

 ForumEurope

THE DIGITAL SERVICES ACT WEEK

A new rulebook for the digital economy

30 June - 3 July 2020

ONLINE EVENT



Conference Report

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Introduction

The potential of the Digital Services Act to transform how the internet economy functions - and by extension the economy at large - is significant. If what we expect to emerge does indeed come to fruition, it will touch e-commerce, digital content, competition, liability regimes, and many other areas. It promises to be a wide-ranging rulebook whose potential impact has been compared to previous legislative work such as the REACH chemicals policy, and more latterly, the EU's flagship GDPR.

Forum Europe's Digital Service Act Week brought together more than 700 participants from Europe and around the world, across four days of debate and discussion. It featured senior policymakers, business representatives and trade associations, members of the press, civil society, and academia. As I indicated in my remarks ahead of the final session, the extent to which stakeholders engaged each other openly and creatively was impressive and a testament to the willingness of all parties to build out at Digital Services Act that, in the end, delivers what is required.

Forum Europe will organise a follow-up event in 2021 but for now, my thanks to everyone who participated and spoke; to our partners EDiMA, AIM - The European Brands Association, and the Information Technology Industry Council (ITI).

This document provides a top line on what was discussed. I hope you find it a useful resource.

Thank you once again,



James Wilmott

Partner & Managing Director
Forum Europe

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Tuesday, June 30, 2020 ▶

Competition in The Digital Economy

The first day of the Digital Services Act Week kicked off with a session dedicated to competition in the digital economy. Two speeches brought the audience up to speed: a keynote speech delivered by **Daniel Matray**, Head of App Store and Apple Media Services, Europe at Apple followed by a panel opening speech by **Inge Graef**, Assistant Professor at Tilburg Law School.



Mr. Matray presented an industry perspective on the evolution of Digital Services. He explained how Apple's App Store realised the ambition of creating a level playing field for all developers, removing barriers to market and supporting a wide variety of business models. He pointed out that the App economy generated over 1.5 million jobs since its inception and facilitated over 50 billion Euros in billings and sales in Europe in 2019. Regarding the Digital Services Act, he argued that it should ensure that services like the App Store can continue to contribute to a trustworthy innovative environment that offers a level playing field in which developers of all sizes can compete.



Inge Graef provided an academic perspective on the underlying objectives and challenges of policy initiatives in online competition law. She formulated recommendations for supplementary regulations alongside existing competition law to address the new challenges of the digital age, such as protecting the level playing field and the diversity of competitors and consumer choice. She argued that the characteristics of digital markets

tend to benefit a few large incumbents, which makes it necessary to support small promising challengers in their growth. Professor Graef provided examples of regulatory gaps and how they can be addressed, supported by a few recent competition investigations. The second part of her introductory comments addressed the issue of effective enforcement and the design of remedies. She critically reviewed the strengths and weaknesses of some competition enforcement tools and explained how, for example, an asymmetric approach with stricter standards for larger firms, can avoid structural issues around competition and customer choice.



After the keynotes, moderator **Lewis Crofts**, Editor-In-Chief, MLex opened the floor to a panel of experts from various backgrounds who brought forward some broader positions.



Prabhat Agarwal, Acting Head of Unit, E-Commerce and Platforms, DG CONNECT, European Commission

Mr. Agarwal spoke about the context that has led the European Commission to look at updating the current rules and explored the possible content of the DSA package. He explained that the DSA will address a range of issues that stem from the way platform economies and digital services have transformed the economy and society in the European Union. Concretely, the DSA will focus on the reform of the digital services regulation and introduce ex-ante rules for gatekeeper platforms.

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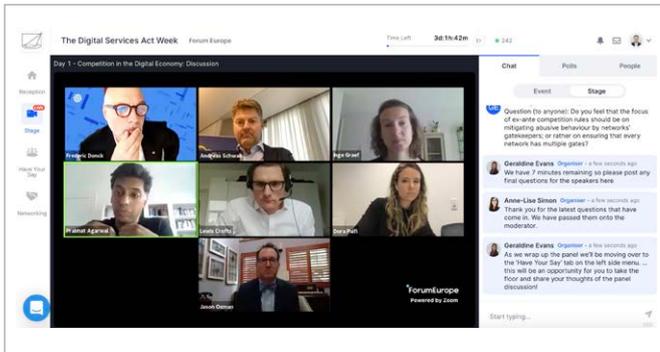
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According to him, regulation reform is necessary to counter the legal fragmentation in the European Union which makes the digital single market impossible. The ex-ante rules for gatekeeper platforms, on the other hand, would address the structural tendency of the digital economy to favor a few big market incumbents, which hinders healthy competition and innovation. This is a continuation of the Platform-to-Business regulation from 2018, which aimed to create a fair, transparent and predictable business environment for smaller businesses and traders on online platforms.

In closing, Mr. Agarwal stipulated that the Public Consultation of the Commission around the DSA runs until September 8, 2020. Combined with a range of studies and expert reports, the Commission tries to ensure that all stakeholders are heard to define the contours of an intelligent new framework that can be introduced next to the existing competition rules.



Andreas Schwab,
EPP Group Coordinator, IMCO
Committee, European Parliament

Dr. Schwab started off by highlighting that Europe has made a lot of progress since October 2013 when the discussion of open markets in the digital age first started. Contrary to those earlier times, the European

objective of improving competition in the digital economy is now widely accepted and acknowledged. He agreed with Professor Graef's point that new regulations should complement existing competition laws and that these should be respected ex-ante by the industry. However, Dr. Schwab also warned that the implementation will be technically complex and will require the support of many expert stakeholders. Finding a balance between protecting the benefits that the digital economy has brought to consumers and eliminating the negative effects we have observed in this market on competition and innovation will be key. He described, for example, the complexity of tackling bottlenecks and gatekeepers, while ensuring that regulation does not get in the way of innovation as the main driver in the digital market. Dr. Schwab then shared a list of concrete challenges that the DSA could regulate, including self-preference, access to data, locking into digital identity services, interoperability, and information asymmetries for data. In a final remark, Dr. Schwab expressed his preference for the creation of a dedicated European regulatory organization to address these challenges.



Jason Oxman,
President & CEO, ITIC

Representing the global trade association of the technology industry, Mr. Oxman underlined the importance of free and undistorted competition as the key to promoting innovation and consumer welfare. ITIC supports the goals of the analysis of the DSA, to safeguard consumers from harmful content online and to maintain a well functioning competitive online ecosystem. However, Mr. Oxman underscored that, while he appreciates the broad policy debate, it is important to focus on proportionate instruments to ensure fair competition. He explained the most important comments and concerns that ITIC

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has formulated to the Commission's proposal, notably on the discussion whether big is necessarily bad, or the definition of a gatekeeper and the relevance thereof. Furthermore, he argued that competition policy must focus on consumers and not on competitors and that enforcement should address a company's conduct and not give rise to imposed structural measures. Mr. Oxman concluded that ITIC is in favor of addressing any emerging challenge and ensuring open and fair competition, but said that issues should be addressed with proportionate and targeted solutions.



Dora Palfi,
CEO & cofounder, imagiLabs

ImagiLabs is a tech start-up that inspires and sparks the interest of teenage girls for technology and programming. The company is part of the worldwide App Association and as such Ms. Palfi represented the developer perspective in this debate. She explained how software apps are extremely valuable in everyday life and our economy in general and gave some examples of apps that have played an important role in dealing with the COVID-19 pandemic. ImagiLabs recently launched its first physical product and a related app. Ms. Palfi observed that App stores and platforms work much more efficiently and effectively than most physical distribution channels. However, she agreed

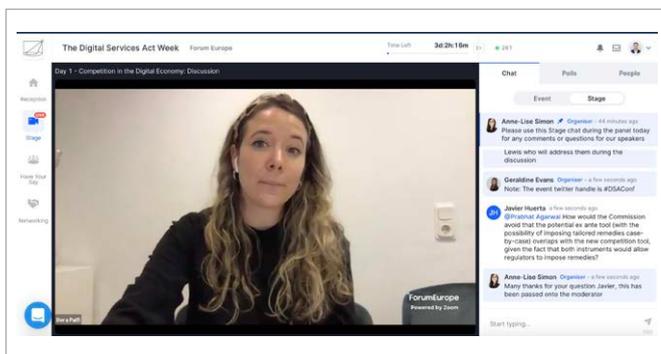
with the points made by the other speakers about the need for regulation and addressing harmful behaviours in the digital economy. Privacy and security of young users are especially a priority to imagiLabs. She wishes that more voices from start-ups are heard to prepare the DSA, to balance the interests of big companies.



Frédéric Donck,
Regional Vice-President Europe,
Internet Society

Mr. Donck introduced the Internet Society as a global non-profit connecting and empowering communities to ensure that the internet remains trustworthy, open, globally-connected, secure and a force for good in the world. He explained some of the fundamental technical properties of the internet way of networking that the Internet Society defends. He highlighted that there are not only intermediaries at the platform level, but also at the infrastructure level of the internet, and these need to be protected from collateral damage that could result from any regulatory measures. Mr. Donck also warned that regulatory requirements around interoperability can create adverse effects, for example on internet security management. He offered the support of the Internet Society to the Commission to identify and avoid such pitfalls.

Mr. Crofts opened the panel to comments from the audience starting with a question about the possible overlap between different policy initiatives like the gatekeeper tool and the competition tool. Mr. Agarwal said that the Commission does not think in terms of overlap but rather of coherence and explained the differences in scope and timing. Mr. Oxman noted that the Platform to Business regulation will enter into force on July 12 and said it is important to evaluate its impact before creating new rules. Dr. Schwab mentioned that it's too early to discuss the coherence of a gatekeeper



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tool with the competition tool since the DSA has not been released yet, but reiterated that it should not replace the ex-post evaluation of competition policy. As a side note, he shared his opinion that a sectoral approach to digital services is preferable since different platforms face different issues. **Professor Graef** addressed the question by referring to the different objectives that these proposals are aiming to achieve.

A question on potential negative externalities of new regulation was picked up by **Mr. Oxman** who said that anything that deters competition and innovation or that negatively impacts consumers should be avoided. Another pitfall **Mr. Donck** added is mandated interoperability which might have an adverse effect on the functioning of the internet itself. **Ms. Palfi** added that from the perspective of an app developer, losing the trust and the scale of distribution of the internet would be a pitfall for them.

The debate then went to the rules that panelists expect to be part of the gatekeeper regulation. **Mr. Oxman** advocated against using a blacklist of prohibited practices because such a blanket approach does not consider the variety of business models of online platforms. Instead, the focus should be on creating greater transparency and communication between online intermediation services and users. **Dr. Schwab** is in favor of a limited blacklist that can be enforced quickly and does not hamper innovation. Confirming this point, **Professor Graef** gave several examples of potentially prohibited practices based on research. **Mr. Agarwal** concluded this debate by explaining the methodology that the Commission could use to identify the platform behaviors that require regulation.

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Wednesday July 1, 2020 ▶

Platforms and User Generated Content



The second day of the Digital Services Act (DSA) Week was moderated by **Javier Espinoza**, EU Correspondent of the Financial Times. He described how timely and relevant the topic of responsibility of platforms currently is, on the backdrop of the recent coverage in the media of the advertising boycott of Facebook because of the way they regulate hate speech. He then invited the panel to provide their introductory comments.



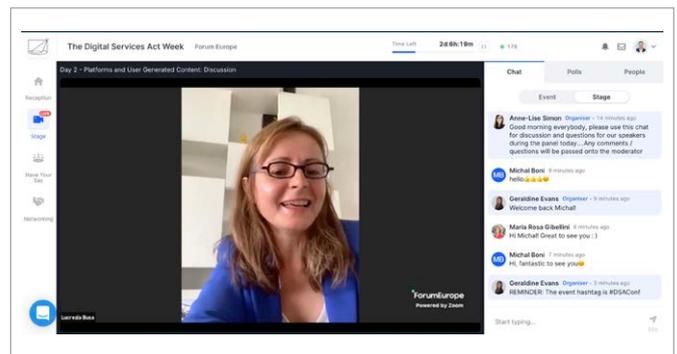
Tiemo Wölken, MEP, Rapporteur for the DSA Initiative, JURI Committee, European Parliament

Mr. Wölken's introduction made a clear distinction between the provisions governing how platforms deal with illegal content, versus how they manage legal but harmful content. To address illegal content, he argues there is a need for a reliable "notice and action" system that provides legal clarity without creating incentives for the unjustified deletion of content. For what concerns legal but harmful content, the very definition of harmful content is hard to grasp, making it very difficult to regulate. Therefore, Mr. Wölken proposes to look at the advertising-based business model of platforms and suggested to provide users with more choice about their curation criteria, which could automatically stop the distribution of harmful content without having to go down the path of defining the grey area between illegal and harmful content.



Lucrezia Busa, Member of the Cabinet of Justice Commissioner D. Reynders, European Commission

As a member of the Cabinet of the Justice Commissioner, Ms. Busa approaches the DSA from the angle of justice and fundamental rights. From her perspective, a key challenge is a balance between protecting fundamental rights and the safety of individuals and protecting freedom of speech. Ms. Busa distinguished three basic questions when it comes to the protection of freedom of speech, which is when to intervene, how to intervene, and what remedies are available to individuals to react to a decision of a platform. Based on this, she explained several challenging topics such as the distinction between legal and illegal content, the complexity of context when it comes to evaluating the content, and the use of national or European laws when addressing violations.



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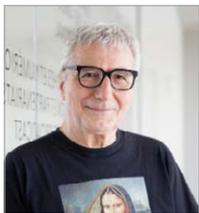
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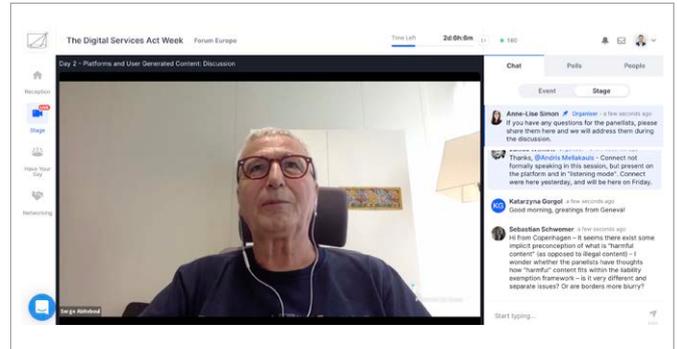
Jan Penfrat,
Senior Policy Advisor, EDRI

Mr. Penfrat represents EDRI (European Digital Rights organisation), a network of 44 civil society organisations across Europe that protect fundamental rights in the digital era. He concurred with Mr. Wölken on the importance of distinguishing legal from illegal content but added that the historical pillars of internet regulation such as the prohibition of general monitoring obligations as well as the e-commerce directive should be upheld. Mr. Penfrat then analyzed why the removal of content is increasingly perceived as the ultimate answer to fight against hate, terrorism, or other illegal activities online. He expects the DSA to address what he sees as being the underlying problems of platforms' business models, which are the cause of platform monopolies and jeopardize the online freedom of the European citizens to maximise profits.



Serge Abiteboul,
Board Member, Arcep

Dr. Abiteboul is a board member at Arcep, the French telecommunication regulator. Based on his experience on the "Mission Facebook" study, a project between the French authorities and Facebook to address hate speech, Dr. Abiteboul explained the difficult balance between freedom of speech and the right of removal of content on social platforms. He believes it is critical to define harmful content to feed AI algorithms that can manage it at scale. Defining harmful content should involve the entire society, including researchers, judges, citizen organizations, social platforms, and many other stakeholders. Furthermore, AI training content should be freely available, so that it can be used by any organization that needs content moderation tools. On a final note, Dr. Abiteboul mentioned that social



media technology itself will be needed to collaborate effectively between all stakeholders.



Siada El Ramly,
Director General, EDiMA

Ms. El Ramly represents the European trade association for internet companies within the platform economy. She said that member companies of EDiMA are looking for legal certainty and a framework with the possibility to find pragmatic solutions to the problems they face. Concerning the DSA, Ms. El Ramly highlighted the importance of focusing on achievable and meaningful objectives. She suggested starting with illegal content moderation, an area where we already have useful definitions and where we can practically create legal certainty. She concurred with Dr. Abiteboul on the importance of involving a broad range of stakeholders but adds the concepts of proportionality and horizontal responsibility when talking about issue resolution. She said online service providers should be free to tailor services or solutions depending on their business models but also needed to accept some form of regulatory oversight.

Mr. Espinoza then introduced a debate, which started with an exploration of the definitions and semantics that will be key in the DSA. Ms. El Ramly talked about the important distinction between responsibility and

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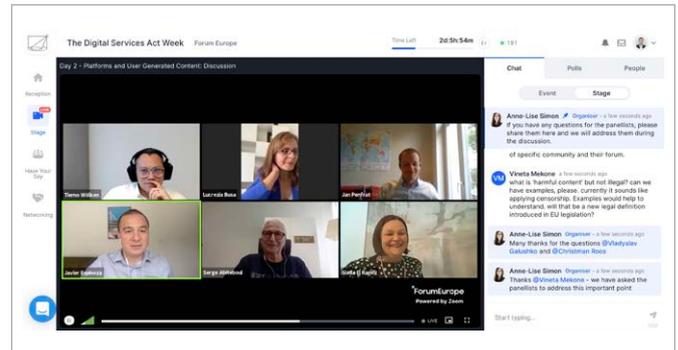
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liability in platform content moderation and pleaded to create horizontal responsibility to act in good faith. She also addressed the difference between illegal and harmful content, the former being quite well defined and thus ready to act on. However, the definition of harmful content is still very challenging at the European level. **Mr. Penfrat** warned about possible adverse effects of platform liability on fundamental digital rights and the difficulty to calculate liability risk. However, the dependency of our society on very powerful online platforms calls for regulatory oversight. **Ms. Busa** agreed with this point and added that if regulatory sanctions were to be defined regarding illegal content moderation, these should be administrative or civil in nature and have some form of proportionality. Furthermore, the power of platforms can also be reduced by more competition. **Mr. Wölken** confirmed that the difference between illegal and harmful content is also key for the Parliament. In line with his introductory comments, he urged stakeholders to focus on harmonizing European wide standards and procedures in dealing with illegal online platform content rather than on detailed definitions of harmful content. In contrast, **Dr. Abiteboul** argued that definitions are important and said we need mechanisms through which society can define harmful content in an agile way. **Mr. Penfrat** remarked that this task is very difficult given the size and global reach of the large incumbent platforms. He argued that the definition of harmful content is different for everyone, so he supports the idea of more competition which gives users more choice to join smaller platforms that match their needs more closely.

Then **Mr. Espinoza** opened the forum for questions from the audience which addressed several key topics such as the calculation of proportional sanctions, the role of platforms in fact-checking, proactive measures, harmful versus illegal content, the importance of full

transparency of platforms concerning their content regulation procedures and the protection of the freedom to do business versus strict regulation.



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Thursday July 2, 2020 ▶

E-commerce and Marketplaces



The third day of The Digital Services Act (DSA) Week was moderated by **Dr. Alea Fairchild**, Director at the Constantia Institute, professor at KULeuven and Principal Advisor at Ecosystem Singapore. She drew the general context and objectives of the

DSA and particularly mentioned that counterfeit and unsafe products continue to be a priority. After outlining the structure of the session, she gave the floor to the panelists for their introductory speeches.



Michelle Gibbons,
Director-General, AIM – European Brands Association

Representing AIM – European Brands Association, Ms. Gibbons mentioned that trust is one of the most valuable assets of brands, and therefore it is one of the key focus areas of the DSA for AIM – European Brands Association and their members. She explained that trust in the digital economy can be achieved through the protection of consumers from illegal goods and ensuring a fair and level playing field. Zooming in on the topic of counterfeit products, Ms. Gibbons shared some key figures from the latest OECD-EUIPO report, which estimated the lost revenues of legitimate business to be around €50billion. She sees the DSA as an opportunity to tackle the problem of illegal goods on online platforms, and detailed four key priorities: a minimum set of legal obligations for e-commerce platforms, the obligation of platforms to verify the identity of online

sellers, pro-activity and transparency including a clear and harmonized framework for notice and take-down procedures, and finally the responsibility of platforms to inform their customers if they have bought illegal goods. In conclusion, Ms. Gibbons reiterated that the DSA can create a framework of rules that will benefit the whole ecosystem and support a digital economy that is based on trust.



Stefan Naumann,
Head of Commercial Law, Zalando

Dr. Naumann spoke about Zalando's vast experience with platform liability and responsibility, explaining that his legal department deals with almost all consumer relevant activity. He gave a short introduction about Zalando with a notable focus on their partner program which allows brands and retailers to use them as a platform. The DSA is of importance to Zalando as they feel responsible for the business that is generated through their platform, hence they also plead for a legal framework for e-commerce platform responsibility. Dr. Naumann stated that the growth of Zalando and other e-commerce platforms was made possible thanks to the liability exemptions under the current E-commerce Directive, so he advocated that these principles are upheld. However, he proposed strong "notice and action" and "know your merchant" systems to protect trust in the digital economy.

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Maryant Fernández Pérez,
Senior Digital Policy Officer, BEUC

Ms. Fernández Pérez represented BEUC, the European Consumer Organisation, and said that although the digital economy has created significant benefits, it also created challenges, such as anti-competitive practices, dangerous business models based on clickbait or micro-targeting, the proliferation of illegal activities, and more. She mentioned a study conducted by BEUC that demonstrated that online products often fail to comply with EU and national rules on safety and security standards, concluding that the current legal framework does not sufficiently protect consumers. She believes the DSA could be an improvement from the current status quo. BEUC supports the Commission's endeavors to put forward ex-ante measures for gatekeeping platforms and agrees that consumers will benefit from a fairer, more competitive market. She also expressed her support to upgrade liability and safety rules via the DSA, which for BEUC includes the definition of obligations and liabilities, but also robust enforcement.



Pablo Arias Echeverría,
MEP, EPP Group Vice-Coordinator,
IMCO Committee, European Parliament

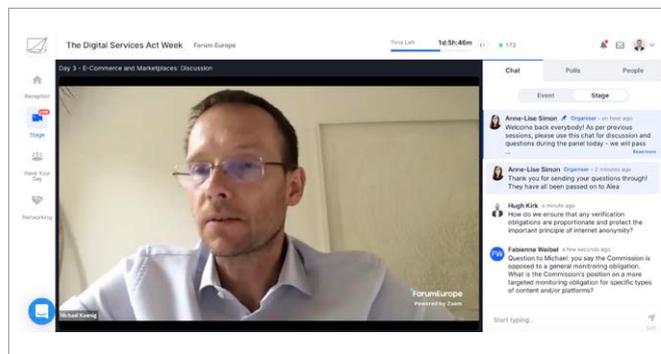
Mr. Arias Echeverría's intervention addressed the EU values in e-commerce. He started by discussing the benefits and the importance of e-commerce in the European economy, specifically on the backdrop of the COVID-19 pandemic which led to the temporary closure of physical stores. He then illustrated some challenges and referenced the IMCO (Internal Market and Consumer Protection Committee) report which suggests increased transparency in the online marketplace to create a safer online ecosystem

that nurtures trust. Observing that the digital market has almost no large European players, he insisted on more European presence, especially considering the current trade war between America and China that creates collateral damage to the EU economy. He believes we need to go beyond the current EU initiatives such as the EU industrial strategy, the EU digital strategy, and the upcoming DSA to create the proper conditions for European digital start-ups and entrepreneurs to grow.



Michael König,
Deputy Head of Unit, Retail and
Online Services, DG Grow, European
Commission

Mr. König welcomed this session's focus on goods because this topic has become much more important since the original E-commerce Directive in 2000. He then distinguished the differences and similarities between non-compliant and counterfeit products and confirmed the intention of the DSA to tackle the platform responsibilities in this area. He specified that any new EU regulation will apply to all e-commerce players that want to do business in the EU, which is a shortcoming in the current Directive. However, other elements are still very relevant such as the liability exemptions, and in particular not imposing a general monitoring obligation. All in all, he strongly supports the harmonized EU playbook to overcome the



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current legal fragmentation that hinders the growth of European competitors. Concerning the responsibilities of e-commerce companies, Mr. König referred to “due diligence obligations” and mentioned a few examples of possible measures such as “notice and action”, “trusted flaggers” and “know your trader”. He then pleaded for proportionality and differentiation to support diversity and reduce concentration on the digital market. He suggested looking into a basic set of due diligence obligations that could be adapted depending on the risk factors that a platform represents.

on the digital market. **Mr. Arias Echeverría** stressed that a single digital market requires a clear singular set of rules.

The discussion then turned to platform liability and the possibilities to distinguish the most trustworthy platforms through, for example, audits and transparent performance data. This led to a debate on ways to increase regulation without harming innovation and diversity, as well as avoiding negative side-effects on consumer welfare.



Dr. Fairchild then introduced the panel discussion starting with a question on how trust can be built in the process of platform sales. **Ms. Pérez** stated that responsibilities and liabilities of platforms are key and they should apply due diligence before offering products to consumers. **Dr. Naumann** talked about the importance of high-quality product descriptions as well as a co-seller model but said that this topic effectively requires a multitude of initiatives. Along the same lines, **Mr. König** said increased transparency allows consumers to compare and make more conscious choices, which creates a competitive market environment based on trust. **Ms. Gibbons** added that the problem of counterfeit products must be addressed in the DSA, since it undermines the trust of consumers

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Friday July 3, 2020 ▶

Concluding Session

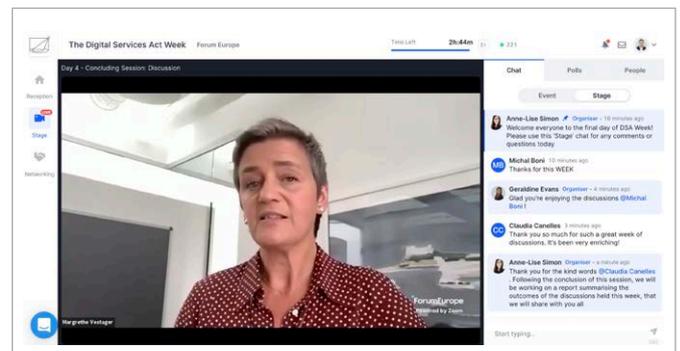


The fourth and final day of the Digital Services Act (DSA) Week was moderated by **Paul Adamson**, Chairman of Forum Europe. He explained that this final session would draw together the discussions from the previous sessions and introduced the keynote speaker, **Margrethe Vestager**, Executive Vice President, "A Europe Fit for the Digital Age", European Commission.



Ms. Vestager emphasized the importance of involving a broad range of stakeholders in the DSA debate, as the fundamental mission is to define which type of internet we want to have. She said there is a sense of urgency to refresh the E-commerce Directive which was established 20 years ago because it does not fit the current opportunities and challenges of the internet anymore. She stated that the objective of shaping Europe's digital future is to improve the lives of all citizens with technology, in line with the values and beliefs of the EU. She mentioned some key challenges such as product safety, counterfeit products, disinformation, the dominance of large companies, and the lack of visibility on data usage. According to her, these issues undermine trust and in turn the ability of society to benefit fully from technology. In terms of solutions, Ms. Vestager talked about increasing responsibility, transparency, and fairness in the digital economy, as well as the importance of enforcement. She said it is only fair that platforms take part in mitigating the risk posed by their business on society since they

are beneficiaries of online trade. In her opinion, creating a level playing field in which abiding by the law does not create a competitive disadvantage is equally important, as is platform responsibility to identify sellers and to prevent the illegal sale of goods and services, and closer collaboration with law enforcement authorities. She also highlighted that fundamental human rights should be protected using transparent policies on user-generated content under the supervision of public authorities. All in all, the DSA should create legal certainty and support a digital single market, especially to help smaller companies and start-ups that want to innovate and compete fairly with gatekeeper platforms. To that point, she expects that the DSA will set out limits as to what platforms can and cannot do, particularly in the field of anti-competitive behavior. However, she recognized that the power of data on the digital market inherently leads to the emergence of gatekeepers and said that a competitive tool is under development to address this. In closing, she reminded everyone that the consultation round is open until early September and invited all stakeholders to contribute.



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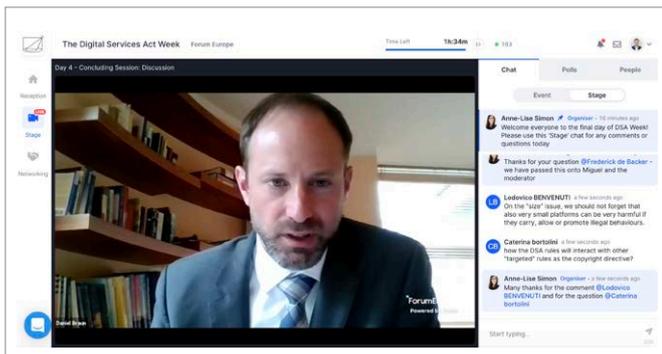
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Mr. Adamson then invited the panelists to summarise their perspectives and observations on the DSA.



Daniel Braun,
Deputy Head of Cabinet for Vice President for Values and Transparency, Věra Jourová, European Commission

Mr. Braun introduced his Cabinet's work on the European Democracy Action Plan, which is built on three pillars: election integrity, media freedom and pluralism, and disinformation. This will complement the DSA with regard to platform responsibility and accountability. He said that social media currently seems to amplify harmful content and create division, contrary to the original purpose of the internet which was to bring more democracy and freeing citizens from manipulation. However, it is still important to recognise that platforms can be enablers of democratic participation and freedom of speech. From his perspective, the integrity of the internet contributes to a more resilient society. He mentioned consultation on these issues will launch around mid-July and run until mid-September.



Prabhat Agarwal,
Acting Head of Unit, E-Commerce and Platforms, DG CONNECT, European Commission

Looking back on the discussions that were held in the past few months, Mr. Agarwal observed a remarkable convergence on the high-level objectives of the DSA after listening to many stakeholders. These include keeping users safe on the internet, improving the functioning of the digital single market, and how to frame the responsibility and accountability of platforms. Secondly, he said that the exchange with stakeholders has been surprisingly open and rich. Thirdly, he stressed that his team will consider all stakeholder input when designing options for future political decision-making and insisted that no decisions have been taken yet, apart from the general principles.



Alex Agius Saliba,
MEP, Rapporteur for the DSA Initiative, IMCO Committee, European Commission

Mr. Saliba gave an overview of all the activities that are ongoing to prepare the Internal Market Committee report for the DSA which is focused on the revision of the e-commerce Directive and the ex-ante rules for online platforms. The guiding principle on which the report is based is that what is illegal offline should also be illegal online. However, he said that some elements should be maintained such as the prohibition of the obligation of general monitoring and the exemption of liability for illegal content. He said online trust is based on consumer protection and broad respect for fundamental human rights, which is why the IMCO report will contain a chapter dedicated to online marketplaces. This will contain suggestions to create a more contestable online environment with increased transparency and responsibilities, especially

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for third country sellers who target EU consumers. He concluded that the DSA is a golden opportunity to adjust EU regulation to the evolution of the internet since the first E-commerce Directive.



Miguel Poiães Maduro,
Professor, School of Transnational Governance, European University Institute

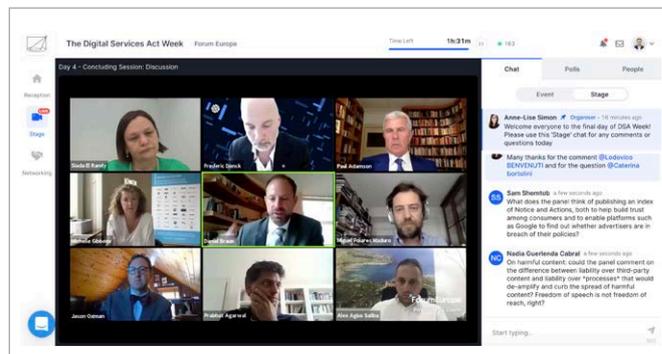
Professor Maduro stated that the COVID-19 pandemic has accelerated the evolution through which the digital space has become our public space, yet it is dominated by a few dominant companies. This gives rise to concerns in the areas of trust, free speech, and the role of disinformation on the democratic process. Online information is highly curated and carefully disseminated using social media algorithms that do not operate in the interest of veracity, but of maximizing public engagement and profits. From Professor Maduro's perspective, the question is then how our new public space can be approached based on this new architecture of information. He explained that the role of the newly created European Digital Media Observatory (EDMO) is to mobilize and promote cooperation among all different stakeholders in Europe to address this challenge and help tackle the issue of disinformation.



Siada El Ramly,
Director General, EDiMA

Ms. El Ramly said that EDiMA and its member companies have put a lot of effort into proactively addressing the issue of content moderation, and they look forward to a more robust responsibility framework in the DSA. Based on her experience, it is important to involve a broad range of stakeholders to effectively address the issue of content moderation. She confirmed that the current E-commerce Directive

requires updating, but that the basic principles are still valid. Ms. El Ramly then stressed the importance of legal certainty to facilitate better content moderation. She remarked that the DSA is a vast undertaking with many stakeholders, so starting in the area where we already have legal certainty, namely the area of illegal content, would be a good pragmatic approach. Thereafter, the focus can gradually broaden as more definitions become available, she concluded.



Michelle Gibbons,
Director General, AIM – European Brands Association

Ms. Gibbons sees the DSA as an opportunity to create a framework that enables consumer trust to be restored, as well as implement a fair and level playing field in the digital economy, and spoke about counterfeit goods as a growing problem in particular. She sees four key priorities to achieve this: a minimum set of legal obligations for e-commerce platforms; the obligation of platforms to verify the identity of online sellers; proactivity and transparency including a clear and harmonized framework for notice and take-down procedures, and finally the responsibility of platforms to inform their customers if they have bought illegal goods.

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Jason Oxman,
President & CEO, ITIC

As a representative of the global trade association of the technology industry, Mr. Oxman recognized the shared responsibility to maintain a safe, inclusive, and innovative online environment. He expressed his support of the DSA goals to safeguard citizens from harmful and illegal online content and to maintain a well-functioning and competitive online ecosystem that benefits citizens globally. However, he said we should be mindful of the complex ecosystem in and around the digital economy and preserve the foundations of the internet's success, like the limited liability regime and the country of origin principle. He believes illegal content should be addressed by the DSA as it requires harmonized definitions at the EU level, while harmful content can be addressed separately through self or co-regulatory approaches. He then underlined the importance of legal certainty and effective enforcement before calling for a single EU wide oversight mechanism combined with boosting enforcement capabilities for national authorities.

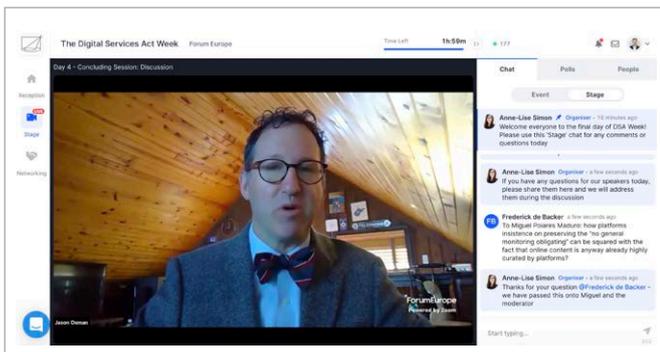


Frédéric Donck,
Regional Vice President - Europe,
Internet Society

Mr. Donck's opening statement focused on the importance of intermediaries at the infrastructure layer since they deliver the integrity, security, speed, and performance of the internet as we know it. He argued that they need to be protected from collateral damage that could result from any regulatory measures. He gave a few examples referencing the multi-layer architecture and the distributed routing principle of the internet.

After these introductory speeches, **Mr. Adamson** opened the debate. First, there was a discussion on the topic of internet gatekeepers in which **Mr. Oxman** warned against the exclusive focus on size and rather focus on marketplace harms. **Mr. Agarwal** responded that size must always be considered for regulation purposes, referring to proportionality tests. Also, the Commission is open to discussing what constitutes consumer harm. **Mr. Saliba** expressed his support of tackling the gatekeeper issue with ex-ante regulation based on multiple indicators beyond size alone.

Professor Maduro answered a question from the audience about the paradox between preserving the exemption of general monitoring obligation and the fact that online content is highly curated by the most powerful platforms. He pointed to the shared responsibility of society, regulators, and platforms. **Ms. El Ramly** gave the industry's perspective, defending the limited liability principle and adding the importance of clear definitions of illegal versus harmful content. **Mr. Braun** replied and stated that the harm to society and to the single market that we want platforms to address needs to be defined through the democratic process. Civil society must then be enabled to have scrutiny on harmful content and the relevant policies that platforms apply.



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The panel then focused on a question about the interaction between the DSA and various other codes of practice already in operation. **Mr. Braun** gave some insights into the European Democracy Action Plan and said the Commission looks at platforms in terms of their possible role in improving the resilience of democracies, which will result in recommendations that could indeed interact with the DSA. **Ms. El Ramly** said that the DSA's objective to deliver a harmonized set of rules will be quite challenging.

Responding to a question on what platforms are currently doing well, **Ms. Gibbons** spoke about good practices on taking down sellers of illegal goods, yet these are patchy and there is a lack of clear minimum rules. **Mr. Saliba** said that platforms are doing a lot to create a safer and cleaner online environment, however, self-regulation must be complemented with more legal clarity and enforcement. **Ms. El Ramly** argued that, despite all the progress that has been made, internet companies do not claim to have solved the issue of disinformation since it is in constant evolution, highlighting the importance of continuous adaptation. **Mr. Braun** applauded platforms for their engagement to join the current code of practice.

On the following question about EU values, **Mr. Donck** spoke about the possible adverse impact of creating European digital sovereignty on the global internet, after which **Professor Maduro** provided more specifics on the EU values.

The difference between platform liability for harmful content and for disseminating it was picked up by **Mr. Oxman** who insisted that platforms that act in good faith to remove harmful or illegal content should not be held accountable if they miss something, referring to the exemption of liability for illegal content. **Mr. Braun** argued that freedom of speech is a fundamental right,

but the dissemination of harmful content is based on business rules. Hence, users should be enabled to better understand and manage the information flows on platforms. **Mr. Saliba** stressed that the IMCO report suggests restricting the "notice and action" system to illegal content.

A final debate tackled the topic of definitions. **Mr. Agarwal** said that the challenge of commonly defining new concepts should be embraced as an opportunity to make progress. **Professor Maduro** added that definitions are important to avoid arbitrary enforcement. **Ms. Gibbons** said that, concerning illegal goods, definitions are readily available and so the DSA can immediately focus on enforcement. **Mr. Donck** offered the help of the Internet Society to address the challenge of definitions from the technical side. **Ms. El Ramly** stated that definitions and enforcement go hand in hand, before **Mr. Saliba** stressed the importance of definitions for legal certainty. **Mr. Oxman** used the example of the code of practice on disinformation to illustrate the relevance of the collaboration between industry and policymakers to create definitions and guide enforcement. **Professor Maduro** added that, beyond definitions, we should not forget that the policy goals are the ultimate priority.

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Published in 2020 by Forum Europe.
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