The Digital Policy of the Next EU Commission: All roads Lead to Margrethe Vestager
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Dirk Auer

Ursula von der Leyen has just announced the composition of the next European Commission. For tech firms, the headline is that Margrethe Vestager will not only retain her job as the head of DG Competition, she will also oversee the EU's entire digital markets policy in her new role as Vice-President in charge of digital policy. Her promotion within the Commission as well as her track record at DG Competition both suggest that the digital economy will continue to be the fulcrum of European competition and regulatory intervention for the next five years.

The regulation (or not) of digital markets is an extremely important topic. Not only do we spend vast swaths of both our professional and personal lives online, but firms operating in digital markets will likely employ an ever-increasing share of the labor force in the near future.

Likely recognizing the growing importance of the digital economy, the previous EU Commission intervened heavily in the digital sphere over the past five years. This resulted in a series of high-profile regulations (including the GDPR, the platform-to-business regulation, and the reform of EU copyright) and competition law decisions (most notably the Google cases).

Lauded by supporters of the administrative state, these interventions have drawn flak from numerous corners. This includes foreign politicians (especially Americans) who see in these measures an attempt to protect the EU's tech industry from its foreign rivals, as well as free market enthusiasts who argue that the old continent has moved further in the direction of digital paternalism.

Vestager's increased role within the new Commission, the EU's heavy regulation of digital markets over the past five years, and early pronouncements from Ursula von der Leyen all suggest that the EU is in for five more years of significant government intervention in the digital sphere.

Vestager the slayer of Big Tech

During her five years as Commissioner for competition, Margrethe Vestager has repeatedly been called the most powerful woman in Brussels (see here and here), and it is easy to see why. Yielding the heavy hammer of European competition and state aid enforcement, she has relentlessly attacked the world's largest firms, especially American's so-called "Tech Giants".

The record-breaking fines imposed on Google were probably her most high-profile victory. When Vestager entered office, in 2014, the EU's case against Google had all but stalled. The Commission and Google had spent the best part of four years haggling over a potential remedy that was ultimately thrown out. Grabbing the bull by the horns, Margrethe Vestager made the case her own.

Five years, three infringement decisions, and €8.25 billion euros later, Google probably wishes it had managed to keep the 2014 settlement alive. While Vestager's supporters claim that justice was served, Barack Obama and Donald Trump, among others, branded her a protectionist (although, as Geoffrey Manne and I have noted, the evidence for this is decidedly mixed). Critics also argued that her decisions would harm innovation and penalize consumers (see here and here). Regardless, the case propelled Vestager into the public eye. It turned her into one of the most important political forces in Brussels. Cynics might even suggest that this was her plan all along.

But Google is not the only tech firm to have squared off with Vestager. Under her watch, Qualcomm was slapped with a total of €1.239 Billion in fines. The Commission also opened an investigation into Amazon's operation of its online marketplace. If previous cases are anything to go by, the probe will most probably end with a headline-grabbing fine. The Commission even launched a probe into Facebook's planned Libra cryptocurrency, even though it has yet to be launched, and recent talk suggests it may never be. Finally, in the area of state aid enforcement, the Commission ordered Ireland to recover €13 Billion in allegedly undue tax benefits from Apple.

Margrethe Vestager also initiated a large-scale consultation on competition in the digital economy. The ensuing report concluded that the answer was more competition enforcement. Its findings will likely be cited by the Commission as further justification to ramp up its already significant competition investigations in the digital sphere.

Outside of the tech sector, Vestager has shown that she is not afraid to adopt controversial decisions. Blocking the proposed merger between Siemens and Alstom notably drew the ire of Angela Merkel and Emmanuel Macron, as the deal would have created a European champion in the rail industry (a key political demand in Germany and France).

These numerous interventions all but guarantee that Vestager will not be pushing for light touch regulation in her new role as Vice-President in charge of digital policy. Vestager is also unlikely to put a halt to some of the "Big Tech" investigations that she herself launched during her previous spell at DG Competition. Finally, given her evident political capital in Brussels, it's a safe bet that she will be given significant leeway to push forward landmark initiatives of her choosing.

Vestager the prophet

Beneath these attempts to rein-in "Big Tech" lies a deeper agenda that is symptomatic of the EU's current zeitgeist. Over the past couple of years, the EU has been steadily blazing a trail in digital market regulation (although much less so in digital market entrepreneurship and innovation). Underlying this push is a worldview that sees consumers and small startups as the uninformed victims of gigantic tech firms. True to form, the EU's solution to this problem is more regulation and government intervention. This is unlikely to change given the Commission's new (old) leadership.

If digital paternalism is the dogma, then Margrethe Vestager is its prophet. As Thibault Schrepel has shown, her speeches routinely call for digital firms to act "fairly", and for policymakers to curb their "power". According to her, it is our democracy that is at stake. In her own words, "*you can't sensibly talk about democracy today, without appreciating the enormous power of digital technology*". And yet, if history tells us one thing, it is that heavy-handed government intervention is anathema to liberal democracy.

The Commission's Google decisions neatly illustrate this worldview. For instance, in *Google Shopping*, the Commission concluded that Google was coercing consumers into using its own services, to the detriment of competition. But the *Google Shopping* decision focused entirely on competitors, and offered no evidence showing actual harm to consumers (see here). Could it be that users choose Google's products because they actually prefer them? Rightly or wrongly, the Commission went to great lengths to dismiss evidence that arguably pointed in this direction (see here, §506-538).

Other European forays into the digital space are similarly paternalistic. The General Data Protection Regulation (GDPR) assumes that consumers are ill-equipped to decide what personal information they share with online platforms. Queue a deluge of time-consuming consent forms and cookie-related pop-ups. The jury is still out on whether the GDPR has improved users' privacy. But it has been extremely costly for businesses — American S&P 500 companies and UK FTSE 350 companies alone spent an estimated total of $9 billion to comply with the GDPR — and has at least temporarily slowed venture capital investment in Europe.

Likewise, the recently adopted Regulation on platform-to-business relations operates under the assumption that small firms routinely fall prey to powerful digital platforms:

> Given that increasing dependence, the providers of those services [i.e. digital platforms] often have superior bargaining power, which enables them to, in effect, behave unilaterally in a way that can be unfair and that can be harmful to the legitimate interests of their businesses users and, indirectly, also of consumers in the Union. For instance, **they might unilaterally impose on business users practices which grossly deviate from good commercial conduct, or are contrary to good faith and fair dealing.**

But the platform-to-business Regulation conveniently overlooks the fact that economic opportunism is a two-way street. Small startups are equally capable of behaving in ways that greatly harm the reputation and profitability of much larger platforms. The Cambridge Analytica leak springs to mind. And what's "unfair" to one small business may offer massive benefits to other businesses and consumers.

Make what you will about the underlying merits of these individual policies, we should at least recognize that they are part of a greater whole, where Brussels is regulating ever greater aspects of our online lives — and not clearly for the benefit of consumers.

With Margrethe Vestager now overseeing even more of these regulatory initiatives, readers should expect more of the same. The Mission Letter she received from Ursula von der Leyen is particularly enlightening in that respect:

I want you to coordinate the work on upgrading our liability and safety rules for digital platforms, services and products as part of a new Digital Services Act….

I want you to focus on strengthening competition enforcement in all sectors.

A hard rain's a gonna fall… on Big Tech

Today's announcements all but confirm that the EU will stay its current course in digital markets. This is unfortunate.

Digital firms currently provide consumers with tremendous benefits at no direct charge. A recent study shows that median users would need to be paid €15,875 to give up search engines for a year. They would also require €536 in order to forgo WhatsApp for a month, €97 for Facebook, and €59 to drop digital maps for the same duration.

By continuing to heap ever more regulations on successful firms, the EU risks killing the goose that laid the golden egg. This is not just a theoretical possibility. The EU's policies have already put technology firms under huge stress, and it is not clear that this has always been outweighed by benefits to consumers. The GDPR has notably caused numerous foreign firms to stop offering their services in Europe. And the EU's Google decisions have forced it to start charging manufacturers for some of its apps. Are these really victories for European consumers?

It is also worth asking why there are so few European leaders in the digital economy. Not so long ago, European firms such as Nokia and Ericsson were at the forefront of the digital revolution. Today, with the possible exception of Spotify, the EU has fallen further down the global pecking order in the digital economy.

The EU knows this, and plans to invest €100 Billion in order to boost European tech startups. But these sums will be all but wasted if excessive regulation threatens the long-term competitiveness of European startups.

So if more of the same government intervention isn't the answer, then what is? Recognizing that consumers have agency and are responsible for their own decisions might be a start. If you don't like Facebook, close your account. Want a search engine that protects your privacy? Try DuckDuckGo. If YouTube and Spotify's suggestions don't appeal to you, create your own playlists and turn off the autoplay functions. The digital world has given us more choice than we could ever have dreamt of; but this comes with responsibility. Both Margrethe Vestager and the European institutions have often seemed oblivious to this reality.

If the EU wants to turn itself into a digital economy powerhouse, it will have to switch towards light-touch regulation that allows firms to experiment with disruptive services, flexible employment options, and novel monetization strategies. But getting there requires a fundamental rethink — one that the EU's previous leadership refused to contemplate. Margrethe Vestager's dual role within the next Commission suggests that change isn't coming any time soon.

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