Navigating The DMA

Application Across National Jurisdictions

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Croatia on its Path to Digital Market Regulation

Croatia

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Abstract

Doing business and providing services on line on digital market followed by spreading use of artificial intelligence posed challenges for legislators and for national institutions such as competition authorities implementing the competition rules. The introduction of EU Digital Market Act as the first EU legal document regulating the big on line players-digital platforms provided useful framework for national legislators and practitioners.

The purpose of this chapter is to present Croatian path to adjustment its laws and practices to digital market and new digital instruments.

Firstly, the paper gives the overview of most important legislation and national strategic documents adopted in Croatia in order to foster digitalisation as a priority in business and other areas. The digital Strategy Croatia until 2032 is examined as particularly important because is sets clear goals for digital transformation in the next ten years and defines priority areas of public policies in all segments of the digital ecosystem. From legislation, the Electronic Commerce Act is the main law that regulates business on internet or e-commerce in Croatia and at the same time it transposed the Digital Services Act.

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Secondly, this paper looks at current practice of Croatian Competition Agency (CCA) in digital market. Considering the CCA still does not have concrete cases and thus, relevant decisions applying Competition Act or Articles 101 and 102 TFEU in digital markets, two relevant sector inquires are presented. The latest sector inquiry looked at digital platforms for online food delivery services in Croatia conducted in 2021/2022 and the first sector inquiry in digital sector conducted by the CCA, the provision of online hotel booking services in Croatia commenced at the end of 2019.

Finally, the author presents the efforts of Croatia to implement DMA and coordinating role of the CCA. In that respect, Regulation on the implementation of the DMA empowers the CCA as the designated coordinating body for the implementation of the Digital Markets Act (DMA) at national level. The paper ends with concluding that next steps on the EU and national level are putting into practice DMA Regulation and making the best use of new digital technologies such as AI. One should also note that in this process of digital transformation, competition law remains fulfilling its role with traditional tools but that the NCAs should also be equipped with new knowledge, new experts and should follow new future approaches in competition law.

I. Introduction: General Views from an EU Member State

26. The emergence of digital market as the new type of market providing services and selling goods in online space alongside or as an alternative to traditional shops and the rise in e-commerce has consequently created the need for different practical and legislative approaches both at EU and national level. Croatia like other EU Member States started to adjust its legislation and business practice to this digital reality. To that end, several important strategic documents have been adopted establishing digitalisation as a priority and as an important goal and recognising the need to create a stimulating regulatory and investment environment which has positive effects on development of technology and innovation. To achieve this, it is necessary to enhance digital competences and increase the number of experts such as data analysts and communication technology experts in the private and public sector and by application of advanced technologies in business market activities. The initiatives taken by the Croatian Government are in line and follow the European Digital Agenda for 2020–2030 aimed at fair economy which enhances competition as one of the three key goals. The statistics showed satisfactory levels of digitalisation in Croatian business. According to the Digital Economy and society Index (DESI), Croatian companies use the opportunities offered by internet sales as follows: 29% of small and medium enterprises sell their products on the internet and 13% of revenues come from the internet sales segment.[1] Advanced digital technologies are becoming more and more popular among Croatian companies: 35% are using cloud solutions, 43% use e-invoices and 9% use technologies based on artificial intelligence.[2] In addition, another relevant

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1 Small and medium enterprises make of 99.8% of economic subjects, undertakings in Croatian economy. Data from Croatian Bureau of Statistics: <https://podaci.dzs.hr/2022/hr/29182> accessed 12 July 2024.

2 See, <https://digital-strategy.ec.europa.eu/hr/policies/desi> accessed 12 July 2024.

factor is the IT industry in Croatia which is constantly growing, it constitutes around 5% of national GDP.

27. The e-commerce in Croatia is well developed with the intention of growing, the current estimation is that Croatian e-commerce market is worth more than 1.3 billion euros in 2024. The estimation is for further growth in e-commerce in coming years, in 2024 it is predicted to grow for more than 13% compared to the previous year. Some of most successful Croatian internet search engines for online sales include *e-kupi.hr* with the largest net income of 51 million euros in 2022, *pevex.hr* online store for home décor and *Konzum* online supermarket for sale of groceries.[3] The majority of popular digital platforms widely used in Croatia are Booking, Wolt, Glovo, Microsoft, Meta, Apple, Alphabet (designated also as gatekeepers in line with the DMA).

28. From the perspective of competition and its rules, e-commerce and digital platforms for use of different services with their special characteristics (interoperability, multisided effects, network effects etc.), in Croatia as in many other EU Member States, it became clear that a new approach in competition law regarding this new market was required. Hence, in Croatia, the Croatian Competition Agency (CCA) started to follow digital markets more closely, including the adoption of the Digital Markets Act (DMA) at the EU level with the aim of setting rules for the big platform-gatekeepers.[4]

1. National Legislative Initiatives Adopted (or Incoming) for the Digital Sector

29. In Croatia, further digitalisation and regulation of the digital sector is recognised as a priority in business, public administration, labour market, education and research and development. For that purpose, several national strategic documents and legal texts were adopted.

A. *Digital Strategy of Croatia until 2032*[5]

30. The Croatian Digital Strategy determines guidelines for accomplishing targeted national transformation towards a green and digital way of life as preconditions for future sustainable economic growth. The strategy sets clear goals for digital transformation in the next ten years and defines priority areas of public policies in all segments of the digital ecosystem: infrastructure, technology, science, education, innovation and competitive markets. This strategy assumes the implementation of advanced technologies such as artificial intelligence (AI), machine learning,

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3 Goran Pavlović, 'Croatian eCommerce is a growing market with numerous possibilities' (*Hrvatska*, 2024) <https://ecommerce.hr/hrvatski-ecommerce-je-rastuce-trziste-s-brojnim-mogucnostima/> accessed 12 July 2024. See also 'Croatia eCommerce Country Commercial Guide' (2024) <https://www.privacyshield.gov/ps/article?id=Croatia-eCommerce> accessed 12 July 2024.

4 Regulation 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 2019/1937 and 2020/1828 (Digital Markets Act or DMA) [2022] OJ L265/1

5 Digital Croatia Strategy for the Period until 2032, Official Gazette No 2/23 16 December 2022 <https://narodne-novine.nn.hr/clanci/sluzbeni/2023_01_2_17.html> accessed 12 July 2024,

cloud computing, big data and blockchain in the public and private sectors. At the same time, it stays open for the implementation of new future technologies which may be developed in this period. The content of the strategy is aligned with the priorities and goals of relevant EU documents, such as the document of the European Commission, 'A Europe Fit for the Digital Age'.[6]

31. One goal of the strategy is to develop and innovate the digital economy through digitalisation and digital transition of the whole economy including industry and services with special emphasis on small and medium enterprises which are on the lower level of digitalisation, which affects their competitiveness.[7]

32. The National Development Strategy of Croatia until 2030 also recognises digitalisation of society and the economy as an important goal to be achieved.[8]

B. *Smart Specialisation Strategy until 2029*

33. This strategy was prepared by Croatian Ministry of the Economy at the end of 2023 and it encompasses also digital products and digital platforms.[9] The focus is on the development of technologies based on artificial intelligence (AI), blockchain via existing companies or new start-ups. The aim of the strategy is to direct development on new innovative and competitive solutions which can be applicable to most world markets. The strategy recognised the need to move away from traditional specific solutions adapted for one user which is neither competitive nor adjustable for competition on the market.

34. Besides the aforementioned national strategic documents, relevant legislation includes the law on e-commerce: the Act on the Implementation of the Regulation 2019/1150 on promoting fairness and transparency for business users of online inter-mediation services and regulation on the transposition of the DMA.

C. *The Electronic Commerce Act*

35. Business on internet or e-commerce in Croatia is regulated by the Electronic Commerce Act,[10] that has transposed the Digital Services Act (DSA) into the Croatian legal system[11]. This Act regulates the obligation of informing and providing commercial communications, e-documents, form and validity of e-contracts, responsibility of the provider of information society services, as well as inspection, supervision and penal provisions. Besides the Electronic Commerce Act,

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[6] European Commission, 'A Europe Fit for the Digital Age' (2024) <https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/europe-fit-digital-age_en> accessed 12 July 2024.

[7] Digital Croatia Strategy for the period until 2032, https://rdd.gov.hr/UserDocsImages/SDURDD-dokumenti/Strategija_Digitalne_Hrvatske_final_v1_EN.pdf 24, 32-40.

[8] National Development Strategy 2030 of Republic of Croatia; Official Gazette No 13/21. https://digital-skills-jobs.europa.eu/en/actions/national-initiatives/national-strategies/croatia-national-development-strategy-2030

[9] National Development Strategy of Croatia until 2030 <https://mingo.gov.hr/UserDocsImages/slike/Vijesti/2022/S3%20do%202029%20Tekst%20VRH%202023%2012%2013.pdf> accessed 12 July 2024. https://digital-skills-jobs.europa.eu/en/actions/national-initiatives/national-strategies/croatia-national-development-strategy-2030

[10] Electronic Commerce Act, Official Gazette Nos 173/03, 67/08, 36/09, 130/11, 30/14, 32/19.

[11] Regulation 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services and amending Directive 2000/31 (Digital Services Act or DSA) [2022] OJ L277/1.

e-commerce is also regulated by provisions of the Electronic Money Act, the Trade Act and the Civil Obligations Act. The establishment of digital businesses in Croatia is regulated by the Electronic Commerce Act and the Companies Act. Croatian legislation does not distinguish the requirements and procedures for the establishment of digital businesses from those governing the establishment of brick-and-mortar businesses. Conclusion of agreements on the Internet in business to customer agreements is also regulated by the Electronic Commerce Act providing the obligation of the information society to confirm the receipt of the email containing the offer or the acceptance of the offer to conclude the contract, while in the case of business-to-business contracts this is prescribed only as a possibility.

36. Furthermore, the Act on the Implementation of Regulation 2019/1150 on promoting fairness and transparency for business users of online intermediation services, entered into force on 12 December 2020.[12] It aims to ensure that business users of online intermediation services and corporate website users in relation to online search engines are granted appropriate transparency, fairness and effective redress possibilities, creating at the same time predictable, a sustainable and trusted online business environment within the internal market open to innovation.

2. Landmark National Cases (by NCAs and Courts) in the Digital Realm Backstage of the DMA

37. Although there are still no significant competition cases in the digital market in Croatia, the CCA is closely following digital cases at EU level prior and post adoption of the DMA.

38. Moreover, the CCA conducted two sector inquiries on digital platforms. The latest one is on digital platforms for food delivery conducted in 2021.

A. *Market Study into Online Food Delivery Services in Croatia*[13]

39. In November 2021 the Croatian Competition Agency (CCA) launched a market investigation into the provision of food delivery services via digital platforms in Croatia with the aim of determining all the relevant facts relating to the pricing method for the provision of online food delivery services, inspecting the mutual relations between digital platforms and their most important partners – restaurants and catering establishments, and the mutual relations between the digital platforms and the food delivery workers (mandataries). The reason for carrying out this

[12] The Act on the Implementation of Regulation 2019/1150 on promoting fairness and transparency for business users of online intermediation services (Zakon o provedbi Uredbe (EU) 2019/1150 o promicanju pravednosti i transparentnosti za poslovne korisnike usluga internetskog posredovanja) , Official Gazette 138/20, 19.12.2020.; Regulation 2019/1150 of the European Parliament and of the Council of 20 June 2019 on promoting fairness and transparency for business users of online intermediation services (Platform-to-Business Regulation or P2B-Regulation) [2019] OJ L186/57.

[13] See, 'CCA Carries Out a Market Study into Online Food Delivery in Croatia' (*Aztn*, 2024) <https://www.aztn.hr/en/cca-carries-out-a-market-study-into-on-line-food-delivery-in-croatia/> accessed 12 July 2024.

sectoral inquiry has been the fast-emerging influence of digital platforms in the provision of food delivery services in Croatia. The emphasis of the research was additionally focused on the general terms and conditions used by individual digital platforms that actively provide food delivery services, as well as the contractual relations with restaurants and other catering establishments.

40. The analysis covered the legislative framework and the implementation in the provision of online food delivery services. General indicators of the online food delivery market in Croatia have been determined, such as the turnover of the individual digital platforms, the number of mentioned service users (restaurants and catering facilities) and the pricing and price calculation in the provision of online food delivery services. The understanding of the comparative practice of the European Commission and individual national competition authorities has also been included in the market analysis.

41. With respect to the legislative framework applicable in the provision of food delivery services via digital platforms in Croatia, the research results showed that there are no special provisions regulating the sector concerned. The main source of law in this area is the Electronic Commerce Act.

42. Furthermore, the CCA found that there have been no legal and/or factual entry barriers to the market concerned, that is, the market has not been subject to any detailed *ex ante* regulation. No significant infrastructure is required because the activity is primarily performed through a digital application and the people who work as delivery workers, do this by using their own means of transport. These are services that cannot be performed by just one undertaking in the market.

43. For the purpose of this inquiry, the CCA created a sample of undertakings that primarily provide online food delivery services, i.e. three digital platforms that are dominant in the market concerned: Wolt Zagreb d.o.o., Zagreb, Bolt Services HR d.o.o., Zagreb and GlovoApp Technology d.o.o., Zagreb.

44. The research showed that at the end of 2021 one digital platform provided online food delivery services in the area of 27 towns and cities and covered the territory from the western to the southern part of Croatia, including the four biggest cities: Zagreb, Split, Rijeka and Osijek. The second surveyed digital platform provided these services in the area of 11 towns and cities, also including the cities of Zagreb, Split, Rijeka and Osijek, whereas the third provider of these services has been active in the area of three cities (Zagreb, Split and Osijek) with an expansion plan.

45. Furthermore, based on the statements given by the above-mentioned undertakings active in the provision of online food delivery services, in the second phase of the analysis, the CCA surveyed the users of online food delivery services, i.e. the restaurants and other catering establishments. The survey included a total of the top ten undertakings – restaurants and catering facilities, that have been the partners–service users of the surveyed food delivery digital platforms, according to their turnover from food delivery and/or the number of deliveries in 2020.

46. In relation to the structure of the online food delivery market in Croatia in the period from 2019 to 2021, the research results showed that the undertaking Wolt represented the most significant online food delivery platform. Regarding the importance of the use of digital platforms as an intermediary in comparison with

the total sales of a particular restaurant, the research showed that the share of online food delivery ranged from 14% to 90% and more in the total sales of an individual restaurant.

47. In the part that referred to the way in which the relations with delivery workers (mandataries) as an important stakeholder in the food delivery chain have been regulated, the research results showed that digital platforms used general terms of business and contracts with delivery workers (mandataries). All three digital platforms stated that they perform their activities exclusively as intermediaries between the restaurants, the delivery workers and the persons who orders food. In the research referring to the requirements that must be met by delivery workers, the results of the research have essentially been the same for all three digital platforms.

48. In the research related to the pricing method applied by the digital platforms concerned, the results of the research based on the statements of the three surveyed digital platforms showed that food prices have been regulated by agreement and that the final price has been set independently and freely by the restaurants and other food service providers. There has been an obligation imposed on the restaurants and catering establishments to guarantee the price, concretely, the restaurant (partner) guarantees that the price of service of a particular digital platform would not exceed the price the partner applies when selling its products at its own point of sale, or that the price should not exceed the price offered on competing platforms. In their statements to the CCA, the surveyed restaurants and catering establishments stated that they freely set the final price of food on digital platforms and that the price of the product is identical to the price in their physical stores. In relation to possible restrictions by the digital platform service providers on restaurants related to food prices, delivery conditions and priority of delivery, the research found that there have been no such restrictions.

49. With respect to intermediary fees that online food delivery service providers charge the restaurants and catering establishments, the research results showed that intermediary fees differ between the surveyed digital platforms. As for the way in which the intermediary fee is defined, the interviewed undertakings, owners of restaurants and catering establishments responded that the intermediary fee is subject to contracting or negotiation.

50. Furthermore, the research also covered the fees that online food delivery service providers pay to food delivery workers and the way in which these fees have been calculated. In the case of one of the surveyed digital platforms the fee consisted of three parts: the basic fee, which is the same for each order in a particular delivery area depending on the means of transport, the additional fee for the air distance in kilometres, and in some cities, the bonuses that the courier gets if they meet a certain number of deliveries. The second platform calculated its fees similarly to the first digital platform, although it has described the individual parts of the fee differently. There have been weekly bonuses, additional promotion coefficients and additional top ups in case of unfavourable weather conditions, which has enabled the delivery workers to increase the final remuneration for the services they have provided. The third digital platform has also calculated the remuneration amount based on the distance travelled per kilometre at the same time defining the amount for pick-up and delivery of the order. A minimum pay per delivery has also been defined.

51. In addition, there have been weekly and weekend incentives. These bonus payments have been calculated based on the number of deliveries made by the courier or delivery person during the incentive period. Also, the research revealed a possibility of increasing the pay of the delivery person by the attributable bonus payment multiplier per delivery. Thus, in the case of one of the digital platforms, the highest multiplier has been applied in the evening hours, but it has differed in individual cities although the order has been made through the digital application of the same digital platform. In the case of second digital platform, bonus approval has been additionally elaborated depending on the acceptance rate of the order. One of the surveyed digital platforms has applied the same bonus system for delivery workers, depending on the number of deliveries and the means of transport, but it has made no difference between the places orcities where delivery has been made. The same platform, unlike the other two, has paid different bonuses for different means of transport.

52. Regarding the advertising on digital platforms and the conditions for advertising the restaurants on these platforms, the application and the functioning of the rating systems for individual restaurants, the research results showed that out of three surveyed digital platforms, one of them has not been engaged in advertising restaurants at all. On the other hand, seven out of ten surveyed restaurants confirmed that they have been using the advertising services on the digital platform. There have been no special advertising requirements for restaurants and the advertising campaigns have been carried out within the regular advertising campaigns of the digital platform concerned.

53. All three surveyed digital platforms have a rating system in place. The rating has been based on those given by the users of the individual digital platform. The surveyed restaurants essentially responded that the rating system has been based on the ratings or experience of the end users and not of the digital platform itself.

54. In this market study, the CCA carried out the analysis of the comparative practice of the European Commission and national competition authorities in the provision of online food delivery services. In that sense, it examined the relevant research studies in online food delivery market made by some national competition authorities.

B. *Sector Inquiry in Online Hotel Booking Services in Croatia*[14]

55. The first sector inquiry in digital area conducted by the CCA was a market inquiry into the provision of online hotel booking services in Croatia. The market inquiry was commenced at the end of 2019 and was carried out during 2020 with all the relevant market indicators in the period between 2017 and 2018.

56. The reason for the market inquiry was, amongst others, the growing influence of the digital economy in the provision of accommodation services globally and

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14 See 'CCA carried out a market inquiry in the on-line hotel booking sector in the Republic of Croatia' (*Aztn*, 2024) <https://www.aztn.hr/en/cca-carried-out-a-market-inquiry-in-the-on-line-hotel-booking-sector-in-the-republic-of-croatia/> accessed 12 July 2024.

also in the territory of Croatia as a tourist destination country, and the effect of this trend on competition in the relevant market. In the past ten years, the European Commission and a number of national competition authorities (NCAs) and governments have intervened in the online hotel booking sector in the form of market studies, antitrust proceedings and legislation.

57. The aims of the CCA market inquiry were to analyse the legislative framework and its implementation in the provision of online hotel booking services, to define the main indicators of the market position in the provision of hotel online booking services in Croatia and to establish the relevant facts regarding the pricing policy in hotel on-line booking services in the country. Additionally, the aim of the inquiry was to investigate the contractual relationships between the online travel agents and their accommodation partners (hotels, boutique hotels and hostels). The CCA sector inquiry also included the comparative analysis of the relevant inquiries of the European Commission and the NCAs concerned. The CCA sector inquiry included all the actors in the provision of hotel online booking and sales services, the chain including the accommodation facility, the online travel agent and the final customer.

58. The market inquiry was based on a survey including all the categories of stakeholders in the relevant online hotel booking market in the Republic of Croatia (28 accommodation service providers, including the largest hotel chains). In the category of the providers of the accommodation services (hotels etc.) the sample of undertakings included in the survey was based on the data from the publicly available database of the Financial Agency, including the undertakings engaged in the provision of accommodation and food services. For the purposes of obtaining a better sample, the undertakings concerned have been grouped depending on their size (large and medium-sized undertakings) and the locality of the accommodation facilities. The geographic locations included the territory from Istria County to Dubrovnik-Neretva County, as well as the continental part of Croatia (Zagreb and the north and south of Croatia).

59. For the sample to be more representative the criterion regarding the type of the accommodation (hotels, boutique hotels, hostels and spa resorts) was also included. The survey also included the online travel agents (OTA).

60. With respect to the structure of the hotel online booking market in Croatia, the market inquiry showed that the undertaking Booking.com has been the most significant OTA, holding a market share, based on bookings made through OTAs, of 60–70% in 2017 and 70–80% in 2018 with a rising trend. Booking.com was followed by the undertaking Expedia with a market share of 20–30% in 2017 and 10–20% in 2018. These were then followed by other OTAs or platforms, such as Hotelbeds.com, HRS, Prestigia.com, Kuoni Global Travel Services and others, whose market shares were lower than 5%.

61. For the purpose of its market inquiry into the hotel on-line booking sector in Croatia, the CCA also compared its own indicators relating to OTA market shares with the figures indicated in the paper of the findings of the European number one and the world’s number three ranking hotel distribution technology provider in hospitality, D-EDGE from October 2019. The latter inquiry involved the evaluation, on the

European level, of more than 200 distribution channels and 680 hotel properties in Europe. Based on this, the comparison of the results showed that the market share of the leading operator in this market, the undertaking Booking.com, but also the market shares of other hotel online booking service providers essentially matched.

62. Relating to the sales channels and hotel booking services used by the accommodation partners in Croatia, the results of the sector inquiry revealed that, as a rule, all undertakings that were included in the survey use the traditional sales channels, such as call centres, walk-in bookings and sales at the reception of the accommodation facility, as well as their own digital platforms on their websites, the direct sales channels. However, the participants of the survey reported that they generally increasingly use sales via OTAs, i.e. indirect sales channels. They reported successfully leveraging other channels – allotment purchase from a tour operator, traditional travel agencies, group rates, a global distribution system (GDS), congress and event sales such as (MICE – Meetings, Incentives, Conferences and Exhibitions) and DMC (Destination Management Companies).

63. Regarding the comparison between the accommodation facilities' own digital platforms and OTA platforms in hotel sales and booking, the CCA sector inquiry showed that in general the individual hotels and chains made more bookings via OTAs than via their own platforms. In addition, in 2018 most of the providers of accommodation facilities that took part in the survey recorded a rise in both online sales channels – on their own web platforms and OTA platforms in comparison with 2017. The number of online bookings via OTAs increased by 42% in 2018 in comparison with 2017, whereas the rise in online bookings on the platforms of the accommodation facilities themselves increased 24% in 2018 compared with 2017.

64. Considering the OTA commission rates for online hotel bookings, the results of the CCA sector inquiry showed that they differentiated among individual OTAs. Some OTAs charged the same commission rate to a hotel for the invoiced accommodation price payable by the final consumer, whereas some of OTAs applied the commission rate that ranges between certain percentages. The amount charged depends on the size of undertakings.

65. Furthermore, in its sector inquiry the CCA wanted to establish whether there had been an upfront number of accommodation units (rooms) within the total accommodation capacity that had been reserved by the accommodation provider for online booking, and if so, how this share had been determined. All but one of the participants of the survey stated that there had been no upfront shares of accommodation capacity in the total facility capacity that would be intended or reserved for online booking.

66. In addition, the CCA sector inquiry included a thorough analysis of the general terms of business of OTAs and the provisions contained in the agreements that OTAs concluded with the accommodation partners (hotels etc.).The investigation into the application of the parity clauses (most-favoured nation clause, MFN) in the contracts OTAs concluded with the hotels showed that the parity clauses are a constituent part of the general terms of business and/or the agreements with accommodation partners. A number of general terms of business and contracts with OTAs contained either a wide parity clause or a narrow party clause.

67. The comparative approach to the EU practice included the study of all the recent and relevant activities of the European Commission and the NCAs in the online hotel booking market.

3. Overlapping Issues between EU and National Regulations for the Digital Sector

68. In the process of preparing the legislation to adopt the regulation for implementation of the DMA in Croatia there were no overlapping issues that emerged. Explaining to the public what the DMA is regulating and who is competent for what, in other words, understanding that EC will be competent for DMA implementation and what will be the role of the CCA, is more the issue.

69. However, there is one good example in the sector inquiry in online hotel booking and its relevance for DMA. In 2024, after the DMA entered into force and started its implementation, Booking.com was designated as a gatekeeper which has special importance for Croatia as a tourist country with tourism being a very significant branch of economy.[15] This means that now Booking.com will have to align its business activities and practices with the provisions of the DMA and it will be unified in the whole EU territory and not as was previously the case, i.e. individually from one EU country to another. In that respect, there is no doubt that Croatia will strongly benefit from alignment of Booking.com's business with the new DMA rules.

II. Actions Undertaken by the EU Member State to Facilitate the Integration and Enhance Synergies between EU and National Legislation for the Digital Sector

1. Best Practice in the Application of Articles 1(5), 1(6), 38(7) and 39 of the DMA

A. *The Tools for Collaboration in the Implementation of the DMA*

70. Within the ECN several good mechanisms are established for the collaboration in the implementation of the DMA: the High-level Group, Digital Markets Advisory Committee and ECN Digital Working Group, including data science and AI. The CCA is included in the last two, there is one representative from the CCA in the advisory committee on the level of vice-president of the Competition Council and one representative of the relevant Ministry of the Economy. The expert team of the CCA are members of the ECN Digital Working Group. All three tools and especially the High-level Group consisting of relevant EU regulators are excellent examples of collaboration between the EC and national authorities of

15 National revenue from tourism in 2023 amounted to 14,6bn EUR and 19,6% GDP. Croatian National Bank, 'Record Revenues from Tourism in the Third Quarter of 2023' (29 December 2023) <https://www.hnb.hr/-/rekordni-prihodi-od-turizma-u-trecem-tromjesecju-2023> accessed 12 July 2024.

the EU Member States, helping to create the best possible practice, and expertise with the aim of ensuring that the DMA and other sectoral regulations applicable to gatekeepers are implemented in a coherent and complementary manner.[16] The ECN High-level Group recognised the need for a coordinated enforcement through the choice of appropriate regulatory instruments and other means to support cooperation fostering a consistent approach to ensure effective cooperation within the DMA and other instruments. In addition to that, many NCAs of EU Member States regularly publish useful papers on digital market topics and ECN has started to organise dedicated conferences about DMA.[17] The CCA is closely following such papers and attending national and international events on digital markets and their regulation.

B. *Coordination between EU Asymmetric Regulation and Public and Private Enforcement by NCAs and National Courts*

71. Considering that the DMA will not affect the competence of the NCAs to apply Articles 101 and 102 TFEU, the CCA has already investigated, and will continue to investigate general terms of contracts applied by digital platforms containing such contractual terms towards its business-to-business users of services in the context of the implementation of Articles 101 and 102 TFEU or corresponding national provisions.[18]

72. In relation to private enforcement at national courts, in Croatia there are practically no cases for breach of competition rules and damages claims based on the breach of competition law at competent commercial courts.[19] This applies not specifically to the digital sector where there are still no competition cases at national level but to the whole set of competition enforcement. Hence, in that sense there is a certain asymmetry between prevailing public enforcement by the competition authority and weak private enforcement by courts applying to all sectors including the digital sector.

C. *Legislative Mechanisms Provided at National Level to Ensure Coordination with EU Regulations*

73. Whereas the EC will have the role of the enforcer, the NCAs in many EU countries will have the role as designated body for coordination and support to the EC in applying DMA and will deal more with digital cases. In Croatia, regulation on the implementation of the DMA empowers the CCA as the designated coordinating

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16 Commission Decision of 23.3.2023 on setting up the High-level Group for the Digital Markets Act C(2023) 1833 final <https://competition-policy.ec.europa.eu/system/files/2023-03/High_Level_Group_on_the_DMA_0.pdf> accessed 12 July 2024.

17 For example, ACM, 'Registration for the ECN Digital Markets Act Conference 2024 is now open' (8 May 2024) <https://www.acm.nl/en/publications/registration-ecn-digital-markets-act-conference-2024-now-open> accessed 12 July 2024.

18 Croatian Competition Act, arts 8 and 13, Official Gazette Nos 79/09, 80/13, 41/21.

19 For more detailed analysis see Jasminka Pecotic Kaufman, 'How to Facilitate Damage Claims? Private Enforcement of Competition Rules in Croatia – Domestic and EU Law Perspective' (2012) 7 Yearbook of Antitrust and Regulatory Studies.

body for the implementation of the Digital Markets Act (DMA) at national level.[20] The Croatian regulation has been adopted in order to safeguard the harmonised application and enforcement of this regulation, ensuring proper implementation framework for the implementation of the EU *acquis Communautaire*. This legal solution is in line with Article 38, paragraph 7 of the DMA and the obligation of EU Member States to ensure the implementation of the DMA with cooperation of the competent national authority by the application of national competition rules against gatekeepers.

74. The Croatian Regulatory Authority for Network Industries (HAKOM) has been elected as coordination body for the implementation of the Digital Services Act (DSA) in addition to its role as the regulatory body responsible for internet access tariffs and charges.[21]

75. The issues of personal data protection are supervised by the Croatian Personal Data Protection Agency (AZOP).

III. Conclusion: The DMA-the first legal instrument for broader digital transformation in the EU

76. The platforms for digital services and new technologies such as artificial intelligence (AI) strongly impact societies and economies. The innovations in question have redefined the way people communicate, shop, conduct business or access information on internet. Consequently, this has led to the need to regulate digital platforms based on digital strategy aiming to create more secure and open single digital markets in the EU with emphasis on rights of users and fair competition. The regulation was accomplished with the adoption of two important legal acts modernising EU legislation on digital services (DSA) and digital markets (DMA) Acts. The DMA sets the rules for undertakings designated as gatekeepers more sensitive to unfair practices including services such as internet search engines, social media and cloud computing. The DMA can be absolutely considered as the most important piece of legislation for the further digital transformation of law and procedures and regulation in the EU. Such wider EU legislative initiatives have already been developed soon after the DMA in the form of the Act on artificial intelligence (AI) and Act on cyber security. The new EU AI Act can be considered as a very comprehensive and risk-based legislative framework.[22] The goal of the AI Act is to address different risks that can occur by AI (health, safety and fundamental rights) and at the same time to promote innovation and benefits of AI.

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20 Regulation 2022/1925, Official Gazette No 131/2023 (2 November 2023) <https://narodne-novine.nn.hr/clanci/sluzbeni/2023_11_131_1799.html> accessed 12 July 2024.

21 Regulation 2022/2065, Decision of the Government on the coordinator for digital services, Official Gazette Nos 19/24 (15 February 2024) <https://narodne-novine.nn.hr/clanci/sluzbeni/2024_02_19_306.html> accessed 12 July 2024.

22 Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence and amending Regulations (EC) No 300/2008, (EU) No 167/2013, (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828 (Artificial Intelligence Act), OJ L, 2024/1689, 12.7.2024.

77. In relation to competition and application of the DMA, from the competition enforcement aspect it is positive that the possibility to conduct proceedings based on the Articles 101 and 102 TFEU or corresponding national provisions still remains in practice because it should not be forgotten that DMA is *ex ante* regulation and tools used in antitrust cases are complementary with the DMA but at the same time the DMA with its tools cannot replace traditional tools and goals of competition law. Another benefit of the DMA for the NCAs is that they will be able to save their resources and direct their investigation and research to other undertakings in a dominant position, but which are not designated as gatekeepers, and which are outside of scope of the DMA. Moreover, in situations with suspicion that certain practices might be harmful, the task of the NCAs will include concrete investigation considering that in every national market there are active digital platforms which might be dominant but that are not at the same time designated as gatekeepers. The national competition authorities will also have an important role filling the gaps caused by the introduction of the DMA. In order to be able to do that properly, NCAs have to be stronger and better equipped with more resources for education in digital markets for its staff and with the new types of experts necessary for future digital cases, such as data analysts or IT engineers.

78. The implementation of the DMA is still in its early stage, hence there is sas yet no case law on DMA so it remains to be seen how successful its application will be. The success of DMA will depend on the contribution of the business community and on clear guidelines for undertakings on how to best comply with its rules. Here the role of national digital coordinator between the different bodies could also be helpful for their implementation. The High-level Group for the DMA will continue to exchange enforcement experience and regulatory expertise relevant to the implementation and enforcement of the DMA and also with regard to AI. The level of development of national strategies in digital or AI areas will also have significant impact on the success of the DMA and the implementation of the AI Act.

79. In Croatia the number of companies dealing with aspect of digital business is constantly growing as are new digital platforms and apps, so too is the interest for all digitally related topics like digital market, IA, platforms and data management which can be observed from many public events (lectures, roundtables, conferences) dedicated to those issues where different experts discuss them. One especially interesting example is the launch of the Academy for AI for undertakings in the Croatian Chamber of Commerce in March 2024. The aim is to educate undertakings and their employees how to use AI more successfully and adequately in their business activities. This education is support by the digital transformation of the Croatian economy. Croatia has legislation in place with legal frameworks and strategic documents such as the Digital Strategy and as an EU Member State it must follow EU legislation and adapt its national legislation. In the Digital Strategy of Croatia until 2032, all mentioned areas are covered and taken into account with the priority of creating a developed and innovative digital economy. For example, on cybersecurity: ‘In further development of digital economy and

society it is necessary to permanently include cyber security and, in that manner, to ensure the trust in digital technology and in process of digital transformation'.[23]

80. From everything outlined above it is clear that with the adoption of first important legislation on EU and national level, a new era of the digital world and market, has taken place. The next stage would be to put this regulation into practice and to control and direct large digital platforms from potentially harmful practices for consumers and the economy. At the same time, it is very important to put new digital technologies such as AI to good use, in order to benefit from them, especially in the field of health, education, labour, the environment and business in general. In that process of digital transformation, competition law with its traditional tools should remain in place but the NCAs should also be equipped with new knowledge, new experts and should follow new approaches in competition law if such an approach is developed over time. Croatia will continue its path to digital regulation in all sectors by supporting its digital business and continuously following best EU practices.

[23] Digital Croatia Strategy until 2032, page 37.

Navigating The DMA

Application Across National Jurisdictions

Gabriella Muscolo,
Alessandro Massolo (eds.)

The Digital Markets Act (DMA) marks a pivotal shift in the EU's approach to regulating the digital economy, targeting powerful gatekeepers to foster fairness and contestability on digital markets. While the European Commission plays a central role in its enforcement, EU Member States are vital contributors, adding layers of complexity and nuance to the regulation's implementation.

This book offers a twofold approach: an insightful, detailed overview by the Editors, providing a cohesive analysis of the DMA's role and its interaction with broader EU and national policies, followed by expert contributions from key European jurisdictions. These national perspectives provide an exhaustive exploration of legislative initiatives, landmark cases, and enforcement practices, offering a comprehensive understanding of the DMA's implementation across the EU.

Through this structured and collaborative format, the book not only highlights the challenges of harmonizing EU and national regulatory efforts but also offers practical insights into how Member States are navigating the DMA's integration. Essential for policymakers, legal practitioners, academics and industry stakeholders, this volume serves as a definitive guide to the DMA and its transformative impact on Europe's digital markets.

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