
Highlights of the Digital Markets Act Conference

Event date: 24 June 2024

Location: Sheraton Hotel (Schiphol)

Hosted by: Martijn Snoep (Autoriteit Consument en Markt)



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Date of release: 5 July 2024

Introduction

The Digital Markets Act conference of 24 June 2024 celebrates the implementation of the act as a milestone in competition law at the Single Market level. During the day, several benefits as well as potential pitfalls have been addressed, on behalf of various stakeholders: consumers, small firms active in digital markets, gatekeepers, national competition authorities, and the interplay between them. The event was hosted by the Autoriteit Consument en Markt (Dutch Authority for Consumer and Market), and special gratitude should be given for its Chairman Martijn Snoep, for having welcomed me and other participants.

I have used Roman numbers to rank the sequence of speakers in chronological order. Each section summarises the highlights of a particular speaker/particular speakers, without using direct quotes. All of the content is based on the shares information, my own notes, pictures taken, careful listening, questions asked, and a final review. I have requested explicit permission of the Chairman before sharing this report in public.

Document overview (and timetable)

- I. 09:15 am - 09:30 am: About the event - Introduction by Martijn Snoep (Chairman of ACM) and Fiona Scott Morton (Economics Professor at Yale School of Management)
- II. 09:30 am - 10:15 am: DMA started out of an idea - by Margarete Verstaeger (Exec Vice-President of the European Commission)
- III. 10:15 am - 11:10 am: Plenary I: Accessibility and Interoperability (panel discussion)
- IV. 11:35 am - 12:35 pm: Breakout Session I: Operating Systems
- V. 01:30 pm - 01:55 pm: Keynote Margaret Verstedden-van Duijn (Bol)
- VI. 01:55 pm - 02:50 pm: Plenary II: Consumer Preference
- VII. 02:50 pm - 03:05 pm: DMA vs Gatekeeper Power - by Cristina Cafarra (independent economist) and Andreas Schwab (Member of European Parliament on behalf of EPP)
- VIII. 03:30 pm - 04:35 pm: Breakout Session II: DMA and Generative AI - by Thibault Schrepel (Associate Professor of Law at VU) and Carel Maske (Senior Attorney at Microsoft)
- IX. 04:35 pm - 05:00 pm: Keynote by Harold Goddijn (TomTom)
- X. 05:00 pm - 05:35 pm: Early lessons from DMA on innovation by Fiona Scott Morton

- I. About the event - Introduction by Martijn Snoep (Chairman of ACM) and Fiona Scott Morton (Economics Professor at Yale School of Management)



Martijn:

- Today's conference is a collaborative of all European Competition Authorities -> This provides businesses with the information necessary to work with the Digital Markets Act
- Business Users are an underrepresented voice
- Fiona is focused on business strategy, and as such not a traditional economist

Fiona:

- Digital Markets Act is about innovation
- Traditionally, consumers are protected against high prices, yet even more is to be gained from innovation

Martijn:

- What types of innovation are we talking about?

Fiona:

- There are three aspects: i) Innovation by entry businesses ii) Interests of gatekeepers iii) Results for consumers
- We hope to learn a lot from businesses on the ground and what steps enforcers need to take to protect innovation -> Compliance is one of the main issues

II. DMA started out of an idea by Margarete Vestager (Executive Vice-President of the European Commission and Commissioner for Competition)

**Margarete:**

- I am from Team DMA -> Teamwork was needed to make the DMA a success
- Make sure there is a market for your business idea, to attract investment and more consumer choice in digital markets
- Dominance and entrenched interests became the norm
- We saw that SMEs faced many challenges in this regard
- i) Contestability ii) Fairness (playing fields should be level) iii) Accessibility
- New responsibilities now only fall on the gatekeepers -> there are only 7 at the moment
- DMA is designed to create new opportunities for SMEs through third-party apps etc., fair ranking
- Gatekeepers must open their ecosystems to smaller companies -> Focus on what the DMA brings and leverage this to your advantage -> And let us know if things do not work
- Civil society is actively involved in panels on antitrust in digital markets
- Within a month of the non-compliance deadline, we

opened 5 cases, currently a 6th one is pending involving Apple -> We are concerned Apple designed its business models such as to hamper optimal usage of the of DMA opportunities for developers and consumers

- On the other 5, investigations are top priority within the European Commission -> National Authorities can start investigations for non-compliance -> this is easier as they often have tighter connection to SMEs
- Joint Teams are used to make this process even more efficient
- Every tool is used from infringement procedures, remedies, fines, structural remedies as a last resort -> No poach agreements -> Under DMA, gatekeepers must report any M&A transaction they wish to engage in
- Compliance date was set at 17 March (this year)

Martijn:

- On a scale of 1 to 10, where are we in terms of progress (on average)?

Margarete:

- Not all gatekeepers have non-compliance cases. When we started 4 weeks after compliance, we had 5 cases, as well as retention of information for upcoming compliance cases, and regulators dialogues
- The tentative deadlines of DMA are 6 and 12 months in a self-standing antitrust case -> Here, our tools are effective from the first day

Ardi (me):

- Question: How do you protect European institutions against cyber risks when trying to regulate gatekeepers with the newest technologies, a rat race on steroids (in advance modelling / anticipation of regulatory updates, espionage, etc)?

Margarete:

- Answer: Cyber risk is indeed a very serious threat, in fact the European Commission is one of the biggest targets for espionage already, yet sometimes it is also people who spy -> We need to stay as sharp as possible in this regard

III. Plenary I: Accessibility and Interoperability (panel discussion)

- During the last 3 years, we have discussed the applicability and interoperability of the DMA

Moderator: Cani Fernandez (President, CNMC)

Panelists:

Ian Brown (Independent researcher & consultant)

Johannes Reck (CEO, GetYourGuide)

Francesco Versace (Associate Director Government Affairs, Spotify)

Amandine le Pape (Co-founder & COO, Element)

Johannes:

- Hopefully there will be upcoming gatekeepers one day
- More than 30,000 travels are conducted through our platform
- I Co-founded this organisation 15 years ago
- We wanted to enact a fairer rebalance regarding Google travel queries

Francesco:

- On Spotify -> We have turned 18 this year (founded in 2006, Sweden)
- Less-known is the way the business works
- There is a distinction between a free ad-based version versus premium based on a monthly fee
- 2/3rd of revenues go into the regeneration of right owners
- Any undue cost from gatekeepers is problematic for industry -> hence we support DMA

Amandine:

- Matrix is a start-up that solves the problem of where to store data, how to communicate, and was founded in 2014



- It primarily sells to the public sector, and is a secure alternative to Microsoft Teams and WhatsApp
- We have worked with the European Commission in defence against gatekeepers
- We support the DMA, and are more mission- than business-driven
- We now have a working Proof of Concept and interoperability

Jan:

- I have been working on interoperability for the past 15 years
- What led to DMA? -> We see core platform services' extreme returns to scale and scope
- Interoperability is positive for competition
- (Promotional video): Economics in one Metaverse is much bigger than when used separately -> It improves interoperability -> Offers better compatibility with regulation
- The consumer choice improves this way, even more so for the EU with its 27 Member States

Amandine:

- Government to citizen communication is nowadays limited
- We offer 20 different applications while still being able to maintain encryption, offering the best of both worlds
- Indirect impact -> Europe is showing thought leadership regarding privacy

Francesco:

- With free users, it is impossible to tell price of products, and there is no access to the payment system
- Today, users need to discover themselves where to go to use a premium membership

- With DMA, we were vocal on new interface and what it can offer
- We now also have audiobooks, yet there is not incentive to move into new terms
- A lot of promises are made, yet we are not yet there in terms of compliance

Johannes:

- Google truly believes they are the government
- Before DMA, they built Google Travel, with a competitive advantage versus us -> DMA cancelled this

Jan:

- Google has a great advantage over others with regard to personalisation services due to its massive amount of users
- Apple has faced scrutiny for designing the iPhone chip to favour secure payment by Apple Pay
- Smaller search platforms need anonymised data from Google to offer these services too -> DMA helped with this

Question from the audience to Francesco:

- Can you migrate users out of the App Store under DMA and would you do it?

Francesco:

- Answer: When it comes to migrating users from App Store to alternative payment, the technology is in place, yet has not been implemented yet
- As for alternative distribution systems, this is only possible if all steps are in place -> These are not sufficiently in place yet

Johannes:

- Tech giants have been preparing the battle for years and have near infinite resources
- Our vision is one of true competition

Amandine:

- Our task is to demonstrate that our tools are working vis-à-vis those of gatekeepers

Question from the audience:

- Do you see a future where we see more usage of platforms like Spotify and web technologies regardless of purchase platforms such as the App Store?

Francesco:

- Answer: All options are on the table -> The most seamless way towards premium is within the app

Ian:

- The Data Act is to be completed next year -> This involves data needed for competition

Amandine:

- Here are the main challenges we see: i) The DMA only applies to EU users ii) Only two gatekeepers have been designated regarding message platforms iii) As a small company, every investment counts, whereas gatekeepers have more ability to invest without direct revenue

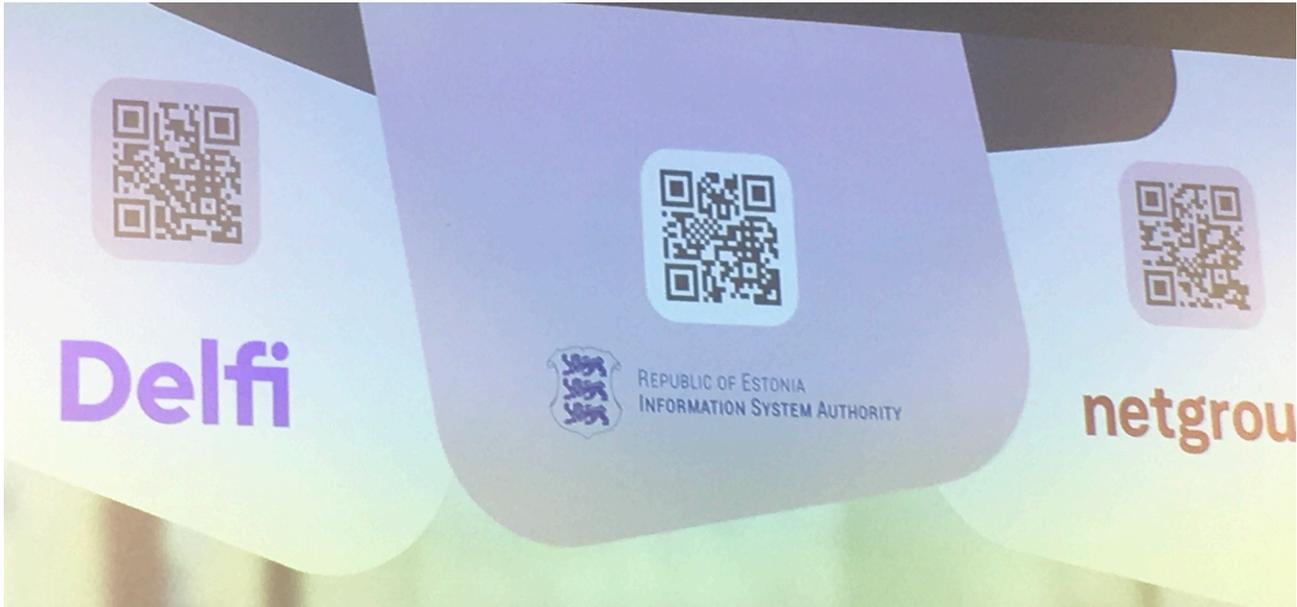
Francesco:

- Main challenges according to us are: i) Resources, not just numbers but also the availability of technical resources ii) The ability of all gatekeepers to circumvent regulatory constraints

Johannes:

- We have to pay for the fact that customers move to us from gatekeepers due to lack of royalties -> There is a mismatch between regulation and actual compliance

IV. Breakout Session I: Operating Systems



Moderator: Evelin Parn Lee (Director General of the Estonian Competition Agency)

Panelists:

Ivar Khrustok (Head of Data Science, Delfi Meedia AS)

Alo Einla (Head of Election Infosystems Estonian State Agency)

Rait Matiissen (Head of Innovation, Net Group Ltd)

Moderator:

- Operating systems are like a house -> apps like residents living in it ;)
- We know the number of houses, yet not the number of residents
- Estonia is recognised as a digital leader -> It is the first country offering online voting
- So, should developers focus on one platform or not?

Alo:

- We are not organising elections yet we are an IT partner, Estonians love e-services, voting included
- Last year, over 51% of voters voted online
- This year we have ended phase I of our Proof of Concept, and it works
- During the road, we realised it is not just another application -> Elections must be uniform, free, limited to 1 vote per person and it should be anonymous
- Four criteria we focused on: i) Supply chain and app integrity ii) Speed and publication of updates -> 6 days for voting -> Do not leave problems unsolved until the evening of day 5 iii) Fake applications in regional app stores iv) Voting identification
- Solutions include, cooperation with operating systems
- Terms & Conditions matter to us -> Goal is digital voting in October 2025

Rait:

- For over 25 years we have focused on digital news media
- We are the largest online news medium in the Baltics
- Distribution: Google can increase or decrease our traffic by 20% -> AI search integration -> We stand to lose 30% of our Search Traffic
- Usage of data: We have around 25% of the total population to use our service
- Mandatory systems: i) Gatekeepers login systems ii) Gatekeepers Payment Systems iii) Gatekeepers Analytics Systems
- To control ads, gatekeepers have: i) Integrated Ad Blocking ii) Enforcing own data protection rules iii) Mandatory SDKs (Software Development Kits) to serve ads
- They (gatekeepers) control the Board: Google Ad Server controls 29% of the ad server market ii) Video Players iii) Gatekeeper Stores iv) Communication

- Regarding Apple vs. Spotify, changes in App Store policies can lower prices and increase choice -> This is harder for Spotify
- Google News Showcase offers direct payments to news publishers

Ivar:

- As software developer, we are working on a National Mobile App in cooperation with Estonian State
- We have looked into the option of cross-platform operations
- Sometimes it is said about Estonia's population and economy, that "We are a statistical mistake"
- It is difficult to cooperate with big organisations and gatekeepers -> We need more of that cooperation
- Regarding privacy and security -> There is rigorous testing all the time for security when negotiating with gatekeepers, and we play by the house rules

Alo:

- If we follow the house rules in negotiation with gatekeepers, we are a dead end
- We too are a statistical error when working with Apple and Google

Rait:

- To Google, we say we could pick Apple instead, and vice versa :)

Ivar:

- There is a very negative perception around digital application when something does not work perfectly
- If we update something, it is already on the web

Rait:

- More inclusion means more ideas
- Without good players in the field, there is no score

Question from the audience:

- Why do you use iOS / Android and not eOS for example?

Rait:

- Short answer is that common standards are needed for collaboration

Ardi (me):

- Question: Given that Estonia, like other Baltic countries, has one major country next to it that is not democratic (to say the least) - namely Russia - how do you deal with cyberrisks in relation to digital voting applications?

Alo:

- This is a serious problem and there is a whole complex of organisations to contain this risk. NATO has employed the CR14-programme for example, and this only one of the many tools used to combat this problem, so we definitely take this into account, not every week but every day

Ivar:

- On Delfi, when we post something that cover Russia, we can immediately see a spike in (attempted) hacks, so we need to take this very seriously

V. Keynote Margaret Versteden-van Duijn (CEO of Bol)



Martijn Snoep:

- Now that we have covered smaller firms, our focus will be on larger, established ones
- Therefore word is given to Margaret Versteden-Van Duijn, CEO of Bol (bol.com)

Margaret:

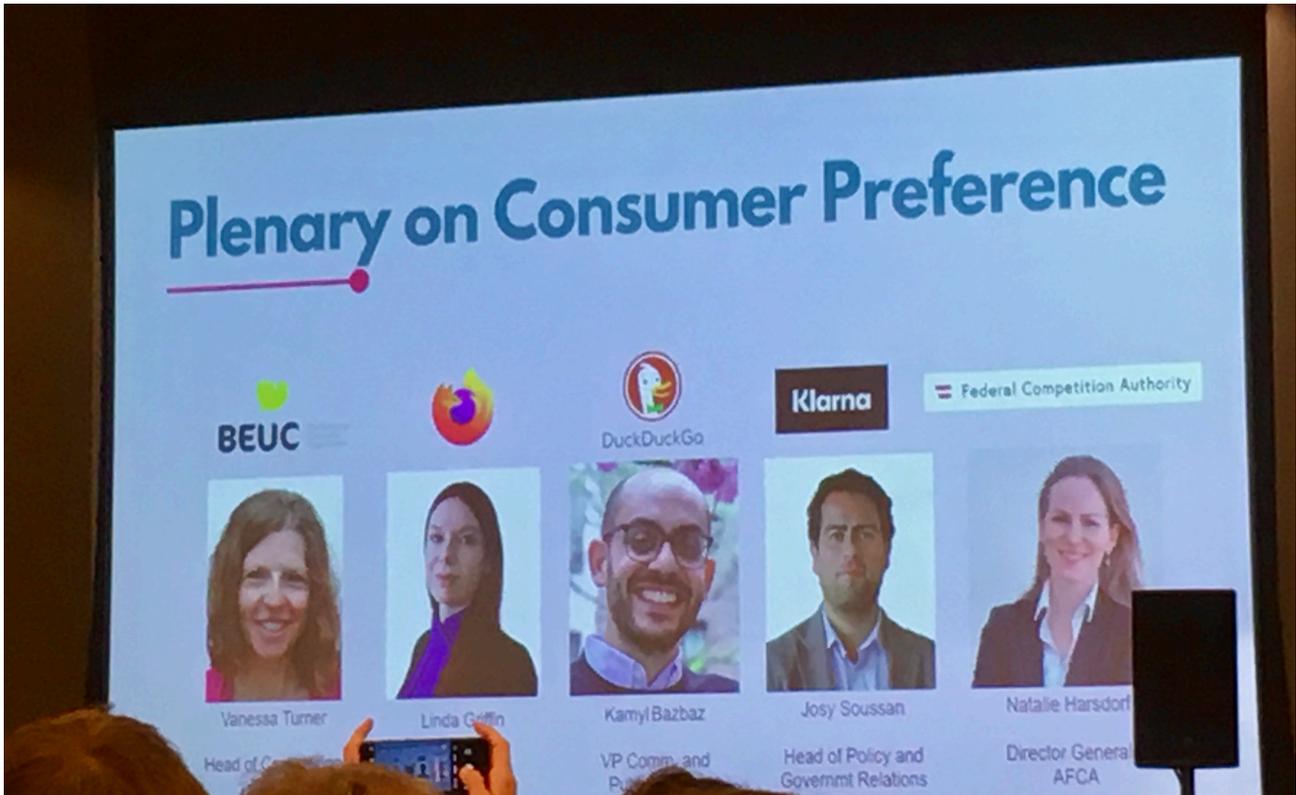
- We are for the last 10 years in a row, the most-loved retail brand in the Netherlands, so how do we do this? -> Time for a closer look
- Purpose Statement: i) Continuously advance the platform ii) Contribute to a better tomorrow for us all -> When we thrive, we can improve for others
- Some of our goals: i) Accelerate sustainable consumption ii) Advance an inclusive society -> We influence about 95% of Dutch and Belgian households iii) Foster the local -> Help small entrepreneurs thrive in an increasingly globalised world
- We are part of highly competitive and globalised markets
- Our platform serves both customers and partners -> We need to be safe and reliable to serve both
- This is not just about Bol -> Many other brands in the EU are facing the same problems
- Chinese competition is extremely aggressive, predatory, and non-compliant -> Temu and AliExpress in particular
- Online purchases from China are up 39% -> The entire market growth is going to them -> 9,000 tons of cargo / 88 Boeing 777s per day that is
- Moreover, 59% of purchases are impulse-driven
- Temu is using plenty of dark marketing tactics -> All players should abide by the same rules -> Recently Temu was designated a very large online platform by the EC
- We are positive about the approach taken by the European Commission
- Yet, enforce existing legislation and use DMA flexibly -> Investigate Temu's gatekeeper status
- We need to make sure consumer protections are respected under DMA -> Cross-selling data should be watched out for -> We should use our own and other EU firms as a force for good

- Bol is extremely dependent on Google

Rik Viergever of MURENA:

- We are software makers for smartphones
- One are of problems is freedom of choice of operating systems
- Smartphone producers try to retain a monopoly on operating systems
- How can DMA improve on freedom of choice?

VI. Plenary II: Consumer Preference



Moderator: Natalie Harsdorf (Director General AFCA)

Panelists:

Linda Griffin (VP for Global Policy, Mozilla)

Kamy Bazbaz (VP Communications, DuckDuckGo)

Josy Soussan (Head of European Policy & Government Relations, Klarna)

Vanessa Turner (Senior Advisor, The European Consumer Organisation BEUC)

Linda:

- At its heart, Mozilla is a foundation
- You can make profitable products while upholding consumer privacy and compete with larger tech firms
- Mozilla emerged 25 years ago, along with the antitrust movement

Kamy:

- I am from New York City
- Every time you do a search on our platform, it is like the first time -> We do not retain search history
- We see no practical reason why privacy standards are so hard to change
- Our solution is worth \$25 million a year

Josy:

- Our firm was founded in Stockholm

- By design, we believe in consumer choice
- Why does finance / banking not have the same level of competition as other industries? This increases prices for consumers too -> We are trying to improve the range of choices

Vanessa:

- European consumer organisation is an umbrella of 40 different organisations
- DMA has the potential to benefit consumers immensely regarding choice and innovation
- We step in at the compliance phase

Linda:

- Let us assume we do not always know what consumers want, neither do they
- Easy-to-change default settings are of major importance
- The Devil is in the details -> Tuning matters, show users real choice
- Without the right data, we cannot anticipate common choices

Vanessa:

- Consumers want to feel in control when choosing
- For end-users, choice matters, if preferences are not revealable, exploitation is a risk
- This is also relevant from a business-perspective
- User journey and choice architecture matters
- Consumer behaviour can thus be heavily influenced and undermined by gatekeepers, here are some examples: i) Negative friction, making it too difficult to find your right choice ii) Default preferences iii) The Advocate General recently acknowledged that consumers can be unduly influenced -> Article 13 of the DMA includes a prohibition in this regard
- End users and business users need to look out for gatekeepers techniques and prompt non-compliance

Question by moderator:

- Do you think we have the right balance between consumer preferences and business objectives?

Linda:

- There are several antitrust cases, this can take years so it is an uphill struggle
- More consumer research is needed including dark patterns
- Regulation does not kill innovation, market dominance does

Kamyl:

- Search and browse -> Consumers need ease of use and good device set-up -> Easy switch-in provisions are partially ignored by the DMA
- We do not have to guess consumer preferences, we can ask them, and choice fatigue is also a real problem

Josy:

- Trust is one of the drivers, do not scare consumers away
- PSD3 contains a lot of chatter on data sharing -> It should rather be about data access to the benefit of consumers
- Likewise, alternatives for consumers in here is to their benefit, and not a matter of lowering security guard
- There are still barriers to true mobility, one reason is the discouragement of consumers from using new options

Vanessa:

- I agree largely with other panelists -> Testing is key -> Gatekeepers should share data to make this possible
- There is an important role for National Competition Authorities to ensure demand becomes a driving force

VII. DMA vs Gatekeeper Power - by Cristina Cafarra (independent economist) and Andreas Schwab (Member of European Parliament on behalf of EPP)



Cristina:

- I am a fan of regulation
- It is about constraining power, pervasive power
- Levelling the playing field sounds ambitious, but not achievable by the current DMA
- To make more progress ... i) We need to be more prescriptive about what the regulation aims to achieve ii) The EU is in a position of extreme dependence on US gatekeepers -> We lost a lot of time and oxygen, we need European infrastructure

Andreas:

- I do not like regulation, yet I do like fair competition on the merits -> This is impossible on its own, hence we need regulation
- If you cannot design DMA in a way to win back money lost due to lack of competition, we need to think beyond
- If this model does not work, think e.g of the Indian model with open access

VIII. Breakout Session II: DMA and Generative AI - by Thibault Schrepel (Associate Professor of Law, VU) and Carel Maske (Senior Attorney, Microsoft)

Moderator:

- Key inputs to AI: data, computation power, labour (knowhow), experimentation
- Training of AI produces new markets for data
- In the future, AI may be added to core platform services -> This will be the discussion topic of this panel, and in addition to that: Open source models

Carel:

- The Cloud is the foundation for the transition of customer bases -> Large computing capacity enabled AI transformation
- Large investment needed to build this infrastructure
- There are two sets of AI services Microsoft provides: i) AI co-pilot ii) Tools for developers to create their own end-user solutions
- Top 5 user cases -> See picture
- Examples include: Heineken uses AI to connect employees, Rijksmuseum uses AI to make art accessible to all
- Highly diversified Generative AI of Large Language compete with each other -> Models are based on APIs
- Microsoft's AI principles: i) Provide access and support for AI developers ii) Ensure choice and fairness across the AI economy iii) Meet our social responsibilities

Thibault:

- Generative AI is not one of the 10 services as part of the DMA
- Current discussion to include it is ongoing
- Chat GPT is a service on its own
- LLMs are things of the past -> That does not mean the DMA will have NO impact



-Direct impact DMA: i) If designated as a core service, then DMA Article 2 applies ii) Article 5 and 6 -> Would it make sense for a company to force AI usage?

-Indirect impact DMA: i) We need to have data, otherwise there is no training of the AI model -> If gatekeepers cannot use those data, their market power may be reduced / slowed down -A gatekeeper does not have to give third party access to AI model(s) -DMA is only part of the story -> Look at the AI act -> To be published in July -> Open AI will have to give you information for your company's AI model to make sense -> Distributing knowledge across ecosystem has an influence on competitive dynamics -If you use log, data needs to be sent back to generating company -> Yet it is unclear how well data sharing and retention is taken care of

Moderator:

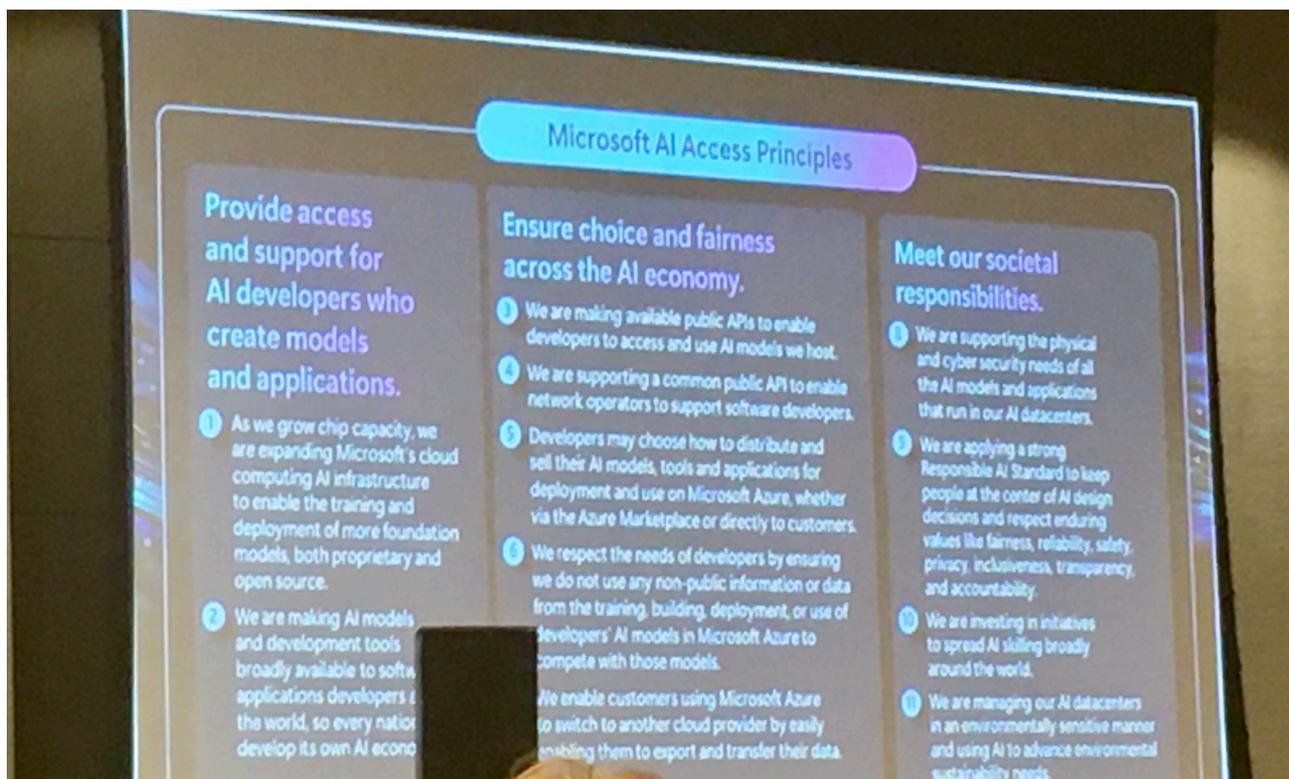
- How does the DMA apply to Microsoft AI?
- What risks are there in generative AI?

Carel:

- To the extent that AI becomes part of services, DMA may apply
- This is a probability when a user puts in prompt for certain results
- AI will help to further develop search results -> Virtual Assistance
- The focus will not be on technologies but on services
- To what extent do the rules make sense? -> The principle of fairness applies -> This we try to model into Microsoft's AI
- Certain obligations make sense, like not using customer data for your own AI model training
- Self-Preferencing is a discussion to be had

Moderator:

- How can AI companies have new opportunities in the market under DMA?
- One, create an AI system good enough so people use it, good infrastructure
- Secondly, access to data is needed, very small companies sometimes have as much data as big players



- We need access to Venture Capital -> Regarding blockchain, lack of regulation was decreasing innovation -> in the US there is not much regulation at the Federal level, yet >500 rules at State level
- Stage two is about the ability to keep improving the model and benefit from increasing returns, attracting new users
- Last point -> 15 years ago there were no big competitors among open source models -> here is oligopoly, but at least one open source model to put competitive pressure on others

Ardi (me):

- Question: How does religious law in the Middle-East affect AI regulation, regarding matters such as antitrust, privacy etc., with Shariah law in countries like Saudi-Arabia and the Talmud in Israel?

Thibault:

- Not so long ago, I have been to Saudi-Arabia with regard to financial markets -> They are putting out a very good AI model
- Regarding religious supervision, it is at least there at some level, religion surely plays a role in this sector -> The exact specifics are hard to gauge and largely defined behind closed doors

IX. Keynote by Harold Goddijn (CEO of TomTom)

- In 2000, we invented personal navigation attachable through a stick on the windscreen -> This was a game-changer
- Yet in 2008 came, earlier than we expected, Google mapping, free of charge, and demand for our devices shrank
- Yet we entered into the broader technology market for map-making and data collection
- The business now generates about €600 million in (annual) revenue, half of our FTEs are engineers, yet it is impossible to be as good as Big Tech companies
- So why not mix and match services with Big Tech? -> This is not allowed
- We demand Big Tech to open up and share their know-how on a competitive basis

Question by the moderator:

- Lots of companies refused to speak up about antitrust due to fear of retaliation. What is your advice?

Harold:

- It is expensive, so balance it against the expected result
- Europe starts to fall behind regarding technology, and if not careful, we become the backyard of the world
- Hopefully, recognising this is a helpful first step, and it is not an election-theme either -> This is worrisome

Question from the audience:

- You need your app to be global -> Is it more helpful to have fragmented solutions across the globe, or does it create more problems?

Harold:

- Europe is important, yet we have hope European and American regulators align better and reduce fragmentation
- For now there is no sign yet of making our systems interoperate

**X. Early lessons from DMA on innovation by Fiona Scott Morton:**

- The difference between ecosystem and a plantation is that an ecosystem is open and a plantation is closed / controlled
- Security is used as a pretext for much of a gatekeeper's behaviours
- DMA can control what the platform offers, but not the entrant
- Browsers as middleware reduce attachment to app stores
- Complaint: It is easy to criticise laws -> But what is the alternative?
- Local competition authorities are in great need for education

On a final note

It was a pleasure to be at this event, characterised by in-depth analysis and discussions by and between various stakeholders. As apparent, a recurring theme is the role gatekeepers have to play in the facilitation of information for other market participants and the prevention of abusive practices. Though several critical notes were raised regarding the DMA, the overall attitude towards the Act was positive. Many thanks to Martijn Snoep and the ACM for having organised this event and for having welcomed me! For feedback, please send an E-mail to quero@discounted-by-a-lightning-strike.com. Thank you for reading!

I have no interests to declare other than my attendance as a board member of investment committee Carpe Divitias.

