



Axon Advisory Research

Regulating 'Big Tech': current initiatives in key jurisdictions



The data-driven business growth and concentration of power of (mostly US) tech giants have been attracting regulatory initiatives across the globe. We review the main issues these are supposed to address, and examples of national and international measures taken or proposed.

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1. Introduction

We are all familiar with Big Tech's disruptive ubiquitous online presence. Its various manifestations have become vital enablers in our private and professional lives, with addictively popular products and value propositions for communities across the globe.

However, the bed of roses of tech giants' unparalleled success may be getting thornier. The impact of their outsized power on competition and their pervasive influence on consumers are attracting increasing scrutiny by regulators, with actions targeting areas of particular concern, such as antitrust, data protection and online content regulation. Acknowledging that some problematic areas of Big Tech conduct may not be self-correcting through market mechanisms alone, legislative instruments and policy adjustments are being introduced to impose some top-down controls over the Big Tech ecosystem.

In this article, we propose a brief definition of Big Tech, explore the main problems stemming from its strategy and operations, and shed light on actions taken by jurisdictions aimed at aligning the interests of consumers, tech giants, and regulatory authorities.

The impact of tech giants' outsized power on competition and their pervasive influence on consumers are attracting increasing scrutiny by regulators

2. Defining 'Big Tech'

Big Tech companies can be loosely defined as the largest and most dominant information technology companies directly affecting consumers' day-to-day lives and the way we interact with our human environment. They have grown at an astronomic pace over the last decade and have redefined digital economy through extremely popular proprietary products and services, and unassailable network economies.

Five technology companies can be considered to be the international technology arena's undisputable giants: **Google**, **Amazon**, **Facebook**, **Apple**, and **Microsoft**. They are often abbreviated as 'GAFAM' (or 'FAAMG') and have all originated in the United States. Their market capitalisation has grown from around €821 billion in 2010 to around €7.6 trillion by 2021 (see Exhibit 2.1), placing them amongst the most valuable global public companies in human history.

Big Tech companies have grown at an astronomic pace over the last decade and have redefined digital economy

A Decade of Growth for Big Tech

Market capitalisation of GAFAM (bln EUR)

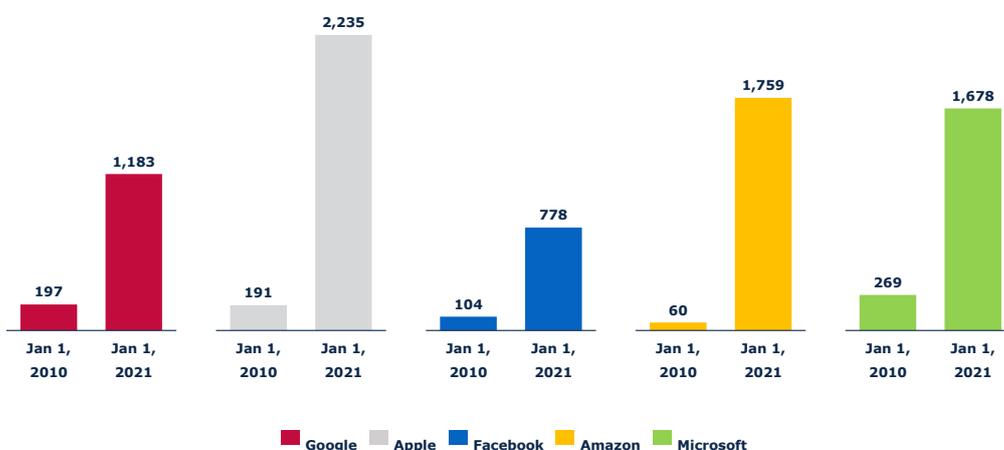


Exhibit 2.1: Market capitalisation of GAFAM, January 1st 2010 and 2021
[Source: Axon Consulting, based on CompaniesMarketCap¹]

With our daily lives increasingly dependent on digital services, the GAFAM companies now reign over a huge consumer base and essential daily activities such as communication, education, entertainment, and business. Moreover, since early 2020, the global COVID-19 pandemic and social

¹ Companies Market Capitalization, "Largest Companies by Market Cap", 2021; Available at: <https://companiesmarketcap.com/>

distancing have further heightened the need for digital solutions as a safer substitute to established social and business practices, such as face-to-face meetings, business travel or large professional events.

But how have Big Tech companies achieved all this, and how have they become such key drivers of massive societal change? Beyond the undeniable talent and vision of their management, there are four main factors that have contributed to the Big Tech's success story:

- ▶ GAFAM companies leverage countless **data points** collected from users and have mastered the science of big data. The analysis of collected information reveals consumers' subtle personal preferences and behaviour, giving insights that have allowed Big Tech companies to optimise their strategies, products, and services in accordance with their users' needs.
- ▶ They have built individual **ecosystems** under their brands, through which consumers can seamlessly connect and integrate several digital devices, and access various types of media, services, and social media platforms offered by these companies. This creates a strong lock-on effect: users enjoy the benefits of such a one-stop-shop and may not bother to even consider alternatives.
- ▶ They draw maximum benefits from the **network effects and positive externalities** of a huge number of private and business users of the same platform across the world.
- ▶ Last but not the least, the Big Five have further fuelled their tremendous growth through **mergers and acquisitions**. The GAFAM companies collectively made more than 400 acquisitions between 2008 and 2018. Most of the acquired targets were providing complementary or competing digital products or services.²

Big Tech's success can be attributed to their extensive use of big data, establishment of individual ecosystems, network effects, and large number of mergers and acquisitions

² Mike Walker, "Reviving Competition, Part 3: Strengthening the Laws to Address Monopoly Power", 2021; Available at: <https://docs.house.gov/meetings/JU/JU05/20210318/111350/HHRG-117-JU05-Wstate-WalkerM-20210318.pdf>

3. Should digital giants be (further) regulated?

As Big Tech companies continue to gain worldwide traction and squeeze their remaining competitors' market shares, concerns about their strong market dominance, financial power, and influence over society are being raised by international bodies, regulators, consumers and, of course, their competitors around the globe. The focal points of this increasingly heated debate can be categorised under the four main areas discussed below: antitrust, taxation, data privacy and online content.

3.1. Monopoly power/dominance

One of the main issues associated with tech giants is the combination of their market power with conduct that is challenged as anti-competitive. High barriers to entry through Big Tech's commanding presence and aggressive market strategies lessen competition and reduce business opportunities for start-ups and new entrants, other than the prospect of their eventual acquisition by one of the GAFAM groups.

It should be noted that, at least in recent years, Microsoft has been generally spared from the big antitrust cases in full swing or brewing against the other Big Tech companies, and this despite Microsoft's continuing dominance of the market of PC operating systems, and its history of a long antitrust litigation in Europe and the USA. A combination of disruptive factors in the industry and strategic decisions by the group have apparently rendered some of the earlier regulatory concerns regarding Microsoft's dominance obsolete.

3.1.1. Data advantage

Collecting and mastering a vast amount of consumer data in exchange for free services allows Big Tech and its partners to craft unique and effective strategies of client acquisition and retention. There is a fine line between using personal and other data from one line of business to improve customer experience, and relying on this advantage to muscle out rivals in other business areas. Dominant companies crossing such fine lines are bound to generate competitive concerns.

High barriers to entry through Big Tech's commanding presence and aggressive market strategies lessen competition and reduce business opportunities for start-ups and new entrants

Regulators are increasingly concerned that data held by Big Tech companies are used to feed business decisions that are intentionally aimed at eliminating competition

Regulators and other stakeholders are increasingly concerned that data held by Big Tech companies are used to feed superior market intelligence and business decisions that are intentionally aimed at eliminating competition. Big Tech's data advantage in the markets they dominate allows them to gain market power in new, so far competitive, markets.

3.1.2. 'Killer' mergers & acquisitions

Mergers or acquisitions are a vital part of corporate growth strategy. Beyond the immediate effect of access to target's valuable assets and customer base, acquisitions allow for cost savings through economies of scale and integration, and synergies that consumers and competition on the market may also benefit from.

Acquisitions are also a proven way to gain share in a new market without having to build internal know-how and run the risk of a greenfield operation. Most importantly for present purposes, acquisitions allow tech giants to pick and choose successful new products, business models and value propositions created from more nimble and innovative start-ups, and integrate them into their ecosystem's value chain. By doing so they eliminate a potential competitor and can at the same time expand their existing offerings.

The GAFAM companies are therefore often accused of abusing their market dominance or near-monopoly by neutralising emerging competitive threats through 'killer' acquisitions. Moreover, as such nascent small competitors usually have limited turnover and market shares, their acquisition may fall below merger review thresholds and hence also the antitrust agencies' radar screens. According to recent calculations by *Mergermarket*, since 2015, only 12 out of 332 acquisitions or investments involving Google, Amazon, Facebook or Apple ('GAFA') led to a regulatory intervention.

3.1.3. Exclusionary conduct

Control over a massive portion of the digital ecosystem, and indeed being dominant in general, is not necessarily anti-competitive, as long as the conduct of such dominant players allows for effective competition by their existing or new rivals.

The GAFAM companies are often accused of abusing their market dominance by neutralising emerging competitive threats through 'killer' acquisitions

However, Big Tech companies are facing increased antitrust scrutiny due to their real or alleged 'exclusionary conduct'. This is defined as '*behaviour that materially disadvantages one or more actual or potential competitors or tends to foreclose or limit the ability or incentive of one or more actual or potential competitors to compete.*'³

There are several types of conduct perceived by authorities as exclusionary. One is linked to the **dual role of platforms with market power**: Big Tech can use online platforms they control as an unfair competitive tool to promote their own products and services against those of their online platform clients. For instance:

- ▶ In June 2017, Google received a fine of € 2.42 billion from the European Commission for abusing its dominance as a search engine, by giving an illegal advantage to its own comparison-shopping service. (Google has appealed, and the case is now pending before the European Courts).
- ▶ Amazon has been accused of strengthening its own branded retail business by giving it larger and more exclusive virtual space on its online platform as compared to those of competitors, and by prioritising its own products in search results.⁴
- ▶ The European Commission is concerned that Amazon and Facebook may be using information they gather from their sellers using the two groups' marketplace services to gain a competitive edge.

Another example of alleged exclusionary conduct by Big Tech companies **is predatory pricing**. Organisations from various sectors rely heavily on the intermediate advertising and sales channels these tech companies provide. It is claimed that these third-party businesses carry the burden of low prices set by tech giants on their own products. Digital platform providers can afford selling their own products at lower than the market price of similar products insofar as this can often be a supplementary revenue stream rather than their core business.

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³ Carpenter Wellington PLLC, "Antitrust Law Reform and The Future of Big Tech Companies", 2021; Available at: <https://carpenterwellington.com/post/antitrust-law-reform-future-big-tech-companies/>

⁴ Vox, "The Big Tech antitrust report has one big conclusion: Amazon, Apple, Facebook, and Google are anti-competitive", 2020; Available at: <https://www.vox.com/recode/2020/10/6/21505027/congress-big-tech-antitrust-report-facebook-google-amazon-apple-mark-zuckerberg-jeff-bezos-tim-cook>

This results in other businesses being forced to offer lower prices for their products as well so that they can fairly compete with the tech giants in the market. Of course, not all businesses can survive under such loss-making conditions.

A related contested practice of dominant platforms are **most-favoured customer clauses**. In a very recent US case, the attorney-general for the District of Columbia has launched a lawsuit against Amazon, accusing it of charging third-party sellers fees of as much as 40% of their product's price in order to be able to sell through Amazon's website, while also requiring them not to charge less for the same products if they sell these through other platforms. In 2019, Amazon announced that it would no longer prohibit third-party sellers from offering cheaper prices through other platforms, but the lawsuit claims that this practice still continues, through other means.

3.1.4. Reduced consumer choice

The proprietary tech ecosystems established by Big Tech companies offer multiple connected services and comprehensive marketplaces from which consumers can benefit. There is no doubt that using a single ecosystem to meet all your needs from digital services is more convenient than searching for alternatives.

But are consumers really free to choose from a variety of competing services, or are they caged into a single ecosystem without noticing? Some regulatory authorities think the latter holds true and have several reasons to support their position: network effects, 'default biases' and product bundling/tying make it more difficult for consumers to switch away from dominant Big Tech products.

For instance, all Apple devices come bundled with pre-installed Apple applications such as the company's own digital navigation app Maps and its web browser Safari, which compete with Google's Maps and Chrome, respectively. They are also assigned as the default web browser and navigation app in Apple's iPhone. Although this practice, in and by itself, does not directly restrain users from searching for alternative apps to satisfy their needs, it allegedly creates an unfair advantage for Apple.

Taking this one step further, tech giants sometimes prevent their products or services from interoperating with other networks and platforms by making them unavailable on competitor products. This way, they extend

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the customer lifecycle significantly. This self-preferencing approach is seen as a threat against consumers' right to choose the individual products or services they want to use for distinct purposes, and ultimately discourage competition.

For example, in July 2018, the European Commission imposed a fine of € 4.34 billion on Google for three types of restrictions on Android device manufacturers and network operators, aimed at ensuring that traffic on Android devices went to the Google search engine.

3.2. Privileged tax treatment

Technology companies and their digital services possess certain revenue sourcing characteristics that differentiate them from other sectors. This allows them to optimise their tax liability and reduce the tax burden in ways that seem almost provocative, even if they are generally in compliance with existing tax rules. According to a recent Nikkei article, the tax burden of Google, Apple, Facebook and Amazon is about 15%, or around 60% of the average tax due by more than 50,000 large companies worldwide.⁵ As mentioned in the article, the main reason for this discrepancy is that Big Tech's profits derive almost entirely from intangibles (i.e., mostly intellectual property rights), which can easily be located in low-tax jurisdictions.

The economic harm to government finances and part of the economy through the COVID-19 pandemic, in stark contrast to the Big Tech's stellar performance in the same period, seem to have further motivated public authorities to accelerate the process or adjusting their tax regimes to catch at least part of the tax revenues one would expect to accrue from Big Tech's international operations.

However, this is easier said than done, given the border-defying revenue streams of tech giants, and a problem that cannot be easily addressed without national coordination. Legal challenges against the tax practices of Big Tech through the existing legal mechanisms have their own difficulties.

The tax burden of Google, Apple, Facebook and Amazon is about 15%, or around 60% of the average tax due by more than 50,000 large companies worldwide

⁵ Nikkei Asia, "Big Tech tax burdens are just 60% of global average", 2021; Available at: <https://asia.nikkei.com/Spotlight/Datawatch/Big-Tech-tax-burdens-are-just-60-of-global-average>

For example:

- ▶ In August 2016, the European Commission found that two Irish tax rulings lowered the tax paid in the country since 1991 by two Irish subsidiaries of Apple, and ordered Ireland recover unpaid Apple taxes worth € 13bn. However, this decision was annulled by the EU General Court in July 2020, and the Commission has subsequently launched a (still pending) appeal against this annulment.
- ▶ Similarly in 2017, the European Commission decided that Luxembourg's tax treatment of Amazon amounted to illegal State aid. However, this decision too was annulled by the EU General Court on 12 May 2021 (and will probably be followed by a Commission appeal).

3.3. Violations of consumer data privacy

Big Tech thrives on big data. Such reliance on private information of consumers comes with a duty to manage it a responsible and transparent manner. As such, consumers and regulators rightfully expect from companies to set clear data privacy policies and collect only information that is essential for the services they provide to consumers.

The debate around consumer data is strongly related to the extent of their monetisation by tech giants. To be able to provide some of its services and platforms for free (which creates a huge competitive edge), Big Tech relies on monetising the data they collect by targeting their advertisements to users or by sharing such data with other service providers. Such monetisation opportunities are largely incompatible with increasingly strict rules on the protection of personal data and privacy.

Even if personal data are now protected by specific rules, led by Europe's General Data Protection Regulation (GDPR) as the 'gold standard', the market power enjoyed by Big Tech has led at least one regulator, Germany's *Bundeskartellamt*, to examine potential data protection infringements also from a competition law viewpoint, as a form of abuse of a dominant position. In 2019, the agency ordered Facebook to change its terms and conditions, in order to address charges that its collection and commercialisation of user data constituted an illegal abuse of market power. The case is still pending on appeal, and the fundamental question of the interface between competition and data protection laws was recently referred by the German court to the EU Court of Justice.

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Changes to Big Tech's personal data practices can also have more direct antitrust implications, if they can lead to the exclusion of competitors. For example, online advertising trade organisations have been complaining to the French competition authority that Apple is limiting competition through data protection policies that are more stringent than those specified by the EU. The European Commission has also hinted that such seemingly user-friendly changes may actually have an exclusionary effect, by weakening the market position of third-party apps providers.

3.4. Accountability for online content

The concerns of regulators and governments relating to Big Tech's role also extend to content disseminated to the public through dominant online platforms, as free, peer-to-peer information flow between communities across the world. Social media platforms, news media, and online search engines have created a huge information communication market globally, enabling all forms of content to reach millions of users almost instantly. The popularity and influence of such information is not necessarily commensurate to its value, seriousness or commitment to the truth and the law, as evidenced by the proliferation of fake news, hate speech, and unlawful content.

With power comes responsibility. Even if online platforms do not generate contestable content themselves, they are increasingly under pressure to manage it more responsibly, balancing such a difficult task with freedom of expression and consumer welfare.

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4. International regulatory response

The problems discussed above have given rise to specific legislative and regulatory steps by governments across the world. Although much of this is still work in progress, with diverse focal points and details, there also appears to be shared visions in this field.

In the rest of this section, we provide an overview of the most recent and relevant regulatory actions taken or contemplated in this area.

4.1. Monopoly power/dominance

- ▶ **European Union – Digital Markets Act:** On 15 December 2020, the European Commission proposed two legislative initiatives: the Digital Services Act (DSA) and the Digital Markets Act (DMA). While DSA focuses on online content, DMA is aimed at protecting competition in the digital markets of Europe, through ex ante measures that would complement the current, slow and uncertain, ex post intervention. The proposed DMA sets out criteria for designating certain dominant digital platforms as 'gatekeepers' that would be subject to stricter compliance rules. These will certainly include GAFAM, but also a range of other digital market players. In case of non-compliant behaviour, companies will be exposed to sanctions such as fines of up to 10% of their worldwide turnover.
- ▶ **Germany – 10th Amendment of the German Act against Restraints of Competition:** Rather than waiting for the adoption of EU-wide legislation under the DMA to come in effect, Germany has adopted its own ex ante regulation regime against possible anti-competitive conduct of tech giants, which entered into effect in January 2021. The amendment introduces an extensive list of types of conduct presumed to be anti-competitive, brings changes to merger control, and prohibits certain types of conduct which would significantly disrupt competition in the German digital market. Based on this new legislation on large digital companies, the *Bundeskartellamt* is already investigating (at least) Amazon and Google.

The most recent and relevant regulatory actions taken or contemplated for Big Tech include introduction of antitrust laws, digital service taxes, data protection measures, and countermeasures against harmful online content

- ▶ **United States - Competition and Antitrust Law Enforcement Reform Act (CALERA):** This proposed US antitrust legislation is intended to introduce new, stricter rules for large digital market players, such as strengthened pre-merger review standards, new types of prohibited conduct, increased flexibility for plaintiffs in antitrust cases, and increased whistle-blower protections.
- ▶ **United Kingdom – Digital Markets Unit (DMU):** The United Kingdom has now established a new tech-specific regulatory and competition unit inside the Competition and Markets Authority (CMA), which will start working on pro-competition reforms. Once equipped with the necessary statutory powers, the DMU will work closely with various stakeholders and other regulators in the country, to help the government develop the regulatory framework and functions for digital markets. One of the key measures will be stricter rules for digital sector mergers, similar to Germany's and the United States' plans for digital regulation.
- ▶ **China – Antitrust Guidelines for the Platform Economy:** China's State Administration for Markets Regulation (SAMR) introduced Antitrust Guidelines for the Platform Economy in November 2020. They came into effect in February 2021. The main aim of the Guidelines is to prevent monopolistic practices of Chinese internet companies providing platform services and ensure fair competition in the market. The rules set out in the Guidelines include measures against monopoly agreements, abuse of dominant market position, and abuse of administrative power to eliminate and restrict competition, amongst others.

The United Kingdom has now established a new tech-specific regulatory and competition unit inside the Competition and Markets Authority (CMA), which will start working on pro-competition reforms

The table below demonstrates the main antitrust and consumer protection issues addressed by the above legislation.

Legislation		Abuse of data advantage	Killer mergers & acquisitions	Exclusionary conduct	Reduced consumer choice
	European Union – Digital Markets Act (DMA)	✓		✓	✓
	Germany – Tenth Amendment of the German Act against Restraints of Competition	✓	✓		✓
	United States - Competition and Antitrust Law Enforcement Reform Act (CALERA)		✓	✓	
	United Kingdom – Digital Markets Unit (DMU)	✓	✓	✓	✓
	China – Antitrust Guidelines for the Platform Economy	✓	✓	✓	

Exhibit 4.1: Scope of digital antitrust laws reviewed
[Source: Axon Consulting]

4.2. Privileged tax treatment

The **Organisation for Economic Co-operation and Development (OECD)** has organised negotiations with over 130 countries to review and update the international tax system so as to make it more fit-for-purpose for the digital economy. It has a current proposal on the table,⁶ with a broader scope (not just covering the digital economy), and expects it to be finalised by mid-2021. Under the proposal, multinational businesses would be required to pay at least part of their corporate taxes in the country of their consumers' location.

At a national level, several countries have implemented or announced a Digital Services Tax (DST). The interim measures taken by countries vary in scope, tax rate and applicable tax base and, in principle at least, should be finalised once consensus is reached on the OECD's proposal. Some examples of countries with already effective DSTs are presented in the Exhibit 4.2 below.

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Country	Rate	Applicable Tax Base
Austria	5%	<ul style="list-style-type: none"> • Online advertising services
France	3%	<ul style="list-style-type: none"> • Provision of a digital interface • Advertising services based on users' data
Italy	3%	<ul style="list-style-type: none"> • Advertising on a digital interface • Multilateral digital interface that allows users to buy/sell goods and services • Transmission of user data generated from using a digital interface
Spain	3%	<ul style="list-style-type: none"> • Online advertising services • Sale of online advertising • Sale of user data

⁶ OECD, "Tax Challenges Arising From Digitalisation – Report on Pillar One Blueprint", 2020; Available at: <https://www.oecd.org/tax/beps/tax-challenges-arising-from-digitalisation-report-on-pillar-one-blueprint-beba0634-en.htm>

Country	Rate	Applicable Tax Base
Turkey	7.5%	<ul style="list-style-type: none"> • Online advertising services • Sales of online content • Paid services on social media websites
United Kingdom	2%	Revenue in excess of £25M derived from UK users from three types of digital services: <ul style="list-style-type: none"> • Social media platforms • Internet search engines • Online marketplaces
Poland	1.5%	<ul style="list-style-type: none"> • Audio-visual media service • Audio-visual commercial communication

Exhibit 4.2: Examples of countries with effective DSTs
[Source: KPMG⁷]

Within the framework of the OECD negotiations, the US government has proposed a minimum tax rate of 15% on worldwide book income for corporations that have such worldwide book income in excess of USD 2 billion

In addition, the **European Commission** is expected to propose an EU digital levy Directive later this year.

Within the framework of the OECD negotiations, the **US** government has proposed a minimum tax rate of 15% on worldwide book income for corporations that have such worldwide book income in excess of USD 2 billion. Although not targeting Big Tech as such, it is clear that US digital giants will be among the companies most affected by such a measure, if it is adopted.

4.3. Violations of consumer data privacy

- ▶ **European Union – General Data Privacy Regulation (GDPR):** Sharpened international focus on privacy policies dates back to 2016 when the EU replaced its 1995 Data Protection Directive with a more detailed and intrusive General Data Privacy Regulation (GDPR), which came into force in 2018. The GDPR is generally recognised as an important framework of reference worldwide and is of capital

⁷ KPMG, "Taxation of the digitalized economy", 2021; Available at: <https://tax.kpmg.us/content/dam/tax/en/pdfs/2020/digitalized-economy-taxation-developments-summary.pdf>

importance to all GAFAM companies, considering their data-driven cross-border business models. The Regulation sets clear rules on the collection, processing and protection of personal information from any individuals residing in the EU and introduces very specific consent provisions. Further, it imposes strict rules on the export of personal data outside the EU. Non-compliance results in serious fines of up to € 20 million or 4 % of the violating company's total worldwide annual turnover, whichever is higher. According to reported statistics, since July 2018 about 650 fines have been imposed under the Regulation, totalling almost € 300 million, even if several of these fines have been subsequently lowered by national courts. The third largest fine (€ 50 million) was imposed on Google by the French data protection authority for 'lack of transparency, inadequate information and lack of valid consent regarding ads personalisation.' It has been upheld on appeal.

- ▶ **United States – California Consumer Privacy Act (CCPA):** The US still lacks federal legislation on data privacy despite legislative attempts in the last ten years. To close the gap, several state legislatures have moved forward with their own state-level consumer privacy laws. As a leading example, the California Consumer Privacy Act came into effect in early 2020. The Act focuses on providing the residents of California with the right to know the data collected about them, which data are shared with other parties and for what purpose, and empowers the citizens with additional rights to receive or make the collector delete the data about them. Further, it limits data collection activities of corporations and provides for hefty sanctions in case of non-compliance. Despite similarities with the GDPR, there are also important differences: While the EU has adopted a 'privacy by default' approach with consent *prior* to data processing as a key condition, the CCPA follows a 'transparency' approach and gives users power to have control over their data *after* they are collected by corporations. Further, the CCPA defines personal information as 'extra-personal' (i.e., information not necessarily specific to an individual but in the category of household data), which differs from the GDPR's exclusively individual definition of personal data.
- ▶ **China – Personal Information Protection Law (PIPL):** China has moved forward with tighter rules around how citizens' personal information is collected by private enterprises to further rein in the power of its national technology giants, such as Alibaba and Tencent.

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While the EU has adopted a 'privacy by default' approach, the US' CCPA follows a 'transparency' approach and gives users power to have control over their data after they are collected by corporations

The PIPL defines 'personal information', how it may be processed, consumer consent requirements, and the rights of individuals whose data are being processed by tech corporations. There are similarities to the principles reflected in the GDPR but also differences in terms of legal grounds, rights, obligations, and cross-border transfer of data. The PIPL sets a maximum fine of up to 50 million yuan (about € 6.5 million) or 5% of the company's annual turnover.

- ▶ **Turkey – Personal Data Protection Law (PDL):** According to UNCTAD statistics, data protection laws in some form are now in place in 128 out of 194 countries.⁸ As an example of such national legislation, and although not specifically targeted at Big Tech, the Turkish Law on the Protection of Personal Data came into effect in 2016. A dedicated Turkish Data Protection Authority has been established as responsible for enforcement. The legislation introduces requirements for personal data processing, transferring of personal data, and defines several rights of individuals whose data is being collected. The law follows a similar approach as the GDPR in Europe with minor differences in terms of reporting of data processing activities to a registry information system and material and territorial scope.

4.4. Accountability for online content

- ▶ **European Union – Digital Services Act:** In December 2020, the European Commission posed a regulation (the 'Digital Services Act' or DSA) setting out obligations for online intermediaries, including network infrastructure providers, hosting services, online platforms, and 'very large online platforms', regarding combatting online harm. DSA focuses on combatting online illegal content and disinformation, and ensuring transparent advertising based on an ex-ante approach.
- ▶ **France – Amendments to the bill on republican principles:** Acting unilaterally until the DSA is adopted, the French government has amended a bill to act against large online platforms on the disinformation and hate speech front. Applicable since January 1, 2019 and set to expire by the end of 2023, the measure requires

The EU's Digital Services Act focuses on combatting online illegal content and disinformation, and ensuring transparent advertising based on an ex-ante approach

⁸ For an overview, see the maps produced by the French data protection authority (Available at: <https://www.cnil.fr/en/data-protection-around-the-world>) and UNCTAD (Available at: <https://unctad.org/page/data-protection-and-privacy-legislation-worldwide>).

online platform providers to take down obviously illegal or hateful content flagged by users, within 24 hours. Non-compliance results in significant fines of up to EUR 1.25M.

- ▶ **Singapore – Protection from Online Falsehoods and Manipulation Act (POFMA):** The Singaporean government passed the POFMA in May 2019 with the intention to combat fake news and misinformation. Infocomm Media Development Authority (IMDA) is the designated agency to ensure the Act's enforcement. The Act requires digital platforms, such as search engines and social media platforms, to correct or remove any content that government declares as false. Further, it penalises both individuals and media-provider companies that fail to comply with the Act through deterrent fines and up to 10 years of imprisonment.

5. Conclusion

The market and social power held today by Big Tech has triggered regulatory and policy initiatives, on both a national and a regional/international level. While US technology companies lead the digital economy at a global scale, Europe leads the way when it comes to regulation – a discrepancy that has not avoided occasional criticism from the US side in the past. Further, the slow pace of new regional legislation or international agreements seems to have motivated individual governments to take interim measures to address areas which, in their view, justify urgent attention.

We can observe a shift in the regulatory approach taken, especially in antitrust and competition law, an area in which Big Tech truly stands out from the crowd. As a complement to traditional antitrust and competition laws, which are enforced ex-post, lawmakers – led again by the EU - are considering measures that aim to stop anticompetitive behaviour in its tracks, on an ex-ante basis.

Governments appear to be the main source of regulatory action for the digital economy at a national level. Depending on which 'problematic' aspect of Big Tech is being targeted, a relevant regulatory authority in the country is often appointed as the enforcer. In some cases, dedicated entities are created with the purpose of overseeing the implementation of a combined set of rules (antitrust/data protection and online content) such as the UK's new Digital Markets Unit.

Big Tech's low taxation and (at least potential) control over an international flow of online misinformation and illegal content have also led to specific regulatory measures, whose combined effect is bound to be felt over the coming years.

Big Tech is by no means the only or even the most important potential culprit in these areas, and efforts to regulate them should be balanced and recognise the significant consumer benefits Big Tech's products have brought to the world. Thus far at least, the proposed or adopted measures seem to reflect such a balancing act, refraining from more drastic measures, such as a mandatory breakup of Big Tech. Furthermore, Big Tech has partly succeeded in rolling back before the courts some of the more aggressive enforcement decisions and heavier fines taken so far.

While US technology companies lead the digital economy at a global scale, Europe leads the way when it comes to regulation

The proposed or adopted measures seem to reflect such a balancing act, refraining from more drastic measures, such as a mandatory breakup of Big Tech

Still, it is reasonable to assume that the combined effect of antitrust, data protection, taxation and online regulation measures will end up having a considerable limiting effect on the market and societal power enjoyed today by Big Tech. Ultimately, both sides will have to accept various compromises along the way, even if this is bound to remain a work-in-progress area for the years to come. In this regard, recent history can offer a lesson: after more than 20 years of high-profile antitrust battles in the US and Europe, Microsoft is now arguably the least problematic among the GAFAM companies on the same antitrust front. This is largely the result of compromise and strategy realignment, and has not stopped Microsoft from tripling its market capitalisation in the last 5 years.

More generally, GAFAM companies do not necessarily see eye-to-eye across the whole spectrum of regulatory issues that affect them: witness the (very public) ongoing privacy spat between Apple and Facebook. Such differences of strategy and opinion among the GAFAM market leaders are more likely to end up strengthening the consumers' and regulators' viewpoint in this continuing debate.

Ultimately, both regulatory authorities and tech giants will have to accept various compromises along the way, even if this is bound to remain a work-in-progress area for the years to come

6. About Axon Advisory

Axon, through its Advisory arm, is an international investment and advisory firm offering world-class consulting and corporate finance services to a broad client base in the ICT industries.

In the last 10 years, Axon has executed +500 projects in +60 countries in the ICT domain for major private companies, institutional bodies, and technology companies worldwide.

Axon is at the forefront of ICT regulation, having advised policymakers, regulators and market players across the globe in a wide range of issues, including the definition of policy and regulatory roadmaps, and the design of strategies in the new digital ecosystem.

Analysts Team at Axon Partners Group⁹

⁹ The views and opinions expressed in this article are those of the authors and do not necessarily reflect the view of Axon Partners Group.