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Digital Markets between Regulation and Competition policy. Converging agendas.

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The EU data strategy framework is driven by a renewed centralized approach when it comes to regulation. In the following it will be proven that such institutional and governance solution shall not be demonized.
Whereas the European digital culture shall be nurtured and fostered, leading to an a solo, competition law and enforcement shall be maintained fit, strong and fast to as to allow the European sovereignty to stand within and across the national boundaries on one hand, and to expand as a global model, outside the European borders.
To advance such trajectory, competition law and enforcement, both at European level and at national level, shall be kept autonomous and parallel so that to make digital markets contestable and open, while preserving their pro-competitive and pro-innovative functioning.

Keywords: EU Data strategy; Regulation and Competition policy; Digital Markets Act; Digital Service Act.

Summary: Introduction. – 1. A neverending dilemma. – 2. A new innovation policy approach. – 3. Towards a common digital culture. – Conclusions.

Introduction.

On December 15th 2020, the European Commission presented two proposals for the regulation of online platforms. The first concerns the regulation of digital services (hereafter, the "Digital Services Act" or "DSA") while the second constitutes a regulation of digital markets (hereafter, the "Digital Markets Act" or "DMA").

In order to sum up the content of the proposals presented by the European Commission - whose legal basis is, for both of them, the provision set forth in Article 114 TFEU - the DSA addresses the preparation of a specific mechanism for accountability of the platforms for processing and disseminating digital content "uploaded" by users; while the new regime outlined by the DMA envisages a series qualitative criteria aimed at identifying large online platforms having the function of access control (also known as "gatekeeping"). Regarding the role played by gatekeepers, they basically constitute platforms holding consolidated and stable position in the domain of their activities (which could be current or even foreseeable in the near future), hence significantly affecting the internal market and playing an intermediary role between a large base of end-users and a large number of businesses.

Having said that and left aside, for the moment, the "detailed" content of the proposals of the European Commission, it should be noted the DMA and the DSA constitute a "privileged observatory" for investigating the issue of the interdependence between regulation and competition. They should be analysed, on the one hand, under the today's fourth industrial revolution perspective, which involves the "innovative" profile of digital markets; on the other, they should be examined having in mind the "centralized" enforcement undertaken the European Commission and the "national-based" enforcement on the territory of Member States, the latter being upheld by national competitions and/or domestic regulatory authorities.

The inseparable relationship between regulation and competition is neither new nor scantily investigated. As proof of the relevance of the topic – as well as of the temporal "circularity" relationship existing between the two -, in a paper issued few years ago and according to two well-known professors of industrial economics and competition law, i.e. D. Carlton and R. Picker, "*[a]ntitrust can say no but struggles with saying yes […] while regulators often have a hard time saying no*".[1]

[1] D.W. Carlton, R.C. Picker, Antitrust and Regulation, in N.L. Rose (ed.), Economic Regulation and Its Reform: What Have We Learned?, NBER Books, National Bureau of Economic Research, 2014, pp. 25-61.

1. A never ending dilemma.

Under the labour division perspective, the abovementioned reference represents a paramount of the traditional work of conceptualisation - confirmed for decades in both overseas and European manuals[2] - concerning the analysis between antitrust law and regulation. It constitutes a subdivision of such fields, moving transversally into the temporal dimension, that is to say that it moves from an *ex-ante* intervention - in relation to the role of the regulator – to an *ex-post* intervention for antitrust enforcement purposes.

This reading summarises the institutional relationship between regulatory intervention and antitrust law, showing a so "precarious" balance as to have produced a predictable outcome and – it could be said - a state of "permanent conflict", which occurs whenever the enforcement of competition law goes beyond (for the decision purpose or for the methods of "closing" an investigation, e.g., by accepting commitments) the *ex-ante* intervention or, finally, whenever antitrust authority exercises its regulatory powers over the *ex-post* regulatory scenario, by sanctioning certain procedures or settling disputes.

Save for cartels and hard-core restrictions, such a logic "short circuit" reveals itself, on the one hand, in the determination of dominant positions (including those deriving from mergers between companies, on which the power of the competition authority operates through *ex- ante* intervention) and, on the other, in the qualification of market abuses. To this end, the most extreme logic pattern for choosing between antitrust law and regulatory power could be seen in the famous Trinko case,[3] whereby the United States Supreme Court upheld that, in the presence of a sectoral regulation, there is no "division" of labour, but an exclusive prevalence of regulation, also with regard to the governance of *ex-post* conducts.

This having been said, these conceptualisations of the antitrust enforcement and regulatory oversight under the "temporal" subdivision perspective (*ex-ante* intervention vs. *ex-post* intervention) - including the "one-way" reading of the United States Supreme Court Trinko case – present numerous perplexities, especially regarding the presence of market dynamics with a high rate of innovation, such as those which we have been occurred more and more frequently in the last five years.[4]

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[2] On this topic, see Hovenkamp, Economics and Federal Antitrust Law, St. Paul, West Publishing Co., 1985, p. 9- 10; R.A. Posner, Oligopoly and the Antitrust Laws: A Suggested Approach, 21 Stan. L. Rev. 1562 (1969); P.E. Areeda, Introduction to Antitrust Economics, 52 Antitrust L.J. 523 (1983); G.J. Stigler, A Theory of Oligopoly, in Journal of Political Economy, 72, (1964), 44 ss.; R. Whish, Competition Law, Oxford, OUP, IX ed., 2018, passim; D. Geradin, A. Layne-Farrar, N. Petit, EU Competition Law and Economics, Oxford, OUP, 2012, passim

[3] U.S. Supreme Court, sent. Verizon Communications Inc. V. Law Offices of Curtis V. Trinko, LLP., No. 02-682 (2004).

[4] On this matter, See public consultation, launched on June 26th 2020 and concluded on October 9th 2020, relating to the revision of the EU Commission Communication on the definition of the relevant market for the purposes of applying EU competition law, available at the link: https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12325-Evaluation-of-the-Commission-Notice-on-market-definition-in-EU-competition-law. According to the media release on the launch of the public consultation as of June 26th 2020 (available at the link: https://ec.europa.eu/commission/presscorner/detail/en/IP_20_1187), "[o]ver the past few years, change is happening at an ever more rapid pace, and the world is becoming increasingly

In this dynamic process of transformation of digital markets, as analysed under the lens of innovation, it is straightforward to acknowledge that both regulation and antitrust law must play their role and, therefore, shall be interpreted as complementary interventions, regardless of the well-known distinction between *ex-ante* and *ex-post* intervention. The regulation sets, on the one hand, the (corrective) purpose of economic freedoms interwoven with "incomplete" rights (to use a terminology employed by the economic analysis of law), hence based on a "given state of the world". Antitrust Law, on the other, regulates the "special" liability arising out from practical situations which cannot be set *a priori* by regulation but, moving from the latter, such practical situations could be subject in re-regulation processes, as long as it is possible to acknowledge every situation as such.

However, as a matter of fact, this means that regulation and competitive enforcement shall be dynamically integrated, which helps, as such, in defining a much broader and a more complex field of investigation in comparison to the mere distinction between *ex-ante* and *ex-post* action.

In light of the above, the DMA and the DSA once again allow this "state of the art" to be critically evaluated and "recorded", outlining the new institutional structure and spending some "embryonic" reflections on the dynamics that will be witnessed over the years to come. Especially, such reflections focus on the necessary interrelationships between regulation and the "traditional" technical-legal tools of antitrust law and, above all, between the "centralized" enforcement system as provided for in the DMA and DSA by the European Commission and those "crumbling" and fragmentating pressures of antitrust enforcement, which have been increasingly put in place by national competition authorities (and which will be discussed below by providing some symbolic examples).

2. A new innovation policy approach.

The proposal provided for in the DMA refrain Member States from imposing on gatekeepers '*further obligations by way of laws, regulations or administrative action for the purpose of ensuring contestable and fair markets*' [5] and '*from applying national rules which are specific to the types of undertakings and services covered by this Regulation* [that is to say, the DMA].'[6] At the same time, the DMA '*is without prejudice to Articles 101 and 102 TFEU, to the corresponding national competition rules and to other national competition rules regarding unilateral*

digital and interconnected. Changes such as the increase in global trade, including with major emerging markets, the progressive elimination of national barriers to commerce within the single market, digitization, and the rise of major new players in some sectors, mean that many markets may work differently today than they did in the past. The current Market Definition Notice dates from 1997 and may therefore not address all pertinent questions arising today when defining the relevant product and geographic market". More recently, the EU Commission issued, on July 12th 2021, a Staff Working Document (SWD(2021) 199 final) reporting an evaluation regarding the update of the EU Commission Communication on the definition of the relevant market for the application of European Law and, especially, in the antitrust field, available at the following link: file:///C:/Users/WIN7/Downloads/090166e5df9d4c7b.pdf.

[5] Art. 1, paragraph 5, Digital Service Act.

[6] Recital no. 9, Digital Service Act.

behaviour that are based on an individualised assessment of market positions.'[7] In details, such a proposal of the European Commission does not '*precludes Member States from imposing obligations, which are compatible with Union law, on undertakings, including providers of core platform services where these obligations are unrelated to the relevant undertakings having a status of gatekeeper*.'[8]

Therefore, any obligation imposed on the "designated" gatekeepers under national competition law is allowed, provided that it is compatible with Regulation (EC) no. 1/2003[9] and, conversely, that '*national authorities shall not take decisions which would run counter to a decision adopted by the Commission',* pursuant to the DMA.'[10] But let's start from the beginning.

Parallel imposition of obligations will therefore be possible, for example, under the DMA and under the new Article 19a of the German Competition Law, which addresses digital platforms.[11] In the case of parallel applications of a regulatory "tool", such as those provided for in the DMA and in competition law, the Court of Justice has previously upheld that, on the one hand, there is a very limited "*room for discretion*" for the European Commission (and, in any case , to be strictly interpreted) to exclude the applicability of Article 102 TFEU, should any anti-competitive behaviour be imposed on companies by national regulatory legislation; and that, on the other, the adoption of *an ex-ante* measures by the national regulatory authority does not preclude the European Commission from launching investigations and/or inquiries pursuant to Article

[7] Ibidem.
[8] See Art. 1, paragraph 5, Digital Service Act.
[9] Pursuant to Art. 3, paragraph 2 of the Council Regulation (EC) No 1/2003 of 16 December 2002, 'Member States shall not under this Regulation be precluded from adopting and applying on their territory stricter national laws which prohibit or sanction unilateral conduct engaged in by undertakings.'
[10] Art. 1, paragraph 7, Digital Service Act.
[11] Art. 19a "Abuse of companies of primary importance for cross-market competition"(1). The Bundeskartellamt may issue a decision declaring that a company that is significantly active on the markets pursuant to Article 18 (3a) is of primary importance for cross-market competition. In determining the primary importance of a company that crosses the markets for competition, the following are taken into account in particular:
1. its dominant position on one or more markets;
2. its financial strength or its access to other resources;
3. its vertical integration and its activities in otherwise related markets;
4. of its access to data relevant to competition;
5. the importance of its activities for third party access to procurement and sales markets and its related influence on the commercial activities of third parties. Once a company is qualified as being of primary importance for cross-market competition, the BKartA may "prohibit this company" from: (2) [...]
1. treat competitors' offers differently from their own offers for access to the offer and sale markets [...];
2. adopt measures that hinder other companies in their activity on the supply or demand markets, when the activity of such companies is relevant for access to these markets [...];
3. directly or indirectly exclude competitors on a market in which the respective firm can rapidly expand its position even without being dominant [...];
4. create or raise barriers to market entry or otherwise foreclose other businesses by using competitive data that has been collected by the other party on a dominated market, including in combination with other competitive data from sources external to the dominated market, or require terms and conditions that allow such use [...];
5. making the interoperability of products or services or data portability impossible or more difficult and therefore hindering competition;
6. insufficiently informing other enterprises of the extent, quality or success of the service they provide or commission, or otherwise making it difficult for them to assess the value of that service;
7. Solicit, for the treatment of offers from another company, advantages that are not proportional to the reason for the request […].

102 TFEU against the same companies to which national measures are addressed.[12] It is not only that, however: the European institutions have interpreted the '*ne bis in idem'* principle very strictly, according to which the same commercial conduct would be sanctioned on the basis of two different regulatory instruments (such as in the case we are dealing therewith, being the DMA and competition rules), provided that the latter guarantees the protection of different legal interests.[13] As, in fact, in the case of the DMA, which aims at protecting a different legal interest, contrary to the rules governing competition: namely, "*it pursues an objective that is complementary to, but different from that of protecting undistorted competition on any given market, as defined in competition law terms, which is to ensure that markets where gatekeepers are present are and remain contestable and fair*".[14] Therefore, the possibility of a joint and parallel enforcement of DMA provisions and competition rules is expressly envisaged.

Conversely, should a "designated" gatekeeper be unable to comply with one set of rules without violating the other, it should then balance itself between the need of preserving and consolidating the internal market (which represents a founding objective as envisaged in the DMA) and, at the same time, respecting the hierarchy of legal sources in European law (pursuant to which European Competition Law - but not also the domestic competition law of the Member States, which goes beyond European law - would prevail over the DMA). Therefore, should antinomies arise out from an obligation imposed by the European Commission pursuant to the DMA (which is applicable throughout the EU) and a measure adopted by a national antitrust authority pursuant to domestic competition law (which is independent from the European law and which applies within one Member State only), the obligation envisaged in the DMA should prevail. Alternatively, it could be argued that, on the basis of the principle of loyal cooperation pursuant to Article 4 TEU, a Member State cannot impose an obligation undermining European law. Should hence a national antitrust authority impose an obligation on a "designated" gatekeeper violating the DMA, the latter could be entitled to refrain from complying with such an obligation, arguing that a Member State would hence impose an obligation in violation to the European law.[15]

In order to "*effectively avoid a fragmentation of the internal market*"[16] and to

[12] See Case C-280 / 08P, Deutsche Telekom, EU: C: 2010: 603, according to which the EU competition rules "complete [...], as a result of an ex-post control exercise, the legislative context adopted by the EU legislator for the ex-ante regulation of telecommunications markets "(§92).
[13] See COMP/39.525, Telekomunikacja Polska, §§143-145.
[14] Recital no. 10, Digital Market Act.
[15] See C-198/01, Consorzio Industrie Fiammiferi (CIF), EU:C:2003:430 Case, according to which: "[…] it is appropriate to point out, first, that, although Articles 81 EC and 82 EC are, in themselves, concerned solely with the conduct of undertakings and not with laws or regulations emanating from Member States, those articles, read in conjunction with Article 10 EC, which lays down a duty to cooperate, none the less require the Member States not to introduce or maintain in force measures, even of a legislative or regulatory nature, which may render ineffective the competition rules applicable to undertakings […] The Court has held in particular that Articles 10 EC and 81 EC are infringed where a Member State requires or favours the adoption of agreements, decisions or concerted practices contrary to Article 81 EC or reinforces their effects, or where it divests its own rules of the character of legislation by delegating to private economic operators responsibility for taking decisions affecting the economic sphere […]" (§§ 45-46).
[16] Recital no. 9, DMA.

"br*ing divergent national legislations closer*",[17] as well as to avoid the risk of different applications of the DMA by the European Commission and of competition law at the level of the States members, the possibility of setting up a new permanent cooperation forum has been proposed (being different from ECN and typical mechanisms envisaged under the Regulation (EC) No. 1/2003, which, contrary to the DMA, fall within the "perimeter" of the "toolbox" available to competition law), whereby the European Commission and national competition authorities (possibly, by virtue of the contribution of other independent national authorities) can meet and discuss the application of the DMA.

Promptly, on June 23rd, 2021, the heads of the national antitrust authorities of the Member States, gathered within the European Competition Network ("ECN"), agreed on a joint document regarding the role of the abovementioned national antitrust authorities in applying the DMA. On the same occasion, the heads of national antitrust authorities supported the creation of a mechanism of close coordination and cooperation between these authorities in the context of DMA, which could emulate the ECN model which has proven to work efficiently over the past 15 years.[18]

3. Towards a common digital culture.

As well-known, the original and fundamental objective of the DMA proposal is to "*allow platforms to unlock their full potential by addressing at EU level the most salient incidences of unfair practices and weak contestability so as to allow end users and business users alike to reap the full benefits of the platform economy and the digital economy at large, in a contestable and fair environment*".[19] But it is not only that, however: the DMA, in the "expectations" of the European Commission's proposal, "*integrates current EU law (and the internal law of the Member States) on competition*".[20]

Doubts about the regulatory fragmentation and the need for harmonization at European level were absent from the "original" purpose upon which the DMA proposal was based. Alongside the start of the legislative procedure, however, certain perplexities emerged prominently, and represent now the core of the debate concerning the adoption of the DMA. And such concerns arise from the circumstance according to which, in order to validly apply Article 114 TFEU as a legal basis, the EU legislator should demonstrate that the real proposal's objective is, indeed, to resolve existing or potential discrepancies between domestic laws being able to hinder the free movement of digital services or restrict competition significantly.

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[17] Recital no. 8, DMA.

[18] See ECN, Joint paper of the heads of the national competition authorities of the European Union – How national competition agencies can strengthen the DMA (23 June 2021), available at the following link: https://www.bundeskartellamt.de/SharedDocs/Publikation/EN/Others/DMA_ECN_Paper.pdf?__blob=publicationFile&v=2-.

[19] DMA, Explanatory Memorandum, p. 3.

[20] DMA, Explanatory Memorandum, p. 4, according to which "It addresses unfair practices by gatekeepers that either fall outside the existing EU competition rules, or that cannot be as effectively addressed by these rules. […] The current proposal minimises the detrimental structural effects of unfair practice ex ante, without limiting the ability to intervene ex post under EU and national competition rules".

The Commission proposal moves toward such a direction and warns several times, by general terms, from a risk of probable future regulatory fragmentation. According to the Commission, "*without action at EU level, existing and pending national legislation has the potential to lead to increased regulatory fragmentation of the platform space*".[21]

However, behind the risk of fragmentation that the DMA seeks to avoid, there is a further risk represented by the progressive process of disintegration of the antitrust enforcement going from the "central" level of the European Commission towards the level of the Member States and national competition authorities. It will be possible to enlist some emblematic examples, drawn from the experience of the last year's cases, to openly discuss them, as follows:

- On May 27th, 2021, German, French and Dutch Ministers of Economy and Finance, while welcoming the innovation arising from the DMA proposal, nevertheless requested a greater "*room for domestic discretion*" on the part of Member States to "adjust" to digital markets (and, consequently, apply) specific national competition rules. More specifically, this is how German, French and Dutch governments expressed themselves in the context of this joint statement[22]:

"*National and European legislation should be complementary for addressing issues of market foreclosure and unfairness entailed by the behaviour of digital gatekeepers. These legislations should not undermine each other either. Since the digital economy is complex and multifaceted, a number of constellations may bear national peculiarities. Member States should therefore remain able to set and enforce national rules including national competition law applicable to gatekeepers' unilateral conduct. The framework should grant such national provisions and the enforcement thereof a sufficient and clear leeway, as granted, for example, by the provisions of Article 3 of Council Regulation (EC) No 1/2003 of 16 December 2002*".

- following the German example - whose parliament, as mentioned above, has introduced a specific rule in its competition law, namely the new Article 19a governing the notion of business "*of primary importance for competition and transversal to markets*" - then several other Member States (such as Italy or Sweden) are now considering the opportunity to adopt further national rules inspired by the DMA. And, indeed, the AGCM, in its report to the Government for the purpose of proposing the annual law on competition,[23] has suggested the adoption of Article 3-*bis* of Law no. 287/1990 titled "*Abusive behaviour by companies that are of primary importance for competition on multiple markets*",[24]

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[21] DMA, Explanatory Memorandum, p. 3; See also DMA, Recitals no. 6-9.

[22] See Germany, French e Netherlands, Strengthening the Digital Markets Act and Its Enforcement, available at the following link: https://www.bmwi.de/Redaktion/DE/Downloads/M-O/non-paper-friends-of-an-effective-digital-markets-act.pdf?__blob=publicationFile&v=4.

[23] S143 – Report as of March 23rd, 2021, pursuant to Articles 21 e 22 of Law 10th October 1990, n. 287, regarding proposals of competition law reforms, pursuant to the Annual Law for Market and Competition on 2021 ('Legge Annuale per il Mercato e la Concorrenza anno 2021'), submitted to the President of the Councils of Ministers.

[24] Article 3-bis. Abusive behaviour by companies that are of primary importance for competition in multiple markets.

1. The Authority, with its own provision being valid for five years from its adoption, can designate companies

by introducing a text modelled on Article 19a GWB.

- The German antitrust authority - the *Bundeskartellamt* - has launched four separate investigations, starting from January 2021, based on the new competition rules approved by the German Parliament with the introduction of the 10th Amendment and of Article 19a to the Competition Law, and, more specifically, the first investigation against Facebook based on the connection of its network with that of the Oculus company on January 28th, 2021,[25] the second against Amazon initiated on May 18th, 2021, [26] the third launched against Google on May 25th 2021 [27] and, most recently, the investigation launched on June 21st 2021 against Apple.[28]

- On May 18th, 2021, the German Federal Court of Justice – *Bundesgerichtshof* - ruled on the appeal of the *Bundeskartellamt* and "overturned", confirming the prohibition, the ruling of the Higher Regional Court of Düsseldorf concerning the clauses of equal price or the "Most Favoured Nation clause" or "MFN

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that have, in particular, the following characteristics of primary importance for competition in several markets: i) possession of a dominant position in one or more markets; ii) the degree of vertical integration and / or presence on contiguous markets; iii) access to data relevant to competition; iv) the importance of the activities carried out to allow third-party companies to access supply or outlet markets and v) the influence on the economic activity of third-party companies.
2. In the event of an assessment pursuant to paragraph 1, the Authority may, with the same provision, prohibit the designated company from the following conduct, unless the designated company demonstrates that the same are objectively justified:
a) to grant preferential treatment, in the intermediation of access to supply or outlet markets, to its goods or services with respect to those of other companies, in particular by favouring them in the visualization or pre-installing their services or products or by integrating them into other offers of the company;
b) hinder other companies in their economic activities on supply or outlet markets, when the activities of the designated company are relevant for access to these markets;
c) hinder other companies on markets in which the designated company, even without being dominant, could rapidly expand its position, in particular through matched bidding and binding strategies;
d) strategically use the processing of data relevant to competition in order to raise the barriers to entry for other companies;
e) hinder the interoperability of goods or services or data portability;
f) provide other companies with insufficient information on the services provided by the designated company or hinder their ability to evaluate such services;
g) to request conditions for the processing of offers from another undertaking that are not proportionate to the service offered, in particular by requesting the transfer of data or rights not necessary for the provision of the service or by making the quality of the offer subject to the transfer of data or rights that are not proportionate to the service.

[25] See Press release del January 28th 2021 titled: First proceeding based on new rules for digital companies – Bundeskartellamt also assesses new Section 19a GWB in its Facebook/Oculus case , available at the following link: https://www.bundeskartellamt.de/SharedDocs/Meldung/EN/Pressemitteilungen/2021/28_01_2021_Facebook_Oculus.html?nn=3599398.

[26] See Press release as of May 18th 2021 titled: Proceedings against Amazon based on new rules for large digital companies (Section 19a GWB), available at the following link: https://www.bundeskartellamt.de/SharedDocs/Meldung/EN/Pressemitteilungen/2021/18_05_2021_Amazon_19a.html?nn=3599398.

[27] See Press release a of May 25th 2021 titled: Proceeding against Google based on new rules for large digital players (Section 19a GWB) – Bundeskartellamt examines Google's significance for competition across markets and its data processing terms, available at the following: https://www.bundeskartellamt.de/SharedDocs/Meldung/EN/Pressemitteilungen/2021/25_05_2021_Google_19a.html?nn=3599398.

[28] See Press release as of June 21st 2021 titled: Proceeding against Apple based on new rules for large digital companies (Section 19a(1) GWB) – Bundeskartellamt examines Apple's significance for competition across markets, available at the following link: https://www.bundeskartellamt.de/SharedDocs/Publikation/EN/Pressemitteilungen/2021/21_06_2021_Apple.html?nn=3599398.

clause" in the case of Booking.com.[29] Although the case described above constitutes a conduct previously "scrutinized" and authorized by the competition authorities in other jurisdictions of the European Union, and despite the risk of divergent interpretations of EU law, this is a case whereby the European Commission had not intervened and the *Bundesgerichtshof* opted not to submit a preliminary reference to the Court of Justice.

- On July 17th, 2019, the European Commission launched an investigation to assess whether Amazon's use of sensitive data of independent retailers operating on its marketplace has breached EU competition law[30] and, on November 10th, 2020, the European Commission communicated a Notice of Charges[31] to Amazon, also leading, *inter alia*, the investigation to focusing on the European Economic Area excluding Italy, since the AGCM had initiated an analogous investigation concerning similar assumptions and behaviours (with particular focus on the Italian market, anyway) on April 10th 2019,[32] hence allowing parallel proceedings at EU and domestic level in relation to the same conducts.

- On October 7th, 2020, the Polish antitrust authority imposed the highest pecuniary sanction ever applied under competition law (equal to Euro 6.7 billion against Gazprom),[33] in the absence of any communication channel with the European Commission concerning preliminary findings and the purpose to proceeding with such a high penalty, as explained by the EU Commissioner Vestager.[34]

Conclusions.

Coming to some preliminary sharp conclusions it seems that in the new innovation policy agenda, institutional and governance centralization shall not be demonized. Shall be better complemented instead.

Whereas the European digital culture shall be nurtured and fostered, leading to an *a solo*, competition law and enforcement shall be maintained fit, strong and fast to as to allow the European sovereignty to stand within and across the national boundaries on one hand, and to expand as a global model, outside the European borders.

To advance such trajectory, competition law and enforcement, both at European level and at national level, shall be kept autonomous and parallel so that to make digital markets contestable and open, while preserving their pro-competitive and pro-innovative functioning.

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[29] See Bundesgerichtshof bestätigt Unzulässigkeit der "engen Bestpreisklauseln" von Booking.com, Nr. 099/2021, Beschluss vom 18. Mai 2021 – KVR 54/20, available at the following link: https://www.bundesgerichtshof.de/SharedDocs/Pressemitteilungen/DE/2021/2021099.html.

[30] See Press Release Release of European Commission, Case AT.40462 Amazon Marketplace, available at the following link: https://ec.europa.eu/commission/presscorner/detail/en/IP_19_4291.

[31] See Press Release of European Commission, available at the following link: https://ec.europa.eu/commission/presscorner/detail/en/ip_20_2077.

[32] V. A528 – FBA Amazon.

[33] See Press Release UOKiK, available at the following link: https://www.uokik.gov.pl/news.php?news_id=16818.

[34] See https://www.politico.eu/article/poland-hits-gazprom-with-world-largest-competition-fine/.