Governing digital markets as industrial policy: the victory of French economic ideas?

Paper prepared for the European Union Studies Association Conference

Pittsburgh, May 4, 2023

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Making the EU's Digital Market: The Return of French Economic Ideas?

Digital market regulations respond to technological changes and global dynamics, but also to how political actors shape markets. Focusing on the recently adopted Digital Markets Act, this article explains the EU's making of digital markets as the result of a struggle between political actors promoting competing conceptions of control in a rapidly evolving technological and geopolitical context. Theoretically, we combine the sociology of markets with strategic constructivism in European political economy. We argue that significant discursive and policy change in digital market governance has occurred because of shifting coalitions between three constellations of actors, which we call market-correctors, market-busters, and market-directors. Tracking the ongoing campaign to challenge Big Tech and define the meaning of digital sovereignty, we show that market directors, influenced by French economic ideas, have ushered in policy changes.

Keywords: digital sovereignty; Digital Markets Act; European Commission; Big Tech, competition policy

Introduction

Does Europe speak French again? Since the Covid-19 crisis and even more since the war in Ukraine, the language of strategic autonomy and sovereignty has taken over Brussels. From chip-making to electricity production, the EU seems to be undergoing a conversion to the political steering of markets through public funding and rules that shield domestic firms from global competition (Ansaloni & Smith, 2018). Historically associated with post-war French economic policy, these ideas were rejected in Brussels and had been somewhat tamed in France itself since the 1980s (Clift, 2012; Schmidt, 2002). The pandemic and the war gave them a new lease of life as the European Commission started

to shift its discourse from market competition to industrial policy, and from trade liberalization to strategic autonomy. In its October 22, 2022, edition, *The Economist* thus wrote with some worry: "Think of Europe going French" (*The Economist*, 2022).

The digital sphere illustrates this shift. For a long time, France has promoted the creation of a level-playing field for European challengers facing US incumbents. But Paris was on the losing side since the demise of French state-led tech sector in the 1980s and 1990s, which saw the commercial debacle of Minitel, Bull, and Alcatel. Attempts to create a European search engine or to grow European startups from the ground up failed in the face of stringent EU market rules, opposition from liberal Nordic countries, and, to be fair, weak consumer demand. However, in recent years, a more vigorous kind of market governance has emerged, making the EU one of the most ambitious regulators of Big Tech. Whether one looks at data protection (with the General Data Protection Regulation), antitrust (cases involving Apple, Amazon or Google), or taxation (the Commission is at the forefront of the push for multinational corporate taxation), the EU has developed a wide array of rules to reign in the GAFAM (Google, Apple, Facebook, Amazon, Microsoft). Thierry Breton, the French internal market commissioner since 2019, goes further in promoting major investments in European-made technology, infrastructure, and platforms. While the push for shaping digital markets began in the mid-2010, the EU's efforts have indeed accelerated since Ursula von der Leyen came to office. They are increasingly justified in the name of "digital sovereignty". During the 2022 French presidency of the Council, a flagship regulation, the Digital Markets Act (DMA), was passed along the Digital Services Act (DSA): while the latter builds on previous legislation to regulate content and data privacy, the former seeks to restrain Big Tech in the name of fair and contestable markets (European Commission, 2020).

In this article, we ask two questions that are drawn from the Introduction to this special issue (Author A, B, C, D, 2023). First, what kind of change does the DMA signal vis-à-vis digital market governance? We show that there has been a significant evolution in the EU's policy-related discourse which must be appreciated in the context of a growing discussion about European sovereignty. *Prima facie*, the DMA constitutes a least-likely case to document the discursive shift towards digital sovereignty, as it deals, broadly speaking, with competition-related issues and derives from the rationale of ensuring a well-functioning single market. However, we demonstrate that, for some policymakers at least, the degree and form of control of the digital market should go further competition law in ways that betray the influence of French, "neo-dirigiste" economic ideas. This points to the tangible possibility of comprehensive policy change, that is, "the prominent use of digital sovereignty language in a policy sub-field with concomitant policy change in the direction of more control of the digital" (Author A, B, C, D, 2023).

Second, where does this change in discourse and policy come from? Still focusing on the DMA, we argue that it is the result of a political struggle between three constellations of actors promoting different "conceptions of control" (Fligstein, 1996), i.e., ideas about how to shape markets that predate the development of the digital sphere. We call the first constellation the **market-correctors**: they accept that public pressure requires changes in the degree of policy steering that will address market failure and offer more protection to consumers, without upsetting the functioning of the single and transatlantic markets. Often allied with US tech giants, Nordic firms and governments apply intense lobbying to make sure that changes in digital market governance remain modest and in line with past antitrust practice. The DMA is for them an incremental piece of legislation that derives from past failures in competition law. Their objective is what

Author A, B, C, D (2023), drawing from Hall (1993), refer to as first-order adjustment. The second constellation we call the **market-directors**: French political leaders, for instance, see the digital sector as an emerging market that requires picking European winners who will be able to withstand global competition, or at least force US firms to significantly Europeanize their activities. In the language of Hall, they seek to effect second-order policy adjustment, that is, to change the form of policy steering through new instruments or tools. For market-directors, the DMA is but one part of a broader set of policy tools to exert European strategic autonomy in the digital sector. The last group we call the **market-busters**: embodied in Maximillian Schrems's successful litigation against US-EU data sharing agreements, their objective is to upset the orientation of policy steering by making it impossible for any tech giant, US, Chinese or European, to control the digital sphere. This third-order policy change would substantially reorient priorities in a capitalist society. This last constellation plays a role in our story, albeit one that is increasingly reoriented towards data privacy and not necessarily market governance.

In this unfinished struggle, we argue that market-directing ideas have gained traction in Brussels through a political campaign aimed at challenging US firms and making room for European ones. These ideas predate the discourse of digital sovereignty, but they have shaped it in significant ways. Much like the repertoire of the "market", the language of digital sovereignty is inherently ambiguous and can be used strategically (Jabko, 2006; Eggeling & Adler-Nissen, 2023). When market-directors speak of digital sovereignty, their goal is to increase European autonomy, a strong version of sovereignty. When market-correctors use the language of digital sovereignty, what they mean is managing interdependence, a more modest ambition. As for market-busters, their focus is on the rights of the sovereign individual. Once dominated by the opposition between

market-correctors and market-busters, the political debate on digital governance now tilts in favor of market-directors who have imposed a more vigorous conception of control, centered upon the political steering of markets, that is in line with the strongest version of sovereignty. For the moment, the success of their campaign is bolstered by the evolution of the geopolitical landscape. As the EU enters the implementation phase, the Chinese tech crackdown, the parallel rebirth of industrial policy in the US, and the Russian war in Ukraine provide ammunition to proponents of digital sovereignty-as-European-autonomy.

Looking at the content of the DMA, whose adoption goes hand in hand with other important policy proposals and a fast-changing policy-related discourse, there are clear signs that the form of policy steering is changing away from a narrow application of competition law. The DMA establishes specific rules that "gatekeepers" must follow. This concept also describes "platforms" (almost all of which, except for Booking.com, are American) that have an entrenched and durable intermediation position and a significant impact on the internal market in several EU countries, making them *a priori* subject to public intervention. The legislative text itself does not mention "sovereignty" so we cannot say that the term is *central* to market governance. But digital sovereignty increasingly serves as a *positive* reference point in the discourse that surrounds market governance. As we show, the relevance and applicability of digital sovereignty for market governance are mobilized through speech acts, albeit in ambiguous ways that betray the continued coexistence of different conceptions of control (Schmidt, 2002; Author A, B, C, D, 2023).

The battle of ideas in digital market governance

The question of how to govern digital markets emerges against the backdrop of a long and institutionalized battle of ideas about market governance in the EU. Our starting point

is that although the digital sector represents a new challenge, the ideas and institutions that have been brought to bear on previous economic sectors shape the current political struggle.

Governing European markets

While we know that EU member states belong to different varieties of capitalism, the literature on EU market governance typically pits ordoliberalism against *dirigisme*, and assumes the dominance of the former over the latter in EU policies (Gerber, 2001). Ordoliberalism focuses on competition law as the primary tool to ensure efficient markets, which need to be cultivated (Montalban et al, 2011). Sometimes associated to protectionism or mercantilism, *dirigisme* corresponds broadly speaking to the exercise of political power over markets (Shonfield, 1969) and manifests itself in the strong role of public officials in promoting national industries. *Neo-dirigisme* encapsulates how *dirigisme* adapted its instruments to fit liberal rules, but kept its ideational core (Ansaloni & Smith, 2018). As a rule, (neo-)*dirigistes* tend to oppose competition law which prevents them from using state aid and mergers to promote national champions.

Recent scholarship has nuanced this rather stark picture. We now know that *dirigisme* influenced some early steps of EU integration (Canihac, 2021), while ordoliberal thinking was challenged by member states and business (Buch-Hansen & Wigger, 2011), and, since the 1990s, by Chicago school-inspired neoliberals (Montalban et al., 2011). The German model has not been translated in a systematic manner into EU rules either (Patel & Schweitzer, 2013). Warlouzet (2017, 2019), in fact, argues that EU policies reflect an evolving compromise. In this regard, the literature shows that the ordoliberal consensus on competition policy started to erode even before the Covid-19 pandemic. In particular, the digitization and geopoliticization trends of the 2010s allowed policy entrepreneurs to promote greater concern for European industry as well as

supranational competition enforcement (Meunier & Mickus, 2020). The popular backlash against globalization, reckoning with China's trade policy, and the rise of protectionism in the US have upset the policy balance that used to favor liberalism. This provides the context in which the political struggle around digital market governance now takes place.

A political-cultural approach to market-making

The scholarship on EU market governance points to the necessity of better understanding why certain ideas win over others at certain moments. To do so, we adopt a political-cultural approach which blends the sociology of markets with strategic constructivism in European political economy. In essence, this approach pays attention to how governments and firms vie with each other to impose market rules that will, most of the time, benefit incumbents and, sometimes, empower challengers (Fligstein, 2001). These rules derive from conceptions of control, which refer to "understandings that structure perceptions of how a market works and that allow actors to interpret their world and act to control situations. A conception of control is simultaneously a worldview that allows actors to interpret the actions of others and a reflection of how the market is structured" (Fligstein, 1996, 658).

From the political-cultural approach we derive two main propositions. First, markets are above all constructed by political actors (by which we do not only mean government actors but also business leaders and activists engaged in the struggle over defining market rules) who adhere to cultural templates about how markets should function. In the EU, dominant conceptions of control can be characterized according to how they relate to ordoliberal and *neo-dirigiste* ideas. These ideas do not converge on what is the legitimate role of state/public intervention in markets (van Apeldoorn & de Graaff, 2022). For ordoliberalism, the role of public authorities is to guarantee a legal framework for the well-functioning of markets. The public sometimes performs market-

correcting functions, when the sustainability of markets requires correcting for negative externalities. Competition law is key: rules should allow for optimal market relations and prevent political intrusion. For *neo-dirigisme,* by contrast, public authorities steer markets towards defined desirable political goals. This normally involves market-directing: the sovereign uses funding programs, state aid, influence on corporate governance, and trade policy to promote national champions (Clift & Woll, 2012; Helleiner & Pickel, 2005).

Second, while stable markets function as systems of domination with clearly identifiable incumbents, emerging markets are more likely to be subject to social movement-type dynamics of contestation. By social movements, Fligstein (2001) means constellations or political coalitions of challengers that mobilize resources and cultural frames to transform how the market is organized. The market is construed as a social field in which each constellation of actors inherits and tries to impose their own conception of control. One strategic way to do so is to craft a repertoire of ideas that others will rally behind (Jabko, 2006). During periods of contestation, different conceptions of control coexist. When the market's norms and boundaries are not yet fully stabilized, as is the case with the digital, political actors can engage in fiercer competition. While public authorities are usually a conservative force that favors incumbents, they may at times encourage challengers. The key insight from the political-cultural approach is that, one way or the other, public authorities contribute to picking winners and losers through their drafting of property rights, rules of exchange, and conceptions of control, and more generally by drawing the boundaries of the market.

Market-correctors, market-busters, and market-directors

While the digital market, dominated as it is by Big Tech firms, may superficially look like stable one, it is fairer to say that it is still in flux. This is especially true in Europe where the GAFAM have provoked strong public resistance despite their commercial

success. As a result, the digital market is characterized by the interaction of different constellations of actors who still try to shape it. Focused on the EU level, our paper analyzes three constellations and the ongoing struggle to impose their respective conceptions of control.

Personified by (but not reducible to) competition commissioner Margrethe Vestager, market-correctors believe in competition law and the liberal protection of consumer rights to correct for market externalities in the digital sphere. They argue that Big Tech firms must follow a certain number of rules that will prevent them from abusing their market dominance and, to some extent, power over individuals. Antitrust procedures launched by the Commission against digital firms and the GDPR are the most visible forms of market regulation, which most firms have grudgingly come to embrace. But market regulation efforts generate their own kinds of externalities, which create the need for some coordination at the global level. That spirit led to the negotiation of a series of data sharing agreements with the US, including Safe Harbor and Privacy Shield. In the last months of the Juncker Commission, market-correctors pushed for the creation of the Trade and Technology Council which would allow the two jurisdictions to make their market-correcting legislation converge, very much in the spirit of sovereignty-as-managing interdependence.

Personified (but not reducible to) digital activist Max Schrems, market-busters believe in a decentralized digital world where no government, no firm will be able to take control over personal data. NGOs like None of Your Business or La Quadrature du Net defend the freedom and privacy of citizens against "surveillance capitalism", but also an alternative model of internet governance which goes from fairly established opensource software to radical Web3 visions (Zuboff, 2019). Although the EU's regulations on data privacy such as GDPR are partly the brainchildren of their legal activism, market-busters

envision much more ambitious forms of governance that would break corporate (and state) power (Mager, 2016; Kalyanpur & Newman, 2019; Obendiek, 2022). For them, policy steering needs to take a new direction that will give sovereignty back to the individual.

Personified (but not reducible to) internal market commissioner Thierry Breton, market-directors came late to the digital game. Their objective is to shape the digital market in a way that suits the public's (or the government's) industrial policy and reaffirm its political sovereignty to write the rules. In their more modest ambitions, market-directors want to make sure that tech companies, most of them American, play by the EU's consumer rules, invest in Europe, keep their data in Europe, and give some space to European competitors. As the yet-to-be-adopted European Chips Act and its attendant large investment vehicle suggest, the dream of creating European champions that will be able to compete globally with US and Chinese firms lurks in the background. This thinking is close to French *neo-dirigisme*, as it combines strong political steering of markets with the promotion of national or supranational interests (Ansaloni & Smith, 2018; Clift & Woll, 2012).

Constellations of actors are not clearly-defined institutions, organizations, or individuals. In practice, they wax and wane, and may very well overlap. For example, a consumer-rights group like the *Bureau européen des unions de consommateurs* (BEUC) is likely to support some aspects of each conception of control: citizen rights, antitrust, and European champions. This is also true of national governments that are all keen to support their industries but must respond to constituencies that are variably connected to US firms or consumer rights advocacy groups. The point of distinguishing these constellations is not to assume that they form cohesive actors, but to suggest that actors

tend to coalesce around conceptions of control that prescribe various degrees, form, or orientation of change in digital market governance.

Methodology

To analyze discursive and policy change, we follow the conceptions of control that have shaped the policy process before and during the adoption of the DMA, paying attention to who articulates them to build coalitions, how they relate to windows of opportunity and the discourse of digital sovereignty, and whether they have been turned into concrete policies. We trace shifts in discourse and policy based on written material and oral interviews. For written sources, we rely on the specialized press on the EU (*Politico*) and on digital policy (*Contexte*). For oral sources, the study is based on longitudinal interviews as well as one-off interviews in Brussels, Paris and Berlin: the authors had the opportunity to follow and conduct non-structured interviews with six policymakers on a regular basis between 2020 and 2022, which they have complemented with nine semi-structured interviews. Interviews have been held with representatives from various sites within the European Commission, the European Parliament, the German government, the French government, as well as with corporate actors. For questions of confidentiality and trust with our interviewees, interviews are used for background, and the interviewees' identity remains concealed.

Before 2019: market-correctors respond to market-busters

The DMA was launched by the von der Leyen Commission, which came to office in 2019. But von der Leyen didn't start with a blank slate. The previous decade saw growing concerns about the practices of large online platforms, with new policy ideas emerging in the Commission's Directorate-General for Communications Networks, Content and Technology (DG CONNECT), Directorate-General for Competition (DG COMP), and in

activist circles. Those were partly taken on board by the Juncker Commission. Yet "for much of the 2014–2019 period, European Commission leaders articulated a commitment to traditional competition instruments, which, it was argued, were able to meet the needs of the new digital economy and society" (Cini & Czulno, 2022, 42). Digital market governance was then apprehended through two distinct, but not always opposing conceptions of control in Brussels. The Commission's approach to the digital sector was very much the same as for other markets, namely one of ensuring efficient competition and consumer rights through market correcting. Contestation came from market-busters, who criticized the marketization of internet and its nefarious effects on citizens' rights.

After she moved to Brussels to take on the competition portfolio in 2014, Margrethe Vestager became famous for using her powerful legal authority to impose fines on tech giants that ran afoul of competition laws and/or trampled on consumer rights. The Commission's antitrust cases forced some US firms to change their relationship with consumers, users, and competitors. But while dominant in Europe, this approach to digital markets was not the only one. Activists like Max Schrems represented a more radical alternative. In contrast to market-correctors, market-busters like him argued about the risks of marketizing the internet for citizens' rights, including physical security (e.g., facial recognition and the use of data generated by such technologies). Activists were able to use EU law to fight back against corporate actors and governments. Schrems' strategic litigation cases against Facebook, Amazon, Apple Music, Netflix, SoundCloud, Spotify, or YouTube forced the Commission to renegotiate its data sharing agreements with the US.

Around the language of rights, market-correctors and market-busters found common ground with commissioner Andrus Ansip, responsible for digital policy in Juncker's team, and political forces in the European Parliament which also sought to

regulate Big Tech and push for a "European-style" digital market. They jointly produced some of the most advanced forms of digital governance, such as the GDPR (Anagnostopoulou, 2020; Obendiek, 2022). But despite the judicial and media success of market-busters, the 2015 *Digital Single Market Strategy for Europe* (European Commission, 2015) with its focus on consumer access and digital skills, clearly put the emphasis on liberal rules and market correction: "The Digital Single Market strategy seeks to ensure better access for consumers and business to online goods and services across Europe, for example by removing barriers to cross-border e-commerce and access to online content while increasing consumer protection". With the e-commerce directive and, to a lesser extent, the Digital Single Market strategy, the Commission's focus was to break down barriers to the benefit of European consumers (Mărcuț, 2017; Cini & Czulno, 2022). While market-busters' agenda was ultimately to break up Big Tech and foster citizens' rights, market-correctors simply wanted to better regulate to achieve fair competition and consumer protection.

The DMA: a tool for competition policy or digital sovereignty?

There is no doubt that the Juncker Commission took the digital challenge seriously. As a result, the GAFAM had to change some of their practices worldwide (Bradford, 2020). But Europe remained a consumer market for dominant US firms. In the last years of the Juncker Commission, services were already working on improving the EU's competition policy, which was deemed too slow to keep pace with fast-changing digital technology. The question was whether competition law**,** once considered the finest EU legal weapon, was strong enough to tackle Big Tech. The answer, carried by Vestager and DG COMP, was to develop a "new competition tool" which would improve enforcement through market analysis and precautionary intervention. In so doing, the Commission enjoyed a "permissive environment to expand its powers in antitrust regulation" (Meunier &

Mickus, 2020, 1084). In spirit, the planned tool was still market-correcting: the goal was to modernize competition policy (senior official in DG CONNECT, personal communication, 2022) and make the European authority a bit more proactive in its protection of consumers (Crémer et al., 2019; Krämer, 2020). Appointed executive vice-president of the Commission in the von der Leyen Commission, in charge of overseeing the EU's digital agenda, itself a presidential priority, Vestager seemed to have the upper hand in imposing incremental changes in the degree of policy steering, which consisted in adapting competition policy to the new digital reality, but not necessarily changing it.

Eventually, the DMA would come out of this policy process which, until 2020 and depending on which Commission directorate-general was pushing it, was either called the new competition tool or *ex ante* regulation, both of which meant to be more pro-active. Because the DMA's goals overlap with those of antitrust law, some observers see it as the result of a "gradual" adaptation of the EU's competition regime to a changing digital environment, past policy lessons, and growing expertise (Cini & Czulno, 2022). To be sure, the DMA is in part the result of policy learning about the limits of competition law as a tool to regulate large firms. The rationale behind the DMA's provisions echoes some previous or ongoing cases brought up by DG COMP such as the Google Shopping antitrust case, in which the platform was accused of treating its own products more favorably than third parties. Observers also note similarities between Section 19a of the German Competition Act (ARC) and the DMA.

But in discourse and in content, we argue that the DMA ended up going further than a simple modernization of competition policy and thus provides real contrast with the market-correcting solutions of the past (Jaursch & Blankertz, 2021; Rusche & Büchel, 2021)**.** Because the DMA is not yet implemented and, most importantly, because the very meaning or goals of policy instruments are never set in stone, we present three political

reasons why it is plausible to argue that the DMA differs from competition law, keeping in mind that the authors are not experts in competition law (for a useful survey, see Moreno Belloso and Petit 2023). All of them suggest ways in which the DMA can be seen as Janus-faced, with a face that looks to market correction and another to market direction.

First, the DMA is a policy instrument that differs from antitrust law. "Substantively, … the DMA comes close to being a competition law. Yet, the method prescribed by the DMA to give life to that substance strays from the methods typical of competition law" (Moreno Belloso and Petit 2023, 31). Antitrust law does not aim to regulate market actors' behavior *ex ante* and, in theory, does not emanate from a political process. Antitrust law relies on *ex post* investigation on anticompetitive behavior: public authorities only step in once they certify that market actors infringe on antitrust rules, and then negotiate the terms of possible solutions if they win their case. Legal action is justified by and proportionate to the effects attributed to firms' behavior. By contrast, the DMA is a regulatory instrument, relying on *ex ante* obligations for incumbent firms, just like in telecoms. For many competition lawyers, the DMA is a tool that goes beyond fair, predictable competition rules because it allows regulators to exercise discretion in the market (de Streel & Larouche, 2021; Bongartz et al., 2021).

Second, the DMA's stated goals are more ambitious than market-correction. The DMA will ensure "contestable and fair markets in the digital sector" (article 1). How these two objectives (contestability and fairness) relate to competition law and to one another is not entirely clear. What is certain is that whether and how the DMA's goals fit with competition law generates a lot of debate among competition lawyers (Beems, 2022; Moskal, 2022). For some, these goals are coherent with traditional competition law. For others, they go further: the German ARC and the DMA "have similar addressees, if not

the same, and similar rules for those addressees. The differences lie in the details: The ARC is competition law, while the DMA goes beyond that and aims to promote contestability and fairness" (Blankertz, cited in Kabelka, 2022). Moreover, as pointed out by an EU official, the two objectives of contestability and fairness only partially overlap: for instance, fairness for end-users and contestability from the perspective of business users need not entail the same solutions. Beyond their legal codification, the DMA's goals are debated from a political perspective, around the extent to which they aim to tame US Big Tech. In theory, the DMA neither protects nor gives preferential treatment to European firms. But implicitly, it opens up the European market to EU firms, which are potential challengers against US incumbents. At a minimum, the DMA seeks to shape markets in such a way that EU firms can have a fair shot against US Big Tech.

Third, the influence of market-directing ideas can be seen in legal debates around the design of the policy instrument. Focused on the specific challenges posed by digital platforms for European sovereignty, the DMA imposes stringent rules on the so-called gatekeepers of core platform services (online search engines, social networking services, app stores, web browsers…). To prevent abuse by gatekeepers, the DMA builds on the experience of DG COMP's case handlers. However, the DMA also reflects specific positions in a wider debate among legal scholars about the best way to deal with competition issues in the digital realm. In the end, the definition of obligations (does and don'ts) and possible sanctions at the enforcer's hand went further than many observers would have expected.[i]

Market-directors take on digital governance

In sum, the DMA is more ambitious and liable to political discretion than competition law is supposed to aim for. The surrounding discourse of digital sovereignty and other Commission policy proposals related to digital governance (Author A, B, C, D 2023) give

the DMA an edge because it enables the development of European firms capable of competing with US incumbents. While the ambition is not shared by everyone and may not pan out (see next section on implementation), we must ask why this shift away from competition law occurred. For Cini & Czulno (2022, 43), "policy change resulted from the opening of internal and external policy windows which then profited from both a consensus in support of *ex ante* regulation among advisors and commentators, and member state opposition to other reform options". While we broadly agree with this explanation, our own analysis focuses on the battle of ideas that animated the corridors of Brussels and turned such policy windows into successful proposals. To do so, we look at political struggles between market-correctors, who had managed to find some common ground with market-busters through progressive legislation on data privacy, and the market-directors who, after 2019, coalesced around French ideas and actors in Brussels, all in the name of fighting US Big Tech.

In line with the political-cultural approach, our main explanation for this shift lies in the successful social movement-like campaign that market-directors launched to promote European industrial concerns through the regulation of digital markets. Coming as he did from the French tech sector, the internal market commissioner, Thierry Breton, invited himself in the competition discussion led by Vestager until 2019, and pushed for a more ambitious form of market regulation that would emulate what the Commission had done for the energy and telecoms industries in the 1990s (senior official in European Commission, personal communication, 2021; senior official in DG COMP, personal communication, 2022). His idea was that digital governance was not only about consumers but also about industries. Surrounded by officials and experts who shared his views, Breton promoted an alternative conception of digital markets that found a growing number of allies in the Commission, in Parliament, and in some national governments

(Bora & Schramm, 2023). Predictably backed by Paris, market-directors initially received modest support from the Merkel government but found more reliable partners when the Greens came to office in Berlin, took over the Economy Ministry, and started promoting the concept of digital sovereignty (senior official in BMWK, personal communication, 2023).

In parallel to DG COMP's work on the new competition tool, DG CONNECT pushed the idea of introducing *ex ante* rules to shape the digital market from the top (Thiffault, 2021). When the Commission announced its intention to produce legislation on the topic, in June 2020, the new competition tool and the *ex ante* approach were still considered as separate options. Media outlets then reported tensions during interservice negotiations between DG COMP officials (working under Vestager), who wanted to stay as close as possible to a competition role of preventing market dominance, and DG CONNECT officials (under Breton), who wanted to structure the digital market through the establishment of *ex ante* rules. *Politico* published a long article about intercabinet tensions, describing turf wars among the two commissioners, each defending different economic philosophies and vying for public attention. "There have been clashes, reported *Politico*, over how best to promote Europe's national interests in the digital realm, squabbles over takeovers of tech firms, and public disagreements over the need to break up Silicon Valley giants" (Larger et al., 2020).

According to Cini and Czulno (2022, 45), "the proposal had had a difficult ride through the Commission's Regulatory Scrutiny Board, where it [was] rejected in early November". After six months of consultations during which Big Tech lobbyists were reported to lobby DG CONNECT, the Directorate-General for Internal Market (DG GROW) and the two commissioners frantically, the new competition tool and *ex ante* regulation were merged into a single text which became the Digital Markets Act (senior

official in European Commission, personal communication, 2021; senior official in DG CONNECT, personal communication, 2022; Scott & Kayali, 2020). "[B]eyond providing a richer information base for the Commission, Cini and Czulno (2022, 50) write, there is no evidence that corporate lobbying affected the decision to introduce the *ex ante* regulation of online platforms". The focus on digital markets was a concession to DG CONNECT, as Vestager had initially hoped for the new competition tool to reach beyond this scope. In December 2020, Vestager and Breton sealed their agreement by writing a joint op-ed in the *Irish Times* which delineated the main contours of their compromise on the DSA and the DMA. As such, the DMA stands as a mix between Vestager's market-correcting, competition policy-led incrementalism and Breton's market-directing, industrial conception: "Nobody was really satisfied but that's often a good sign in EU politics", concludes one of our interviewees (digital policy advisor, personal communication, 2022).

The *Irish Times* piece was short and did not mention terms like "digital sovereignty". Yet constructive ambiguity played a role in forging that compromise (Jabko, 2006; Jegen & Mérand, 2014). Discreetly present under the Juncker Commission, the discourse on digital sovereignty spread in Brussels after with Ursula van der Leyen evoked "tech sovereignty" in her first *State of the Union* speech, in September 2020. Now, the meaning of digital sovereignty ranges from state (including authoritarian) control to user autonomy to economic competition (Pohle & Thiel, 2020; Couture & Toupin, 2019). In German circles where it has become commonplace since the Greens joined the Scholz-led coalition in 2021, digital sovereignty tends to refer to user autonomy (Pohle, 2020) and it is as such compatible with standard competition law. But in France, the term is also associated with competitiveness, industrial policy, and especially strategic autonomy. What was long seen as a French coquetry acquired considerable glamour in the context

of Covid-19, which struck in the early months of the von der Leyen Commission, and even more after the Russian invasion of Ukraine which showed the EU's vulnerabilities. Originally applied to defense policy, where it translated Paris' old quest for independence from the US, strategic autonomy was stretched to cover industrial and trade issues, notably independence from China and the US (Bora & Schramm, 2023; Tocci, 2021).

In less than two years, the repertoire of digital sovereignty came to be accepted by both market-correctors and market-directors in Brussels. In May 2021, Paris, Berlin and The Hague, dubbed "the Friends of an Effective DMA", pushed the Commission to crack down on "killer acquisitions", signaling their distrust of US tech giants (Haeck, 2021; Altmaier et al., 2022). On the discursive level, market-directors read strategic autonomy while market-correctors see the ability to make one's rules in an interdependent world. But while people like Breton explicitly equate marketcraft with statecraft ("In the global race for technological power, Europe will lead if we seize the opportunities of data, microelectronics and connectivity" [Breton, 2020]), and see the digital sphere as the new frontier of political authority (Kelemen & McNamara, 2022), Vestager defines digital sovereignty more modestly: "That doesn't mean innovation is going to create a completely self-sufficient European tech ecosystem. … Digital sovereignty is not about cutting those connections. It's about managing them in a way that give us the power to make our own choices" (Vestager, 2021).[ii]

Indeed, despite the emerging frame of digital sovereignty, important differences of interpretation remain when it comes to digital market governance. Regarding remedies, for instance, the DMA provides the Commission with strong powers that go further than what market-correctors wanted. In the drafting phase, the debate revolved around the option of breaking up large firms. Antitrust policy traditionally relies on behavioral remedies while structural remedies are more common in merger controls (senior official

in DG CONNECT, personal communication, 2022). Yet Breton was adamant about the need for structural remedies. Reflecting ordoliberal thinking, the German Competition Authority instead promoted behavioral remedies. In this view, the breaking up of firms is not advisable, as it represents more of a political posture than a proportionate solution to competition issues. According to our sources, Vestager echoed and defended this conception until the very end. In winter 2022, she still was trying to tame Breton's argument for structural remedies by calling it the "nuclear option". Yet in the end the DMA partly reflects the Frenchman's market-directing views: the Commission can apply significant penalties and fines to non-compliant firms, especially those that repeatedly infringe upon EU rules, and impose behavioral and structural remedies to gatekeepers, such as the prohibition of killer acquisitions.

The market-directing potential of the DMA becomes even more apparent when seen in the context of several other policy proposals that build more directly on the repertoire of digital sovereignty (Author A, B, C, D, 2023). For some business players, the DMA is only one piece of a "tsunami of legislation" which aim to regenerate Europe's industrial capacities (representative of a North American firm, personal conversation, 2022). More than a standalone tool to regulate Big Tech's behavior, the DMA is indeed accompanied by several other initiatives which resonate with sovereignty-as-European autonomy. France has long pushed for a relaxation of state aid rules and more public investment at the EU level. During Macron's tenure, Paris sponsored Scale-Up Europe, an initiative to "create 10 European tech giants by 2030", for which it enlisted the Commission (notably Breton and research commissioner Mariya Gabriel) and some member-states. In Winter 2022, the college of commissioners agreed to reorient some of the science R&D budget lines into a European Chips Act (chips being the backbone of the digital sector) whose purpose is to increase substantially the European share of the

global semiconductor industry. While the objective of this piece of legislation backed by € 43 billion is to promote the development of autonomous value chains in Europe, the almost inevitable outcome is to pick winners that will be able to compete with US and Asian firms through the creation of megafabs. While it is too early to assess the impact of those initiatives, they participate in framing the DMA as a key element of the EU's digital sovereignty strategy.

Once it was tabled in December 2021, political opposition to the DMA turned out to be surprisingly weak. It took a bit more than a year for Parliament and Council to adopt it, which is fast by EU standards. The legislative debate revolved among other things around killer acquisitions and the number of firms that should be targeted, which was also ultimately linked to the question of a firm's nationality (Bertuzzi, 2021). A narrow focus on the largest firms was pushed by Parliament, where some MEPs like Andreas Schwab wanted to take on US Big Tech. Schwab managed to increase the threshold for the designation of gatekeepers. A narrow targeting could be seen as a pragmatic move, as the EU would not have the resources to monitor many corporations. However, targeting large firms means that almost all of them will be American. Accusations of EU protectionism were quickly raised, as US public and private actors voiced their concerns about being discriminated against. The DMA drafters, in both DG COMP and DG CONNECT, shared an interest in avoiding this debate to take place. The final version of the DMA reflects the need to target while formulating it in a manner that is compatible with WTO obligations (senior official in DG CONNECT, personal communication, 2022; senior official in DG COMP, personal communication, 2022).

The limits of the DMA for digital sovereignty

In the preceding section, we showed that market-directors imported the rather French language of *neo-dirigisme* in digital market governance, created alliances within EU

institutions and with the German government to go beyond traditional competition law, and seized geopolitical opportunities to promote their conception of control in and beyond the DMA. In line with the political-cultural approach, their social-movement campaign has led the EU to adopt legislation that would allow European challengers to coexist alongside US incumbents in the tech sector. Yet the DMA is not implemented yet. It is difficult to predict whether it will be used to ensure fairer competition (the market-correcting view) or whether it will constitute a stepping board for European industries (the market-directing view). Currently, the policy-related discourse emphasizes strategic autonomy more than managed interdependence. But we can identify two factors that will possibly impede a contribution of the DMA to the strong version of digital sovereignty.

A first factor is the lack of resources for the Commission to ensure coherent and ambitious implementation. A practical issue is the DMA task force that was put in place. While this unit has grown over the last months and was made permanent in early 2023, observers question whether there will be enough case handlers to face Apple's or Microsoft's lawyers. The Commission has been meeting with tech firms to prepare – and negotiate – the DMA's implementation. This has proved necessary given the complexity of the DMA but also to avoid potential litigation later on. However, the sheer complexity of applying *ex ante* rules to very diverse firms may lead to an actual return to case-by-case analysis, more analogous to competition law (business association representative, personal communication, 2023). The sociology of EU bureaucratic actors in charge of the DMA's implementation may also play a role here. While all interviewees underline that the DMA is different from EU competition law, whether the DMA will be implemented with an eye to sustain European firms or not may depend on how implementing actors conceive of their role and of this instrument's goal. Many of them having a background in competition law and having worked, presently or in the past, in DG COMP, it is likely

that they will embody the competition face of the DMA more than its political steering face.

A second factor concerns the ability of the Commission to pull sufficient funding to finance its ambitious rhetoric regarding European technological catch-up. The European Parliament has been very vocal about this issue: while MEP Schwab, for instance, converges with Breton's conception of digital sovereignty, he feels, like many of his peers, that there is "too much blabla" and not enough money invested to make this discourse credible (digital policy advisor, personal communication, 2022). Again, this suggests that the DMA is, in the minds of many actors, about more than competition policy, showing the influence of market-directing ideas.

Conclusion

Borrowing from the cultural-political approach to markets, our paper has offered tentative answers to the main questions raised in the special issue's introduction: What kind of change does the DMA signal vis-à-vis digital market governance? Where does this change in discourse and policy come from? We have shown that the language of digital sovereignty has shaped digital market governance and ushered in actual policy changes that may turn out to be consequential. Embracing this language, market-directors have upset the decade-long struggle between market-correctors and market-busters to steer governance towards greater political guidance. In terms of drivers, our story is not one in which policy discourse drives change through, for example, the logic of the better argument. It is one in which constellations of actors seize opportunities and build political coalitions to push for their favorite conceptions of control. The DMA is a result of a broader campaign to revitalize French-style strategic autonomy, as are some of the recent policy proposals that also build on the language of sovereignty. But it is too early to declare French victory. Because it is couched in ambiguous terms, it is not entirely clear

yet that the positive reference point of digital sovereignty will translate in comprehensive policy change in the long run. Supported by decades of liberal market governance in the EU, corporate interests, and strong institutional interests, notably in the Council and in DG COMP, market-correctors haven't uttered their last word.

This study raises several questions requiring further research. One first question relates to the link between these ideational struggles that are internal to the EU and global governance. While international crises such as a global pandemic and the Russian war in Ukraine have helped bolster industrial policy within the EU, it is not clear how the latter will play out in interaction with other states or in other international arenas. The case of the Trade and Technology Council is telling. Originally designed as a forum to harmonize US and EU regulations and explore avenues for cooperation, the TTC has become a geopolitical arena where issues of sovereignty are openly discussed. Another question relates to how much influence the EU's policies will have. Anu Bradford (2019) uses GDPR as an illustration of the "Brussels effect" whereby European regulations force firms to adapt their standards globally. Whether the DMA will lead to global practices diffusion remains, of course, to be seen. Big Tech has also fought back and won against the Commission's tax decisions, the impact of EU initiatives on the US regulatory space has been minimal, and China stands out in its increasingly decoupled, authoritarian way of regulating the digital market. This calls for further inquiry into other cases, such as the reform of the Canadian Competition Act and how the DMA inspired it.

While the DMA is in the process of being implemented, the jury is still out on whether the EU will become a truly autonomous shaper of digital markets, perhaps partly decoupled from the rest of the world, or will rather seek to carve out a socially and economically acceptable place in the global digital market. Both can be called digital sovereignty but they do not mean the same thing. While the latter would be a continuation

of past practices, perhaps sharpened by developments in Washington, the former would be a comprehensive change towards strategic autonomy. If that were to happen, it would suggest that (French) market-directors were successful in crafting a language, creating alliances, and mobilizing growing geopolitical rivalry to align digital market governance with their conception of control.

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[i] For instance, the DMA adopts a strong stand in the legal debate about the benefits and downsides of narrow parity prices clauses: parity-price clauses are ways in which platforms (retailers) ensure that service providers (hotels, for instance) do not sell their product at a lower price on their own website (narrow price parity clause) or on any other platform (wide price parity clause). Platforms have tried to justify this practice by the need to fight

freeriding in markets (as service providers benefit from exposure by the platform). Competition authorities have found wide price parity clause to have anti-competitive effects. There is however no consensus among antitrust legal experts (senior official in DG CONNECT, personal communication, 2022) or national competition authorities as to how to handle narrow parity clause. While some countries have temporarily accepted those price parity clauses, such as France, Italy and Sweden, the German *Bundesgerichtshof*'s 2021 decision found this practice to go against antitrust law. The DMA sides here with an overall ban of both wide and narrow price parity clauses in the name of the benefits for business and end users. It thereby puts more pressure on gatekeepers than may be seen as necessary.

[ii] The discourse of sovereignty also resonates with market-busters for its promise to bring back control to citizens but it is less relevant for the DMA. The language of individual autonomy which underpins their conception of control has been partly incorporated in various EU policies that focus explicitly on data users, such as the Digital Services Act which was adopted alongside the DMA.