# THE CONVERSATIONAL NATURE OF THE DMA – A TAXONOMY OF ACTORS, CONVERSATIONS AND PURPOSES

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*Big Tech corporations have created important spatial and temporal problems, such as the spillover of market power into political power or their lifespan and legacy. Competition law – the long-perceived archnemesis of bigness – appears to be unfit for addressing these challenges and ensuring that digital markets produce new entrants. Consequently, the European Union has adopted the Digital Markets Act (DMA), a regulation based on a novel regulatory strategy. This strategy – called here a 'conversational approach' – is understood as a chain of conversations among a diverse range of actors and areas of law for the purpose of building an 'ethics of the future'. The conversational approach relies on a double hybridisation, one between competition law and regulation, and a second between competition law and the three elements of anticipatory governance – foresight, engagement, and integration. What distinguishes the conversational approach to regulation is its promise to address both the spatial and temporal issues raised by gatekeepers.*

## 1 INTRODUCTION – THERE IS AN ELEPHANT IN THE ROOM

Everybody knows that an elephant in the room represents a troublesome situation. Big Tech – understood as encompassing 'the largest corporations that prioritise high technological intensity as a key pillar of their business development'[1] – poses a similar conundrum to regulators around the world. It is now widely accepted that these corporations wield unprecedented influence on production and consumption by commanding vast resources, attaining granular reach, and exercising informational leadership in the expansive ecosystems and elite technology with which they operate.[2] Big Tech corporations, in other words, raise important questions in relation to the space in which they operate.

Big Tech corporations also raise interesting questions of temporality. In an influential essay from 1997, Arie de Geus wrote that corporations were newcomers in the world of institutions, which 'have been around for only 500 years – a mere blip in the course of human civilization'.[3] He goes on to show that by 1983, one-third of 1970's Fortune 500 companies had been either acquired, broken into pieces or merged with other companies.[4] In other words, most companies that De Geus observed had a life span of 10-15 years. De Geus

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[1] Publications Office of the European Union, *Futures of big tech in Europe – Scenarios and policy implications* (Foresight 2024) <https://data.europa.eu/doi/10.2777/93885> accessed 1 October 2025.

[2] ibid 4.

[3] Arie de Geus, 'The Living Company' (Harvard Business Review, March-April 1997) <https://hbr.org/1997/03/the-living-company > accessed 1 October 2025.

[4] ibid.

explains that:

> individuals, communities, and economies are all affected – even devastated – by untimely corporate deaths. The high corporate mortality rate seems unnatural. No living species suffers from such a discrepancy between its maximum life expectancy and the average span it realizes. And few other types of institution – churches, armies, or universities – have the abysmal record of the corporation.[5]

De Geus offers an interesting vision of the corporation as a species amongst other species. He articulates his narrative of the 'living company' as a corporation that could live up to 700 years, as some companies in the sample that he studied did. Returning to the subject of Big Tech, these corporations are all beyond the 10-15-year mark, becoming 'living companies'. Regulators are thus facing the challenge of addressing corporations that not only have amassed previously unseen levels of power, but they appear to be on their way to permanence as well.

This conundrum is nothing new. The rise of the first global corporations has been accompanied by important questions about their power and the role that law and regulation should play in relation to them.[6] Business and human rights scholars have drawn attention to the need to secure voluntary cooperation and engagement by global corporations, while at the same time establishing clear rules and standards to mitigate their power.[7] The quick spread and adoption of digital technology has promised, for a brief time, a line of enlightened law-abiding global corporations that would self-regulate. The renowned economist Thomas Friedman declared in this sense that the world was flat and that hierarchies within and between corporations would be flattened out by the imminent advent of the global interconnected economy.[8] Whereas Friedman's theory indeed has some validity, it is also true that contested inequalities can be observed within and around the digital giants that have emerged from the interconnected global economy. Competition law scholars in particular have drawn attention to the growing power of Big Tech companies and the spillover of market power into other forms of control and command.[9] Despite being tasked with controlling market power, competition law has largely failed to prevent the rise and entrenchment of Big Tech corporations.

One weakness of the efforts to regulate Big Tech corporations has been the focus on *spatial* issues such as the exercise of market power. Still, despite numerous cases involving an abuse of dominant position by Big Tech corporations, their market power, political power, and social power continued to grow. This could be due to another weakness in the efforts to regulate Big Tech, namely competition law enforcement being focused on past behaviours. *Temporal* or *future-oriented* efforts were thus absent from the efforts to address

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[5] de Geus (n 3).
[6] Nadia Bernaz, *Business and Human Rights: History, Law and Policy: Bridging the Accountability Gap* (Routledge 2016) 62–78.
[7] ibid.
[8] Thomas L Friedman, *The World Is Flat: A Brief History of the Twenty-First Century* (1st edn, Farrar, Straus and Giroux 2005).
[9] Tim Wu, *The Curse of Bigness: Antitrust in the New Gilded Age* (Columbia Global Reports 2018). Anna Gerbrandy and Pauline Phoa, 'The power of Big Tech corporations as Modern Bigness and a vocabulary for shaping competition law as counter-power' in Michael Bennett, Huub Brouwer, and Rutger Claassen (eds), *Wealth and Power: Philosophical Perspectives* (Taylor & Francis 2022) 166-176.

some of the consequences of what Hans Jonas calls our new 'collective technological practice'.[10] This collective technological practice constitutes a new kind of human action, Jonas contends, because of the novelty of its methods, the unprecedented nature of some of its objects, the sheer magnitude of most of its enterprises, and the indefinitely cumulative propagation of its effects.[11] Jonas reasoned that, in light of this, a new ethics for the future is needed, one 'where that which is to be feared has never yet happened and has perhaps no analogies in past or present experience'.[12] Jonas acknowledges that public policy has never had to deal with matters of such inclusiveness and such lengths of anticipation before. However, his diagnosis is clear: 'if the realm of making has invaded the space of essential action, then morality must invade the realm of making, from which it has formerly stayed aloof, and must do so in the form of public policy'.[13]

The European Union (EU) has chosen to address the challenge posed by Big Tech corporations using a 'name and tame' strategy, whereas the Digital Markets Act (DMA) establishes a procedure for designating gatekeepers and emerging gatekeepers and sets out to regulate their behaviour. In so doing, the DMA adopts a novel regulatory strategy that I call 'a conversational approach', which can be understood as a chain of conversations among a diverse range of actors and areas of law for the purpose of building an 'ethics of the future'. The conversational approach relies on a double hybridisation – one between competition law and regulation, and a second between competition law and the three elements of anticipatory governance – foresight, engagement, and integration. What distinguishes the conversational approach to regulation from the theoretical ground from which it draws its source is the fact that it is meant to address both the spatial and temporal issues raised by gatekeepers.

The conversational approach of the DMA stands in contrast with EU competition law, which is marked by a serious commitment to specialness. Advocate-General Ad Geelhoed has argued that EU law has mainly been public economic law 'aimed at the establishment and proper functioning of the internal market'.[14] This initial arrangement had numerous consequences. One such consequence has been the widely shared belief that *competition law is special* and that it should, therefore, remain sealed away from exogenous influences. As Gerber has noted:

> a central feature of European competition law tradition has been the idea that competition law is special and that using law to protect competition moves outside law's normal domain. In this view, competition law is a new type of law which deals with problems for which traditional legal mechanisms are inappropriate, and thus it requires correspondingly non-traditional methods and procedures.[15]

The special status of EU competition law has had a number of consequences. First, as

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[10] Hans Jonas, *The Imperative of Responsibility: In Search of an Ethics for the Technological Age* (1st edn, University of Chicago Press 1984) 23.
[11] ibid.
[12] ibid 27.
[13] ibid 9.
[14] Ad Geelhoed, 'The expanding jurisdiction of the EU Court of Justice' in Dierdre Curtin, Alfred Kellerman, and Steven Blockmans (eds), *The EU Constitution: The Best Way Forward* (TMC Asser Press 2005) 403.
[15] David J Gerber, *Law and Competition in Twentieth Century Europe: Protecting Prometheus* (Oxford University Press 2001).

highlighted by Bietti, competition law is deemed 'ontologically separated from and preferred to other forms of regulation'.[16] In this view, competition law is a welcome partner to the idea that markets self-regulate and that competition law should be used sparingly to address market failures. Second, the specialness of EU competition law has also led to a refusal to engage with other areas of EU law, such as the right to privacy and data protection. An early example of this could be observed in the case of *Asnef/Equifax*.[17] There, the Court of Justice of the European Union (CJEU) was called to rule on the relevance of privacy and data protection for competition law assessments. More precisely, the CJEU was asked to give guidance on whether Article 101 of the Treaty on the Functioning of the European Union (TFEU) prevented financial institutions from setting up a credit information system that would allow them to exchange solvency and credit information on individual customers through the computerised processing of data. The CJEU ruled that this type of agreement neither had the object of restricting competition nor was likely to have such an effect. It added, however, that any possible issues relating to the sensitivity of personal data were not, as such, a matter for competition law because they could be resolved on the basis of the relevant provisions governing data protection.[18] Although it appears that the interaction between EU competition law and data protection law has changed outcomes, the growing literature on this subject suggests that much cross-fertilisation is still needed to reach a coherent application in both legal regimes.[19] Lastly, the specialness of EU competition law can also account for its quasi-judicial procedures that would not survive a fair trial test under Article 6 of the European Convention of Human Rights (ECHR).[20]

Specialness may be a legitimate strategy at the beginning of a legal order. The European Communities attempted to build a strong supranational competition authority in the wake of a world war in which Big Business partook in damaging values, governments and people.[21] Similar to the autonomy of the EU legal order, specialness has had its time and justification. However, in light of digital markets showing signs of fast concentration and tipping,[22] specialness cannot be justified. Such siloing has not only hampered the evolution of law in the digital economy, but it has also 'obscured the full breadth and scope of legal possibility and produced slow and limited responses to digital harms and abuses'.[23] The complementarity of the DMA and EU competition law implies that specialness will continue to be maintained in competition law investigations.[24] At the same time, the conversational approach adopted in the DMA signals a hybridisation between regulation

[16] Elettra Bietti, 'Experimentalism in Digital Platform Markets: Antitrust and Utilities' Convergence' (*Social Science Research Network*, 11 November 2022) <https://papers.ssrn.com/abstract=4275143> accessed 24 October 2024.
[17] Case C-238/05 *Asnef-Equifax* EU:C:2006:734.
[18] ibid para 63.
[19] Klaudia Majcher, *Coherence between Data Protection and Competition Law in Digital Markets* (Oxford University Press 2023); Arletta Gorecka, 'The Interface between Competition Law and Data Privacy Law: Violation of Privacy as an Exploitative Theory of Harm under Article 102 TFEU' (University of Strathclyde 2024) <https://stax.strath.ac.uk/concern/theses/9s161673r> accessed 30 October 2024.
[20] Cristina Teleki, *Due Process and Fair Trial in EU Competition Law: The Impact of Article 6 of the European Convention on Human Rights* (Brill/Nijhoff 2021).
[21] Bernaz (n 6).
[22] Tim Wu, *The Master Switch: The Rise and Fall of Information Empires* (1st edn, Alfred A Knopf 2010).
[23] Bietti (n 16).
[24] Viktoria HSE Robertson, 'The Complementary Nature of the Digital Markets Act and the EU Antitrust Rules' (2024) 12(2) Journal of Antitrust Enforcement 325.

and competition law that is likely to affect the specialness of EU competition law as well.

In this paper, I describe the advent and character of the conversational nature of the DMA. I lay the theoretical ground for the conversational nature of the DMA by drawing inspiration from scholars studying economics, regulation, and governance. Next, I suggest that the conversational approach adopted in the DMA has three main tenets inspired by anticipatory governance: engagement with the relevant actors, integration through conversation, and foresight. In the ensuing sections of the paper, I map and describe in more detail the contours of the conversational approach. To do so, I first list the actors amongst which conversations should take place, distinguishing between pre-existing actors and new actors. I then map two types of conversations mandated by the DMA: scripted and unscripted. I also identify two functions of the conversations mandated by the DMA, which I summarise as 'Enhance and Protect'. Finally, I conclude that the adoption of the DMA is the first step towards addressing the elephant in the room, and that the numerous challenges concerning the enforcement of the DMA can be tackled through its conversational nature.

## 2 CHANNELLING JULIA BLACK

A few authors have taken notice of a remark by the Nobel-winning economist, Jean Tirole, that 'participative antitrust' should be developed, that is, a competition law system in which 'the industry or other parties propose possible regulations, and the antitrust authorities issue some opinion, creating some legal certainty without casting the rules in stone'.[25] These authors suggest that 'participatory antitrust' is particularly astute for regulation in digital markets, where the regulated firms, their competitors and users should co-design the obligations to be enforced.[26]

Interestingly, the idea of 'participatory antitrust' aligns with a few ideas developed by scholars working in disparate fields such as regulation, governance and legal theory. Thus, Julia Black posits in her work that conversation is central to regulation. She suggests that conversations are 'communications and discussions between a regulatory official or officials and a regulated individual or firm as to the application of a generally applicable rule in their particular case'.[27] Black highlights that conversations may either occur at any point in the regulatory process – such as in the process of rule application, supervised rule formation, and monitoring and enforcement – or may be consciously adopted as a regulatory strategy. She notes that this approach is inspired by environmental and safety regulations and is beneficial both to the regulated enterprise, increasing the legal certainty needed to operate, and to the regulator, because rules are applied.[28]

Conversations are also central to experimentalist governance, which is defined as a machine for learning from diversity.[29] This is a 'recursive process of provisional goal-setting and revision based on learning from the comparison of alternative approaches to advancing

[25] Allison Schrager, 'A Nobel-winning economist's guide to taming tech monopolies' (*Quartz*, 27 June 2018) <https://qz.com/1310266/nobel- winning-economist-jean-tirole-on-how-to-regulate-tech-monopolies/> accessed 16 October 2024.
[26] Vikas Kathuria, 'The Rise of Participative Regulation in Digital Markets' (2022) 13(8) Journal of European Competition Law & Practice 537, 538.
[27] Julia Black, 'Talking about Regulation' [1998] Public Law 77.
[28] ibid.
[29] Charles F Sabel and Jonathan Zeitlin, *Experimentalist Governance* (Oxford University Press 2012) 169.

goals in different contexts'.[30]

Experimentalist scholars focus on the ends and means of legal intervention and emphasise the importance of reflexive learning to ensure that the means are tailored to achieve the proposed ends.[31] Recent competition law scholars have used the experimentalist governance perspective to discuss competition law enforcement in the Italian case *AGCM v Google – Ostacoli alla portabilità dei dati*.[32] Other scholars have applied the experimentalist perspective to the DMA arguing that the more cooperative approach followed in the DMA offered novel perspectives when compared to the punitive model of enforcement in competition law.[33]

Although anticipatory governance has mainly been studied in relation to nanotechnology, it is increasingly relevant for the governance of emerging technology. Its three main tenets – foresight, engagement and integration – attempt to anticipate and shape the development and impact of emerging technology or other innovations during the early stages of their development, when there is still significant uncertainty as to their impact and when choices can still meaningfully influence outcomes.[34]

Lastly, legal theorists have embraced the conversationalist approach fully. In a recent book, Gargarella argues that law is a conversation among equals, conceived as a 'dialogue that we could and should have with those around us about the way we wish to live and the principles and rules that will define and organize our social lives'.[35] The idea of law as a conversation among equals centres on the need to develop rules to organise collective life. Consequently, Gargarella argues that:

> Disagreements over the rules arise, and solutions to those disagreements are sought dialogically, that is, put simply, the way people who take one another as equals tend to do. This is because they respect each other despite their differences and because they assume no one has a natural right to 'command' the others, imposing their vision of what the rules should be 'because I say so'.[36]

Gargarella continues to show that law as a conversation among equals should have six characteristics: equality, disagreement, inclusiveness, deliberation, debates focused on subjects of public interest, and open, continuous, and ongoing dialogue.[37] Insisting on the topic of inclusiveness, Gargarella notes that 'the privation of one person's perspective – of any single person – should be considered a fundamental, irreparable

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[30] Sabel and Zeitlin (n 29).
[31] Rory Van Loo, 'The Missing Regulatory State: Monitoring Businesses in an Age of Surveillance' (2019) 72(5) Vanderbilt Law Review 1563.
[32] Emanuele Fazio, 'Experimentalist Competition Law Enforcement as a Complementary Data Sharing Toolkit: Learning from AGCM v. Google – Ostacoli alla Portabilità dei Dati' (2024) 17(29) Yearbook of Antitrust and Regulatory Studies 235.
[33] Anna Tzanaki and Julian Nowag, 'The Institutional Framework of the DMA: A Novel but Thoughtful Experiment in Regulatory Design?' (*SSRN*, 21 March 2023) <https://ssrn.com/abstract=4574518> accessed 11 March 2026
[34] Daniel Barben, Erik Fisher, Cynthia Lea Selin, and David H Guston, 'Anticipating Governance of Nanotechnology: Foresight, Engagement, and Integration' in Edward J Hackett, Olga Amsterdamska, Michael Lynch, and Judy Wajcman (eds), *The Handbook of Science and Technology Studies* (3 edn, MIT Press 2007) 979-1000.
[35] Roberto Gargarella, *The Law as a Conversation among Equals* (1st edn, Cambridge University Press 2022) 19.
[36] ibid 20.
[37] ibid. 21-25.

'loss' – a serious problem – that will end up harming the impartiality of the decision-making process'.[38]

These various streams of thought converge in a number of ways. First, the ideas explored by the authors above appear to have been built in response to the operations of global corporations. Julia Black developed her theory of regulation at a time when governments and international organisations were looking for ways to mitigate the environmental and social impact of multinational corporations. This search for regulatory solutions was also stimulated by the growing public awareness and understanding of the environmental and social harm resulting from the operations of multinational corporations. Second, these theoretical frameworks centre around the idea that periods of self-regulation – during which corporations are allowed to cumulate economic power and set their own rules – are followed by periods of government intervention through regulation. Third, previous scholars have intuited the growing power of large corporations as a phenomenon in itself and supported the optimistic ideal that such power can be mitigated through engagement with the corporations themselves.

The question then arises whether the regulatory approaches described above are appropriate for addressing the power of Big Tech. To answer this, one needs to acknowledge that Big Tech includes corporations that differ significantly from previous multinational corporations. Big Tech is actively shaping today's economic, cultural, and social milieu to consolidate its advantages.[39] In addition, as recently shown, Big Tech companies' activity in epistemic, instrumental, and technology constituencies highlights their roles as 'super policy entrepreneurs' in the policy process.[40] Big Tech is not only actively expanding beyond its traditional policy domains, but it also influences policy cycles.[41] In other words, Big Tech is part of the policy process. This renders the transition from self-regulation to external regulation particularly difficult. In addition, unlike previous regulatory waves, the public opinion of Big Tech companies has matured quickly, with the public demanding scrutiny into and action against some corporate practices of Big Tech companies. Finally, there has been no other time in history when both corporate activity and policy-making – or at least their public parts – took place with real-time feedback from the public.

In light of the above, I propose that the conversational approach to regulation embedded in the DMA is a novel regulatory approach that is suited to ecosystems in which the transition from self-regulation to external regulation is unwanted or cumbersome. I now turn to describing the specifics of this approach, which, I suggest, has three tenets – actors, conversations, and purposes – which curiously coincide with the three tenets of anticipatory governance – engagement, integration, and foresight.

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[38] Gargarella (n 35) 23.
[39] Shoshana Zuboff, *The Age of Surveillance Capitalism: The Fight for a Human Future at the New Frontier of Power* (Profile books 2019).
[40] Shaleen Khanal, Hongzhou Zhang, and Araz Taeihagh, 'Why and How Is the Power of Big Tech Increasing in the Policy Process? The Case of Generative AI' (2025) 44(1) Policy and Society 52, 53.
[41] ibid.

# 3 THE FIRST TENET OF THE CONVERSATIONAL APPROACH – ENGAGEMENT WITH ACTORS

Conversations need participants. The DMA ignites or imposes conversations amongst a range of participants that I call actors. Some of these actors existed before the entry into force of the DMA, and for others, the DMA has established novel legal regimes.

## 3.1 EXISTING ACTORS

The DMA imposes various obligations upon and interactions with existing actors such as business users, end users, advertisers, publishers, and third parties. In terms of public authorities, the DMA creates duties of dialogue and cooperation for the European Commission, Member States of the EU, the European Data Protection Board (EDPB), national authorities, national competent authorities, and national courts.

## 3.2 NEW ACTORS

The DMA also creates legal regimes for a number of new actors: gatekeepers, emerging gatekeepers, providers of new services and practices, compliance officers, monitoring officers, and the high-level group for the DMA.

Article 3 of the DMA stipulates that a gatekeeper is an undertaking providing core platform services (CPS) designated by the European Commission. At least two types of gatekeepers can be distinguished in the DMA for the purpose of this paper. A Type I gatekeeper fulfils two conditions: (1) they exercise control over whole platform ecosystems in the digital economy; (2) they are structurally extremely difficult to challenge or contest by existing or new market operators.[42] *A contrario*, Type II gatekeepers do not exercise control over whole platform ecosystems.

The DMA also provides a novel legal regime for the so-called emerging gatekeepers. Thus, according to Article 17(4) of the DMA, emerging gatekeepers are providing CPS, but do not yet enjoy entrenched and durable positions in their operations. However, emerging gatekeepers will foreseeably enjoy such a position in the near future.

Article 19 of the DMA establishes a legal regime for a third category of actors – the providers of new services and new practices that limit contestability or are unfair and which are not effectively addressed by the DMA.[43]

The engagement between the gatekeepers and the European Commission should be facilitated by two types of actors. On the one hand, the DMA foresees the creation of compliance officers to be established by the gatekeepers. In this sense, Article 28(1) of the DMA provides that compliance officers should be independent from the original functions of the gatekeeper and composed of one or more compliance officers, including the head of the compliance function. On the other hand, the DMA also foresees the creation of monitoring officers assisting the Commission in monitoring obligations and providing

[42] Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act) [2022] OJ L 265/1 (DMA), Recital 3.
[43] DMA, Art 19.

specific expertise or knowledge. According to Article 23(3) and Article 26(2) of the DMA, such monitoring services should be provided by independent external experts and auditors.

Finally, according to Article 40 of the DMA, a high-level group for the DMA was established.[44] The high-level group is composed of the (a) Body of the European Regulators for Electronic Communications; (b) European Data Protection Supervisor and European Data Protection Board; (c) European Competition Network; (d) Consumer Protection Cooperation Network; and (e) European Regulatory Group of Audiovisual Media Regulators.

The notion of ecosystem appears central to the conversational nature of the DMA. As recently highlighted, the ecosystem concept is increasingly used by the European Commission in its decisions, yet its use is often inconsistent. [45] This, however, is more a strength than a weakness in line with the conversational approach that requires open-textured notions to be debated and agreed upon through dialogue or litigation. In this sense, the Court of Justice of the European Union (CJEU) has found that a 'digital platform ecosystem may consist of one or more CPSs and other services connected to them, for example by means of technological links or interoperability'.[46] The CJEU has also noted that a digital ecosystem exists:

> where several categories of suppliers, customers and consumers are brought together and interact within a platform, and where the products or services comprising that ecosystem may overlap with, or be connected to, each other in terms of their horizontal or vertical complementarity.[47]

The differences between pre-existing and new actors are important for the conversational nature of the DMA. New actors will have to confront a steep learning curve to design not only the obligations imposed but also the relations between themselves. Pre-existing actors, on the other hand, will have to become DMA-fluent to ensure their participation in the enforcement process.

## 4 THE SECOND TENET OF THE CONVERSATIONAL APPROACH – INTEGRATION THROUGH CONVERSATIONS

The second tenet of the conversational approach to regulation consists of the integration of information achieved due to the conversations mandated by the DMA amongst relevant actors. I identify two main types of conversations mandated by the DMA: scripted and unscripted.

### 4.1 SCRIPTED CONVERSATIONS

Scripted conversations take place among unequal actors, facing the gatekeepers off against the European Commission. These are consequential conversations about the bounds of

[44] DMA, art 40.
[45] Jasper Van Den Boom, 'Incumbent or Challenger? — Assessing Ecosystem Competition in the DMA' (2024) 20(4) Journal of Competition Law & Economics 409, 416.
[46] Case T-1077/23 *ByteDance v Commission* EU:T:2024:478 para 129.
[47] ibid.

digital power, and the discretion of both actors is limited. The script, therefore, focuses on the types of documents to be submitted by the actors, the deadlines to respect and the consequences for failing to engage. The designation of gatekeepers under Article 3 of the DMA, as well as the opening and conclusion of proceedings covered in Chapter 5 of the DMA, are examples of scripted conversations. Scripted conversations under the DMA draw inspiration from the procedural rules set in Regulation 1/2003.[48] These conversations serve the interests of all ecosystem members. They increase legal certainty for gatekeepers because they describe the kinds of actions the enforcer is empowered to take. For all actors involved in the platform ecosystem, they also increase transparency.

### 4.2 UNSCRIPTED CONVERSATIONS

In the DMA, unscripted conversations are conversations between equals. These are conversations about harms, risks, and mitigation measures. Taking into account their frequency and depth, the unscripted conversations mandated by the DMA could be classified as (a) information sharing, (b) dialogue, (c) cooperation and coordination, (d) exchange of information, and (e) insider cooperation.

First, under Article 27 of the DMA, any third party, including business users, competitors, or end-users of the designated gatekeeper, may inform the national competent authority of the Member State or the Commission directly about any practice or behaviour by gatekeepers that falls within the scope of the DMA. National competent authorities and the European Commission have the discretion to decide what to do with such information. I deem three other types of exchanges to be information sharing: (a) interactions with independent external experts and auditors pursuant to Article 26(2) of the DMA; (b) interactions with the high-level group for the Digital Markets Act pursuant to Article 40 of the DMA; and (c) exchanges with national authorities concerning any matter relating to the application of the DMA.

Second, there is an important exception to the general rule that conversations with the gatekeepers are scripted by a well-established procedural protocol. Article 8(3) of the DMA stipulates that a gatekeeper may ask the Commission to engage in a process to determine whether the measures that it intends to implement or has implemented to ensure compliance with Articles 6 and 7 of the DMA are effective. The Commission has the discretion to decide whether to engage. Recital 65 of the DMA clarifies that, when the Commission decides to engage in such a process, a dialogue with the gatekeeper will ensue.

Third, Article 37 of the DMA stipulates that the Commission and Member States shall work in close cooperation and coordinate their enforcement actions to ensure the coherent, effective, and complementary enforcement of the DMA.

Fourth, Article 38 of the DMA provides for an obligation of in-depth cooperation between the European Commission and the national competent authorities of the Member States. This obligation involves 'the power to provide one another with any information regarding a matter of fact or of law, including confidential information'.

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[48] Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (Text with EEA relevance) [2003] OJ L1/1.

Lastly, one of the innovations of the DMA is the creation of an insider cooperation mechanism in the form of the compliance function, established by Article 28 of the DMA. This is one of the most intrusive provisions of the DMA, obliging the gatekeepers to create an independent compliance function composed of one or more compliance officers. Pursuant to Article 28(5)(d), compliance officers must cooperate with the Commission for the purpose of the DMA, but the means and channels of such cooperation are not stipulated.

Unscripted conversations hold the promise of addressing two challenges that EU competition law failed to address. First, unscripted conversations will diversify both the pool of policy positions and options that the European Commission can access and the channels through which this information circulates. As mentioned above, gatekeepers are deeply involved with the policy-making process.[49] Unscripted conversations offer the possibility for a diverse range of actors to raise contestability and fairness concerns with the European Commission. Even more importantly, unscripted conversations open the possibility for various economic actors in the EU to consider the DMA as part of their business strategy. This line of argument can be deduced from a recent statement by Apple – a designated gatekeeper – in which Apple acknowledged that the European Commission is seeking broad feedback about the impact of the DMA.[50]

Unscripted conversations will also diversify the channels through which information about the contestability and fairness of markets circulates. The example above shows one way in which this diversification is taking place. Indeed, Apple used its newsroom to communicate with its users about its approach to the DMA. In addition, all actors enumerated in Section 3 above may receive and deal with such information.

The diversity resulting from unscripted conversations is also likely to address one of the main weaknesses resulting from the specialness of competition law, which was the inability to respond to non-economic harm in digital markets. Undoubtedly, unscripted conversations are a vehicle for addressing the economic harm to digital markets resulting from a loss of contestability and fairness. At the same time, the actors involved in these conversations are also likely to address harm to privacy, harm to freedom of speech, to dignity, and to the right to property. Although the DMA does not mention fundamental rights at all, which makes the DMA a notable exception in the EU to the rights-driven model proposed by Anu Bradford,[51] fundamental rights will be part of unscripted conversations. A recent example of this can be read in Apple's statement quoted above, in which Apple relied on privacy to justify some of its choices.[52] In other words, diversity will breed integration not only for the European Commission, but also for the gatekeepers.

## 5 THE THIRD TENET OF THE CONVERSATIONAL APPROACH – FORESIGHT

Scholars note that one of the weaknesses of competition law has been the fact that

[49] Khanal, Zhang and Taeihagh (n 40).
[50] Apple, 'The Digital Markets Act's Impacts on EU Users' (*Apple Newsroom*, September 2025) <https://www.apple.com/newsroom/2025/09/the-digital-markets-acts-impacts-on-eu-users/> accessed 3 October 2025.
[51] Anu Bradford, *Digital Empires: The Global Battle to Regulate Technology* (Oxford University Press 2023).
[52] Apple (n 50).

the traditional concept of market power appears unable to capture the complexities of competition between platforms and digital business ecosystems.[53]

Another reason competition law has failed to prevent the advent of Big Tech corporations could be the length of its proceedings.[54] In other words, there was a novel spatial and temporal problem in digital markets that could not be easily captured by traditional competition law.

The conversational approach adopted in the DMA proposes a new solution to the space-time problem in digital markets. I argue that the conversations mandated or pursued according to the DMA are a form of foresight that seeks to address the spatial and temporal issues in digital markets that competition law did not. They do so by enhancing and protecting certain values.

### 5.1 THE ENHANCEMENT FUNCTION OF DMA CONVERSATIONS

The conversations mandated by the DMA seek to enhance the transparency of and the knowledge existing on and about digital markets. Both gatekeepers and the European Commission must publish non-confidential summaries of important interactions with each other. Thus, pursuant to Article 11(2) of the DMA, gatekeepers should inform the Commission, through mandatory reporting, of the measures they have implemented in order to ensure effective compliance with the DMA. In addition, a non-confidential summary of such information should be made public. The DMA clarifies in the recitals that this non-confidential publication should enable third parties to assess whether the gatekeepers comply with the obligations laid down in the DMA.[55] In the same vein, the European Commission must publish non-confidential summaries of the case and the measures it intends to take or impose on the gatekeeper when it opens proceedings according to Article 20 of the DMA and when it investigates systematic non-compliance according to Article 18 of the DMA. In both cases, interested third parties may submit comments.

This approach is in line with insights from economists such as Laffont and Tirole, who in 1986 wrote one of the most influential papers on regulation. In their paper, Laffont and Tirole analysed the regulation of a monopolist in a situation in which the regulator observes the firm's production cost, but the firm has private information on the determinants of its costs. Laffont and Tirole note that in this situation, the regulator cannot distinguish between a firm that is more efficient because, for example, it benefits from economies of scale and a firm that has actively invested in the past to make its production more efficient. They show that a regulator cannot attain the first-best outcome because of the informational asymmetry between the firm and the regulator. Laffont and Tirole thus estimate that information rents are rents that a firm earns by exploiting the asymmetry of information existing between it

[53] Ioannis Lianos and Bruno Carballa-Smichowski, 'A Coat of Many Colours — New Concepts and Metrics of Economic Power in Competition Law and Economics' (2022) 18(4) Journal of Competition Law & Economics 795.
[54] Anne C Witt, 'The Digital Markets Act: Regulating the Wild West' (2023) 60(3) Common Market Law Review 625, 629; Pierre Larouche and Alexandre De Streel, 'The European Digital Markets Act: A Revolution Grounded on Traditions' (2021) 12(7) Journal of European Competition Law & Practice 542, 546.
[55] DMA, Recital 68.

and the regulator.[56] Almost 40 years later, Tirole showed that asymmetries of information concerning costs, technological choices, and demand prevent regulators from guaranteeing the best services at the lowest prices for citizens.[57] He highlighted that even a regulated business can make strategic use of the information it alone has: 'it reveals this information when it is advantageous for it to do so, and keeps it to itself when transparency would endanger its revenues'.[58]

The non-confidential summaries that the DMA mandates will address asymmetries of information, like those identified by Laffont and Tirole. On the one hand, the gatekeeper releasing non-confidential summaries will, in fact, communicate its strategy for complying with the DMA and the changes to its business model that it is ready to implement. On the other hand, business users, end users, and relevant public authorities may publicly approve or contest these measures. Public opinion, in turn, may inform the future positioning of the gatekeepers, public authorities, and business users. This may result in a virtuous cycle of dialogue that, over time, will indeed establish new rules for contestable and fair markets.

A recent example of the above can be read from the 2025 non-confidential report of Meta, a designated gatekeeper. There, Meta declared that it 'has gone above and beyond the requirements of the DMA by working closely with the European Commission and third-party messaging services who may be interested in interoperability'.[59] Such statements signal not only the gatekeeper's willingness to engage with the European Commission, but they also act as positioning in terms of strategy and product development that can diminish the asymmetry of information in the gatekeeper's ecosystem.

The conversations mandated by the DMA will also enhance the contestability and fairness of digital markets. Since these terms are not defined in the DMA, actors will initiate conversations about the definitions and interpretations of contestability and fairness in digital markets, and are likely to rely on econometric calculations.

Transparency, contestability, and fairness in digital markets are goals in themselves and once they are reached, the whole digital ecosystem will be improved. However, the conversations about these characteristics have an intrinsic value as signposts of the improving quality of the digital space.

## 5.2 THE PROTECTIVE FUNCTION OF DMA CONVERSATIONS

By attempting to create an 'ethic of the future', the protective function of the DMA is future-oriented. The DMA acknowledged from the beginning that, despite their small numbers, gatekeepers 'exercise control over whole platform ecosystems in the digital economy and are structurally extremely difficult to challenge or contest by existing or new market operators, irrespective of how innovative and efficient those market operators may

[56] Jean-Jacques Laffont and Jean Tirole, 'Using Cost Observation to Regulate Firms' (1986) 94(3) Journal of Political Economy 614.
[57] Jean Tirole, *Economics for the Common Good* (Steven Rendall tr, First paperback printing, Princeton University Press 2019) 457.
[58] ibid.
[59] Meta, 'Meta's Compliance with the Digital Markets Act: Non-Confidential Public Summary of Meta's Compliance Report' (6 March 2025) <https://transparency.meta.com/reports/regulatory-transparency-reports/> accessed 24 October 2025.

be'.[60] This is in line with the findings and arguments of 'modern bigness' scholars who have shown that the power of big technological companies goes beyond controlling prices on certain markets.[61] Indeed, due to their large investments in research and development (R&D),[62] gatekeepers are keeping the door closed to future potential competitors and markets. The proposed solution is a legal regime addressing so-called emerging gatekeepers, which entitles the European Commission, on the basis of Article 17(4) of the DMA, to designate as a gatekeeper an undertaking providing CPS that does not yet enjoy an entrenched and durable position in its operations, but which will foreseeably enjoy such a position in the near future.[63] The European Commission may declare applicable to that gatekeeper only one or more of the obligations laid down in Article 5(3) to (6) and Article 6(4), (7), (9), (10), and (13) of the DMA. However, the Commission shall only declare applicable those obligations that are appropriate and necessary to prevent the gatekeeper concerned from achieving, by unfair means, an entrenched and durable position in its operations.

The legal regime concerning emerging gatekeepers may be considered a first step towards protecting competitive markets for future generations in the EU.[64] A few scholarly and policy developments are showing the way. First, the 2024 United Nations (UN) Pact for the Future (PfF) highlights the importance of markets for achieving the goals set in the PfF.[65] In addition, its Global Digital Compact (GDC) emphasises that creativity and competition drive digital advance. The GDC also stresses that a predictable and transparent digital enabling environment is necessary in order to benefit from the digital economy. Such a predictable and transparent enabling environment encompasses policy, legal, and regulatory frameworks that support innovation, protect consumer rights, and promote fair competition.[66]

The protection of future generations in the EU is also a subject of growing concern, as the appointment of the first European Commissioner for Intergenerational Fairness, Youth, Culture and Sport suggests.[67] This appointment answers a scholarly argument that the creation of the EU and its predecessors, the European Communities, was rooted in an idea which, at its core, concerns the well-being of future generations.[68] Furthermore, Sulyok also argues that 'there are several elements already built into the current body of primary EU legislation, which would justify affording stronger and more effective protection

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[60] DMA, Recital 3
[61] Anna Gerbrandy, 'Revisiting the concept of power in the digital era' in Oles Andriychuk (ed), *Antitrust and the Bounds of Power – 25 Years On* (Bloomsbury 2023) 209-224; Gerbrandy and Phoa (n 9).
[62] Gerbrandy (n 61).
[63] DMA, Art 17(4).
[64] Cristina Teleki, *Competitive Markets – A Fundamental Right of Future Generations?* available at: <https://digi-con.org/competition-fundamental-rights-and-power-in-the-digital-age-2/> accessed 1 May 2026.
[65] United Nations General Assembly, 'The Pact for the Future' (22 September 2024) UN Doc A/RES/79/1
[66] UN 'Global Digital Compact: rev.2' (6 June 2024) <https://www.un.org/techenvoy/sites/www.un.org.techenvoy/files/GlobalDigitalCompact_rev2.pdf> accessed 14 October 2025.
[67] European Commission, 'Commissioners-designate 2024-2029' <https://commission.europa.eu/about-european-commission/towards-new-commission-2024-2029/commissioners-designate-2024-2029_en> accessed 14 October 2025.
[68] Katalyn Sulyok, 'Protecting the Interests of Future Generation by the European Union' (Jesuit European Social Centre 2024) <https://jesc.eu/wp-content/uploads/2024/02/Sulyok-FG-EU-law.pdf> accessed 14 October 2025.

to long-term interests during the exercise of EU power'.[69]

Finally, competition law scholars emphasise that 'the concept of future markets has […] been applied in merger cases in the EU and US where the merging parties competed in R&D to introduce innovative products'.[70] Also, in one of the fastest-growing fields of study within competition law, scholars argue that novel ways to protect nascent competition should be considered.[71]

## 6 MASTERING THE METAGAMES – PROCEDURAL ASPECTS OF THE CONVERSATIONAL APPROACH

I have argued in the previous sections of this paper that the DMA is conversational in nature, linking the success of its enforcement with the duties of dialogue and cooperation among existing or new actors. These conversations may increase the transparency and predictability of digital markets, in addition to ensuring their fairness and contestability. However, the enforcement of the DMA will be only as successful as the institutions and people involved in it. In order to reap all the benefits of the conversational nature of the DMA, a few challenges should be addressed.

First, the European Commission – as the designated enforcer of the DMA – will have to strengthen its cooperative culture while preserving the adversarial culture needed for the enforcement of EU competition law. In other words, the conversational nature of the DMA will coexist with the specialness of competition law. This requires a careful appraisal of procedures and the people working as case handlers.

Second, there is a strong emphasis in the DMA on external independent expertise to support the European Commission's work. This is particularly important in light of the recent claim that undisclosed affiliations distort the enforcement of the DMA.[72] In addition, this demand for external independent expertise should be matched by an increase in the independence of the European Commission. The European Commission will also have to put in place guardrails – both epistemic and procedural – against regulatory capture.

Third, the conversational nature of the DMA requires enforcement officers who can assess digital markets from multiple perspectives. They should thus be able to understand the behaviour of gatekeepers, emerging gatekeepers, advertisers, publishers, and all other actors in a platform ecosystem. At the same time, they should understand privacy and other

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[69] Sulyok (n 68) 4.

[70] Velizar Kirilov, 'Sector-Specific Essential Facilities Doctrine: A Tool for Remedying Distortions of Innovation Competition for Future Markets' (2024) 45(1) ECLR 20. See also, Viktoria HSE Robertson, *Competition Law's Innovation Factor: The Relevant Market in Dynamic Contexts in the EU and the US* (Hart 2020) 122–128.

[71] C Scott Hemphill and Tim Wu, 'Nascent Competitors' (2019) 168 University of Pennsylvania Law Review 1879; Tristan Lécuyer, 'Digital Conglomerates and Killer Acquisitions – A Discussion of the Competitive Effects of Start-up Acquisitions by Digital Platforms' (*Concurrences*, 1 February 2020) <https://www.concurrences.com/en/review/issues/no-1-2020/droit-et-economie/digital-conglomerates-and-killer-acquisitions-a-discussion-of-the-competitive-92964-en> accessed 14 October 2025; Digital Competition Expert Panel, 'Unlocking Digital Competition' (2019) <https://www.gov.uk/government/publications/unlocking-digital-competition-report-of-the-digital-competition-expert-panel> accessed 14 October 2025.

[72] Margarida Silva, Bram Vranken and Max Bank, 'Uncovering Big Tech's Hidden Network' (*SOMO*, 29 October 2024) <https://www.somo.nl/uncovering-big-techs-hidden-network/> accessed 4 November 2024.

fundamental rights in order to engage with such information. The positioning of Permeability Officers could thus ensure that silos – both bureaucratic and epistemic – are opened up to intersectional work.

Lastly, the conversational nature of the DMA is likely to result in numerous submissions from gatekeepers and third parties. Since certain undertakings have previously used large files in competition proceedings to overwhelm competition authorities, similar strategies may be redeployed during critical moments in DMA enforcement proceedings. At the same time, there is also a risk of not absorbing and integrating the knowledge shared during the conversations mandated by the DMA. This challenge could be addressed by establishing Filtering Officers who would deal independently with the submissions received by the European Commission.

## 7 CONCLUSION

In his essay dedicated to the living company, de Geus wrote that 'a company that survives for more than a century exists in a world it *cannot hope to control*'.[73] Although it remains debatable whether corporations *should want to* and *should be able to control the world*, the reality of Big Tech corporations is that they play a very important role in present day economies and societies by influencing everything from how we work to how we parent and live. These corporations raise novel spatial and temporal issues that cannot be easily addressed using past legal instruments.

I have attempted to show in this paper that the DMA relies on a novel regulatory approach in attempting to contain the spatial and temporal power of Big Tech companies designated as gatekeepers. I have argued that the conversational approach represents a hybridisation between regulation and competition law and between regulation and anticipatory governance. It has three main tenets: engagement with actors, integration through conversations, and foresight. Throughout the paper, I have mapped the actors, identified the types of conversations mandated by the DMA, and discussed the main functions of the mandated conversations. This approach promises to regulate the diversity of the actors and subjects involved in digital ecosystems and contributes to the establishment of an 'ethics of the future' for the EU.

[73] de Geus (n 3).

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