

SHARED OBJECTIVES FOR FRAMING THE TECH ECONOMY

MARGRETHE VESTAGER*

Summary

The Berkeley Journal of International Law awarded the 2022 Stefan A. Riesenfeld Award to Margrethe Vestager, the European Commissioner for Competition and the Executive Vice President of the European Commission for A Europe Fit for the Digital Age. The Journal has reproduced the transcript of Commissioner Vestager's keynote address delivered on Feb. 22, 2022 as part of BJIL's annual symposium.

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INTRODUCTION

Ladies and Gentlemen,

Chancellor Christ,

Good morning, and thank you. It is an honor to be with you today.

When I look at the list of those who have received the Riesenfeld Memorial Award in the past, I feel privileged to be in their company. To name but two: the great Algerian diplomat Lahkdar Brahimi; and the current President of the International Court of Justice, Joan Donoghue. And so many others. It's not an exaggeration to say these women and men have truly changed the world. To have my name added to that list—well, it's very humbling.

I am especially honored to be here with you, Chancellor Christ. As the first woman to occupy the post of chancellor of this great university, you have been a fearless advocate of that which is best in academia. Your brave defense of free speech on campus serves as an inspiration to all who seek to uphold the liberal foundations of our democracies.

I. A CHALLENGING TIME IN HISTORY

Because the world needs inspiration. To quote Mr. Brahimi, “we live in a world of disturbing global tensions and unpredictability.”

Tensions and unpredictability are nothing new. Latest we have seen the Russian recognition of the non-government-controlled areas of Donetsk and Luhansk, which is a blatant violation of international law. From the European Union we will react with sanctions against those who are involved in this illegal act.

We see many symptoms of change.

Change coming in so many ways: the shifting geopolitical balance; the need for us to come together. Also over climate change.

Then there is the reality of the digital transition. I say ‘reality’ because the transition has been happening for some time. The pandemic has greatly accelerated the shift, and this adds urgency to the challenge of writing good digital policies.

II. ENFORCING COMPETITION POLICY

Of course, we are not starting from scratch. Our work on digital markets has been ongoing for years. Enforcing competition rules is one important part of that, because we know how important competition is for healthy markets. Not just because it keeps prices low for consumers, but also because it spurs innovation.

Competition is also about fairness—here in the US, a new study shows start-ups are often younger, more diverse, and more likely to be ‘outsiders’.¹ By enforcing our competition rules, we are acknowledging the fact that they deserve the same chance to compete as the bigger, more established players in the market.

In 2017, our decision on the Amazon case focused on what is called Most Favored Nation clauses, which forced sellers to offer Amazon the best terms when using its platform to sell e-books.

That same year, we adopted the Google Shopping decision, fining Google nearly two and a half billion euros for using its search engine to give an illegal advantage to its own shopping comparison service. Consumers who searched with Google saw its own results before getting to see the results of competing services.

In 2018, we fined Google over 4 billion euros for abusing its dominant position with the Android mobile operating system and apps, by tying the supply of the app store with search and browser services. Now users see a choice screen, and can select alternatives to the default search engine.

In November, the EU’s General Court upheld our decision in the Google Shopping Case. That’s very good news, because it constitutes an important legal precedent on which we can build our future work.

That future work is already in the pipeline. This year, we proceed with a series of investigations into how large digital platforms might be harming competition. That includes cases for which we already issued Statements of Objection—for example the case concerning Amazon’s use of third-party data and Apple’s treatment of third-party music streaming services. And there are other investigations in the making, involving Google’s behavior in the ad tech space and Meta’s use of advertising data when competing with rivals.

Staying on top of things also means anticipating. That is why we are carrying out formal sector inquiries into areas of the economy where the transition is making big changes. One good example is the consumer Internet of Things. It’s a fascinating market, with huge potential to make our lives better, and more fun.

¹ New US data shows firm growth since the pandemic is concentrated in ‘microbusinesses’ with an increasing share of women, black Americans and people without college degrees. Simon Torkington, *How the Great Resignation is Driving a Boom in Startups from More Diverse Founders*, WORLD ECON. F., Feb. 16, 2022, <https://www.weforum.org/agenda/2022/02/the-great-resignation-boom-in-startups-from-more-diverse-founders/>.

But as our report on this shows, there are also competition concerns around things like interoperability, data accumulation and exclusivity. By shedding light on these issues, the sector inquiry can encourage firms to rethink their practices, avoiding the need for enforcement altogether.

When we started our Google investigations back in 2010—really it seems like a lifetime ago! Not very many others were concerned about competition issues in digital markets. What you heard mostly was that digital players were driving down prices, increasing choice, so what was the problem? Perhaps there was a reluctance to look down the road.

Now, digital markets are on everyone's agenda. In the United States, the FTC's investigation into Facebook is seeking a divestiture of Instagram and WhatsApp. The Department of Justice is looking at practices similar to the ones covered by our Android complaint.

And it's not just in America. There is also action happening in the UK, Australia, Japan, South Korea and India. The fact that today multiple competition authorities around the world are looking at competition issues in digital markets is a good thing. It means there is international consensus that action needs to be taken to protect consumers and businesses in these markets.

III. DIGITAL MARKETS ACT

Enforcement actions are vital—we are watching them closely. But they are not enough. The fact is, we need new ways of safeguarding competition. With our Digital Markets Act, the EU is on the frontier of a whole new approach to regulating tech platforms. We are recognizing the reality that a handful of key platforms now act as gatekeepers to a large part of the internet, including online markets. The Digital Markets Act will be there to remind them: with great power comes great responsibility.

The Act will set out a list of do's and don't's—things that apply only for the gatekeepers. While the details are being finalized, it will cover things like the use of business user's data by gatekeepers, interoperability, switching, default settings, and self-preferencing, amongst others. Whether online businesses succeed or fail must be based on how good their ideas are. And on hard they work to serve the consumer. Not on the decisions of the gatekeeper.

We are still involved in discussions with co-legislators around the final text—that means the European Union's Member States as well as the European Parliament. Progress is good, but there is still a lot of work to do. And we remain hopeful for an agreement very soon.

Speed is important—these markets are always moving quickly. At the same time, we know we have to get this right. If we want to see real changes on

the ground, the legislation must be clear and to the point. This is essential for its enforceability.

Effective enforcement, which includes the Commission having sufficient resources to do so, will be key to ensure compliance. Some gatekeepers may be tempted to play for time or try to circumvent the rules. Apple's conduct in the Netherlands these days may be an example. As we understand it, Apple essentially prefers paying periodic fines, rather than comply with a decision of the Dutch Competition Authority on the terms and conditions for third parties to access its app store. And that will also be one of the obligations included in the DMA.

Another important point is that these rules are objective and non-discriminatory. Both our credibility as an enforcer, as well as our commitment to free and open trade, demand that our actions apply equally, regardless of the origin of the companies concerned. Gatekeepers will be designated based on size and reach within the European market.

That is also why it is important that we think globally. The EU has already led the way in areas like privacy rights. Consider the impact our General Data Protection Regulation has had—including California's own Consumer Privacy Act.

We want our work on the gatekeepers to inspire other jurisdictions in the same way. And we're seeing it happen—for example in Japan, the UK, and Australia. In the US, several bills are progressing through Congress and Senate, and they share many features with our proposal. This is very encouraging because it means that there is a great degree of global consensus.

IV. THE WIDER DIGITAL AGENDA

Of course, competition policy doesn't exist in a vacuum. Everything I have spoken about is only one part of the EU's wider digital agenda, which covers everything from promoting trustworthy Artificial Intelligence to improving e-government services; from investing in digital skills, to laying optical fiber and developing 5G coverage. Too much to talk about in one speech!

But there is one aspect I would like to highlight, which is the Digital Services Act. While the Digital Markets Act deals with how markets work and focuses on how a small number of gatekeepers should behave in the marketplace, the Digital Services Act has a different focus. It is a horizontal law, setting the rules online to mirror offline rules. It aims to protect online consumers from unsafe and illegal products, and it protects our right to speak freely online.

V. INTERNATIONAL COOPERATION

The impact of our digital legislation will depend as much on what happens outside the EU's borders, as within. That is why we are so committed to the Trade and Technology Council, a renewed transatlantic partnership for finding common approaches to these issues. Specifically for competition policy, we have launched the new Technology Competition Policy Dialogue, which builds on our longstanding tradition of cooperation. The EU and the US may not end up with the exact same laws, but it is becoming increasingly clear that we share the same basic vision when it comes to developing digital policy to protect our citizens, and to keep our markets fair and open.

This is true not just for the transatlantic relationship. The EU's cooperation links are strong across the world—and they are paying dividends. For example, a few days ago, we launched the inaugural Africa-EU Competition Week, a platform for exchange and policy dialogue with our African partners. And we are keen to enhance our cooperation with other parts of the world too.

CONCLUSION

Before I finish, I would like to pay tribute to another winner of the Riesenfeld Memorial Award, the renowned human rights lawyer David Weissbrodt. Sadly, Professor Weissbrodt passed away a few months ago, but the legacy he left behind will last for generations.

One of his most important contributions to international law and cooperation was to bring to light the idea that without the right set of international standards, private corporations cannot fulfil their social obligations. This means, if the policy community expects corporations to be fair and ethical, it is up to us to set the right standards.

Of course, he was speaking in terms of fundamental human rights, where he served as a tireless advocate for many long decades, in the fight against child slavery, human trafficking and extraordinary rendition.

But I believe the logic holds in other policy areas too. Most immediately, tackling climate change comes to mind.

It also applies to the standards we choose to set for the new, digital economy, and to the principles to which we hold large platforms who act as gatekeepers for online marketplaces.

Indeed, the work of international law and policymaking has never been more important than it is today, precisely because we are so connected. And because change is coming so fast. And because we do live in a world of disturbing global tensions and unpredictability.

I hope that in my own way, I can continue to play a part in that work.
Thank you.