time and search costs for the consumer and increasing sales and profits for the merchant. Artificial intelligence also has a significant impact on recommendation algorithms. AI-powered algorithms learn from user behavior to optimize content personalization, i.e., they determine the content displayed, influence interactions, and often reinforce the dominant position of platforms in the digital economy[15]. In this context, according to Article 5 of the Artificial Intelligence Act (AI Act)[16], artificial intelligence systems that use subliminal, manipulative, or deceptive techniques, exploit a person's vulnerabilities, or take advantage of a social or economic situation with the aim of significantly distorting consumer behavior are prohibited[17].

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[15] Cristina Elena Popa Tache and Elise Nicoleta Vâlcu, "Artificial Intelligence and Corporate Liability Towards a New Legal-Ethical Contract in the Dynamics of Emerging Global Human Rights Convergences," *Juridical Tribune – Review of Comparative and International Law* 15, no. 2 (2025): 281–305, https://doi.org/10.62768/TBJ/2025/15/2/04.

[16] Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 Laying Down Harmonised Rules on Artificial Intelligence and Amending Regulations (EC) No. 300/2008, (EU) No. 167/2013, (EU) No. 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828 (Artificial Intelligence Act), art. 5(1)(a)–(b), *Official Journal of the European Union* L, 2024/1689 (July 12, 2024), https://eur-lex.europa.eu/eli/reg/2024/1689/oj/eng.

[17] Taeyoung Kim and Il Im, "Understanding Users' AI Manipulation Intention: An Empirical Investigation of the Antecedents in the Context of AI Recommendation Algorithms," *Information &*

However, it cannot be ruled out that the potential of algorithms may be exploited to distort competition or influence users' decisions in order to maximize platform profits rather than contribute to consumer welfare. The lack of transparency of the algorithms used by gatekeepers has led to the imposition of measures through the Digital Markets Act. Thus, the Commission may, by simple request or by decision, request access to any data and algorithms of the platforms and to information about testing. In addition, the Commission may carry out inspections to verify how the platform is organized and operates and request explanations regarding its IT system, algorithms, data handling, and commercial practices. The Commission may also adopt a decision imposing on gatekeepers penalty payments not exceeding 5% of their average daily worldwide turnover in the preceding financial year, per day, calculated from the date set in the decision, to compel them to provide access to data, algorithms, and testing information.

In addition, the Digital Services Act contains a series of legal provisions requiring platforms to be transparent about advertising (Articles 24-26) and recommendation systems (Article 29). Firstly, online platform providers are prohibited from presenting advertising communications to service recipients based on the creation of profiles using personal data (Article 26(3) DSA). Furthermore, in accordance with Article 26(2) of the DSA, online platform providers must make available to recipients of the service a function enabling them to declare whether the content they provide constitutes or contains commercial communications.

Under Article 27 of the Digital Services Act, platforms must explain clearly, in accessible language, how recommendations are determined based on the algorithms used. By imposing this obligation, the European legislator sought to increase user autonomy and achieve algorithmic transparency. To this end, platforms must explain, "in simple and understandable language," the main parameters used in their recommendation systems (e.g., user history, expressed preferences, location, content popularity, social profile, etc.) and the reason why they are used (e.g., to provide you with relevant content). Service receivers must be given the option to change these parameters. To this end, online platform providers must make available a function that allows service receivers to select and change their preferred option at any time[18].

Under the Digital Services Act (DSA), the European Commission has requested YouTube, Snapchat, and TikTok to provide information on the design and functioning of their recommendation systems and the parameters used by their algorithms to recommend content to users, as well as their role in amplifying certain systemic risks. In response, after the DSA came into force, TikTok introduced the option for EU users to disable the personalized feed based on their personal profile. Thus, in the For You and LIVE feeds, users are shown popular videos at the national and global level, instead of personalized clips based on their personal history. In addition, the platform has given

Management 62, no. 1 (2025): 104061, https://doi.org/10.1016/j.im.2024.104061; for the legal prohibition, see Regulation (EU) 2024/1689 (Artificial Intelligence Act), art. 5(1)(a)–(b).

[18] Regulation (EU) 2022/2065 (Digital Services Act), art. 27; see also Philipp Hacker, "Manipulation by Algorithms. Exploring the Triangle of Unfair Commercial Practice, Data Protection, and Privacy Law," *European Law Journal* 29, nos. 1–2 (2023): 142–75, https://doi.org/10.1111/eulj.12389.

users the ability to filter certain hashtags in their For You feed, giving them more control over their recommendations. By using the Refresh option, accessible from the personal feed, the recommendation system will be completely reset and users will be able to watch content on For You just like on their first day on the platform.[19]

Recent studies analyzing how social media users perceive AI-based recommendations have highlighted that they prefer clear, accessible, concise, and visually easy-to-identify explanations about how content is recommended to them, in order to understand how algorithms work, protect their privacy, and increase their trust in the platform[20].

Pursuant to Article 15 of the Digital Markets Act (DMA), Meta submitted a report to the European Commission on March 6, 2025, detailing all the profiling techniques it applies to users of the Facebook, Instagram, Facebook Messenger, and Facebook Marketplace platforms.

Meta mentions that content display on Facebook and Instagram platforms is based on algorithmic personalization processes, and this information is included in the Terms and Conditions of Use as part of the obligation to ensure transparency regarding how recommendation algorithms work. "Meta shows content to consumers on the Services that is individually personalised for each consumer such that no one person's experience of the Services is the same. The focus is on presenting content, which is likely interesting, relevant and valuable to the specific consumer, in line with the service they agreed to receive. This can include personalising content the consumer chooses to see (such as status updates, photos, videos and other content from profiles, accounts, pages and groups that they follow or are otherwise connected to) and suggested or recommended content (in other words; content which consumers are not directly connected to, like accounts and entities which the consumer does not already follow)"[21] . Users will be able to see ads in their feed unless they have opted for an Subscription for No Ads.

Facebook and Instagram display a feed or timeline on their home page, i.e. a list of messages consisting of text, images, sound or combinations thereof, generated and ordered by a recommendation system. The content of the feed can be profiled or unprofiled. The profiled feed—called "for you" or "most relevant"—is generated based on algorithms that have collected data about the user's behavior and preferences based on previous searches. The unprofiled feed provides a chronologically ordered display of posts from accounts, also known as "follow." Although Meta claims to have

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[19] TikTok, "More Ways for Our Community to Enjoy What They Love," July 13, 2022, https://newsroom.tiktok.com/en-eu/more-ways-community-enjoy-what-they-love-eu; TikTok, "An Update on Fulfilling Our Commitments under the Digital Services Act," August 4, 2023, https://newsroom.tiktok.com/en-eu/fulfilling-commitments-dsa-update; Sandeep Grover and Mabel Wang, "Introducing a Way to Refresh Your For You Feed on TikTok," TikTok, March 16, 2023, https://newsroom.tiktok.com/en-eu/introducing-a-way-to-refresh-your-for-you-feed-on-tiktok.

[20] AKM Bahalul Haque et al., "To Explain or Not to Explain: An Empirical Investigation of AI-Based Recommendations on Social Media Platforms," *Electronic Markets* 35 (2025): 2, https://doi.org/10.1007/s12525-024-00741-z.

[21] Meta, *Meta Consumer Profiling Techniques: Digital Markets Act*, non-confidential public overview, March 6, 2025, 3, sec. 2.1, https://transparency.meta.com/sr/meta-consumer-profiling-2025.

introduced the option for users to choose a chronologically ordered feed without a personalized algorithm as an alternative to the main feed, in reality, this option is difficult to find and is disabled when the app is closed. For example, in the case of the Facebook application for iOS devices, the home page displays profiled content; however, unprofiled content cannot be selected directly from the home page. To do this, the user must access the Menu button, where they can select unprofiled content, i.e., posts from "Friends," "Pages," "Groups," or "Favorites" in chronological order.

According to reports from national proceedings before Dutch courts in 2025, disputes have emerged concerning the configuration of recommendation systems used by social media platforms and their compatibility with the transparency requirements established by the Digital Services Act[22]. The court found that the platform's current procedure (where the option is difficult to find or automatically disabled) meets the criteria for "dark patterns." In accordance with point 67 of the DSA, "dark patterns on online interfaces of online platforms are practices that materially distort or impair, either on purpose or in effect, the ability of recipients of the service to make autonomous and informed choices or decisions. Those practices can be used to persuade the recipients of the service to engage in unwanted behaviours or into undesired decisions which have negative consequences for them".

The judge ordered Meta Ireland to implement a system within two weeks of the ruling that would allow Dutch users' preferences for recommendation systems to be respected and made persistent, in the sense that the option for the unprofiled feed is retained, even when the user navigates to other sections of the platform, leaves the application, and reopens it later. Meta Ireland was also required to make the preset option for an non-profiled recommendation system directly accessible and without restrictions on the application's home page, including for the "Reels" section of Instagram and Facebook. Meta said it would appeal and requested a stay of execution of the decision. Subsequently, the Amsterdam Court of Appeal reviewed the deadline and set a new deadline of December 31, 2025[23].

We salute this decision as it is the first time that a judge has interpreted and applied the provisions of Article 27 of EU Regulation 2022/2065 (Digital Services Act) regarding transparency and user control over recommendation systems. Moreover, the ruling is an example of how the DSA can be applied in Member States to compel large platforms to protect users' rights in general. In particular, the Amsterdam court's decision confirms that large platforms must offer clear and persistent options for non-

[22] District Court of Amsterdam, *Stichting Bits of Freedom v. Facebook Netherlands BV, Meta Platforms Ireland Ltd., and Meta Platforms Inc.*, C/13/774725 / KG ZA 25-687, October 2, 2025, ECLI:NL:RBAMS:2025:7253, paras. 4.20–4.39, 5.1–5.2, https://uitspraken.rechtspraak.nl/details?id=ECLI:NL:RBAMS:2025:7253; English translation, https://www.bitsoffreedom.nl/wp-content/uploads/2025/10/20251002-District-Court-of-Amsterdam_en.pdf.

[23] Reuters, "Dutch Court Gives Meta More Time to Change Timeline Settings," October 28, 2025, https://www.reuters.com/technology/dutch-court-gives-meta-more-time-change-timeline-settings-2025-10-28/; see also Gerechtshof Amsterdam, "Meta krijgt meer tijd voor aanpassingen Facebook en Instagram," October 28, 2025, https://www.rechtspraak.nl/organisatie-en-contact/organisatie/gerechtshoven/gerechtshof-amsterdam/nieuws/2025/10/meta-krijgt-meer-tijd-voor-aanpassingen-facebook-en-instagram.

profiled feeds.

6. Big Tech Liability: Lessons from Case Law

6.1. Google Shopping Case

Google LLC is part of the American company Alphabet and is one of the most powerful players in the digital economy, belonging to the Big Tech group. Google currently generates the highest revenues for the company, which is a technology conglomerate with multiple activities in online advertising, cloud computing, software, hardware, etc. Due to the large number of users and the size of the digital infrastructure it controls, Google has a dominant position in several relevant markets, which is why Google's practices have been assessed by the European Commission to determine the extent to which they restrict competition or affect consumer interests[24].

Google is primarily known for its search engine, Google Search, which allows users to search for information on the internet. Each time the search engine is accessed, Google's algorithms collect and analyze user data in order to recommend personalized content. When a user enters a keyword or string of keywords into Google Search, Google generates generic results as well as specialized search results (e.g., Google Shopping, Google Finance, Google Flights, Google Video). The two categories of results appear together on the search results pages.

In addition, Google Search can also display a third category of results, namely advertisements from Google's online auction-based advertising platform, Google Ads (formerly AdWords)[25]. When a user enters a query into Google Search, the system triggers a real-time auction between ads that match the search terms. Each ad is evaluated based on the maximum amount an advertiser is willing to pay for a click and a quality score that reflects the anticipated click-through rate.

Google also offers a price comparison service—Google Shopping—which is integrated into its search engine, allowing users to compare products and prices offered by different online retailers[26]. The results generated lead users directly to the pages of Google's commercial partners, where the user can purchase the product or service they are looking for. The Google Shopping service was the subject of an antitrust investigation, in which the European Commission found that Google had abused its dominant position in two relevant markets, namely the market for general search services and the market for price comparison services. The Commission found that Google positioned and displayed its own price comparison service in a more favorable

[24] Pablo Ibáñez Colomo, "Google Shopping: A Major Landmark in EU Competition Law and Policy," *Journal of European Competition Law & Practice* 13, no. 2 (2022): 61–62, https://academic.oup.com/jeclap/article/13/2/61/6532540.

[25] Rosie Graham, "Google and Advertising: Digital Capitalism in the Context of Post-Fordism, the Reification of Language, and the Rise of Fake News," *Palgrave Communications* 3 (2017): 45, https://doi.org/10.1057/s41599-017-0021-4.

[26] Germain Gaudin and Despoina Mantzari, "Google Shopping and the As-Efficient-Competitor Test: Taking Stock and Looking Ahead," *Journal of European Competition Law & Practice* 13, no. 2 (2022): 125–35, https://doi.org/10.1093/jeclap/lpac006.

manner on its general search results pages compared to competing price comparison services[27]. For example, competing services such as Yelp and Idealo.de were downgraded in the generic search results and displayed, on average, only on the fourth page[28]. The decision was definitively confirmed by the Court of Justice of the European Union on September 10, 2024[29].

6.2. TikTok Case

In a very short time, TikTok has evolved from a social network aimed at teenagers to the status of Very Large Online Platform (VLOP), as defined by the Digital Services Act. But how did TikTok manage to dethrone Facebook's supremacy in such a short time? To find an answer, we need to analyze how the platform's algorithms work, which manage to keep users connected for hours on the For You page. TikTok differs from other social media platforms that, at first glance, appear to offer similar services and features. The main difference is that TikTok is a platform for sharing short videos, while other social media platforms are designed for sharing photos and text. First of all, the For You page displays short, easy-to-watch videos that users can personalize with their favorite music. These videos usually feature funny stuff or viral trends. Recommendation algorithms create a unique feed for each user, automatically selected based on preferences and previous browsing behavior, which is constantly updated by continuous learning systems. Unlike other social platforms, TikTok users interact more with the For You algorithm than with other users, which allows it to learn and adapt better to the user's interests in order to present them with personalized content. Although the exact workings of the platform's algorithms remain a secret, users seem to be aware that the algorithm becomes more specific as they spend more time on the platform.

Studies conducted on platform users have led to the conclusion that they interact most with the personalized algorithm, which repeatedly confronts them with various aspects of their own personalities. This model has been called the

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[27] Rastislav Funta and Marian Horváth, "Can the Platform Operator, Who Acts as a Provider on His Own Platform, Favor Himself over Third-Party Providers?," *Juridical Tribune – Review of Comparative and International Law* 14, no. 2 (2024): 227–42, https://doi.org/10.62768/TBJ/2024/14/2/04.

[28] European Commission, *Decision of 27 June 2017 Relating to Proceedings under Article 102 of the Treaty on the Functioning of the European Union and Article 54 of the Agreement on the European Economic Area*, AT.39740—Google Search (Shopping), C(2017) 4444 final, June 27, 2017, secs. 5–7, https://ec.europa.eu/competition/antitrust/cases/dec_docs/39740/39740_14996_3.pdf; General Court of the European Union, *Google LLC and Alphabet Inc. v. European Commission*, T-612/17, judgment of November 10, 2021, ECLI:EU:T:2021:763, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62017TJ0612; Iakovos Sarmas, "Market Definition for Two-Sided Platforms: Why Ohio v. American Express Co. Matters for the Big Tech," *Florida State University Business Review* 19 (2020): 199–220, https://drive.google.com/file/d/1bqibRTbf7NcoUcGshG1AZsFz0Y8PzYu7/view; for the finding concerning page four of search results, see European Commission, "Antitrust: Commission Fines Google €2.42 Billion for Abusing Dominance as Search Engine by Giving Illegal Advantage to Own Comparison Shopping Service," June 27, 2017, https://ec.europa.eu/commission/presscorner/detail/en/ip_17_1784.

[29] Court of Justice of the European Union, *Google LLC and Alphabet Inc. v. European Commission*, C-48/22 P, judgment of September 10, 2024, ECLI:EU:C:2024:726, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62022CJ0048.

"algorithmized self" — an extension of the user's habits and preferences into the virtual environment[30].

Following its designation as a very large platform, the European Commission requested information under the Digital Services Act (DSA) on the measures it has taken to comply with its obligations regarding risk assessments and mitigation measures against the spread of illegal and harmful content. In February 2024, the Commission opened a first formal procedure to assess whether TikTok may have infringed the DSA in areas related to the protection of minors, advertising transparency, researchers' access to data, and the management of risks related to addictive design and harmful content. At the same time, TikTok was forced to withdraw its "Task and Reward Program" from the TikTok Lite app in the European Union, which allows users to earn points and convert them into vouchers, thereby increasing the risk of addiction to the platform, especially among minors[31].

In the context of the elections in Romania, the European Commission requested information from the platform on the design and functioning of recommendation systems and the measures taken to prevent manipulation of the service by malicious actors, in order to mitigate risks related to elections, media pluralism, and civic discourse, which can be amplified by algorithms[32].

On November 24, 2024, Călin Georgescu won the first round of the Romanian presidential election on November 24, 2024, as a result of his election campaign conducted on the TikTok platform. Romania's Constitutional Court[33] annulled the election, while the European Commission opened an investigation to examine whether TikTok had violated its obligations under the Digital Services Act (DSA) by giving an unfair advantage to a political candidate through its recommendation algorithm[34]. The

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[30] Aparajita Bhandari and Sara Bimo, "Why's Everyone on TikTok Now? The Algorithmized Self and the Future of Self-Making on Social Media," *Social Media + Society* 8, no. 1 (2022): 9, https://doi.org/10.1177/20563051221086241.

[31] European Commission, "TikTok Commits to Permanently Withdraw TikTok Lite Rewards Programme from the EU to Comply with the Digital Services Act," August 5, 2024, https://ec.europa.eu/commission/presscorner/detail/en/ip_24_4161.

[32] European Commission, "Commission Sends Requests for Information to YouTube, Snapchat, and TikTok on Recommender Systems under the Digital Services Act," October 2, 2024, https://digital-strategy.ec.europa.eu/en/news/commission-sends-requests-information-youtube-snapchat-and-tiktok-recommender-systems-under-digital; for the request in the context of the Romanian elections, see European Commission, "Commission Sends Additional Request for Information to TikTok under the Digital Services Act," November 29, 2024, https://digital-strategy.ec.europa.eu/en/news/commission-sends-additional-request-information-tiktok-under-digital-services-act.

[33] Constitutional Court of Romania, Hotărârea nr. 32 din 6 decembrie 2024 privind anularea procesului electoral cu privire la alegerea Președintelui României din anul 2024, *Monitorul Oficial al României*, pt. I, no. 1231 (December 6, 2024), paras. 19–20 and operative part, https://www.ccr.ro/wp-content/uploads/2024/12/Hotarare_32_2024.pdf.

[34] European Commission, "Commission Opens Formal Proceedings against TikTok on Election Risks under the Digital Services Act," December 17, 2024, https://digital-strategy.ec.europa.eu/en/news/ commission-opens-formal-proceedings-against-tiktok-election-risks-under-digital-services-act; for the retention order of December 5, 2024, see European Commission, "Commission, Online Platforms and Civil Society Increase Monitoring during Romanian Elections," December 5, 2024, https://ec.europa.eu/commission/presscorner/detail/en/ip_24_6243.

Commission has issued a 'retention order' to TikTok under the DSA "ordering the platform to freeze and preserve data related to actual or foreseeable systemic risks its service could pose on electoral processes and civic discourse in the EU". The investigation is ongoing, but this case highlights once again the power of algorithms, which can go so far as to jeopardize democracy and influence an electoral process. Large digital platforms can exploit their position in an increasingly digitized society, taking advantage of their large number of users and the trust they have gained in algorithms, thereby endangering the very democracy of some states[35].

7. Conclusions

The way large platforms operate raises a number of issues, ranging from ethical to legal. Their dominance is based, on the one hand, on their large number of users and, on the other hand, on their financial power. The number of users is maintained and increased by capturing their attention for as long as possible, and profits are increased by exploiting the data collected about users. Although many digital services appear to be offered free of monetary charge, users effectively provide value through the data they generate and the attention they allocate to digital platforms, which constitute central resources in platform-based economic models. What at first glance seems like innocent fun and a pleasant way to pass the time, on closer inspection can be seen to be an addiction induced by algorithms and a waste of cognitive resources, which can affect users' productivity, concentration, and even mental health. The lack of transparency in how algorithms are designed to work, the negative impact they can have on users, the massive collection of data and its exploitation for huge profits have led to the adoption at European level of the Digital Markets Act and the Digital Services Act[36]. The European Commission has turned these two legal provisions into real instruments of control and prevention with regard to the activity of large online platforms within the European Union. Although they give the European Commission increased investigative powers, the monitoring process is proving difficult due to the opacity of Big Tech companies. Recently, the Commission found that Facebook, Instagram, and TikTok had put in place cumbersome procedures and tools designed to obstruct its access to platform data under the Digital Services Act (transparency obligation): '*Allowing researchers access to platforms' data is an essential transparency obligation under the DSA, as it provides public scrutiny into the potential impact of platforms on our physical and mental health*'[37].

At the same time, the Commission found that neither Meta nor TikTok offer

[35] Jana Lasser and Viktoria H. S. E. Robertson, "Alternative Recommendation Algorithms as an Antitrust Remedy in Digital (Democracy) Cases," *Journal of European Competition Law & Practice* 16, no. 1 (2025): 20–29, https://doi.org/10.1093/jeclap/lpaf013.

[36] Balázs Hohmann et al., "The Shades of the Concept of Transparency on the Horizon of European Technology Law and Platform Regulation," *Juridical Tribune – Review of Comparative and International Law* 15, no. 1 (2025): 44–62, https://doi.org/10.62768/TBJ/2025/15/1/03.

[37] European Commission, "Commission Preliminarily Finds TikTok and Meta in Breach of Their Transparency Obligations under the Digital Services Act," October 24, 2025, https://ec.europa.eu/commission/presscorner/detail/en/ip_25_2503.

users accessible mechanisms through which they can report illegal content, such as 'Notice and Action'. The saga of online platforms is far from over; even though the Digital Services Act and Digital Markets Act marked a turning point in the new era of Big Tech accountability, practical and legal challenges remain significant.

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