

Europe's rapprochement with Big Tech - too good to be true?

Blog post by Practice Lead Conan D'Arcy, 1 April 2020

“It’s the first time tech companies act in such a strong way. They reacted immediately, and made very important, practically spontaneous, decisions. The crisis will without doubt accelerate this.” This intervention from Thierry Breton, Commissioner for the Internal Market, marks a major change in tone from the European Commission which has spent the past five years locked in an increasingly abrasive regulatory tussle with large, mostly American, technology providers.

These companies are now being viewed as vital sources of information and routes of communication to help understand and mitigate the pandemic. Even in cases where software companies have been seen as a barrier to tackling the crisis, such as on telecoms network capacity, they have acted to adjust their business models by reducing the quality of their streaming services following requests from the European Commission. This prompted Breton’s praise of tech companies, the like of which has not seen since Neelie Kroes’ time as Europe’s digital supremo. This new mood is not unique to Europe and has been reflected across the globe with technology companies receiving praise from the Indian government and US administration, amongst others.

But will it last? And is too early for industry executives to celebrate the demise of the EU’s assertive digital policy?

In the short term, it appears certain that Europe’s regulatory agenda will move more slowly as a function of the crisis. Public consultations and policy strategies have been delayed, reducing the scope for major legislative initiatives to be published this year. Likewise, Vice-President Vestager and DG Competition have found themselves having to prioritise state aid approval processes above digital anti-trust enforcement and reform. Data protection authorities like the UK’s Information Commissioner’s Office are reported to be delaying enforcement actions against companies in the midst of the crisis.

Taken together, this represents a notable shift in prioritisation for crisis management purposes but not yet a fundamental change in digital policy. This is not to say there won’t be lasting changes. A more extensive public emergency exemption from the e-privacy directive and General Data Protection Regulation could be foreseen, for example, but this does not automatically translate into a more permissive approach to processing personal data for online advertising and other commercial purposes. On dominance and competition concerns, the crisis has served to entrench the view that some of these companies function like traditional utilities, potentially bolstering the argument for utility-like ‘ex-ante’ regulation for ‘digital gatekeepers’.

Companies currently lauded by politicians could find themselves vulnerable later due to shifting circumstances and scrutiny of their performance. At the outset of the crisis, companies will be largely judged for the rigour with which they promote trusted information sources and remove misinformation and disinformation. In the longer term, perhaps the most important factor in shaping a new settlement for Big Tech in Europe will be whether major companies align their business models more closely with

the expectations of EU institutions and European governments. Recent moves on video streaming quality will be quickly forgotten if companies are perceived as repeating historic practices in data protection, online content and taxation. The latter will be particularly sensitive and important to get right given the major strain on public finances caused by the emergency spending measures that have implemented globally.

Underlying Breton's embrace of Big Tech was something of a warning - companies have shown leadership and responsibility but there are expectations in Brussels that this collaborative approach will continue well beyond the current crisis. Put simply, Breton's message to Silicon Valley is we're giving you a second chance, don't waste it.