Muhammedali Aktaş

European Law Series



ROBIN HOOD 2.0

An Assessment of the New Competition Approach Drawn by The Digital Market Act from an Ordoliberal Lens

HayatAkademi

ROBIN HOOD 2.0

An Assessment of the New Competition Approach Drawn by The Digital Market Act from an Ordoliberal Lens

European Law Series: 1

Robin Hood 2.0: An Assessment of the New Competition Approach Drawn by The Digital Market Act from an Ordoliberal Lens

Muhammedali AKTAS

First edition - İstanbul, 2025.

Cite as: Muhammedali Aktas, Robin Hood 2.0: An Assessment of the New Competition Approach Drawn by The Digital Market Act from an Ordoliberal Lens (Hayat Akademi 2025).

Editorial Coordinator: Muhammed Enes Bayrak

Design: Vildan Ekşi

Hayat Akademi is a brand of Hayat Publishing Group.
© 2024, Hayat Yayıncılık, İletişim, Yapım, Eğitim Hizmetleri ve Ticaret A.Ş.
All rights belong to Hayat Publishing Group. It can be quoted by showin the source; cannot be reproduced or printed without the permission of Hayat Publishing Group.
ISBN: 978-625-94792-2-4
Certificate Number: 75092
Printed by Erkam Yayın Sanayi ve Ticaret A.Ş. / Certificate Number: 51796
İstanbul - 2025

Address: Molla Gürani Mahallesi, Oğuzhan Caddesi No: 15 Kat: 3 Daire: 5
34093, Fatih / İstanbul
Tel: 0212 613 11 00
Web: www.hayatyayinlari.com/akademi - ***e-posta:*** hayat@hayatyayinlari.com
linkedin.com/company/hayatakademi

Muhammedali AKTAS

ROBIN HOOD 2.0

An Assessment of the New Competition Approach Drawn by The Digital Market Act from an Ordoliberal Lens

HayatAkademi

Muhammedali Aktas is a research assistant at Fatih Sultan Mehmet University in Istanbul. He has two LLM degrees, one in Legal History at Marmara University and the other in EU Economic Law at Europa-Institut / Saarland University. He is currently a PhD. candidate in Istanbul University with a thesis titled "Redesigning the Relationship Between Administrations: The Phenomenon of Contractualisation". His academic field covers administrative law, competition law, EU law, and legal history.

Acknowledgment

This book is a result of my workings at Europa-Institut / Saarland University. In this study, I strived to give theoretical clarity to the position of the DMA by handling the technical specialties of the legislation intertwined with the concepts and competition approach embraced by it. It was an effort to investigate the legal continuity of the DMA with the classic competition enforcement in the EU and examine the allegations that the DMA exhibits ordoliberal characteristics. This study would not be in presence in the absence of Mr. Dr. Manuel Kellerbauer, who honored me by accepting the supervision and writing a foreword to this book. Thanks also to my PhD. Supervisor Prof. Dr. Meliksah Yasin made this study possible by paving the way for me with his broad perspective on academic development. I've also had kindly support of my dear friends in Saarbrücken and Istanbul, whose names are Enes Bayrak, Yusuf Sinan Canatar, Enes Ozkan, Emirhan Başol, and Anıl Toros. I owe my gratitude also to the Toğru family and Tahsin Saygılı for their sincere friendship and support. Finally, this book is a result of the visionary and science-loving approach of Hayat Akademi Press. Thanks for turning this academic effort into an open-access book.

Foreword

Digitalization has had an evolutionary effect on our economic systems and the legal challenges of today are inextricably linked with our digital world. Accordingly, competition law and competition law related regulatory instruments, as points where economy and law meet, emerge as an area that needs to be adapted to the information age. This adaption needs to be consistent with the theories that have successfully guided law enforcement in the past.

The EU is at the forefront of addressing the digital challenges in the economy, such as the rise of digital platforms, data-driven business models, and the concentration of market power in the hands of a few tech giants. The Digital Markets Act (DMA) is a key instrument in this endeavor. A wealth of literature addressing the DMA has emerged in a relatively short period. However, much of this literature focuses on the DMA's technical details and practical implications rather than shedding light on the DMA against the backdrop of the economic theories that have shaped our understanding of economic law enforcement in the last century.

Muhammedali Aktas has elaborated a unique approach to the theoretical aspects of the DMA, which combines legal analysis with economic theory. His work analyses to what extent the DMA points to a re-emergence of the ordoliberal approach. The author outlines the key features of the digital economy and presents the main features and legal issues related to the DMA. Next, the concepts of the ordoliberal approach to competition policy are explained. Finally, a thorough investigation is conducted by comparing the features of the DMA with the main concepts of ordoliberal thinking.

Mr Aktas' work contributes significantly to the expanding literature on the EU digital competition law. The author provides us with noteworthy

insights, some of which merit further exploration. He consolidates parts of the slightly scattered literature into a cohesive narrative. In addition to examining the DMA's legal continuity regarding the current EU competition law framework and prevailing economic theories, he delves deeper into the concepts underlying the DMA and identifies inconsistencies with ordoliberal concepts.

I commend the painstaking scholarly effort demonstrated in Mr Aktas' work and recommend his text to everybody that wants to gain a deeper insight into the DMA without neglecting the economic theories that are required to understand its foundations.

Dr. Manuel Kellerbauer

Table of Content

A. Introduction 17
B. The Basics of the Digital Economy and Markets 21
I. The Structure of the Digital Economy and Markets 21
1. The Requirement of Definition and Conceptualization 21
2. Structural Features of The Digital Economy and Markets 25
a) Extreme Returns to Scale 25
b) Network effect 25
c) Constituting a Data-driven System 26
d) Path Dependency 27
e) The Domination of Platforms 28
3. Behavioral Features of the Digital Economy and Markets 29
a) From the Platform Side 29
aa) Pricing Strategies 30
bb) Non-Pricing Strategies 30
b) From the User Side 30
II. Assessment of Digital Economy and Market 31
1. Platforms: Beyond Constituting a Market 31
2. Being Inclined to Form a Monopoly 32
C. Inadequacy of the Classic Competition Approach Against Anti-Competitive Menaces within the Digital Markets 35
I. The Basics of the Classic Competition Approach 35
1. The Fundamental Features 35
a) Objective 35
b) Ex-Post Control (Legal Basis, and ex-post structure) 41
2. The Main Tools 41
II. The Enforcement Loopholes in Digital Markets Caused by The Inadequacy of The Classic Competition Approach 42

D. Seeking a Solution: The Digital Market Act 45
I. Background: The Road to the Digital Market Act 45
1. Institutional and Judicial Struggle 45
2. Academic Struggles 46
II. The Fundamental Features 47
1. Objective 47
a) Contestable Market 48
b) Fair Market 49
c) Assessment 50
2. Ex-Ante Regulation (Legal Basis, and Ex-Ante Structure) 52
a) Legal Basis 52
aa) Whether Art. 114 TFEU Provide Making Such a Sector-Specific Regulation 52
b) What is the Nature of The Digital Market Act: Regulation vs. Competition Law 58
III. The Enforcement Structure 66
IV. The Main Tools 68
E. Looking at The Competition Law from An Ordoliberal Lens 71
I. The Ordoliberal Competition Approach: Mental Framework, The Instrumental Requirements, Objectives, and The Actual Situation 71
II. An Ordoliberal Assessment of The Digital Market Act 78
1. Assessment by Objectives and Nature 78
2. Assessment by Enforcement Structures 80
3. Assessment by Tools 81
F. Conclusion 83
G. Bibliography 87

This book is dedicated to my family, who constantly and selflessly supported me.

The digital giants have dominated the economy during the last two decades with a transformative effect. Besides their financial bigness, they have the power to transform the cornerstones of the existing economy and markets. The distinctive features of the digital giants enabled them to infiltrate from the loopholes of the classical competition law enforcement both in the EU and the US. The first systematic response came from the EU via the adoption of the Digital Market Act (DMA). Following the issuance of the draft DMA, it has been argued that it reflects ordoliberal features.

Against the challenges of the imbalanced social structure of the techno-feudalism, the DMA emerged as an updated second version of Robin-hood, neither completely inside nor entirely outside the EU competition law and economic framework, to ensure an undistorted internal market where the European people play and share fairly amongst them. However, there is no place for a Robinhood, who has many paradoxes in his character as explained in detail in this book, within the Ordoliberal competition understanding whose primary concern is the establishment of 'ordnungspolitik' based on the economic constitution.

HayatAkademi

9 786259 479224