

An Empirical Analysis of an Expanded Multiple Streams Framework in the European Union: The Development of the Digital Services Act and Digital Markets Act

Introduction

The Digital Services Act (DSA) and Digital Markets Act (DMA) are two ambitious, flagship policies of the Ursula von der Leyen Commission (Schmid and Koehler, 2022; Bostoen, 2023; EC, 2023). Through enshrining 'duty of care' obligations for technology companies, requiring greater transparency, and improved moderation, the DSA hopes to foster improved accountability and consumer safety across European digital platforms (ibid). Similarly, the DMA in identifying the most powerful and largest digital platforms seeks to regulate their behaviour to ensure fairer competition in the digital single market (EC, 2020).

This essay aims to analyse the development of the DSA and DMA using Kingdon's (1984; 1995) multiple streams framework (MSF). It will report an account of key events and actors in its formation. Moreover, where notable criticisms appear against MSF, this essay will incorporate and scrutinise additional MSF factors to gain deeper insights into policy development in the European Union (EU).

Before addressing theoretical and empirical revisions of MSF, a brief summary of Kingdon's (1984; 1995) landmark policy analysis framework will be detailed.

Overview of MSF

Kingdon's (1984; 1995) multiple streams framework originally worked to explain policy agendas in the United States (Goyal et al., 2021). Today, it is a model that seeks to analyse and predict decision-making processes and policy formation developments. It does this by uncovering the interactions and interconnections between actors and events in the policymaking process (Herweg et al., 2018). As the name suggests, it consists of three streams which when in alignment are said to shape policy agendas via the exploitation of 'windows of opportunity' by 'policy entrepreneurs' (Goyal et al., 2021).

The politics stream concerns political wills and abilities of political parties and the public. The problem stream concerns heightened and current issues or policy shortcomings in society. Finally, the policy stream concerns ever-changing policy solutions and alternatives posited by government agencies, political parties, thinktanks, etc. (Herweg et al, 2018).

MSF Critiques

Mass Media

Whilst the media's role as a key policy entrepreneur has been explored in autocracies vis-à-vis liberal democracies, it has seldom been studied in liberal democracies alone. Hammond (2013, p121) notes: "there is no inbuilt necessity that policy entrepreneurs appear only in systems that have elections or a free media". Despite this appreciation for policy entrepreneurs in liberal democracies, the study of media as an influential driver itself has focused chiefly on autocracies (Herweg et al., 2022; Herweg et al., 2018, p42). In liberal democracies, often its role is understood as a 'window opener' that facilitates 'focusing events' (Eckersley and Lakoma, 2022; Rawat and Morris, 2016). Tom Birkland (1997) defines these as sudden, often harmful, events which capture both the attention of the public and politicians simultaneously. Such as terrorist attacks or natural disasters (Herweg et al., 2018).

This regards only the 'coupling' between existing streams. The media is not viewed as a separate stream or an influential, exogenous variable; it exists either in the political (Ritter, 2018, p235; Sanjurjo, 2020, p107) or problem stream (Birkland, 2006).

That said, media agenda-setting is separate from 'focusing events' (as noted in the study of autocracies). For the former case, agenda priorities are predetermined; for the latter, they are reactionary.

The mass media's independent role beyond MSF has been largely neglected (Herweg et al., 2018, p42; Rüb and Zohlnhöfer, 2016, p62). This seems a considerable oversight in view of the general academic consensus of the media's nontrivial influence in direct or indirect agenda setting, even in liberal democracies (Grossman, 2022; Semetko and Varughese, 2022; Kubin and von Sikorski, 2021; Zhuravskaya et al., 2020; Hoewe and Peacock, 2020; Gavin, 2018; Luo et al., 2018; Wolfe et al., 2013).

This essay aims to increasingly prioritise the role of media both in and beyond existing streams of MSF. Especially given its heightened role in the digital age today and limited empirical application in democratic systems (Herweg et al., 2018, p42).

Institutions

The strongest theoretical criticism comes from the original framework Kingdon's (1984; 1995) MSF is adapted to: the garbage can model by Cohen et al. (1972) (Zahariadis, 2016b, p156). Expanded by Mucciaroni (1992, p466), stating:

"Political institutions are structures with perhaps the greatest impact on policy. Kingdon's garbage can model views the role of institutions almost exclusively in situational terms, [...] as 'participants in the stream'. [...] But institutions also make up the topography [...] that shapes participant behaviour."

Whilst the role of institutions in MSF as ‘window openers’ or ‘spillover facilitators’ is understood in many applications (Saurugger and Terpan, 2016; Ackrill and Kay, 2011; Blankenau, 2001), recent accounts akin to Mucciaroni (1992) have been neglected. Such as cases of feedback loops in shaping policy or the determinative role of institutions in embedding represented interests (Béland, 2005). For instance, Danish public sector reforms were found to be limited by pre-existing institutionalised interests and restrictive public consultations (Bundgaard and Vrangbæk, 2007).

The remainder of this section aims to expand the above theoretical critique with modern accounts. It ends with calls for increased study of institutions’ roles in shaping policymaking.

Under bounded rationality and organisational constraints, MSF faces criticism that it has neglected the role of institutions as an external variable (or an additional stream) in the policymaking.

Kingdon (1984; 1995) does give attention to how policy entrepreneurs may be hindered by structural processes (e.g.: second readings, majority votes, royal ascension). He notes that whilst “institutions imbue predictability and decrease uncertainty”, they can also “bias priorities [and] distort the length and contestability of the [policy] process” (Zahariadis, 2016a, p6). Yet, such restraints relate primarily to the policymaking process in action. Not, notably, preceding restraints that determine the initial innovation of policy ideas (Mucciaroni, 2013, p322; Ritter, 2018, p244).

Individual actors’ cognitive limitations result in, typically, only ‘acceptable’ (rather than ‘ideal’) solutions. Such actors operate within political institutions which are limited by their determined hierarchies, functions, and objectives (March and Simon, 1958). Thus, with “policymaking as a problem of individual decisions and institutional aggregation” (Zahariadis, 2016b, p158), the integral operative constraints of public institutions beckon consideration in any theory of policymaking.

Numerous instances highlight the role of institutions in policymaking. In the EU, for example, Zohlnhöfer et al. (2015) notes the friction in policymaking from institutional ambiguity and pluralism, with diverse executive agendas and distinct Directorate-Generals mandates clouding development (Zahariadis, 2016a; Saurugger and Terpan, 2016). Another example by Risse (2010) and Weber and Glynn (2006) demonstrate how heterogeneity can entrench “institution-derived” (Zahariadis, 2016a, p6) identities by way of institutional steering. Consensual institutions can encourage cooperative policy whereas centralised power structures can foster centralised policies (Zahariadis, 2016a).

Ambiguous systems, like the EU, are said to generate instability especially amongst unorganised political interests by necessitating that policy entrepreneurs continually adapt proposals to appease more parties, often with many compromises (Zahariadis, 2016a, pp6-7). The EU’s rigid corporatist system means new interests have restricted access to policymaking settings until socialised into becoming stable and mature (Rozbicka and Spohr, 2016). In contrast, however, ambiguity can also mean great epistemic distance between policy entrepreneurs and policy implementors. Which can result in policy ambitions

untainted by potential poor implementation (Zahariadis, 2016a, p7; H  ritier, 1999). Either way, the role of institutions cannot be understated.

Given the myriad of theoretical and empirical accounts in strengthening the case for institutionalism in the policymaking process, this essay seeks to apply such understandings as an additional factor in MSF.

MSF in EU Policy Analysis

Extensive usage of MSF in analysing EU policy developments has spanned economic, energy, defence and more. In a supra-national institution characterised by extreme complexities, these studies have gravitated towards explaining policy window openings (Herweg et al., 2018). Less attention has been paid towards the literal crafting and context of legislation. Due to the scale and “organised anarchies” (Ackrill et al., 2013, p872) of the EU, details of policies themselves are not seen to open and close decision/agenda windows. Instead, attention lies with the degree to which a multitude of actors cooperate or spillover into each other's arenas (ibid, pp37-38; Bergmann and M  ller, 2021; Donnelly; 2021; Hurka and Haag, 2019).

Given the significant influence of institutional constraints, the EU presents an attractive arena for studying institutionalist factors in MSF. Its continental scale requires of potential media influences to be particularly massive, too.

Methodology

Process Tracing Outline

In a similar realm to the DSA and DMA, applications of MSF have been used to analyse the development of the General Data Protection Regulation (GDPR). Moreover, as this essay has laid out in a similar fashion, the application of MSF to technology policy analysis has previously also incorporated additional factors to the model. In Goyal et al. (2021), ‘technology developments’ are given substantial consideration in the development of EU legislation. In this essay, analysis shall deviate from including technology developments as significant variables, but instead incorporate the ‘role of the mass media’ and ‘constraints of EU institutions’ into understanding the development of the DSA and DMA.

As used effectively by Goyal et al. (2021), this essay shall also exploit the technique of process tracing to reconstruct events in the policymaking process.

Borrowing from the analysis of GDPR’s development (ibid), data will be collected from a myriad of primary and secondary literature from the EU, outlets relating to the EU, and news sources. Such as academic analyses, EU communications, and news articles. This essay shall search the Scopus and Nexis Uni databases for (*“Digital Service” OR “Digital Market”*) *AND “EU”* for relevant documents, and codes events by i) political stream development, ii) problem stream development, iii) policy stream development, iv) mass media development,

or v) institutional development. This is to answer the research question: “what role has the mass media and institutional constraints in an extended MSF model had on the policy development of the DSA and DMA?”

Case Study Selection

The von der Leyen Commission launched an ambitious strategy to regulate ‘Big Tech’ in Europe (Budzinski and Mendelsohn, 2023; Cini and Czulno, 2022; Jacobides, 2020) with a ‘Europe fit for the digital age’ as a headline ambition (European Council, 2019).

Large sanctions have been commonplace amongst technology companies (TX, 2020), and dramatic ‘threats’ to limit operations in the single market have been made (Burgess, 2022). Big Tech companies themselves have, too, had a sizable lobbying presence in the development of the DSA and DMA (Tarrant and Cowen, 2022, p222).

The DSA and DMA provide a unique opportunity to study the role of media in the development of policy in a realm within its scope. It also allows ample opportunity for appreciation towards the role of EU institutions in shaping policymaking amid a plurality of actors/interests.

DSA and DMA Development

EU Policymaking Overview

The EU is an economic and political union that consists of 27 member-states (28 for much of the DSA and DMA’s development) which operates through various governing institutions. Chief amongst them is the European Commission (EC), responsible for initiating legislation and implementing policies. Its agenda-setting power, however, comes with a limited role in policy decision making. Decision making powers in this regard lie with the European Parliament (EP) and the Council of the EU (the ‘Council’) (Goyal et al., 2021). Agendas here, however, are influenced greatly by national party or state affiliations (Herweg, 2016). Although working closely, the EC favours agenda-setting ‘top-down’, whereas the EP and the Council are ‘bottom-up’.

Lastly, although the European Court of Justice (ECJ) sits in the judicial branch, its role in interpreting legislation shapes the policy stream through creating or changing policy alternatives (Nowak, 2010). Understanding the interplay between these institutions is crucial for building a picture of any EU policy development.

Developments Before DSA and DMA Proposals

The EU initially maintained a stable digital market without intervention. However, as technology companies grew, EU regulators fined Microsoft in 1994 for exploiting its dominant position, prompting the need for improved technology competition policy (Nicoli

and Iosifidis, 2023, p31). In 2000, the EU introduced the Electronic Commerce Directive (ECD) (Heras Ballell, 2021).

The ECD redefined technology companies as 'intermediaries', enhancing competitiveness by limiting liability to their "safe harbour" (Heras Ballell, 2021, p76). Whilst competition was encouraged in Luxembourg, Ireland and Poland (with tax reductions and state aid), investigations into anti-competitive practices by technology firms surged in the EU (Nicoli and Iosifidis, 2023, pp32-33).

Witt (2022) notes that competition law and consumer protection in the EU are supposed to align. The consolidation of Big Tech domination and the proliferation of technology across Europe by way of ECD failures, however, "disclaimed any role for broader public interest" (Dunne, 2020, pp259-260). Though not realised beyond the EC and ECJ immediately, this began the ripening of the problem stream. Later investigations and consultations then built political will for policy.

MSF posits that agenda-setting cannot occur until all streams are coupled with the policy stream. In 2008, the EC launched 'i2010' (EC, 2008) to establish a "European information space" (ibid, p1). It promoted IT research and, notable for future developments, digital quality of life advances. Before Juncker, the EC emphasised digital infrastructure (EC, 2012): such as the Open Internet Access Regulations introduced in 2015 (Marsden and Brown, 2023, p13).

Three focusing events ripened the problem and political stream. Two internal to the EU and one external, but both with due attention in EU populations.

Public attention rose regarding digital platforms' abuses of power affecting accountability and consumer protections. Firstly, the ECJ's 2013 *Animal Defenders vs UK* ruling exposed regulatory gaps in monitoring paid political advertising. This highlighted digital communications' impact on Europeans' lives (Shattock, 2021, p3).

The 'Snowden Revelations' exacerbated worries by disclosing US and UK surveillance programs via Edward Snowden whistleblowing. These data breaches via backdoors to technology platforms significantly shaped GDPR's development (Goyal et al., 2021).

Concerns spilled over to the new Commission in 2014: the third focusing event. The Juncker Commission launched the Digital Single Market (DSM) initiative. It aimed to boost competition and simplify digital access for businesses and consumers across member-states (Cini and Czulno, 2022, p44).

During this period, EC-Big Tech investigations expanded, gaining vast media attention (Cini and Czulno, 2022, p44). MEPs voiced dissatisfaction with the speed and scope of a recently concluded Google investigation (EP, 2015), but the EC's priorities increasingly lay with competition policy.

Commissioner Vestager emphasised the adaptability of competition policy along with the EC, yet in 2017 the Commission faced criticism for its limited experience, resources and technical knowledge in ineffectively addressing digital platform abuses (Cini and Czulno,

2022, pp44-47). Article 101 and 102 in The Treaty for the Functioning of the EU (TFEU), however, necessitate EU competition legislation superiority and rigour in investigating domestic regulated sectors, such as telecommunications (Beems, 2023, p13).

At this stage, the DSA and DMA's politics and policy stream foundations lie undeniably in addressing anti-competition practices. Additional focusing events and spillover windows would shift focus towards consumer protections (albeit still with a competition reform focus).

Early 2018 was pivotal in ripening the problem stream. The Guardian and the New York Times exposed data misuse via Facebook in the 'Cambridge Analytica scandal'. It garnered major public attention towards digital platforms and online political campaigning (namely Trump's presidential campaign and the UK's Leave campaign) (Schlag, 2023, p169).

Following the subsequent EP adoption of an EC report urging accelerated investigations into market-dominant digital platform abuses and, more generally, a review into competition policy (EP, 2018), Vestager acknowledged legislative shortcomings (Cini and Czulno, 2020, p44). The Commissioner stressed: "new ideas for competition enforcement at a time when markets are going through enormous changes as a result of continuing technological developments" (EC, 2018).

Amid scarce policy proposals, the European Law Institute (ELI) published the 'Model Rules on Online Platforms' in 2019 (Heras Ballell, 2021, p83). The initial stages of coupling this newly matured policy stream with the other streams were underway. Lead policy entrepreneur, Vestager, began attempts by discussing new digital platform competition regulations in Copenhagen weeks before a change in Commission president (EC, 2019).

Early into the von der Leyen Commission, France, Germany, Italy and Poland sent a joint letter to the promoted Vestager urging reform of digital competitive policy (Braun et al., 2020). After a failed attempt to introduce a New Competition Tool (NCT) due to member-state opposition, the EC then proposed the DSA and DMA (Cini and Czulno, 2020, p45).

Developments During DSA and DMA Policy Process

Studying events solely before DSA and DMA proposals would be naïve. The institutional makeup of the EU and its discursive, consensual nature mean policy agendas and contents can morph during the decision-making process.

Once introduced by the EC, the EP met twice publicly to debate proposals with little disagreement between parliamentarians (Schlag, 2023, p172). The Committee on Internal Market and Consumer Protection (IMCO), headed by Christel Schaldemose, was chiefly responsible for the Parliament's position. Vestager and Thierry Breton negotiated for the EC (ibid).

Policy details shifted towards a broad "rulebook"/"constitutional" approach (ibid). Considering this, Vestager recognised the role of National Competition Authorities (NCAs) in implementing the policy (EC, 2019; Streel and Alexiadis, 2023; Beems, 2023). Given that the

ECD states that platforms must align with domestic EU-law implementation of their host state, the directive gave significant weight to interpretations by the Irish Digital Services Coordinator (given it hosts numerous Big Tech firms) (Eifert et al., 2021, p1021). Moreover, since implementation relies greatly on digital platforms themselves, legislation was required to i) adapt to different platform specifications, and ii) include EC support for platforms to comply effectively. Equally, institutional restrictions of the EC in its limited authority over privacy and free speech greatly reduced the DSA and DMA's scope (ibid, p1000). According to Schlag (2023, p173), this empowers corporate interests in DSA and DMA despite narratives of "democracy over profits" and "taking back control" by gleeful MEPs.

In the final trilogues between the EC, EP and Council, heavy Big Tech lobbying aimed at safeguarding business interests overshadowed digital rights groups, who had limited access (Schlag, 2023, p172; Cini and Czulno, 2020, pp49-50). The pandemic-driven shift to online deliberations further obscured transparency (Cini and Czulno, 2020, p50). Potential Big Tech lobbying influence are substantiated by Hanegraaff and Poletti (2021), who find that EU 'agencification' greatly favours corporate interests (and their resulting policy outcomes).

Conclusion

The policy stream in the development of the DSA and DMA had started maturing since the ECD. Initially, it coupled well with the problem stream and politics stream: anti-competitive practices by technology companies addressed by EU digital infrastructure legislation.

After the focusing events of the Snowden Revelations and ECJ and EC rulings/investigations that highlighted dated and insufficient EU digital competition policy, however, the policy and politics streams regressed in comparison to a ripening problem stream.

In attempts to recouple the policy and problem stream (from a now very adamant politics stream policy entrepreneur: the EC), competition policy was once again the EU's primary approach. All despite previous TFEU requirements slowing the EC.

Soon after, however, an EC report found failings in EU competition policy regarding digital markets and platforms. The need to mature the policy stream was only then highlighted by the Cambridge Analytica scandal, which detailed the abuse by and immense power of technology companies.

Hightened political will soon propelled calls for policy. The ELI and major EU member-states pressed for fresh legislation. Vestager and the incoming von der Leyen Commission, after ultimately admitting to competition policy failures, responded with the DSA and DMA.

Whilst developments were not determined by the mass media, evidence suggests that the immense coverage and disruptions caused by landmark technology scandals helped to ripen political wills and shift focus towards failing competition and consumer protection legislation. Uniquely, these focusing events occurred *in and because of* the media; the issues highlighted would have retained a low-profile without news coverage. That said, it is

conceivable that DSA/DMA development would have occurred without these focusing events (given internal EU reports on failures), but its maturation may have been prolonged.

This essay found that institutional constraints had smaller impacts on policy developments. Whilst the ambiguity and pluralism of the EU certainly narrowed the scope and content of the DSA/DMA, it had limited influence on agenda setting. Here, troublesome lobbying practices and the outsourcing of implementation to NCAs had a greater impact. Notably, however, were the demanding requirements of the TFEU on EC investigations. Which evidently exacerbated competition policy failings and caught the attention of policymakers.

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