

# TRADE, COMPETITION AND MARKET ACCESS IN THE EUROPEAN UNION: ASSESSING THE EFFECTIVENESS OF EU COMPETITION LAW IN PRESERVING FAIR AND OPEN MARKETS

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## ABSTRACT

The EU Internal Market is a zone of free circulation of goods, services, capital, and people. At the same time, for the free circulation to be realized, it is necessary to ensure legal and institutional guarantees. The influence of cartels (consortiums of companies on a particular commodity), anti-competitive government interventions, different national policies, and the predominant position of giant digital companies in the market also affect the free circulation of goods in the EU.

The EU has a well-developed legal framework for ensuring competition in the internal market. This legislation regulates anti-competitive agreements (article 101), abuse of dominance (article 102), and state aid (article 107). Recently, EU legislation has been developing digital-specific regulations, such as the DMA and DSA, to ensure the competitiveness of the EU internal market in the digital economy. EU competition law appears to be one of the most effective ways to ensure openness and competitiveness in the EU. In addition, it should be noted that such competition laws enable not only to ensure the free circulation of goods in the EU but also to enhance the competitiveness of enterprises. For instance, the EU should consolidate its tools for regulating entry barriers and separation of competition policy from economic policy to enhance the free circulation of goods within EU member states. Moreover, to ensure the free circulation of goods in the EU, it would be useful to develop competition policy oversight authorities to ensure and enforce regulations in the digital economy.

## Keywords

EU Competition Law; Internal Market; Market Access; Articles 101 and 102 TFEU; Digital Markets Act; State Aid.

## I. Introduction

The EU is not just a free trade zone for sovereign states but a political and economic union of states that ensures the free movement of goods, services, and capital. Yet, there are still obstacles to free trade within the EU. These barriers may be caused not only by customs duties and prohibitions but also by private monopolies, market-controlled organizations, discriminatory practices of enterprises, state regulation, and granting of preferences. For this reason, EU competition law performs a role that is wider than ordinary market regulation. It protects the internal market from both public and private distortions. Article 34 TFEU addresses restrictions imposed by Member States. Articles 101 and 102 TFEU deal with anti-competitive agreements and abuses of dominance. Article 107 TFEU controls State aid when public support distorts competition and affects trade between Member States.<sup>1</sup> Taken together, these provisions show that the EU internal market is not based on a passive belief that markets will remain open on their own. It is a regulated legal space in which access, rivalry and neutrality have to be actively protected.

This paper aims to explore the following question: How does the EU ensure that competition law promotes competition objectives and market access while still ensuring free trade within the internal market? The issue of competition is complicated by the fact that competition law has evolved significantly over time. Traditional competition law focused on protecting trade from private monopolies, cartels, and price fixing. However, contemporary issues such as the accumulation of data and digital dominance, the use of algorithms to fix prices, network effects, self-preferencing, state aid, and trade-distorting industrial policies also affect competition within the EU. At the level of individual markets, a proliferation of competition law issues may be an impediment to securing value for money for the consumer, enabling new entrants to the market, and preventing digital platforms from capturing and controlling the market.

This paper will be organized into five sections. The first section will discuss the competition law framework and its relationship to the EU internal market. The second section will analyze how competition law, through the prohibition of restrictive covenants of Article 101 and the abuse of dominance of Article 102 of the TFEU, promotes and ensures free trade. The third section will evaluate state aid control as a competition law tool to ensure free entry to the market. The fourth section will appraise the Digital Markets Act and the Digital Services Act. The fifth section will compare the EU and US approaches to competition law in order to determine which one is more effective at promoting and ensuring free trade within the internal market.

<sup>1</sup> Consolidated Version of the Treaty on the Functioning of the European Union arts. 34, 101, 102, 107, 2012 O.J. (C 326) 47.

The central argument of this paper is that EU competition law is normatively strong and broadly effective, but it is not sufficient on its own in its present form. Articles 101 and 102 TFEU continue to be powerful legal tools, yet their ex post nature can make enforcement too slow, especially in fast-moving digital markets. Similarly, State aid control plays an important role in preventing market distortions, but its application often becomes politically sensitive during periods of economic crisis. Therefore, the EU model works most effectively when its legal principles are supported by timely enforcement, clear regulatory standards, and practical remedies capable of protecting market access before exclusionary conduct becomes irreversible.

## II. Literature Review

The literature on EU competition law generally begins from the point that competition law and the internal market are closely linked. Whish and Bailey explain that EU competition law is designed not only to protect rivalry between undertakings, but also to prevent the partitioning of national markets within the Union.<sup>2</sup> This historical understanding is reflected in early case law. In *Consten and Grundig*, the Court of Justice treated absolute territorial protection as incompatible with the common market because it insulated national markets and restricted cross-border trade.<sup>3</sup> The case remains important because it shows that EU competition law has always had an integrationist purpose, not merely an economic one. Jones, Sufrin and Dunne similarly argue that EU competition law cannot be reduced to consumer welfare in a narrow price-based sense. It also protects market structure, the competitive process and the internal market objective.<sup>4</sup> This distinction is crucial. A market may be contestable (i.e., have low prices) but nonetheless closed (i.e., new entrants cannot establish themselves, develop or distribute their products). Consequently, access to a market is not only an economic but also a legal category in the EU competition law framework. Internal market scholarship supports the same view. Craig and de Búrca describe free movement law and competition law as complementary. Free movement provisions discipline public restrictions created by Member States, while competition law controls private restraints that can produce similar exclusionary effects.<sup>5</sup> Weatherill also treats market access as a legal concept through which EU law evaluates restrictions on cross-border activity.<sup>6</sup> The case law in

Dassonville, Cassis de Dijon and Keck developed this idea in free movement law, but the same concern with access also informs competition analysis.<sup>7</sup>

The literature on the competition law of Article 101 and 102 TFEU also reflects a debate that has taken place within academic circles between formal and effects-based approaches to competition enforcement. Earlier EU competition law was criticized for being overly formalistic in its approach particularly in relation to vertical agreements and abuse of dominance. More recent case law reveals a growing willingness to take actual or potential effects into account. In Intel, the Court required the Commission to examine evidence that rebate schemes were not capable of restricting competition when such evidence is submitted.<sup>8</sup> In Servizio Elettrico Nazionale, the Court clarified that abuse of dominance involves conduct capable of excluding competitors by means other than competition on the merits.<sup>9</sup> These developments make EU law more economically sensitive while retaining its concern for market structure and fairness.

State aid scholarship represents another special area of influence. Article 107 TFEU prohibits Member States from granting selective benefits that may distort competition and affect trade.

Such a measure could take the form of a disguised trade barrier. The foreign firm is free to enter the market on its own, but it has no chance to withstand a competitor who enjoys selective tax benefits, guarantees, or subsidies. The Apple State aid litigation shows both the strength and difficulty of this field. It demonstrates that State aid law can address selective tax treatment, while also raising questions about the boundary between Member State tax autonomy and Commission intervention.<sup>10</sup> Digital market scholarship has become central because traditional competition law is mainly *ex post*. Digital platforms can entrench power quickly through network effects, data accumulation and ecosystem lock-in. Ezrachi and Stucke argue that digital competition requires attention to algorithmic power, behavioural manipulation and data-driven market control.<sup>11</sup> The Digital Markets Act responds by imposing *ex ante* obligations on gatekeepers, while the Digital Services Act addresses transparency, accountability and systemic risks in online intermediary

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<sup>7</sup> Case 8/74, *Procureur du Roi v. Dassonville*, 1974 E.C.R. 837; Case 120/78, *Rewe-Zentral AG v. Bundesmonopolverwaltung für Branntwein (Cassis de Dijon)*, 1979 E.C.R. 649; Joined Cases C-267/91 & C-268/91, *Keck & Mithouard*, 1993 E.C.R. I-6097.

<sup>8</sup> Case C-413/14 P, *Intel Corp. v. Commission*, ECLI:EU:C:2017:632.

<sup>9</sup> Case C-377/20, *Servizio Elettrico Nazionale SpA v. Autorità Garante della Concorrenza e del Mercato*, ECLI:EU:C:2022:379.

<sup>10</sup> Case C-465/20 P, *Commission v. Ireland & Apple Sales International Ltd.*, ECLI:EU:C:2024:724.

services.<sup>12</sup> The gap in existing scholarship is that free movement, antitrust, State aid and digital regulation are often studied separately. This paper connects them through one standard: whether EU law preserves real, not merely formal, access to the internal market.

### III. Methodology

This paper makes use of the doctrinal and comparative legal research methods. The doctrinal method is suitable for this paper since it aims to interpret and evaluate the force of legal norms and their actuality in the EU. This paper uses the comparative method in order to compare different laws, approaches and methods. The primary sources of law include the Treaty on the Functioning of the EU, EU regulations, Court of Justice decisions, and the Commission's documents. Particular attention is given to Articles 101, 102 and 107 TFEU, Regulation 1/2003, the Digital Markets Act, the Digital Services Act and the Commission's 2024 Market Definition Notice.<sup>13</sup> The doctrinal analysis is mainly case-law based. Foundational internal market cases such as *Dassonville*, *Cassis de Dijon* and *Keck* are used to explain the development of market access.<sup>14</sup> Competition cases such as *Consten and Grundig*, *United Brands*, *Hoffmann-La Roche*, *Intel*, *Google Shopping* and *European Superleague* are analysed to examine agreements, dominance, foreclosure, self-preferencing and restrictions on access.<sup>15</sup> State aid analysis is based on Article 107 TFEU and the *Apple/Ireland* litigation.<sup>16</sup> The paper also uses comparative legal analysis by contrasting the EU framework with the United States antitrust model. The purpose is not to provide a complete account of US antitrust law. Rather, the comparison is used to highlight the difference between the EU's internal-market-oriented approach and a US model that has traditionally placed heavier emphasis on consumer welfare, price effects and judicially developed antitrust standards.<sup>17</sup>

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<sup>12</sup> 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, 2022 O.J. (L 265) 1; Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services, 2022 O.J. (L 277) 1.

<sup>13</sup> Consolidated Version of the Treaty on the Functioning of the European Union arts. 101, 102, 107, 2012 O.J. (C 326) 47; Council Regulation 1/2003, 2003 O.J. (L 1) 1; Commission Notice on the Definition of the Relevant Market for the Purposes of Union Competition Law, 2024 O.J. (C 1645) 1.

<sup>14</sup> *Dassonville*, 1974 E.C.R. 837; *Cassis de Dijon*, 1979 E.C.R. 649; *Keck*, 1993 E.C.R. I-6097.

<sup>15</sup> *Consten and Grundig*, 1966 E.C.R. 299; *Case 27/76, United Brands Co. v. Commission*, 1978 E.C.R. 207; *Case 85/76, Hoffmann-La Roche & Co. AG v. Commission*, 1979 E.C.R. 461; *Intel*, ECLI:EU:C:2017:632; *Case C-48/22 P, Google LLC & Alphabet Inc. v. Commission*, ECLI:EU:C:2024:726; *Case C-333/21, European Superleague Co. SL v. FIFA*, ECLI:EU:C:2023:1011.

<sup>16</sup> TFEU art. 107; *Commission v. Ireland & Apple Sales International Ltd.*, ECLI:EU:C:2024:724.

<sup>17</sup> *Sherman Antitrust Act*, 15 U.S.C. §§ 1-2; *Ohio v. Am. Express Co.*, 585 U.S. 529 (2018).

The research is qualitative rather than quantitative. It does not use surveys, interviews, or econometric measurements. Instead, it uses doctrinal, institutional, enforcement, remedial, and internal market-oriented criteria. This approach is better suited to the task at hand, as the topic concerns not merely the question of whether specific markets became cheaper or more efficient but whether the law can deliver open, accessible, and competitive markets within the Union.

#### **IV. Main Analysis**

##### **A. Internal Market and Competition Law: A Common Objective**

The internal market is based on the removal of barriers between Member States, but the abolition of public obstacles is not sufficient. Private undertakings can create obstacles to the free movement of goods, restrict the development of distribution channels, monopolize key sectors or infrastructures, thereby generating barriers to trade. It follows that competition law is not an autonomous element of the internal market, but one of its essential components, without which it cannot function properly..

Article 101 TFEU prohibits agreements between undertakings, decisions by associations of undertakings and concerted practices that may affect trade between Member States and restrict competition.<sup>18</sup> The phrase “effect on trade” is important because it connects competition law directly to the internal market. It does not require proof that trade has already been diverted. It is enough if the conduct is capable of altering the pattern of trade within the Union.

Consten and Grundig remains a useful starting point because it shows the EU’s early hostility towards private market partitioning. The agreement in that case granted territorial exclusivity and restricted parallel imports. The Court treated this as contrary to the common market because it protected national markets from cross-border competition.<sup>19</sup> The same concern exists today, although the techniques have changed. Market partitioning can now occur through platform ecosystems, search rankings, app store rules, payment systems, data restrictions and technical design.

Free movement case law reinforces this understanding. In *Dassonville*, the Court defined measures having equivalent effect broadly as trading rules capable of hindering intra-Community trade.<sup>20</sup> In *Cassis de Dijon*, it developed mutual recognition and limited Member State restrictions to justified mandatory requirements.<sup>21</sup> In *Keck*, the Court tried to prevent free movement law from reaching every national selling rule too broadly.<sup>22</sup> These cases show that market access always requires a balance between openness and legitimate regulation. Competition law performs a similar balancing function in relation to private conduct.

### **B. Article 101 TFEU: Agreements and Market Partitioning**

One of the strongest pro-market access provisions is Article 101 TFEU, which targets coordination between undertakings as a form of anti-competitive behavior. Cartels, both explicitly collusive and implicitly coordinated, pose a significant threat to competition by replacing competition on the market with the collusion between the cartel members. Anti-competitive agreements also include restrictions regarding the free circulation of goods, such as territorial restraints that hinder the ability of a distributor to operate beyond a specific location, and the division of markets in any way. The internal EU market is built on the free circulation of goods, services, and capital, which can only exist when the Member States' national markets are fully integrated. Therefore, the anti-competitive agreements should be prohibited as they undermine the fundamental principles of the EU economy.

At the same time, Article 101 does not condemn every form of cooperation. Article 101(3) allows exemption where an agreement improves production or distribution, promotes technical or economic progress, gives consumers a fair share of the benefit, imposes only indispensable restrictions and does not eliminate competition.<sup>23</sup> This exception is necessary because some agreements that restrict commercial freedom may still create genuine efficiencies. For example, distribution arrangements may help a new product reach different markets, and technology licensing may support innovation.

### **C. Article 102 TFEU: Dominance, Abuse and Gatekeeping**

Article 102 prohibits the abuse by a dominant position in the internal market or any substantial part of it likely to affect trade between Member States. The fact that a company has a dominant

position on the market is not prohibited per se. Thus, the EU competition law does not punish success or efficiency. Instead, the abuse of dominance occurs when a company takes advantage of its strong market position and exploits its clients or limits their access to the market.

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In *United Brands*, the Court defined dominance as a position of economic strength that enables an undertaking to prevent effective competition and behave independently of competitors, customers and consumers.<sup>24</sup> In *Hoffmann-La Roche*, the Court added that dominant undertakings have a special responsibility not to impair genuine undistorted competition.<sup>25</sup> This doctrine matters because a dominant firm may not just compete in the market; it may also control the conditions on which others can access that market.

Article 102 is therefore closely connected to market access. A dominant undertaking may restrict access through loyalty rebates, tying, refusal to supply, predatory pricing, margin squeeze, discriminatory conditions or self-preferencing. These practices do not always involve open exclusion. Often, they work more subtly by making it commercially unrealistic for rivals to compete effectively. EU law therefore protects the competitive process, not only immediate consumer prices.

Recent case law has made this approach more refined. In *Intel*, the Court required the Commission to examine evidence on whether rebate schemes were capable of restricting competition where such evidence is submitted by the dominant undertaking.<sup>26</sup> In *Servizio Elettrico Nazionale*, the Court clarified that abuse involves conduct capable of excluding competitors through means other than competition on the merits.<sup>27</sup> This keeps space for strong but lawful competition while condemning exclusionary conduct.

The Google Shopping judgment is especially important for digital markets. The Commission found that Google abused its dominance by favouring its own comparison-shopping service in search results while demoting rivals. The Court of Justice upheld the Commission's reasoning, confirming that self-preferencing may amount to abuse where it produces exclusionary effects and departs from competition on the merits.<sup>28</sup> The point is simple but important: market access in digital markets is not satisfied merely because a rival service technically exists. If a dominant platform controls visibility, ranking and user access, the market may remain open in form but closed in practice.

#### **D. State Aid Control and Competitive Neutrality**

State aid control is one of the most distinctive features of EU competition law. Article 107(1) TFEU prohibits aid granted by a Member State or through State resources where it confers a selective advantage, distorts or threatens to distort competition and affects trade between Member States.<sup>29</sup> The provision recognises that Member States themselves can distort market access by favouring domestic undertakings or selected sectors.

State aid control is necessary because subsidies can operate like hidden barriers to trade. A foreign undertaking may formally have access to a national market, but it may be unable to compete if a domestic rival receives selective grants, tax advantages, guarantees or preferential financing. The Apple/Ireland litigation illustrates both the reach and the sensitivity of this field. The Commission argued that Ireland had granted Apple selective tax advantages through tax rulings concerning profit allocation to Irish branches, and the Court of Justice upheld the Commission's position in 2024.<sup>30</sup> The judgment shows that State aid law can reach selective tax advantages, while also exposing the difficult boundary between tax sovereignty and EU competition control.

### **E. Digital Markets Act, Digital Services Act and New Market Access Problems**

Digital markets show the limits of traditional competition law. Articles 101 and 102 TFEU mainly operate after anti-competitive conduct has occurred. That ex post model can be too slow where platform markets tip rapidly. Once a digital gatekeeper controls users, business users, data and infrastructure, later remedies may not fully restore competition.

The Digital Markets Act responds to this problem by imposing ex ante obligations on designated gatekeepers.<sup>31</sup> It applies to large platforms that provide core platform services and act as important gateways between business users and end users. The DMA aims to ensure contestability and fairness by addressing practices such as self-preferencing, anti-steering restrictions, limits on interoperability, forced use of payment systems and unfair data practices. These are precisely the kinds of practices that can prevent business users from reaching consumers on equal terms.

The Commission's 2025 non-compliance decisions against Apple and Meta show that the DMA is now being used as an active enforcement instrument rather than remaining only a symbolic regulation.<sup>32</sup> Its real effectiveness, however, will depend on whether enforcement looks beyond formal compliance. Gatekeepers may preserve exclusionary outcomes through interface design, technical barriers or complex consent systems even while appearing to comply on paper.

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The Digital Services Act has a different function. It is not a competition statute in the narrow sense. It focuses on intermediary liability, transparency, due diligence, illegal content and systemic risks.<sup>33</sup> Even so, it supports the internal market by creating uniform rules for digital services. Together, the DMA and DSA show that open markets now require more than the punishment of anti-competitive conduct. They also require regulation of the digital infrastructure through which businesses reach consumers.

#### **F. EU and US Competition Frameworks: A Comparative Perspective**

The EU and US competition frameworks share a concern with preventing restraints on competition, but they differ in emphasis. US antitrust law, especially under the Sherman Act, has traditionally focused on consumer welfare, price effects and output.<sup>34</sup> US courts have often been cautious about condemning unilateral conduct unless there is clear evidence of harm to competition. That caution reduces the risk of over-enforcement, but it may also under-detect harm in digital markets where services are offered at zero monetary price.

The competition law of the EU has a broader perspective in comparison to the American one. Even though it still focuses on the creation of utility for the consumer, it also protects the market from the loss of its integrity, fairness, contestability, and other competitive elements. It does not necessarily protect the inefficient, as the law does not consider that the reduction of alternatives for the consumer is not a loss for the market. It is particularly important in the case of digital platforms, where the price may be paid in the form of attention and data, and not in money.

#### **V. Discussion and Policy Recommendations**

The analysis demonstrates that EU competition law is broadly effective in balancing competition regulation with the objective of market access, although this balance is not flawless. The strength of the EU framework lies in its recognition that barriers to market access can arise in several forms, including private anti-competitive agreements, abusive conduct by dominant firms, selective State aid, and digital gatekeeping. This broader understanding of market restriction is one of the key strengths of EU competition law.

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<sup>33</sup> Regulation (EU) 2022/2065, *supra* note 12.

<sup>34</sup> Sherman Antitrust Act, 15 U.S.C. §§ 1-2; *Ohio v. Am. Express Co.*, 585 U.S. 529 (2018).

Articles 101 and 102 TFEU remain a centerpiece of competition law. Whereas Article 101 TFEU continues to dominate in cartel and territorial restraints cases, Article 102 TFEU has seen a renewed interest due to the emergence of distribution gatekeepers, exemplified by the Google Shopping case. The abuse of dominance law has moved beyond pricing to encompass the ability of platforms to favor their own services over alternatives, creating distributional barriers.

State aid control, meanwhile, remains a central pillar of EU competition law, and one that is becoming increasingly politicized. The aim of state aid rules is to ensure that public spending does not create unjustified advantages to particular firms or sectors. At the same time, political pressures are growing to relax state aid rules in the wake of economic emergencies. The EU needs to ensure that competition law does not become a tool for persistent asymmetry between technologically advanced and digitally less developed Member States.

The reform competition law rules under the Digital Markets Act (DMA) is the first significant competition law reform in recent years and addresses some of the most pressing weaknesses in the Union's competition law framework. However, it is not clear to what extent the DMA will be able to address them, as the regulation's effectiveness will depend on how its commitments are interpreted and implemented. At worst, the commitments may simply serve as procedural hurdles for competition authorities and courts to overcome before being able to condemn the digital gatekeepers for abusing their dominant position.

As a result, it is recommended that the Commission continues to use interim measures, which help to overcome the procedural hurdles of competition law litigation, which can prove exceptionally wasteful of time and resources, particularly for private enforcers. It is recommended that the DMA's implementation process be aligned with the objectives of Article 102 TFEU, which also prohibits the abuse of dominance, as the proposed remedies go beyond what is necessary to remedy the anti-competitive effects of the gatekeepers' conduct. Moreover, it is recommended that transparency obligations be imposed for state aid interventions, as well as their unconditional withdrawal in the event of an economic emergency.

Fourth, it is recommended that the digital marketplaces grant unconditional access to their platforms through remedies that go beyond the mere procedural obligations. This includes, but is not limited to, the opening of interfaces, access to data, equal treatment of independent marketplace participants, and the absence of steering and anti-steering duties. Fifth, it is recommended that the concept of market access be expanded to include the principles of fairness and contestability in order to achieve the

desired pro-competitive effect.

## **VI. Conclusion**

The EU competition law is one of the most sophisticated legal concepts created today. Competition occupies a special place in the EU governance and integration processes because of its particular connection to the EU internal market. More specifically, competition in the EU is not considered to be a consequence of something, for example, market power, prices, cost-efficiency, or even consumer welfare, but instead, competition is regarded as a condition of the EU internal market's functioning. The purpose of this paper is to argue that the EU competition law is indeed the cornerstone of the Union's pro-competitive policies.

First and foremost, the *acquis* related to competition is a sign of the EU's commitment to securing the conditions for the free market to function correctly. This objective is primarily achieved through the prohibition of anti-competitive agreements and abuse of dominance as established by the Article 101 and 102 of the TFEU. Moreover, the EU competition law provides for a comprehensive control regime over state aid designed to prevent any discrimination against enterprises, such as granting grants to some and not to others. Furthermore, a recent addition to the EU competition law, namely the Digital Markets Act and Digital Services Act, ensures that competition in the EU digital markets is properly maintained. Overall, the combination of the aforesaid competition-related instruments allows the EU to secure the prosperity of the internal market.

At the same time, the effectiveness of the competition law in maintaining the EU's internal market is in question due to several competition-related issues that have been pressing for the last several years. As will be discussed below, the *acquis* has failed to respond adequately to the short-term nature of some of the anti-competitive behaviors that take place in the internal market, particularly those related to digital technology. Furthermore, while state aid is at the center of the ongoing debate, the very flexibility of the State aid regime threatens the ability of the EU to provide equal treatment for all businesses. In a similar vein, the effectiveness of the Digital Markets Act and Digital Service Act is in question because of the complexity of the digital environment and the dependence on the capabilities of individual states to enforce newly adopted regulations. Therefore, it is hard to estimate the effectiveness of the competition law regime that the EU has chosen to combat anti-competitive behaviors that threaten the internal market.

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