

Global Insight Margrethe Vestager**Vestager's firm hand is an opportunity not a threat to EU tech**

Plan to put burden of proof on to companies underlines diverging path from the US



Margrethe Vestager's aggressive approach 'is not just regulation, but our competitive advantage' © EPA-EFE

Martin Sandbu NOVEMBER 4 2019

Margrethe Vestager is using her renewed and expanded mandate for all it is worth. The EU competition commissioner, who will be promoted to vice-president of the incoming commission in charge of digital policy, is contemplating a new move against digital market abuse. In future, large internet companies accused of anti-competitive behaviour may find [the burden of proof](#) is on them to show their conduct benefits consumers, rather than on authorities to prove harm.

What does the commission gain from such a policy change? One obvious answer is speed. Ms Vestager “is doing it to show we can have smart regulation, meaning that you can be fast enough to act upon market cases that require immediate action”, says Francesca Bria, a digital policy adviser to the UN and the commission. “This makes a lot of sense. If you intervene too late you do not have the tools to enforce your regulation and the problem may have moved somewhere else.”

The policy would dovetail with Ms Vestager's revival of so-called interim measures to stop alleged market abuse during an investigation. That was a “very welcome” decision, says Thomas Philippon, a New York University finance professor and author of a book arguing Europe's antitrust policy has overtaken America's. “There is no presumption that the company is right or wrong, but when there is uncertainty and time is of the essence then it's appropriate for regulators to have this instrument . . . the burden of proof argument is very similar in spirit.”

Requiring tech companies to show how their behaviour benefits users may have consequences

beyond mere speed.

It could address what Ms Bria calls a “very strong paradox” — that other industries, such as “Big Pharma or telecoms or big monopolies”, share data with authorities “for competition inquiries and analysis” whereas “Big Tech [companies] are sitting on big amounts of data” but resist sharing it.

Greater access to data that the new policy would facilitate could help regulators examine whether the law is respected in matters beyond market abuse, such as privacy. Privacy and competition “are very intimately linked,” according to Ms Bria, “but until now not much has happened because regulators and competition economists do not have the tools or the ability to analyse the situation”.

Ms Vestager's latest move to take on Big Tech “fits exactly” a bigger picture of how Europe and the US have taken different regulatory paths since the 1990s, says Mr Philippon. Antitrust ideas that were shared across the Atlantic and “partly originated from the US” were “set in stone” in European law and institutions, Mr Philippon says, “with regulators in charge of upholding these rules and strong enough to resist lobbies . . . The irony is that we [the Europeans] did it because we did not trust each other very much, so we did not want a weak regulator in Brussels that could be swayed by a big country”.

The US went in the opposite direction. Mr Philippon says there was a “change in the ideology of antitrust” represented by the “Chicago School” view that new challengers to established firms would keep monopolists in check. That was true in the 1970s and 1980s, Mr Philippon has found, but is no longer true today. “Then [there was] a gigantic increase in lobbying and political expenditure . . . It's basically corruption, to not put too fine a point on it.”

There are worries that European regulation can stifle innovation. But Ms Bria argues that “if you regulate and also have a vision, and you invest in that vision, then the innovators can dare” take risks. Europe's strong backlash against privacy breaches has fostered the “biggest ecosystem for distributed ledger technology”, such as blockchain networks, she says. “Cryptography [technology to keep confidential data secure] could be the next innovation wave” for the same reason.

Ms Vestager's aggressive approach “is not just regulation, but our competitive advantage,” Ms Bria says.

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