

# The EU Proposals to Regulate Tech Platforms

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# 1. Political drivers

- **Protectionism**

- Protect EU firms and/or the 'losers' of digital disruption (who can be very powerful)

- **Concentration** of economic, innovation and informational powers among few players

- **Unfair results** : most of the added value is captured by few innovative firms
  - esp. because their taxation is (still) very low

- **Loss of autonomy** of citizens, business users and States
  - Need to take back control!



## 2. Political choices

- **Ex ante regulation to complement** ex post antitrust
- **Market contestability** and long term innovation incentives
  - User choice and autonomy/self-determination
  - Business users innovation over gatekeepers innovation
  - Long term over short term
- **Opening the platforms** instead of breaking them up
- **Rules** instead of standards
- **Centralised EU enforcement** instead of decentralised national enforcement



### 3. Improvement possibilities

#### New Eighteen Commandments

- Regulatory design: **rules and standards**
  - **Detailed** rules for existing obligation
  - **Broad** discretion for new obligations
  - *Need to have more principles-based rules*
- Regulatory enforcement: **individualisation**
  - Too little, too implicit – “One size fits all” flavour
  - *Need to provide for gatekeeper **defence**: no harm to contestability and fairness*
  - *And Commission **escape** clause*



# Enforcement mode

- **Antitrust mode**

- Bi-lateral (adversarial) dialogue between the European Commission and platforms

- *Need a regulatory mode: **ecosystem of enforcement***

- *Platforms: internal mechanisms*
  - *Business and end-users*
    - *Complaint, remedy design, monitoring*
  - *Civil society (vetted data researchers)*
  - *National antitrust, data protection, telecom agencies*
    - *Complaint, remedy design, monitoring*

## 4. Is this a Revolution?



# Digital Markets Acts

- DMA is a welcome **revolution**
  - First asymmetric EU law on online platforms
- But is mostly **based on the traditional EU policy choices**
  - Ex ante regulation complementing ex post antitrust
  - Ordo-liberalism
  - Open Platform
  - Except for centralised enforcement
- Possible **improvements**
  - More **flexibility** in the rules while being mindful of the powers of the gatekeeper to abuse this flexibility
  - Broader **ecosystem of enforcement**