

Report on the seminar on Competition law and the ELSA event on the Digital Markets Act (DMA)

On May 12 and 13, 2022, the seminar on competition law by Univ.-Prof. Dr. Susanne Augenhofer, LL.M. (Yale) and Univ.-Prof. Dr. Giorgio Monti, of Tilburg Law School, took place at the University of Innsbruck. In close collaboration with the seminar, on May 12, the European Law School Association (ELSA) organized an event with the participation of Prof. Augenhofer and Prof. Monti, as well as RA Dr Barbist from Binder Grösswang and Dr Wolf from the European Commission. Both events dealt with the Digital Markets Act (DMA), a highly topical project of the European legislator aiming to regulate the digital economy.

From punitive to responsive regulation

	deterrence	Responsive regulation
approach	Penalties & expect compliance	Advise parties how to comply
assumptions	Parties maximize gain	Parties wish to comply
3 rd parties	Damages	Advisors on how to comply
Recidivism	Higher penalties	Escalate enforcement
Advantages	Certainty of penalty	Stair-made compliance design
Risks	No effect	Regulator fooled by the firms or regulatee complains too much
Judicial review	Central	Limited to the punitive parts



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The first day of the seminar started with a presentation by Prof. Monti. He explained the history of the DMA, especially referring to the New Competition Tool, which has long been seen as a possible alternative to the DMA. In great detail, he also presented the planned enforcement mechanism of the DMA and highlighted the challenges that might arise. This was followed by the first student presentations. These dealt with the process of designating a company as a "gatekeeper" - a key concept of the DMA; as well as a presentation on the concrete obligations to which the "gatekeepers" will be subject under the DMA.



This was followed by a panel discussion of experts organized and moderated by ELSA from Innsbruck. The panel consisted of Prof. Augenhofer and Prof. Monti, as well as RA Dr. Barbist from Binder Grösswang and Dr. Wolf from the European Commission. Over the course of their discussion the political developments behind the DMAs creation were discussed. In addition, some specific obligations of the DMA were discussed in great detail, such as the obligation for horizontal interoperability between messaging services or the prohibition of "self-preferencing". Finally, they discussed the fact that the DMA provides only astonishingly few exceptions to its obligations, so every gatekeeper will basically have to fulfill all obligations without exception and will not be able to justify non-compliance.

On the second and last day of the seminar the remaining presentations followed. These presentations dealt with individual topics such as "self-preferencing" or "interoperability". The application of these topics in the DMA was compared with their previous application in competition law, especially under Art 102 TFEU.

Finally, Prof. Monti gave another presentation in which he outlined the intersection of the DMA with traditional competition law. In particular, he addressed the concept of "ne bis in idem" i.e. the question whether a parallel application of both the DMA and competition law could violate the double jeopardy prohibition. Based on recent case law, he demonstrated the complex problems that might arise in this area of the law.

We would like to take this opportunity to thank Prof. Monti, RA Dr. Barbist, Dr. Wolf and the ELSA Innsbruck for their participation in the seminar and the panel-discussion!