

Online platforms: power, regulation, and the transatlantic relationship

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General overview

Sources of power

Regulation and the transatlantic
relationship

Definitions

European Commission broad definition from the 2016 Communication on online platforms: *online spaces where users are brought together by a platform operator to facilitate an interaction (exchange of information, a commercial transaction, etc.)*

Definition from the economic literature: *platforms are two-sided (or multisided) markets, if they can affect the volume of transactions by charging more to one side of the market and reducing the price paid by the other side by an equal amount; in other words, the price structure matters, and platforms must design it to bring both sides (or many sides) on board*

Online
platforms are
two- or
multisided
firms

Two- and multisided firms sell access to customers

A traditional firm buys “raw material”, makes stuff, and sells it to consumers.

A two-sided firm recruits one type of customers and makes those customers available to another type of customers. The customers *are* the raw materials.

The demand by one group for the business depends on the interest (and therefore the demand) of the other group.

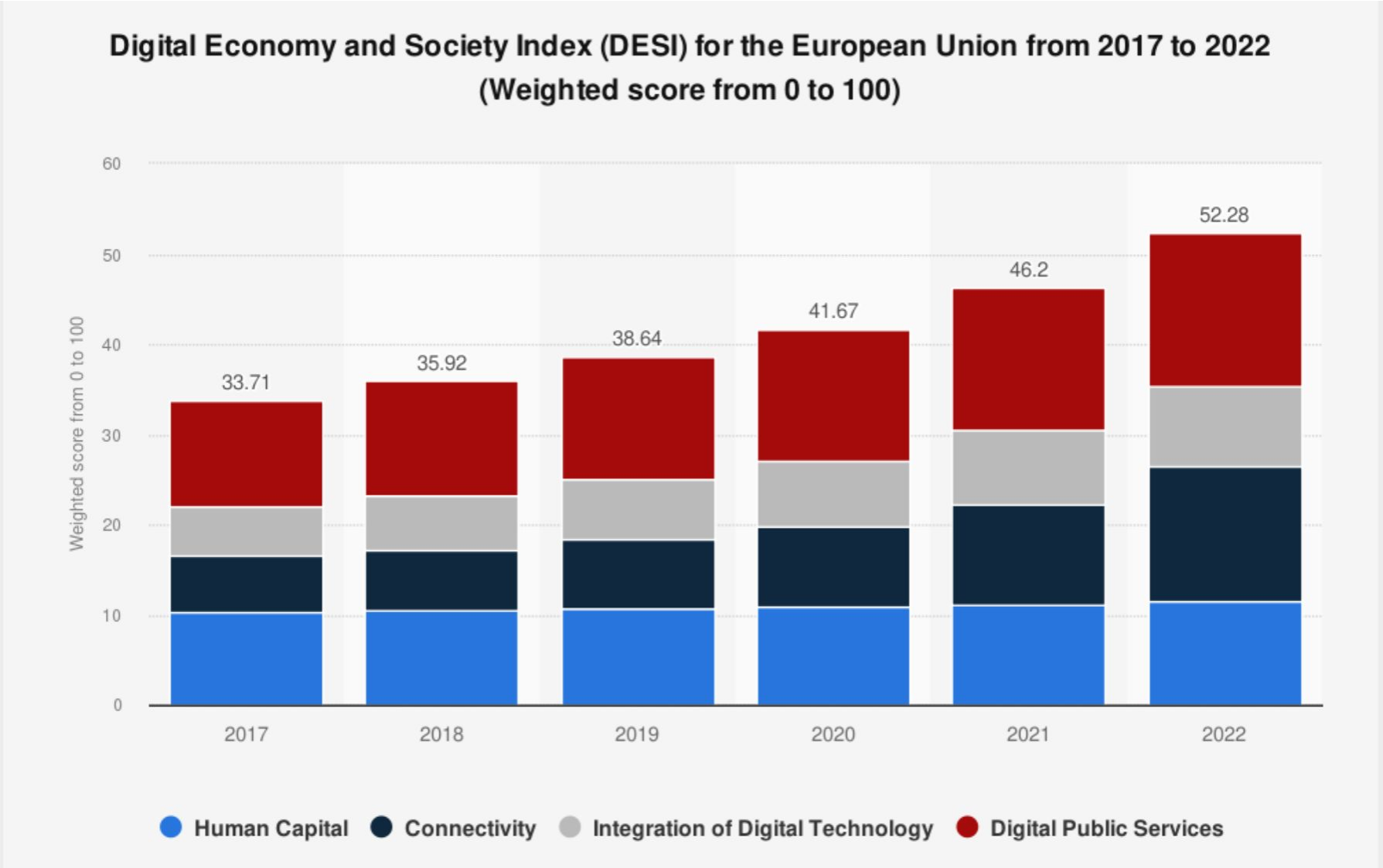
Examples

COMPANY	CUSTOMER SIDE A	CUSTOMER SIDE B	CUSTOMER SIDE C
Uber	Drivers	Passengers	
Apple iOS	Phone users	Application Developers	
YouTube	Uploaders of video	Viewers of video	Advertisers
Sony PlayStation	Console users	Game Developers	
Facebook	Friends who send messengers	Friends who receive messengers	Advertisers
Google Search	Searchers	Advertisers	Websites
London Stock Exchange	Liquidity providers	Liquidity takers	
Monster	Job seekers	Employers	
Daily Telegraph	Readers	Advertisers	
Centro in Oberhausen	Retail Stores	Shoppers	
PayPal	People and businesses who send money	People and businesses who receive money	App developers
Match.com	Men	Women	

Examples of pricing structure to achieve network effects

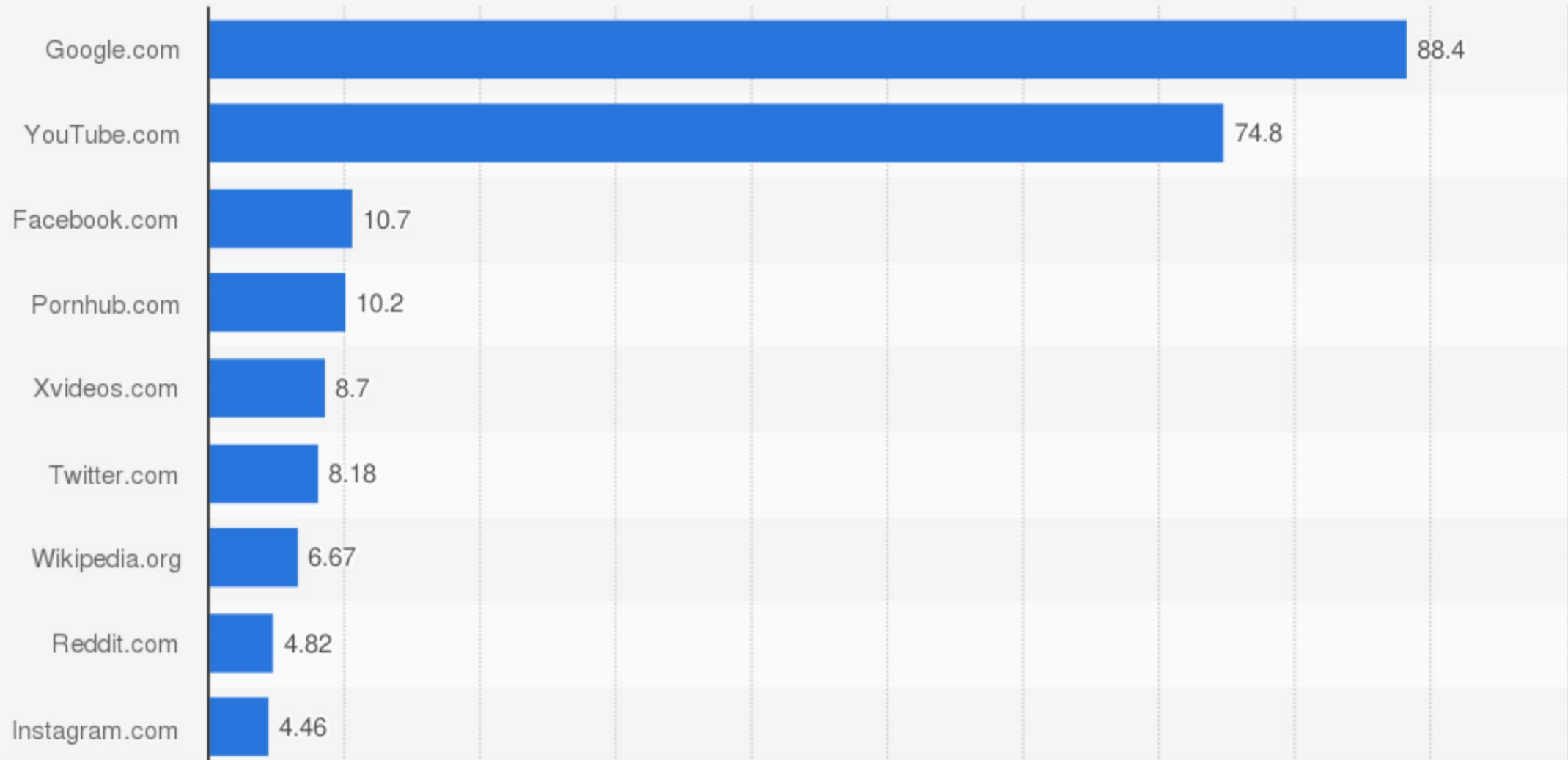
Platform	Money Side	Subsidy Side	Typical Price on Subsidy Side
Video game consoles	Game publishers pay royalties	Consumers pay marginal cost or less for console	Below marginal cost
Online marketplaces	Sellers often pay commission	Buyers usually do not pay	Free
Uber	Drivers pay a fee	Riders do not pay	Free
Airbnb	Hosts pay 12% fee	Guests pay 4% fee	Below marginal cost
Search engines	Businesses pay for advertisements	Searchers do not pay	Free

Covid-19 as game changer: jump in digitalisation

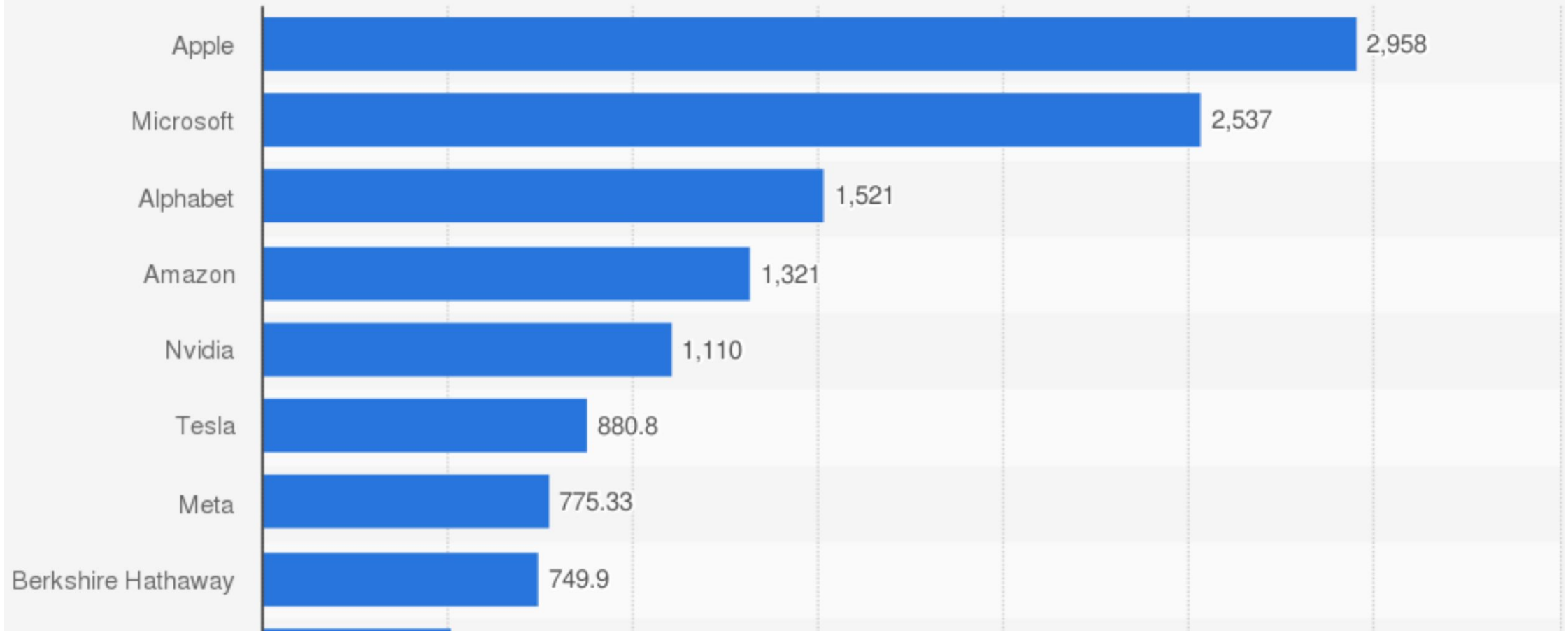


Source: European Commission

Most popular websites worldwide as of November 2022, by total visits (in billions)

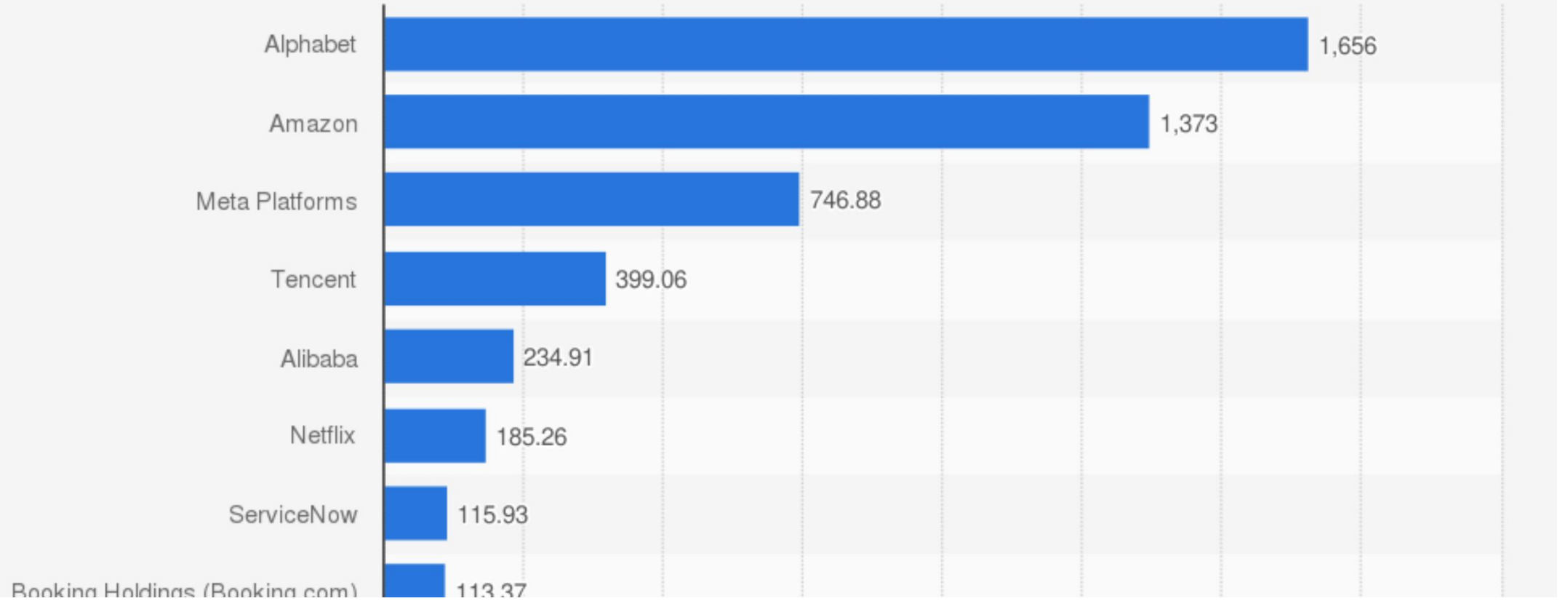


Market capitalization of largest companies in S&P 500 Index as of July 2023 (in billion U.S. dollars)



Source: Statista.com

Market capitalization of the largest internet companies worldwide as of August 2023 (in billion U.S. dollars)



Source: Statista.com

Growing concentration

- Top 7 platforms account for 69% of the total EUR 6 trillion valuation of the platform economy
- New market operators that may want to enter or expand in digital markets where a gatekeeper is present may find it extremely difficult to overcome some of the inherent barriers to entry or expansion without access to a sufficiently large users base



Businesses dependence on platforms



Of European SMEs that sell online, more than eight in ten rely on search engines as a mean of marketing their products or services.



In some cases, more than 50% of goods sold on a marketplace come from third-party sellers.

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New institutional forms

Online platforms have grown in ways that have transformative impact on virtually all areas of social life, including business competition, firm organisation, labour relations, technological innovation, and the conduct and content of social and political discourse.

They represent a new institutional form, with extraordinary capacities for expansion and for the development of asymmetric power with respect to other firms and the consumers that interact through them

Beyond market power

New sources and types of power beyond concepts upon which existing regulatory frameworks are built

Market power is a key element but not the only one

The power held by platforms concerns consumer protection, use of personal data, and the structuring of media.

According to some, platforms have acquired societal and infrastructural power becoming institutional ecosystems

Examples: expansion into public transport, healthcare, education, public sphere and politics

The COVID-19 crisis has made the societal and infrastructural role taken up by platforms even more apparent

Network effects and switching costs

Network effects facilitates the rapid growth of platforms and create barriers to entry for new competitors

It is not enough for a new entrant to offer better quality and/or a lower price; it also must convince users of the incumbent to switch to its own services.

This depends on several factors: data portability and data interoperability.

Consumers or businesses may not be able to transfer their 'reputation capital' (e.g., ratings, trust scores)

Exploiting behavioural biases



Behavioural biases (default options, short-term gratification, etc.) increase switching costs and create lock-in



Platforms operators may actively exploit psychological weaknesses of users with the help of so-called 'dark patterns'



For example, they could design user interfaces in a way to make their digital products addictive



Platforms hold detailed information on the behaviour of their users and routinely perform experiments to learn more.



Consumer data collected on a platform or even across a digital ecosystem allows companies to engage in microtargeting individual consumer preferences with personalized offers

“In the twenty-first century our personal data is probably the most valuable resource most humans still have to offer, and we are giving it to the tech giants in exchange for email services and funny cat videos.”

- Yuval Noah Harari, 2015

datafication

(Mayer-Schönberger, 2013; Zuboff, 2015)

Data as a source of power

Large pools of data held by incumbent platforms are the single biggest barrier to entry in the digital economy

A data-rich platform improve its offering by targeting and personalising service, and generate higher revenue by offering more targeted advertising to business users

As gatekeeper, a platform accesses to large pools of data providing information about the preferences and behaviour of individual users, and also accumulate 'social data', i.e. information that may shed light on other people's behaviour (e.g. traffic patterns).

In the age of artificial intelligence and machine learning, personal data collected on the behaviour of one set of consumers has predictive value for the behaviour of other consumers

Detour: Data and Sovereignty in the digital age



Sovereignty

The highest and **exceptional power** and control typically held **by a state** over a **political entity** (Kahn, 2011)



Digital sovereignty

A **macro-level reaction** to the **growing power of large data processing entities**



Self-sovereignty

A **micro-level reaction** to **increasing datafication** which seeks to empower users

The geopolitics of digital sovereignty

Digital sovereignty can be defined as **“the political ambition of governments to exert control over digital infrastructures, technologies, and data through regulations and geopolitical imperatives”**



Infrastructural power

Google Maps provides a cartographic infrastructure that serves as a basis for a plethora of private and public services



Healthcare is another area being entered by platforms: health data collected via smartphone apps and wearables are becoming a key element of the emerging digital health care infrastructure



Summer of 2020: introduction of Covid-19 tracing apps, for which many national governments were dependent on the cooperation of Apple and Google



Power over society and democracy

- Platforms are becoming infrastructures, which are assuming a critical role in public and private lives
 - As intermediaries between politics and the people, platforms are restructuring the public sphere. Facebook, YouTube, Twitter and Instagram have become the new gatekeepers or custodians to the massive, heterogeneous, and contested public realm they have brought into being
 - Mass media do no longer control their channels of communication and are becoming dependent upon increasingly powerful digital intermediaries
-

In sum

Power held by certain players in the platform economy transcends our current understanding of market power

Digital platforms are now also acting as gatekeepers of public interests through their ability to impose their own rules on how businesses can reach consumers, their ability to steer consumer behaviour and consumer choice, and their ability to influence democracy through the algorithmic curating of public discourse

Which should be the policy concerns

Market power, concentration, entry barriers, lock-in

Data and privacy concerns, extraction of behavioural surplus

Monopoly on data and European data dependency

Behavioural bias: a fourth market failure leading to hyper-nudging

Democracy and the public sphere

A hybrid between a firm and a market: quasi-institutions?

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The sleeping regulators

Regulators were asleep while online platforms ballooned into giants

In the US, the FTC let Google buy DoubleClick (2007) and Facebook buy Instagram and WhatsApp (2014) to then sue Facebook too late for the same two acquisitions (2020)

Until recently, both in the US and in Europe platforms and big tech benefited from the zenith of neo-liberalism, presented by the Internet gurus as libertarianism

This ideology is best summarised by the iconic phrase: 'it's better to beg forgiveness than ask permission' (often attributed to Uber's founder, Travis Kalancik)

In other words, they became giants through regulatory arbitrage

Changing winds... at least in Europe



- Surely in Europe, and more slowly in the US , the laissez faire regulatory ideology is losing its societal legitimacy and political power
- Governmental authorities are not only contemplating increased enforcement of competition and antitrust law, but are also moving towards more intensive and comprehensive regulation of platform firms and markets
- The new approach is for legislation allowing anticipation and prevention

EU Digital constitutionalism

- The Artificial Intelligence Act (AI Act), the Digital Service Act (DSA), the Digital Market Act (DMA), the Data Governance Act (DGA), the Data Act (DA), together with the GDPR, envisage the coming of a new EU “digital constitutionalism”
- It emphasises the protection of fundamental human rights and democratic values
- These acts are ‘extra-territorial’, so that market players, if their operations affect EU citizens, must deal with EU regulations regardless of where they operate
- One risk is of overshooting and of creating problem of coherence among the various acts

Europe | Charlemagne

Is the EU overreaching with new digital regulations?

It leads the world in making rules for big tech, but enforcing them is another matter



Sep 1st 2022

Save

Share

Give

Two opposing views

- Regulating the platform economy would stifle innovation
- De-regulation or self-regulation by platforms
- Current attempts: protectionism in disguise
- Impossibility statement: technological developments too complex for regulators
- Advocates of common carriage / public utility regime
- Competition policy to break down monopolies
- Need of regulatory innovation: new definition of market power
- Consider data implications of M&A

Precautionary principle vs cost-benefit approach

- Uncertainty not risk
- Adoption of precautionary principle to pre-empt damages to individual and society
- Radical renewal of competition policy to be applied to curb the power of dominant platforms
- Precautionary approach has been criticized as ‘the law of fear’
- Regulation defended on the principle of the worst scenario;
- The precautionary principle claims that dangers should not be downplayed, but this builds a negative public discourse that could block innovators
- Better case by case cost-benefit approach

Detour on the transatlantic relationship

The War in Ukraine and China stance have accelerated the process of transatlantic realignment that had started in 2020, and In 2021 the US-EU Trade and Technology Council (TTC) was established

It is clearer today that a community of interests and of values exists between the US and the EU and that their fates are closely intertwined to mitigate their strategic economic vulnerabilities and address the challenges posed by revisionist and autocratic powers

There are clear points of convergences, but also some divergences mostly related to the digital domain

Transatlantic convergences

At the geopolitical level the need for a geostrategic alignment is clear. Through political statements and in TTC proceedings a number of points of convergences have been identified

Politically, EU and U.S. interests align on the need to defend democratic values and support an international order where the economic and security challenges posed by autocratic states are constrained. Europe and the U.S. are strongly aligned on Russia and the response to its war in Ukraine and are coming to similar views on China

There is also agreement on the need to address dependencies and cooperate on the development of secure and resilient supply chains. The existing economic interdependences represent a starting basis for further convergence and collaboration

Transatlantic divergences

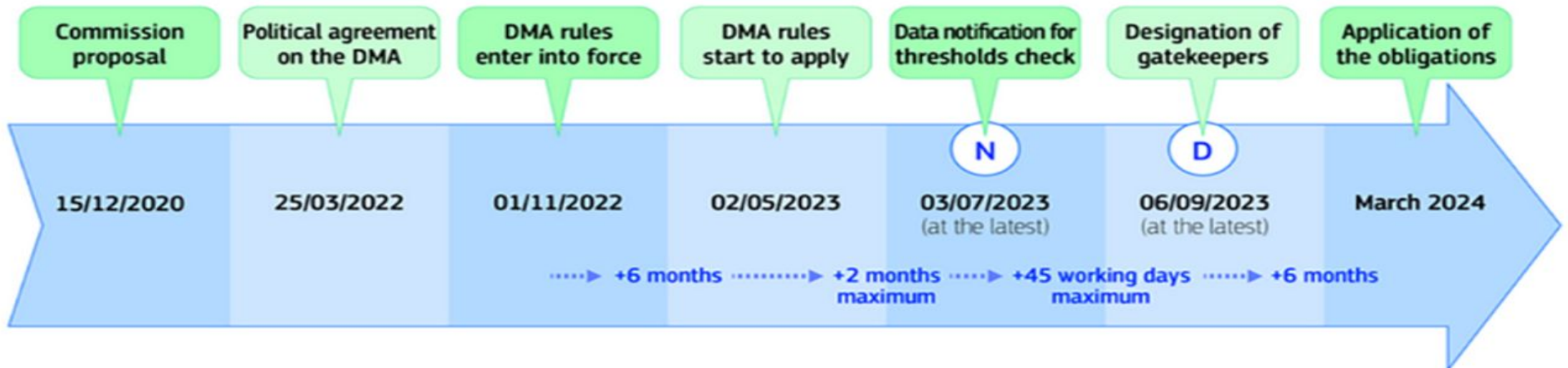
The main points of potential divergence concern the 'digital realm' in terms of both the economic composition of their respective digital economies and regulatory approaches. In the domain of online platforms and value-added digital services there is a clear dominance by the US.

To some U.S. observers the EU's digital activism appears to have implicit protectionist goals, seen particularly in the Digital Market Act and its effect on U.S. technology companies.

US think tanks deemed the DMA as an excessive ex ante precautionary approach to anti-trust aimed to just hobble US tech companies. In particular, it was claimed that the DMA is inspired by a mix of Neo-Brandeisianism and Ordo-liberalism

What is the Digital Market Act (DMA) and its timeline

- The DMA aims at preventing gatekeepers from imposing unfair conditions on businesses and end users and at ensuring the openness of important digital services
- Its goal is to ensure contestable and fair markets in the digital sector.
- It regulates gatekeepers, large online platforms that provide an important gateway between business users and consumers, whose position can grant them the power to create a bottleneck in the digital economy



DMA: expected benefits



Business users who depend on gatekeepers to offer their services in the single market will have a fairer business environment.



Innovators and technology start-ups will have new opportunities to compete and innovate without having to comply with unfair terms



Consumers will have more and better services to choose from and fairer prices

Who are the gatekeepers

- Companies providing at least one of the ten core platform services enumerated in the DMA are presumed to be gatekeepers if they meet the criteria listed below
- These core platform services are: online intermediation services such as app stores, online search engines, social networking services, certain messaging services, video sharing platform services, virtual assistants, web browsers, cloud computing services, operating systems, online marketplaces, and advertising services (One company can be designated as gatekeeper for several core platform services).
- There are three main quantitative criteria that create the presumption that a company is a gatekeeper as defined in the DMA:
 - When the company achieves a certain annual turnover in the European Economic Area and it provides a core platform service in at least three EU Member States
 - When the company provides a core platform service to more than 45 million monthly active end users established or located in the EU and to more than 10,000 yearly active business users established in the EU;
 - When the company met the second criterion during the last three years.

DMA: Do's



Allow third parties to inter-operate with the gatekeeper's own services in certain specific situations



Allow their business users to access the data that they generate in their use of the gatekeeper's platform



Provide advertisers and publishers with the tools and information necessary to carry out their own independent verification of their advertisements hosted by the gatekeeper



Allow their business users to promote their offer and conclude contracts with their customers outside the gatekeeper's platform

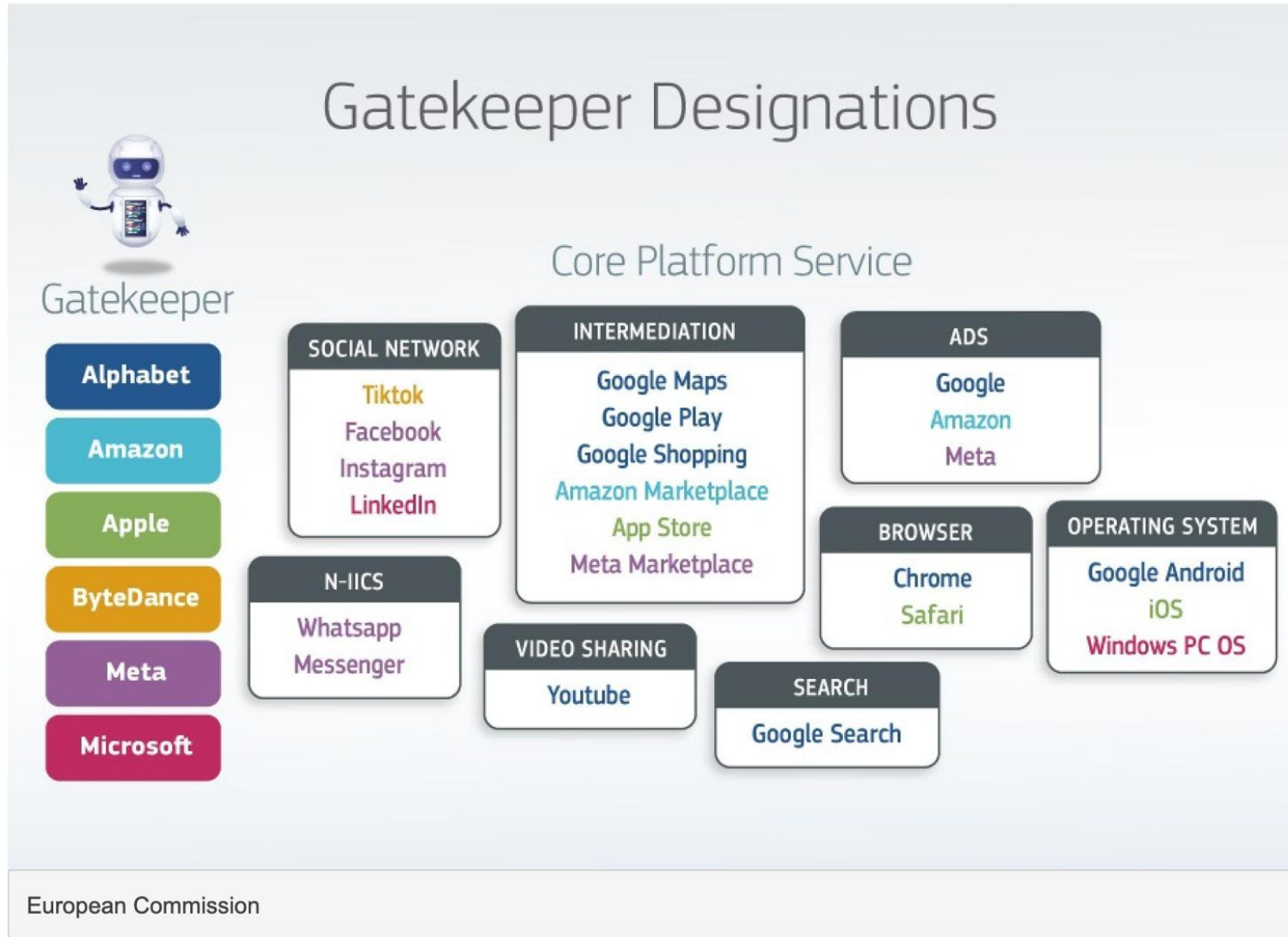
DMA: Don'ts

Treat	Treat services and products offered by the gatekeeper itself more favourably in ranking than similar services or products offered by third parties on the gatekeeper's platform
Prevent	Prevent consumers from linking up to businesses outside their platforms
Prevent	Prevent users from un-installing any pre-installed software or app if they wish so
Track	Track end users outside of the gatekeepers' core platform service for the purpose of targeted advertising, without effective consent having been granted

DMA: Enforcement and sanctions

- Commission to carry out market investigations: qualify gatekeepers, update the obligations, tackled systematic infringements
- Fines of up to 10% of the company's total worldwide annual turnover, or up to 20% in the event of repeated infringements
- Periodic penalty payments of up to 5% of the average daily turnover
- In case of systematic infringements, additional remedies may be imposed on the gatekeepers after a market investigation.
- If necessary and as a last resort option, the Commission can oblige a gatekeeper to sell a business or parts of it or ban the gatekeeper from acquisitions of additional services related to the systemic non-compliance

The first six designated gatekeepers



- On September 6 2023 the Commission has designated six gatekeepers
- The gatekeepers have now six months to comply with the DMA obligations (the do's and don'ts) for each of their designated core platform services
- By complying, they would offer more choice and more freedom to end users and business users of their gatekeepers' services
- One obligation, however, applies already: to inform the Commission of any intended concentration
- In case a gatekeeper does not comply with the obligations laid down by the DMA, the Commission can impose the fines and other sanctions described earlier.

Changing winds also in the US?



- The Republican blocks any possible legislation in this domain, but things are happening through the reawakened FTC and through the courts
- In 2022 the FTC sued to block Meta's acquisition of a VR company, although it was ruled against in court in February of that year
- In September 2023, the FTC sued Amazon for monopolistic practices
- On September 12, 2023, the most significant U.S. technology antitrust trial in decades opened in a Washington, D.C. federal district court:
- In U.S. v. Google, the U.S. Department of Justice (DOJ) and 38 state and territory attorneys general allege that Google has violated Section 2 of the Sherman Act, an antitrust law originally enacted in 1890

Thank you
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