Conversations in Competition – Everything you need to know about 'the Digital Markets Act' in 2024.

[00:00:00.000] - Ronan Scanlan, Of Counsel

Good morning and welcome to this third episode in the Conversations in Competition series. My name is Ronan Scanlan, an Of Counsel in Arthur Cox and I'm delighted to be joined today by Alba Ribera Martínez, a lecturer in University in Spain, a PhD student in University Carlos III Madrid, and an editor of the Journal of European Competition Law and Practise and Kluwer Competition Law. I'm delighted to be joined by you today, Alba. How are you?

[00:00:28.680] - Alba Ribera Martínez

It's a pleasure to join you here, Ronan, and I'm really looking forward to the conversation.

[00:00:34.200] - Ronan Scanlan, Of Counsel

Thanks so much, Alba. Well, as you may know, in the last couple of episodes, I've been discussing with David Foster, a Competition Economist, and Lara Stoimenova, a former staff member of Ofcom and the CMA, some of the cross-cutting themes in tech regulation, both in the EU, the UK, and further afield. We've touched on a number of subjects, including merger control, new theories of harm. We've looked at S&P regulation in telecoms and how that might track across to the regulation of tech. We've discussed a little bit of Article 102 and the new revised Market Definition Notice but what I really would love to discuss with you today, and I think a all of the listeners would be really, really interested to hear your thoughts on, is the Digital Markets Act in the European Union, both in regards, obviously, to the designation process of the gatekeepers, the workshops which took place a couple of weeks ago, the current investigations, the detailed compliance reports, and maybe the next steps in that journey. For me, as a lawyer, I've been dipping in and out. I found your insights and your detailed reports on each of these extremely helpful and

[00:01:46.200] - Ronan Scanlan, Of Counsel

I think it's just a great opportunity today to maybe share a little bit more of your thoughts on the DMA and also, of course, Article 102 at its 20th anniversary.

[00:01:55.930] - Alba Ribera Martínez

Yes, I would say also on the discussion on Article 102, it seems a bit of a groundhog day to me because a few years back, some of the officials in the European Commission said, "Okay, we are going to bring this more economic approach into this guidance around Article 102." That was completed. It's supposed to be successful. Now, fast forwarding to 2023, the European Commission has decided that that more economic approach has been correctly implemented, and now it should make an additional step to codify the case law, the real problem that it has to settle what the case law says so I would say that that's a real challenge because even academics don't agree on most points because in the second paragraph of the

policy brief that the European Commission published subsequently, it said that the objectives of EU competition law went far beyond consumer welfare, and it highlighted, supposedly from I believe in the Google Android case that those additional goals of EU competition law are goals and objectives such as fairness, levelling the playing field, market integration, or even ensuring clarity and democracy. I would say that from this statement alone, we already have for us this tension between antitrust and other types of regulatory intervention.

[00:03:25.640] - Ronan Scanlan, Of Counsel

Thank you so much. It's just great to have the chance to talk to you and to have that energy and that insight. It seems to me that you have had the opportunity in your academic work to really deep dive into these quite fundamental questions about Article 102 and the Digital Markets Act, and you've had the time to follow the discourse in those areas. I mean, I attended a conference a couple of weeks ago in Brussels where they had invited a member of the European Commission along to discuss the new guidelines, or I should say the revised guidelines on Article 102 and there was quite a lengthy debate about whether those guidelines were simply, as you say, codifying the existing case law, multifaceted as that is from Lithuanian railways to Google AdTech and so on, or going one step further in trying to create almost by objects exclusionary abuses.

[00:04:21.570] - Alba Ribera Martínez

Okay, the European Commission is codifying some of the most relevant developments, but it is also omitting all the key developments that the Court of Justice has stated, but that the European Commission does not really agree on. So we might see also attention, not only from the perspective of European Commission versus practitioners, but also European Commission versus a European Court of Justice.

[00:04:46.610] - Ronan Scanlan, Of Counsel

Fascinating. Thank you so much, Alba. That's really clear. I think there's this growing ecosystems within individual countries around how they tackle digital markets and big tech. Obviously, we've seen in the UK, the development of the DMCC and the expectation that will become law later this year. We've seen approaches in Germany and the Netherlands to developing bespoke approaches.

[00:05:11.250] - Alba Ribera Martínez

Ronan, don't get me really started on Section 19A, because we won't finish the podcast.

[00:05:19.840] - Ronan Scanlan, Of Counsel

No. Well, I think that's probably a podcast in itself, right? The approach of the Bundeskartellamt but needless to say, there are a number of national regulatory strategies designed to tackle big tech alongside the Commission's Article 102 powers and the Digital Markets Act. I might just walk you through the steps as I see them and just invite you to give your 60 second thoughts on each of those. Obviously,

the starting point is the DMA itself, the why, the purpose of it, how it evolved and its objectives and then I think what we'll do is we'll walk through just step by step the designation process of gatekeepers, the workshops, the compliance reports, the recently announced investigations in the future but I think just to start and maybe just contextualise this discussion, it would be helpful to hear your views on the objectives of the DMA and the legal structure that's set up to try to achieve those objectives.

[00:06:25.180] - Alba Ribera Martínez

So the DMA is based on two fundamental premises. The first one is to harmonise the internal market when it comes to digital rule-making, precisely because of these interventions coming from the Germans in that time, around 2020, from the French, from the Dutch, I believe and also the second objective is to ensure contestable and fair markets and indeed, I would say that the most prominent question is what are and what is contestable and how to achieve contestable and fair markets and what do they really mean in practice? Because we do not really have or we had during the legislative process, we didn't have a clear definition of what those concepts meant in reality until the last version of the DMA and even then on the Recital 32 and 33 that define those concepts of contestability and fairness, one really does not quite grasp what the DMA is trying to attain, because contestability is not defined as this Bommolian approach of the hit and run entry that potential entrants may make, but it's particularly addressed to the fact that business users can effectively overcome a barriers to entry and expansion, whereas unfairness is also categorised not as the fairness concept we have within our minds of antitrust, but within the imbalance in power of gatekeepers vis-à-vis business users.

[00:08:03.450] - Alba Ribera Martínez

So against this background, the DMA was first proposed in December 2020, and it was entered into force in May of 2023.

[00:08:13.760] - Ronan Scanlan, Of Counsel

And I think this was a topic that I discussed at the end with Dr. Lara Stoimenova in the last podcast, which is trying to think about learnings and experience from other regulatory regimes and the focus on that podcast was the telecoms regime and the use of significant market power S&P designations, and then the potential remedies that you would impose, which include, obviously, price controls, which are not as applicable here but frand terms, and we have decades of jurisprudence about what frand; fair and equal access essentially means in that context and it seems that there is still a lot of questions in the DMA and in the letter of the DMA as to what exactly fairness will mean and how questions around pricing and the terms on which gatekeepers offer access to business users, what terms or how fairness will be determined and whether it will be the commission whether it would be the courts doing so and obviously, other regimes are trying to take different approaches. In the UK, obviously, they're looking at arbitration as a potential alternative towards finding agreement between the gatekeeper and the access seeker but it does seem like there's a lot of questions about how you will actually achieve this level playing fields that the DMA is setting out to establish.

[00:09:41.720] - Alba Ribera Martínez

So the particular problem, not so much with contestability, because with contestability, we might have this idea of potential competition in mind. So we might see, okay, this provision, for example, the provision that ensures that gatekeepers have to enable that defaults can be changed on their operating systems, work when, for example, users download other types of services so that would be a quite easy example to draw out from the DMA but as you have said, there are loads of provisions within the DMA that tackle fairness and fairness, in particular, core platform services that the DMA defines in that way from the list and the Article 2, for example, operating systems, online social networking services, or web browsers, which are particularly aimed by the DMA to attain this fairness principle or goal and in my research, I also tried to inquire whether fairness was applied transversely to all of the DMA and the fact is that I found that fairness indeed is not applied in the same way throughout the DMA. So I found out that really there were four different manifestations to fairness within the DMA. First, we had principle and the main goal of the overall furnace, and then we have indicators for fairness within the provisions.

[00:11:12.710] - Alba Ribera Martínez

Then we also have the supplement or the precautionary measures that the DMA ingraines within the regulation to try to make it flexible. For example, the kind of furnace that one would maybe watch or see and say "Okay, this is an unfair outcome", but one cannot directly say "Okay, I'm going to intervene here" and those types of scenarios are the ones that the European Commission tries to satisfy via its precautionary and supplementary measures by trying to make the DMA as flexible as possible so that it can incorporate on one side more core platform services to the list of these ten core platform services, and second, more provisions within the list of the provisions. They are, I believe, around 20 provisions that now are currently applicable for the designated gatekeepers that we will talk about now but the DMA can also expand on those obligations based on the premises of fairness so I would say that is the initial point and then we also have to ask ourselves whether we want fairness in terms of outcome or fairness in terms of the principles and as the starting point of the interactions between the economic operators within that need to go to sector?

[00:12:30.920] - Ronan Scanlan, Of Counsel

I think that is one of the big questions because fast forward to some of the compliance programmes that have been rolled out, access seekers are very quickly complaining that it's giving them equal maybe greater equality in terms of opportunity, but not delivering equality in terms of outcome. Now, of course, as a competition lawyer and academic yourself, I think we would baulk at the idea that any regulatory intervention should give equal outcomes. I mean, you're simply trying to enable a degree of contestability and competition and perhaps better access to consumers but then it is really, I suppose, at the gift of the access seeker to make the necessary investments and marketing and promotions and so on to actually build their own market share and this isn't something that the DMA can can simply hand to them.

[00:13:22.100] - Alba Ribera Martínez

But then they can also pitch the argument that though not fair or unfair outcomes contravene the anti-circumvention clause that Article 13 established, the DMA is not so directed at providing access for the sake of it, but for obtaining this goals of contestability and fairness but the main difference, as I see it with antitrust, is the fact that the DMA is also focused on the business user side of things, whereas end users are not directly maybe involved in the decision making and the competitive process that results as a result of the application of the DMA, because basically the DMA does not really address end users independently in any of the provisions, just as they are just addressed as the instruments to gain that access so I would say that this is a completely different approach as opposed to antitrust, which is already focused on consumer welfare.

[00:14:33.640] - Ronan Scanlan, Of Counsel

No, it's a really excellent point and I think part of this discussion is just really trying to locate the beast, the animal that is the Digital Markets Act. It's not quite antitrust, it's not quite S&P regulation, it's not quite consumer welfare, but it is based on an effects analysis in the sense of... And really runs counter, I think for me as an ex-enforcer as well, to what is usually the spirit of competition law, which is protecting the market and protecting consumers, but not necessarily protecting individual competitors.

[00:15:07.520] - Alba Ribera Martínez

I like this metaphor of the antitrust head and a regulatory tail, or the competition hand in a regulatory glove. We must think of the DMA in that way because basically all of the provisions within Article 5, Article 6, come from the antitrust experience, both at the European and the national level, as we would think about it so all of the provisions within the DMA, if they are breached, they are presumed to cause harm to business and individuals. That's the bottom line of the DMA and I would say that the interesting interplay that we will have before us, of course, on public enforcement and how the European Commission will try to, I would say, maybe carve out the solutions or the adequate solutions for effective enforcement with the gatekeepers, but also the application of private enforcement and because the DMA provides for private enforcement in two fundamental ways, the first one is as a regulation, it is directly applicable and some of its provisions might have direct effect before the national courts and the second one is via collective redress and within this second work stream of collective redress, addressing articles, I believe they are 42 and 52 of the DMA, they require that the violation causes harm to the consumer.

[00:16:32.990] - Alba Ribera Martínez

So that's also a really interesting, I would say, idiosyncratic interplay between a Directive, the Representative Actions Directive, which has not been transposed by most of the member states Vis-à-vis the public enforcement of the European Commission, which will surely influence that private enforcement that will take place before the national courts.

[00:16:56.420] - Ronan Scanlan, Of Counsel

Alba, thank you very much for that. I think it would be helpful then to discuss maybe the designations to date. Obviously, we all know the main companies involved, but there's also a question, I think, of whether there might be additional designations in future.

[00:17:10.920] - Alba Ribera Martínez

The designation decisions and the destination process is set out under Article 3 and basically, a gatekeeper is defined via three requirements set out in Article 3(1). The first one is that it must have a significant impact on the internal market. The second one is that it provides a core platform service. We have already seen that these core platform services are defined within the list and the Article 2 of these operating systems, web browsers, media sharing platform services. Within the second requirement, those core platform services must be important gateways for business users to reach end users. That was the reason why I said that the focus is set out within the perspective of business users and not for end users and the third one is that undertaking enjoys an entrenched durable position so to define and to set out whether those requirements are fulfilled in practise, the European Commission has two different work streams. The first one is the qualitative designation and the Article 3(8) where the European Commission may designate a gatekeeper within that core platform service based on criteria that are not based on quantitative thresholds. For example, the presence of multi-homing or the presence of network effects.

[00:18:34.110] - Alba Ribera Martínez

This is the case for Apple's iPad OS, and we do not yet have any particular solution or outcome of that process. On the other side, most of the gatekeepers have been defined as such via the quantitative designation procedure and that is the one set out under the Article 3(2), and it operates basically similarly to merger control, where three sets of thresholds corresponding to these requirements must be overcome in order to presume the undertaking is in fact a gatekeeper and even within that designation, then the gatekeepers may exceptionally bring some arguments forward before the European Commission to try to rebut that same presumption and as a result, the designation decisions that were issued by the European Commission in September 2023, it resulted in the designation of six gatekeepers with regards to 22 core platform services. Now, in early March, I believe it was, it was X Booking and TikTok notified that they were also maybe meeting some of these thresholds set out in Article 3(2) for the quantitative designation, so that the European Commission now has to also decide whether those additional core platform services gatekeepers must be captured by the DMA. What is the practical impact of that designation?

[00:20:00.680] - Alba Ribera Martínez

That Article 3(10) then establishes that starting from the designation decisions in six months, the obligations under Articles 5, 6, and 7 are applicable to those gatekeepers with respect to those core platform services.

[00:20:15.060] - Ronan Scanlan, Of Counsel

And so we've come through the initial designations process. And of course, there were a couple of appeals to the gatekeeper designations in the back end of last year but really, I suppose in the last month, we've been following the various workshops that took place. I suppose for people that don't advise on the DMA every day, these are a little bit curious as to their purpose and the content of the workshops. These occurred at or just after the compliance reports were released for each of the gatekeepers, right? And the attendees at these workshops were, in large part, access seekers or interested parties, I suppose, looking to understand the opportunities coming out of these programmes for greater participation?

[00:21:07.010] - Alba Ribera Martínez

This is a great question because it has lots to unpack there. So on the workshop side, they were scheduled and they were held, as you well said, two weeks after the compliance reports were issued by the gatekeepers. They were maybe organised within this idea of the European Commission conserving or remaining its enforcement as transparent. We cannot really say that that was the main objective of the European Commission, because throughout all of the workshops, the European Commission basically remained silent. It only gave the scene, if you would like to say like that, for the gatekeepers to discuss and engage with the stakeholders. Given that I was one of the attendees of those workshops, I also posed questions to the gatekeepers. The workshops were really useful to really grasp what the gatekeepers compliance, each one of the gatekeepers compliance strategies will be in the future, in the future months. First of all, and also as a starter, I would say that none of the gatekeepers were compelled to participate in this workshops. They went there voluntarily. As much as voluntarily might mean when the European Commission ask you to do something. On that side, I would say the workshops were success because all the gatekeepers attended those workshops.

[00:22:32.910] - Alba Ribera Martínez

But I would also point out maybe to two groups of gatekeepers that we can see through on their participation on the workshops. On one side, those that really participated maybe begrudgingly and those that participated with these ideas of transparency and openness in mind. Some of the gatekeepers tried to really uphold these ideas that the DMA poses a risk for their business operations and thus their compliance solutions must be really narrow in scope, so they only satisfy the really narrow terms of the letter of the law of the DMA and then there was a second group of gatekeepers that really tried to engage substantively with the stakeholders and maybe incorporate some of their feedback to the reengineering of their products and there was maybe a third group of gatekeepers that they maybe tried to pose was a constructive attitude before the European Commission as to their responses to the stakeholders but then I would say that all went up in flames on the week because this was held from the March 18th to that week. Then because there was a holiday there, then I believe it was the 25th, there was no workshop. Then the 26th, the European Commission held a Microsoft workshop and

[00:23:57.810] - Alba Ribera Martínez

In that interim, the European Commission issued its non-compliance procedures against five different implementations of the gatekeepers so I would say it's a little bit confusing to tell apart whether the European Commission was really trying to be transparent in appearance and apply its stick strategy within its enforcement of the DMA and on the side of the Compliance Report, first of all, there is a wide scope and a wide array of compliance reports. We have the 12-page long compliance report for Apple, and then there's the 400-page long report for Microsoft so there's great difference in terms of scope and breadth of the compliance reports that the gatekeepers submitted. In fact, no one can really tell off gatekeepers because of this, because the DMA only poses and stresses that a summary must be published about the compliance report that they submitted to the European Commission but in any case, we already have a real clear view through those numbers on how those compliance strategies will be pursued in the future and how maybe the European Commission will try to chase gatekeepers as a result of those narrow compliance solutions.

[00:25:22.530] - Ronan Scanlan, Of Counsel

Yeah. It was a pretty busy couple of weeks, as you say, with the flurry of compliance reports, the workshops, which I guess were almost a day long in each case. The constitution of the workshops, as you say, the European Commission really took a back seat, and there was some, I suppose, criticism that they could have been a bit more proactive or ask questions but I think from their perspective, this was really an opportunity for bilateral exchange between the gatekeepers and the access seekers, right and other interested people like yourself. We then had the announcement of the investigations in the middle of it, which, as you say, struck an odd chord, and the choreography seemed a little bit strange when the Commission was trying to encourage transparency and openness and collaboration but we don't need to try to read the tea leaves too much on that. I suppose the big question for us as we step into April/May, 2024, and the last six months of the DMA is really what the next 6-12 months looks like from your perspective. As you say, there's questions obviously about the Commission going through the compliance reports, looking at the proposals to comply with Articles 5, 6, and 7, looking at access seekers also, their initial views and feedback on some of the compliance mechanisms that the gatekeepers have proposed.

[00:26:48.180] - Ronan Scanlan, Of Counsel

Then really interesting, you mentioned earlier around this private enforcement, collective address, and so on.

[00:26:54.690] - Alba Ribera Martínez

First of all, I would say that for anyone getting interested in the DMA, this is the moment to get working on really grasping the regulations implications, because I believe it's going to be a really lively year, first of all, on the timeline of 6 - 12 months. We might have a solution, maybe a consequence as a result of the opening of the non-compliance procedures against Alphabet, Meta, and Apple. Maybe the European Commission will now grasp the opportunity that it has issued these compliance procedures to engage in

the regulatory dialogue that it could have done without triggering those non-compliance procedures. Then the European Commission is subsequently also pursuing other types of investigatory measures with regards to, I believe it's Amazon and Apple again. The European Commission is also reviewing in a rolling basis, I would say, the compliance solutions of the gatekeepers as presented within in the compliance reports, but also as they are updated, nearly every day there is a new update on how those compliance solutions may be applied in reality through their websites and so on. The DMA is quite, and the DMA Effective enforcement, I would say, is quite a moving target, like set of technical implementation and reengineering efforts,

[00:28:24.690] - Alba Ribera Martínez

I would say it's a mix of both. Then we also ... the real implication, and this is, I believe, one of the greatest transformations that the DMA wants to impose is that the European Commission also extended the time for complying with the provisions for interoperability for WhatsApp's messaging services so approximately in 3 - 6 months time, we might have a little pop-up within our WhatsApp services, allowing third-party chats to interpret this WhatsApp. Also on the side of private enforcement, I also expect, maybe not expect, access seekers, I also wanted to remark that access seekers that were present within the workshops were the same suspects that we already had in other previous antitrust cases. So not surprising at all, but maybe good to remark and on the private enforcement side of things, I would say that the access seekers or the business users might be forum shopping by now throughout all of the member states to accommodate or to try to accommodate those actions before the national courts but in any case, there is also a real risk of undermining the effective enforcement of the DMA because now fragmentation will start to permeate within the internal market, within the private enforcement side

[00:29:52.150] - Alba Ribera Martínez

and also on the NCA side, the National Competition Authorities also have monitoring powers to seek out information and to trigger their investigations to check whether non-compliance takes place at the national level and in this particular sense, I am also undertaking a set of research. It is particularly aimed at grasping whether each of the member states are passing their own national legal developments and incorporating them into their competitive law regimes to accommodate those monitoring powers in to their regular powers, if one would say. In this sense, we are already seeing some scope for divergence and for lack of unification or harmonisation that one would have expected within the DMA broader objective that we pointed out at the start of the conversation, surrounding this objective of harmonisation on the internal market.

[00:30:52.400] - Ronan Scanlan, Of Counsel

I think that's a really, really interesting topic to round off this really interesting discussion, Alba, which is, I suppose, brings in the discussion on Article 102 and Reg 1 2003, which is in a lot of ways a decentralised system of enforcement versus the Digital Markets Act, which is, at least, I suppose at its core, quite a centralised system of enforcement, this idea that the EU will essentially be responsible for the designation

process, is responsible for the imposition and review of compliance, but that the national competition authorities have this concurrent amplifying role where they can essentially take the work of the EU and go further with the existing gatekeepers and potentially go further still with other companies that are not gatekeepers and I know this was a point of interest for your discussions with other academics previously but I think it would just be very interesting for legal and economic practitioners to understand is, what does this look like from the National Competition Authority's perspective? Are we to expect a lot of unilateral action by them alongside the DMA? Are they waiting to let the DMA progress before taking additional steps? Or what's your view on that interplay?

[00:32:12.580] - Alba Ribera Martínez

The member states on the Competition Authority that also have adopted this, going back to this activist approach, may be the most prone to then maybe get their cases going and be conflicted with the DMA's overall impact in the internal market. I would say from the practitioners' side, the most relevant points I would raise would be those of the, first of all, the powers of the national competition authorities to receive complaints from third parties, they can receive those complaints and then they will pass them on directly to the European Commission and then the NCAs, these are really nice interplay, because I believe it's Article 27 of the DMA, which provides great scope for leeway for the National Competition Authorities to reject or write those same complaints and not even pass them on to the European Commission. Then the European Commission, as you have also rightly pointed out, is the sole enforcer of the DMA as established via Recital 91 of the DMA and the NCA have this supporting on secondary role to support, for example, the dawn raids that the European Commission maybe decides to perform in any of the member states.

[00:33:34.340] - Alba Ribera Martínez

Then there's these powers that I just highlighted in Article 38(7) of these monitoring powers and especially when also circling back to this idea of Article 102 and mergers, the gatekeepers are also compelled to notify all of the transactions that they realise within the market, although they might not be captured by merger control to the European Commission. Then the European Commission can pass on that information to the member states in order to apply the famous and renowned Article 22 of the merger regulation.

[00:34:14.520] - Ronan Scanlan, Of Counsel

Well, that is a topic really close to my heart at the moment, not least because I'm due to give a talk about Article 22 with fellow panellists later this month. There's obviously a glaring question now about the utility of Article 22 too but I think in a famously coined phrase, not life will find a way, but I think the Commission will find a way, one way or the other, to continue to call these mergers in and whether that means national authorities getting additional below threshold, call in powers under their own legislation, which a number of authorities, including Ireland, actually already have, or whether they need to do some reform to the EUMR if the general court upholds the EMLAU's opinion on this. So It's a very interesting question indeed

around how they will deal with this new obligation now for gatekeepers to notify mergers and what power is they will use to actually review those mergers.

[00:35:11.930] - Alba Ribera Martínez

I would say, first of all, the European Commission within the DMA is only compelled to gather all of this information coming from the gatekeepers but they will say that also the advocate general's opinion issued a few weeks ago is also key to understanding the interpretation of Article 22, because this is precisely, and I taught one course on merger control a few days back, and all of my students were wondering, okay, but haven't you taught us that if concentration of a merger falls below the scope of the thresholds, then none of the regime applies? Why is this coming along of killer acquisitions, which comes from a real imperative I recall, like inverted commas, "a paper remark on killer acquisitions on the pharma industry that really do not maybe apply in the same way to digital platforms and mergers? How is this coherent with all of the content that you have really taught us." I would say that the Advocate General's opinion goes really to the core of the Dutch clause and Article 22, which is basically this article was passed on the grounds that the Netherlands and Luxembourg did not have National Accommodation Law regimes, and especially relating to merger control, so that the European Commission should subsidiarily apply its powers on those types of cases, but not within the scope of Article 22 as we read it with the new guide issued by the European Commission

[00:36:51.730] - Alba Ribera Martínez

and especially within the Illumina Grail situation, we already have a really, I would say, paradigmatical approach to enforcement, which we should maybe not try to endeavour again, basically because the dates do not really correlate with the interpretation that was applied so I would say great impact. Both on the side of merger control and the DMA, but especially, I would say that the DMA can also be the work stream or the pathway that national competitions may pursue to apply in the end the tower cast judgement. So under the Tower Cast ruling and criteria to their enforcement actions in applying this Article 102 to past merger acquisitions and the merger control and transaction. So I would say it's also a quite spectacular number of acquisitions and interplay of how mergers are going to be applied and interpreted in the future so as to watch how they are going to be captured, not below the radar, but maybe within the radar by the European Commission.

[00:38:05.270] - Ronan Scanlan, Of Counsel

Alba, thank you so much. That's all the time that we have discussed these matters today and I'm delighted that we managed to even cover merger control because that wasn't on my copy book list. Alba, it's been such a pleasure to discuss these issues with you today and just get your insights from academic circles about these issues.

[00:38:26.650] - Alba Ribera Martínez

Thank you so much for the invitation, Ronan. And it has really It's been a real pleasure to join you and to exchange some ideas on how we maybe predict that enforcement is going forward.

[00:38:39.550] - Ronan Scanlan, Of Counsel

We've only just seen the start of the story around Digital Markets Act and how gatekeepers will respond, how access seekers will respond to the compliance measures, how the European Commission will take action, and even, as you say, how companies may seek private enforcement. So a lot left in the tank, I think, in this story.

[00:39:00.450] - Alba Ribera Martínez

Yes, so let's get on to it.

[00:39:02.910] - Ronan Scanlan, Of Counsel

Thanks so much, Alba. Have a fantastic day and look forward to discussing these matters with you again soon.

[00:39:07.630] - Alba Ribera Martínez

Thank you, Ronan.