

EC chief economist says DMA data access provisions require care - Lisbon Council

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- Data property rights a technically difficult problem
- Difficult to determine which data is essential

The provisions in the European Commission's (EC) proposed Digital Market Act (DMA) pertaining to mandated data access and self-preferencing will need handling with a lot of caution to avoid them having a negative impact on innovation, according to EC's DG Competition's chief economist.

“We have to be careful as we move forward with things like interoperability and data access,” Pierre Regibeau said during a Lisbon Council event (12 April) on innovation and the DMA. The position of chief economist is an independent role within the agency conferred on a rotating basis to an external expert.

The DMA's provisions on data access will be an area where the agency will need to be very careful, said Regibeau. Noting that the DMA is “quite vague at this stage“ on data sharing, Regibeau said the matter of property rights on data and constituting which data sets should be deemed essential facilities will be tricky issues.

Attention will have to be paid to distinguishing different types of data as the property rights on data are “not obvious”, said Regibeau.

“In order to retain incentive to generate this data, one needs to respect who is responsible for emergence of data. Technically this is a very difficult problem,” he added.

Regibeau also pointed to the treatment of data as an essential facility, and said that outside of search that he had not seen much evidence to demonstrate which data sets show economies of scale over a wide range.

Regibeau pointed to the provisions on self-preferencing as another area where the legislators will need to be careful when drafting the DMA.

If the prohibition on self-preferencing is badly applied, it could sufficiently decrease a gatekeeper's ability to capture rewards from innovation, or appropriability, so as to have an adverse effect on innovation. He pointed to the regulatory dialogue here between the agency and the gatekeeper as an area where the EC will have to be particularly careful as to how it will be put into practice.

On interoperability, Regibeau said that despite warnings, it would not entail the expropriation of IP and that it should not have a strong direct negative effect on innovation. “It means a greying of

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the standard, of making interfaces that are artificially made impossible to work with other tech,” he said.

by Jacob Parry in Brussels

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