



Digital Markets: Notes on Competition Law, regulation and european challenges for Latin American (rules and practice)

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Módulo Jean Monnet
Derecho PUCV
Proyecto 101176220
EACEA- UE

Funded by the European Union

Financiado por la Unión Europea

- This lecture is part of the Jean Monnet Module PUCV, Project 101176220 EACEA – EU on “Economic Constitution and Defense of Competition in Digital Markets” and is coordinated by the author with Professor Dr. José Luis Guerrero Becar, at the Pontifical Catholic University of Valparaíso Law School.

Firstly...Thanks!

01

Thanks for your
connection and
interest in the next
discussion

02

Thanks to Dr.
Vasco Pereira Da
Silva

03

Thanks to ELPIS



Road Map

1. The big picture of digital markets: trends and characteristics

2. Origins of the DMA (Digital Markets Act in Europe)

3. How the DMA is shaping Competition Law?

4. Challenges for Latin American rules and practice on digital markets



1. The big picture of digital markets: trends and characteristics

The current scenario
of big tech companies
has been categorized
in Europe with the
term “gatekeepers”

Gatekeeper Designations



Gatekeeper

Alphabet

Amazon

Apple

Booking

ByteDance

Meta

Microsoft

Core Platform Service

SOCIAL NETWORK

Tiktok
Facebook
Instagram
LinkedIn

INTERMEDIATION

Google Maps
Google Play
Google Shopping
Amazon Marketplace
App Store
Booking.com

ADS

Google
Amazon
Meta

N-IICS

Whatsapp
Messenger

BROWSER

Chrome
Safari

OPERATING SYSTEM

Google Android
iOS
iPadOS
Windows PC OS

VIDEO SHARING

Youtube

SEARCH

Google Search

The word “Gatekeepers” in the current European scenario is related to the Digital Markets Act (1925/2022)

This DMA is a regulatory body that faces competition challenges on digital markets

This DMA is a regulatory answer regarding to digital economy

¿What does it mean “digital”?

- The word “digital” means: “(...)belonging to or relating to the fingers. Relating to digits. Said of a device or system that creates, presents, stores, or transforms information by combining bits.”
- REAL ACADEMIA ESPAÑOLA. Dictionary. Access on: <https://dle.rae.es/digital>.

What does it mean “digital”? (II)

- Also, it has been pointed out that digital is that which “(...) applied to a computer that operates with data in the form of digits or similar discrete elements.”
- THE OXFORD ENGLISH DICTIONARY (1989). Oxford; Clarendon Press. Oxford, p. 654

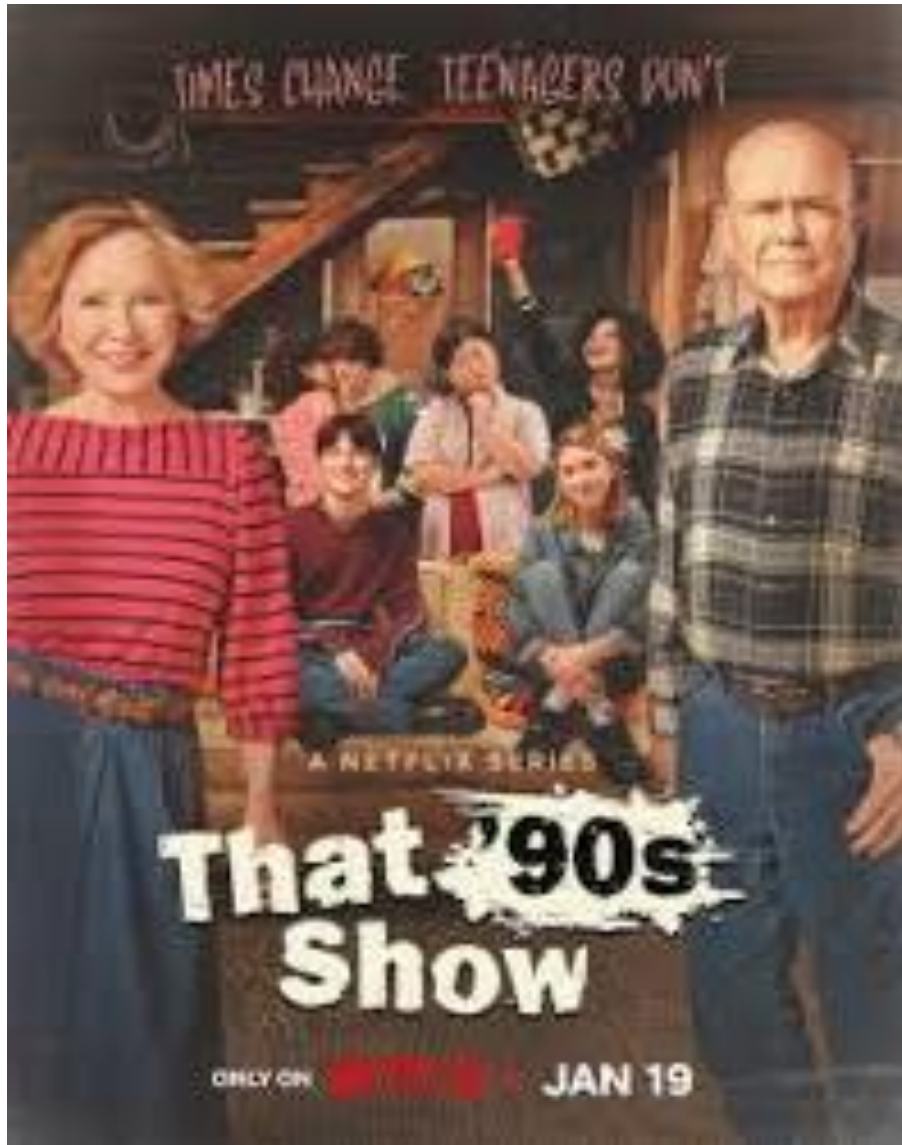
Digital Economy

- Those economic activities “(...) that increasingly depend on information technology, data and the Internet for their business models” (Srnicek, 2018).

Why digital economy is important?

- “A central engine for future prosperity, generating waves of innovation, efficiency and consumer well-being,” which “has revolutionized business models, products, services, communications and social interactions” and which has been “paving the way for the emergence of platforms and networks” (Ezrachi, 2018).





Virtual economy and “new economy” (the 90’s)

- In the late 1990s and early 2000s, terms such as “virtual economy” (Castronova, 2002) were used, and the term “new economy” was used in legal literature, denoting three types of industries: software manufacturing; provision of services in businesses based on Internet platforms; and communications and equipment services that are functional to the two previous industries (Posner, 2000).

Digital Economy and Competition

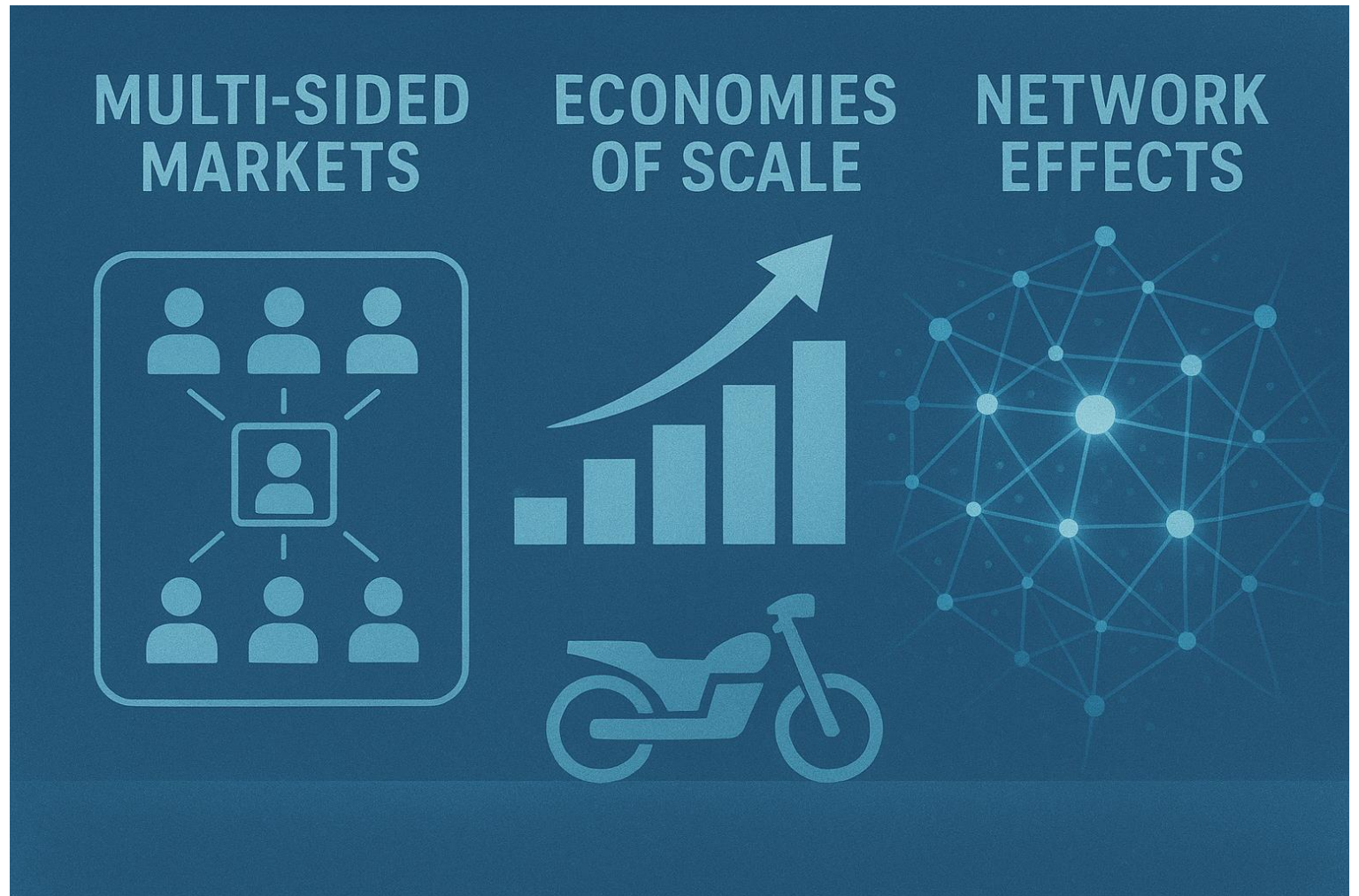
In the mid-2000s, concerns about the digital economy began to be analyzed from a global perspective.

Some authors argue that competition authorities need to adopt particularly careful measures aimed at balancing the protection of users and consumers "with the prevention of harm caused by anticompetitive behavior in complex business systems that move quickly but are not fully understood" (Evans, 2008).



Competition Authorities watching digital markets

Characteristics of digital markets



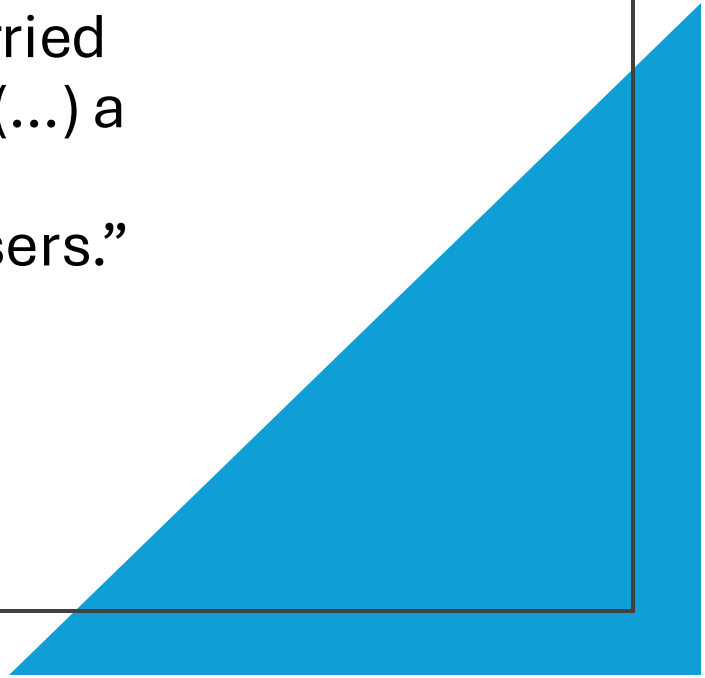
Economies of scale

- Economies of scale are the cost advantages businesses gain from producing more goods or services, which lowers the average cost per unit.



Digital Platforms

- A considerable part of the goods marketed or services provided in the context of the online economy are carried out through platforms, which can be understood as “(...) a website, an application, or other digital design that interacts commercially with one or more groups of users.” (Hovenkamp, 2020).



Clasificación de digital platforms



Redes sociales (Facebook e Instagram – Meta -, Twitter, LinkedIn, TikTok)



Publicación de videos (Youtube, DailyMotion, Vimeo)



Streaming de música (Spotify, Apple Music, Tidal, Amazon Music)



E commerce (Amazon, Ebay, Alibaba)



Marketplaces colaborativos (AirBnB, Uber)



Motores de búsqueda de información (Google, Bing, Duck Duck Go)



Cloud computing (Amazon Web Services, Google Cloud)



Viajes y hotelerías (Booking, Expedia)



2. Origins of the DMA

DMA (Digital Markets Act)

DSA (Digital Services Act)

12.10.2022

ES

Diario Oficial de la Unión Europea

L 265/1

I

(Actos legislativos)

REGLAMENTOS

REGLAMENTO (UE) 2022/1925 DEL PARLAMENTO EUROPEO Y DEL CONSEJO

de 14 de septiembre de 2022

sobre mercados disputables y equitativos en el sector digital y por el que se modifican las Directivas (UE) 2019/1937 y (UE) 2020/1828 (Reglamento de Mercados Digitales)

(Texto pertinente a efectos del EEE)

27.10.2022

ES

Diario Oficial de la Unión Europea

L 277/1

I

(Actos legislativos)

REGLAMENTOS

REGLAMENTO (UE) 2022/2065 DEL PARLAMENTO EUROPEO Y DEL CONSEJO

de 19 de octubre de 2022

relativo a un mercado único de servicios digitales y por el que se modifica la Directiva 2000/31/CE (Reglamento de Servicios Digitales)

(Texto pertinente a efectos del EEE)

DMA & DSA

- During the second half of 2022, the European Union enacted two major legislative bodies that design and seek to implement the regulation and supervision of digital markets and services: the Digital Markets Act (DMA) and the Digital Services Act (DSA).

Origins of the DMA

June 2019: Competition authorities of "G7" countries and the EC published a "Common Understanding on Competition in the Digital Economy." This document emphasized the need for international cooperation and convergence on competition matters, particularly in relation to the digital economy, which, by its nature, is borderless (Whish and Bailey, 2021).

Based on this agreement, two relevant reports were prepared: one prepared by Professors Crémer, de Monjoye, and Schweitzer for the European Commission; and another, in the United Kingdom, called the Furman Report.

Similarly, two other important documents were produced in the United States, by the Stigler Center for the Study of the Economy and State and the Judiciary Committee of the United States House of Representatives.

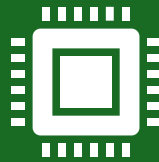
Reports on Digital markets

- Cremer Report (UE) (2019) :
<https://op.europa.eu/en/publication-detail/-/publication/21dc175c-7b76-11e9-9f05-01aa75ed71a1/language-en>
- Furman Report (UK) (2019)
<https://www.gov.uk/government/publications/unlocking-digital-competition-report-of-the-digital-competition-expert-panel>

What about the reports?



All of these reports noted that improvements to existing competition law and practice were needed to address the challenges posed by digital platforms.



In addition to the reports just referred to, the rise of digital platforms has also produced a rich and abundant literature on competition law (Whish and Bailey, 2021).

Political Context

- Regarding the political-economic context in which the DMA was issued, specialized literature explains that it is fundamentally characterized by the assessment of the market power that digital platforms have achieved, and that it constitutes a concern for governments, competition authorities and think tanks around the world.

A German precedent

Among several factors, this European solution has a precedent in the reform of the German law on restrictions against competition.

(Gesetzes gegen Wettbewerbsbeschränkungen, GWB) “(...) which came into force in January 2021 and created a regulatory framework on competition for digital markets, to promote faster and more effective action by the authorities, allowing for the adoption of precautionary measures against the excessive growth of so-called super-dominant digital platforms.”

Cases that served as context for the discussion of regulation (DMA)

Google Shopping, 2017

Google Android, 2018

Google Ad Sense, 2019

EC v. Amazon, 2020

CNIL France v. Google and Amazon, 2020, for data privacy)

In United States: *Department of Justice* (DOJ) and *Federal Trade Commission* (FTC)

[DOJ v. Google, 20-Oct- 2020; FTC v. Facebook, 9-Dic-2020]

¿Regulation or Competition Rules?

These rules combine regulatory techniques with competition protection tools, the construction of which seeks to address the growing market power of large technology companies, in a major political and institutional effort in the European Union.


However, the implementation of these rules—in the real economy, in the conduct of actors, in the supervision of agencies, in coordination with authorities in each country, and in enforcement by the courts—is a process that has only just begun, and which has not been free from doubts and criticism.

DMA (formal structure)

109 recitals and 54 articles.



Article 2 of this legislative body establishes a list of 33 definitions related to the scope of development of technology industries.



At the beginning of the text, the new legislation sets out the motivations that led the European Union to legislate on this matter, incorporating a large part of the reports that were used as input for this initiative.

Some recitals of the DMA

Recital 3 of the DMA reaffirms the ideas established by the reports, stating that:

“(…) a small number of large companies providing basic platform services have accumulated significant economic power, which could qualify them to be designated as gatekeepers under this Regulation.”

These gatekeepers, the regulation states:

“(…) generally have the ability to connect many business users with many end-users through their services, which, in turn, allows them to shift their advantages, such as their access to large amounts of data, from one area of activity to another.”



DMA's Diagnosis of European Competition Law

- The DMA, in its recital 5, argues that current European competition law has not been effective in this enforcement, stating that, “(...)although Articles 101 and 102 of the Treaty on the Functioning of the European Union (TFEU) apply to the conduct of gatekeepers, the scope of those provisions is limited to certain cases of market power (e.g. dominance in specific markets) and anti-competitive conduct, and enforcement occurs ex post and requires extensive case-by-case investigation of often very complex facts.”

Gatekeeper Designations



Gatekeeper

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Windows PC OS

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VIDEO SHARING

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SEARCH

Google Search

Platform services (Art.2, N°2, DMA)

- a) online intermediation services;
- b) online search engines;
- c) online social networking services;
- d) video-sharing platform services;
- e) number-independent interpersonal communications services;
- f) operating systems;
- g) web browsers;
- h) virtual assistants;
- i) cloud computing services; and
- j) online advertising services, including advertising networks, advertising exchange platforms, and any other advertising intermediation services, provided by an enterprise that provides any of the core platform services listed in points (a) to (i).”




Recital 36, Gatekeepers and data

- In Recital 36, the DMA explains that these gatekeepers “(...)directly collect personal data from end-users for the purpose of providing online advertising services,” expressing the relationship with the value of privacy and data regulation, establishing in the recital a particular concern for minors.

¿What is a social network? (art.2, N.º 7, DMA)

- “(...) a platform that enables end-users to connect and communicate with each other, share content, and discover content and other users across multiple devices, including through chats, posts, videos, and recommendations.”

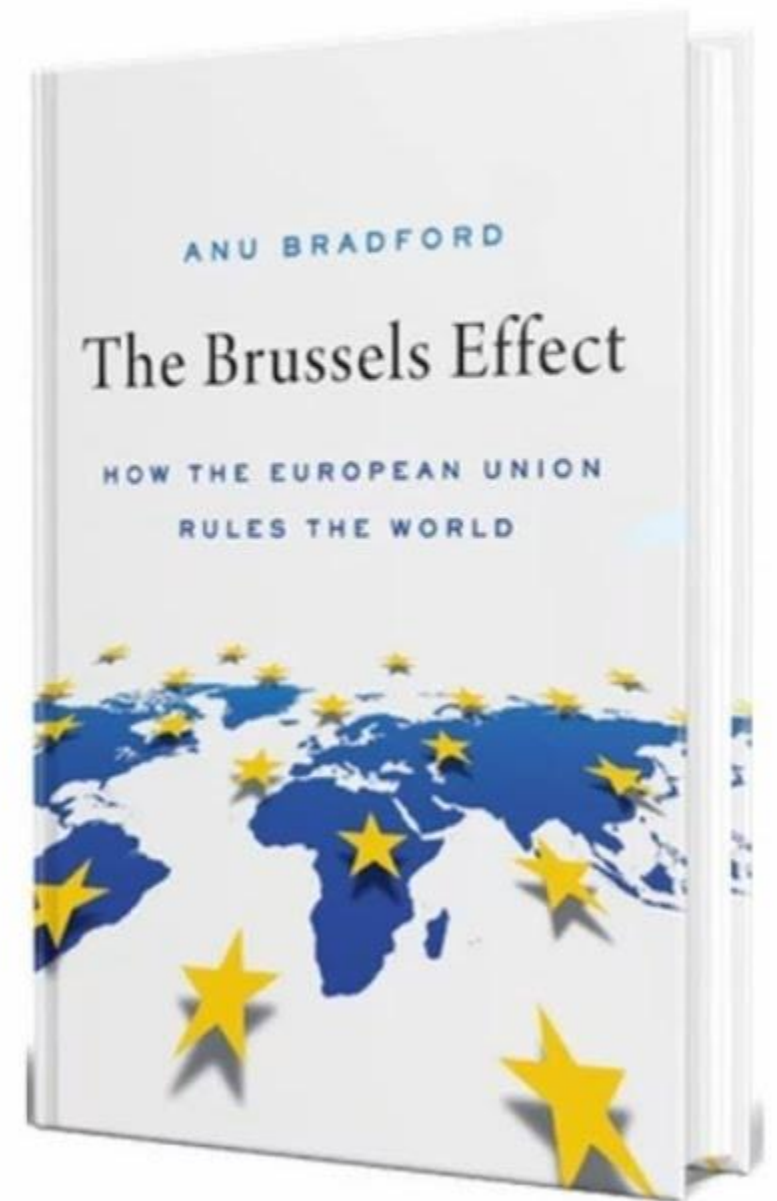
A hand holding a silver stopwatch in the foreground, with a swimming pool and lane markers in the background. The pool is blue with white lane lines. Red and white triangular flags are visible along the edge of the pool.

**3. How is the
DMA shaping
the
Competition
law abroad?**

The Brussels Effect:

How The European Union
Rules The World

Anu Bradford



4. Challenges for Latin America



Chile (TDLC)

- Acción Consumidores v. Apple (C - 536-2025)
- FNE v. Delivery y Glovo (C- 534 -2025)
- FNE v. Google (C – 533-2025)
- El Mostrador v. Google/ Alphabet (C- 525-2024)
- Cooperativa v. Google/ Alphabet (C- 524-2024)
- Acción Consumidores v. Google/ Alphabet (C- 521-2024)
- Copesa v. Google/ Alphabet (C-505-2024)

Q&A



Thanks so
much!

