EU-China Competition Week
Enforcement in digital sector

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The Google Shopping case in a nutshell

The abusive contact: the more favourable positioning and display in Google’s general search results pages of Google's own comparison shopping service compared to competing comparison shopping services.
Enforcement experience

- Internal documents are key
  - Executives often discuss practices in emails
  - Engineers are more open about consequences
  - Digital companies always conduct lots of tests
- Experiments
  - Complainants conducted testing for us (Bing result switching experiment)
  - Third party monitoring tools (Sistrix – performed even better than its own engineers thought)
- Ask for raw data underlying arguments of dominant company
  - Google claimed it conducted a live experiment showing practice had no impact
  - We obtained the raw data (>1 billion queries with search results and clicks data)
  - Using our own IT we could not only rebut Google’s argument, but also positively show the anticompetitive impact of the practice
The proposed Digital Markets Act

- A series of ex ante regulatory rules for large digital gatekeepers
  - Digital platforms from a given list
  - Designation process

- Key aims
  - Ensure contestability of markets
  - Fairness to benefit consumers and businesses

- Philosophy is to harmonise certain rules on an EU-wide basis

- Complementary to case-by-case competition enforcement - but it is not competition law

- Some provisions informed by experiences and knowledge from competition law. Benefit of having a more general rule

- Other provisions relate to issues that cannot be effectively dealt with by competition law
Articulation of the DMA

• First step: designation of gatekeepers
• Second step: gatekeepers must apply two categories of obligations
  • Article 5: Precisely defined obligations which are automatically implemented (7 in total)
  • Article 6: More general obligations that are subject to an implementation dialogue (11 in total)

• Examples of obligations
  • anti-steering provisions
  • ban on MFN clauses
  • ban on preferential ranking and display in search results
  • various data-related and interoperability provisions
  • fair conditions for app stores

• Enforcement procedurally similar to Antitrust
How are gatekeepers designated?

- Three core criteria:
  - There needs to be a **significant impact** on the EU internal market
  - Company must operate a core platform service that is an **important gateway** for business users to reach end users
  - Must have an **entrenched and durable** position

- Rebuttable presumption with thresholds

- Notification if company meets thresholds. Commission will designate the company as a gatekeeper unless it provides substantiated arguments why it should not be treated as such

- Commission may also designate as gatekeepers a provider of a core platform service that does not meet the thresholds but where it is determined following a case-by-case substantive assessment that the three core criteria are fulfilled