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Counter-Hegemonic Neoliberalism

Making sense of EU platform regulation

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ABSTRACT

The platforms that hold the power in the digital economy, and the politics that surround them, are a central topic in contemporary political economy. The EU is widely perceived as a digital laggard, as it is home to very few leading digital corporations, and it is exposed to the market hegemony of the Big Tech platforms. Moreover, the EU is often considered the pioneer of digital regulation, and its platform politics have gained momentum as the EU Commission has unleashed a swathe of new regulatory initiatives, ranging from competition policies to governance of digital content, data flows and platform work. In this essay, we treat platform control and regulation as a matter of contested market design. We offer an analysis of the recent stream of EU platform regulation, questioning how it relates to the historical trajectory of the platform economy and established path dependencies within the EU. We argue that it is characterized by a critical approach to the power of digital platforms and a continuation of negative integration in the EU, and we suggest that it should be understood as a manifestation of counter-hegemonic neoliberalism, as it essentially enforces market-based governance of society through political market design.

1 Introduction

As critical technology scholars point out, digital technologies have become a central locus of power in modern society. In particular, the rise of the meta-platforms – Alphabet/Google, Apple, Amazon, and Meta/Facebook – has been identified as the beating heart of market control within the digital economy. Despite great interest in the politics of the digital economy and the question of reigning in Big Tech, the idea of establishing a comprehensive regulatory framework for the platform economy has only recently found its way out of the sphere of academic, political, and public discussion and entered the realm of legislation. While rather modest policies, such as the Open App Markets Act and the American Choice and Innovation Act, are still under discussion in the US Congress, the EU has pushed ahead with a comprehensive set of regulatory initiatives. Since 2019, the EU Commission has issued an ambitious package that covers competition (Digital Markets Act), content (Digital Services Act), data (Data Governance Act, European Data Act), and working conditions (Platform Work Directive).

While the EU – with very few leading platform companies of its own – is widely perceived as a digital laggard that is subject to the market hegemony of tech platforms, it, in fact, leads digital regulation. Given that the EU’s policies could function as blueprints for other countries (the so-called “Brussels effect”), a proper understanding of its platform regulation activities will be crucial to understanding the potential trajectories of the platform economy within and beyond the EU.

Any legislation proposed by the EU is subject to multiple expert discourses, each starting from the perspectives of the respective expert community – from antitrust and competition lawyers to policy advisers who are interested in social media governance and data regulation, or unions addressing platform work. Instead of following these professional discourses within the political arena, we pursue a reading of EU platform regulation that focuses on the underlying contestations of platform power embodied by the relevant legislation. This means identifying the competing forces and positions involved in shaping the platform economy. We start by analyzing the sources and strategies of the platform power targeted by the EU’s policy initiatives, by selectively reviewing literature addressing the rise of the platform economy and the sources of platform power (Section 2). By focusing on strategies of market dominance, we derive four dimensions of digital control, which we frame as strategies of *privatized digital market design* pursued by the owners of proprietary platforms. In Section 3, we use these dimensions to analyze EU platform regulation, seeking not to examine the particularities of the respective acts but rather the overarching ideational trajectory they share. We argue that they represent political market design measures intended to challenge the power exercised by private platforms. In the discussion (Section 4), we return to the political economy literature to evaluate

the conflict between private and public market design at play in the platform economy. We argue that EU platform regulation does not follow an “entrepreneurial” (Mazzucato, 2014) or “developmental” (Block, 2008) path, which has often been identified as the reason behind the rise of the platform economy in the US. Instead, it is stuck in a particular EU path dependency of negative integration and an ordoliberal/neoliberal ideational trajectory. We conclude (Section 5) that, by contesting private platform power while simultaneously enforcing a pro-market program of political digital-market design, the EU is, in fact, engaged in a practice that we frame as counter-hegemonic neoliberalism.

2 The rise of privatized digital market design

While it is widely believed that the rise of platform companies can be attributed almost entirely to private entrepreneurial behavior, critical political economy tells a very different story. As the relevant literature demonstrates, the global success of large platforms that are mostly based in the US is attributable to two dominant modes of state intervention. First, the private sector was able to build on computer technologies that had originally been developed through public investment, usually within the American military-industrial complex (cf. Schiller, 2000, 2014; Mazzucato, 2014). This literature argues that the emergence of an “entrepreneurial” (ibid.) or “developmental” state (Block, 2008) and the impact of its actions (targeted resourcing, opening windows, brokering, and facilitation) played a significant role in the genesis, expansion, and consolidation of what later became the platform industry in the US. Second, an anti-trust policy in the form of the political breakup of AT&T’s telecommunications monopoly cleared the market for newcomers, such as Google and Apple (Kushida, 2015), as well as the platform economy more generally.

The EU’s institutional set-up proved comparatively fragmented. Developmental statism operated mostly on the national level, with limited fiscal power and market reach compared to the US. Additionally, as Fritz Scharpf argues (2008; 2009), the process of European integration has been defined by a fundamental asymmetry between negative and positive integration: Negative integration, characterized by the elimination of tariffs, quantitative and qualitative restrictions on free trade, and free competition, was the dominating principle, and positive integration of economic policy and regulatory powers at the EU level remained limited (Scharpf, 2008, pp. 50–51). The dominance of negative integration, which persists to this day, systematically impeded interventionist developmental policy in the digital realm. Furthermore, national telecommunications monopolies were dismantled slowly, and only partially, leaving greater power in the hands of traditional operators (Kushida, 2015). Instead, the focus was on harmonization between national economies in terms of macro-level market design (negative integration). This European “preference” for

rule-setting (rather than developmental engagement) is often attributed to the deep influence of (German/Austrian) ordoliberalism (cf. Schnyder & Siems, 2013). Although the extent to which the contemporary EU can be deemed “ordoliberal” is contested (cf. Cardwell & Snaith, 2018; Schnyder & Siems, 2013), at least in terms of an absence of “dirigiste” industrial policy and a preference for engineering “free markets”, ordoliberal thinking seems to be firmly entrenched (cf. Fouskas & Roy-Mukherjee, 2019).

Following Kean Birch (2020), one can frame this practical and ideational trajectory as essentially neoliberal, as the politics of negative integration are largely about market design, which Birch (2020) understands as the essence of contemporary neoliberal practice. He arrives at this conclusion by acknowledging that neoliberalism is a highly contested and obscure concept and, in response, proposes a processual approach to the term that takes into account its development over time and accounts for changing notions about what markets are supposed to be, how they should be governed, and what they should be applied to. He notes that neoliberal thinkers have expressed quite “different notions of what a market is or should be” (ibid., p. 14). The godfathers of neoliberalism, Austrian Friedrich Hayek and Chicago School economist Milton Friedman frowned upon government planning and intervention for distorting the markets, while “Chicago sociology neoliberals like Gary Becker [1992] simply treated society as if it was already a market” (ibid., p. 15; cf. Birch, 2017). Contemporary neoliberal practice, Birch argues, follows a conception of markets advanced by Richard Posner (1973), where “markets are designed and organized through bureaucratic and other means, whether public or private institutions” (Birch, 2020, p. 16). In the EU’s ordoliberal/neoliberal tradition in particular, the role of market designer has usually been assigned to the state, whose role is to establish ground rules and oversee competition.

If we apply this thought to the current platform economy and the sources of the platforms’ power, it becomes apparent that these companies fundamentally challenge the regulatory primacy of the neoliberal state by seeking to design market processes and institutions on the basis of data. Theories of platform capitalism emphasize this point precisely, often framing the economic practices of the dominant platform companies as the capture and commodification of data. Shoshana Zuboff (2019), for instance, focuses her critique of the technology companies’ economic power on the underlying data economy and its social consequences. The major innovation of the digital era, she argues, is the development of new kinds of resources and profit opportunities that entail a profound socioeconomic transformation. Tech firms extract and process personal data to improve and sell their services, but also to expand and enhance their ability to predict, and even modify, their users’ behavior. Nick Srnicek (2017; 2018) also discusses how the hegemony of the platform corporations depends on private appropriation of user data. In line with a now well-established definition, he describes platforms as intermediating digital infrastructures that tend to become “natural monopolists” (Srnicek, 2017) in a winner-takes-all logic.

Building “data moats” is a central strategy for platforms seeking to expand their market power: bringing together disparate groups of participants (users, advertisers, and companies) and facilitating their interactions on the platform in order to maximize aggregation and control of the data. Capturing, aggregating, and utilizing the data allows the platform company to gain the knowledge it needs to offer improved products and services, which results in greater competitiveness and a dominant market position. Market dominance, in turn, creates path dependencies in favor of the leading platforms, because other market participants will arrange their own business models around them and consequently share an interest in sustaining their infrastructure and services.

A third line of theory focuses more explicitly on how platforms employ algorithmic management tools to expand their power through granular design of market processes. As Staab (2022) indicates, both the sectoral platforms and the broader ecosystems, such as Google and Amazon, use data from both the demand and supply sides to govern the digital markets they own and extract profits by taxing market participation on the supply side. Examples include the 30% revenue share that Google and Apple retain from transactions in their app stores, the cuts that food delivery platforms take from restaurants, and the fees Amazon charges third-party sellers on its e-commerce platform. Given that “transaction platforms” (cf. Gawer & Srnicek, 2021) are themselves essentially the locus of economic exchange – the marketplace (Staab, 2022) – the market power of platform companies is best conceptualized not as power in the market but as ownership, and thus control, of the market. While privately owned platform markets have become established in a variety of sectors, such as mobility, hospitality, delivery, and payments, platform giants such as Google (Android) and Apple (iOS), which Staab calls “meta-platforms,” have created broader market environments that are often described as “digital” or “socio-technical ecosystems” (Van Dijck et al., 2018) and occupy a privileged place in the digital economy. They constitute “proprietary markets” in the sense of comprehensive digital exchange systems that are each operated by a single company whose proprietary systems account for a significant proportion of supply and demand.

Within this context, algorithmic management practices function as sophisticated instruments of privatized and granular *digital market design*. Hewing to Hayek’s notion of markets as the ultimate information processors, market design seeks to manipulate market institutions to create incentives for market participants to reveal information (Nik-Khah & Mirowski, 2019), which can then be used to discourage strategic gaming behavior and thus prevent market failures (Hitzig, 2020). Market design as a field of research and practice in the *digital* economy evidently depends on the governance of digital data (Posner & Weil, 2018; Roth, 2015). Because the data-based management of platform markets gives market owners full control over this data and the respective infrastructure of economic exchange, dominant platform companies can execute market interventions that directly affect the economic conditions of millions of people by designing their proprietary market “institutions so that the behavioral incentives of individual

market participants are consistent with the overall goals of the market architect” (Ockenfels, 2013); that is, the platform company. The algorithmic management employed by platform companies is essentially how digital markets are designed, transformed, and adapted. According to Staab, the tools of private digital market design can be clustered into four sets (cf. Staab, 2022):

- 1) *Data control* is the exclusive capture of market information by measuring and evaluating products, services, market participants’ behavior, communications, transactions, inventories, and prices. In order to gain full control, platform companies centralize all traffic through their own servers and determine what information users can and must share through the design of their website interfaces. Automated monitoring of platform users enables precise calculation of demand developments and effective optimization of the design and placement of the company’s own products. Data control is also a means to intensify so-called lock-in effects by increasing the cost of switching to competing platforms.
- 2) *Access control* enables the platform to create artificial shortages of either supply or demand: The platform company controls the goods and services consumers get to choose from and the order in which they appear. It also has the power to exclude users and curtail, or even revoke, access to customers if suppliers do not obey the rules of the marketplace.
- 3) Dominant platforms use their economic power to directly or indirectly dictate the prices suppliers can sell their products for; they exercise *price control*. Amazon and Booking.com, for example, have best-price clauses that prevent sellers from offering lower prices elsewhere. Amazon directly manipulates the prices of third-party sellers through its ranking algorithms (cf. Kim, 2019).
- 4) To continue doing business, consumers and sellers must fulfil the set standards for market participation which are enforced by the market-owning platform. One prominent example of this *performance control* in practice is the non-transparent rating systems that platforms employ to measure the quality of services and discipline suppliers.

Evidently, the ability to abuse market infrastructure to serve one’s own interests contradicts the very core of liberal economic thinking. Platform markets are neither free nor neutral, nor open to all market participants alike. Instead, the privatized market design of digital platforms systematically challenges the historical liberal perception that market design is the preserve of the state (cf. Staab, 2022). Thus, we suggest that EU platform regulation should essentially be understood as an attempt to repoliticize digital market design. In the following section, we will take a closer look at the EU’s program of platform regulation and demonstrate that the respective policies are, indeed, designed to challenge precisely the tools of algorithmic market management that we have identified as the main pillars of privatized digital market design.

3 EU platform regulation: From privatized to political market design

One consequence of the rise of privatized digital market design has been the erosion of the effectiveness of many existing policy instruments, as platform companies circumvent existing legislation and establish their own forms of market control. More generally, the shift of economic activities to the internet has also weakened the effectiveness of legislation and governance linked to the nation-state. In recent years, however, a new trajectory for regulating the digital economy has emerged in the EU. Some even speak of the “evolution of European data law” (Streinz, 2021) or a new “data governance law” (Viljoen, 2020), which seeks to establish a coherent market design for the platform economy. Since the introduction of the General Data Protection Regulation in 2016, with its regulations for data processing, the regulatory focus has been on platform business models. During Ursula von der Leyen’s Presidency, the EU Commission has published an entire series of legislative proposals that directly address platform-based market design. In this section, we explore platform-related laws proposed and enacted in the EU since 2019 – the Digital Markets Act (DMA; European Parliament and Council, 2022a); the Digital Services Act (DSA; European Parliament and Council, 2022b); the Data Governance Act (DGA; European Parliament and Council, 2022c); the Platform Work Directive (European Commission, 2021); and the European Data Act (European Commission, 2022) to identify the EU decision makers’ underlying understanding of digital markets. We argue that this policy package can be read as a broader strategic shift that aims to establish the capacity to counter privatized market design via political legislation, and thus to reclaim political supremacy. We analyze the EU’s approach in relation to the four types of digital market design tools outlined in Section 3, demonstrating in relation to the most relevant aspects of the legislative proposals how the attempted regulation seeks to address the question of market design by digital platforms. We examine the extent to which European platform regulation is addressing particular control forms, which control forms these are, and how the European platform regulation does so.

Table 1: Comparison of privatized and political digital market design

Dimensions of control via market design	Privatized digital market design in proprietary algorithmic markets (Big Tech strategies):	Political digital market design in state-led digital markets (EU digital policy packages):
Data control	<ul style="list-style-type: none"> \ Determining the data to be collected for their own purposes \ Exclusive appropriation of market data (user behavior and communications, transactions, inventories, and prices) \ Centralizing traffic through the platform's own servers \ Disclosing and providing data to other users and third parties 	<ul style="list-style-type: none"> \ Prohibition of data misuse (DMA): Gatekeepers prohibited from using user data for own purposes; user profiles may no longer be combined with data from other services \ Prohibition of self-preferencing (DMA): Gatekeepers may not prefer their own products by disadvantaging other market participants through sorting algorithms \ Prohibition of lock-in mechanisms (DMA): Certain platforms must allow for data portability and interoperability \ Obligatory disclosure of information on service conditions, prices, and fees (DSA, DMA) \ Regulation of data sharing services (DGA) \ Compulsory data-sharing (Data Act): Platforms must allow business-to-public and business-to-business data sharing
Access control	<ul style="list-style-type: none"> \ Sanctioning non-compliant platform users with exclusion \ Creating artificial shortages of supply or demand \ Controlling goods and services for customers \ Setting the rules of the marketplace as condition for access 	<ul style="list-style-type: none"> \ Core platform services such as app stores required to grant access to third-party services (DMA) \ Prohibition of vertical restraints (DMA): Right of commercial platform users to offer products and services on other platforms at other conditions

Price control	\ Setting prices for certain services directly, e.g., Uber	\ Prohibition of best-price clauses and exclusive contracts (DMA)
	\ Dictating price ranges for suppliers, e.g., via best-price clauses in Amazon or Booking	\ Opening up platform employee pay for collective bargaining (Platform Work Directive)
		\ Direct price control as indicator of bogus self-employment (Platform Work Directive)
Performance control	\ Imposing standards for market participation, e.g., via non-transparent rating systems and algorithmic process management	\ Eliminating illegal content and dangerous products (DSA)
		\ Performance control as indicator of bogus self-employment to end circumvention of labor law (Platform Work Directive)

Source: authors

Let us first consider *data control* as the main form of platform control, where the general intention of EU policymakers is to constrain the capabilities of powerful platform companies. The legislation places radical constraints on the collection and combination of information, thereby restricting the data acquisition practices employed by the gatekeeper platforms.¹ The DMA, in particular, prohibits gatekeeper platforms from using data generated by the activities of their users for goals other than the actual functioning of the platform (Art. 6). This prohibition could significantly blunt the competitive edge of powerful platform companies, because it constrains their ability to gain exclusive strategic knowledge on the basis of algorithmic prediction; for example, regarding developments in supply and demand. The obligation to grant access to data and algorithms is a significant encroachment on gatekeepers' exclusive control of information flows. In that sense, the DMA is the flagship of the governmental response to privatized digital market design, building on the Platform-to-Business Regulation of 2019. The DMA, first unveiled in December 2020 and entered into force at the beginning of November 2022, reflects the classic objectives of competition policy by protecting market "openness", sanctioning the abuse of market power, and enhancing transparency for platform users. On the technical site, the DMA includes comprehensive interoperability and data

¹ The definition of gatekeepers was controversial and subject to great debate, especially regarding appropriate thresholds. In the legislation, it comprises digital platforms with more than 45 million monthly end users and more than 10,000 business users. The platforms must have an annual turnover of at least €7.5 billion in the European Economic Area (EEA) or a market capitalization of €75 billion in the last financial year. Additionally, they must provide a core platform service in at least three EU member states. Obviously, this approach targets Big Tech companies, but many smaller gatekeeper platforms, such as the streaming platform Spotify, the travel agency Booking.com, the food delivery platform Just Eat Takeaway, or the long-distance bus platform Flixbus, will not be affected. Besides, if the definition is limited to very large platforms, the regulation, though dubbed "ex ante," will hardly be able to prevent the rise of new gatekeeper platforms.

portability rules² that have the potential to crack open the established monopolistic and oligopolistic structures (Art. 6). Some of the other proposals, such as the DSA (Art. 29, 31) and the Platform Work Directive (Art. 6), also stipulate disclosure of information pertaining to core platform operations such as performance measurement tools, online advertising, and data generated by search engine users. The Platform Work Directive also regulates information flows within platforms, requiring their operators to enable communication channels between platform employees as well as workers' representatives and trade unions (Art. 15). The Data Governance Act (Chap. 2) will regulate new platform models that provide data-sharing services for businesses and individuals. The EU Commission's legislation stipulates that data sharing services operating in the EU must be registered in a member state or at least "designate a representative" in the Union so that they can be prosecuted under European law (Art. 10). The European Data Act will facilitate access to and use of data handled by large private platforms, making it an ideal vehicle to disrupt their exclusive data control. On the one hand, business-to-public data sharing seeks to provide the public sector with fair, reliable, and transparent access to data held privately by infrastructure platforms (Art. 14, 15). On the other hand, European SMEs should profit from extended rights to business-to-business data sharing (Art. 4, 5, and 6). In a nutshell, the regulations described in this paragraph represent the EU's attempt to reassert data control. Because their business models are grouped around privatized data structures, tighter data regulation will also make it far harder for the gatekeeper platforms to uphold their access, price, and performance control.

The platforms' *access control* will be severely constrained by stronger transparency requirements and government oversight. Digital labor platforms will be prevented from arbitrarily dismissing recalcitrant workers; social media platforms will be forbidden from unfairly deplatforming users, and they will be required to adhere to standardized procedures instead; gatekeepers' operating systems will have to open up to third-party software applications and – crucial to addressing market closure – competing application stores. The most pointed measure to reduce access control is the rule to allow all business users to use parts of gatekeeping operating systems such as application stores on "fair and non-discriminatory general conditions" (DMA, Art. 6), which would eliminate marketplace exclusivity. With its plans for a general interoperability obligation for social media operators, the European Parliament is trying to push the agenda of restricting access control even further. Through its amendment to the DMA (European Parliament, 2021), the Parliament has enforced that gatekeeper messenger services such as WhatsApp provide open interfaces and standards (APIs) to enable cross-platform

² Data interoperability refers to standardized data exchange via APIs that allows seamless integration of processes between different information systems. It requires a common and well-documented communication protocol with which the essential parameters of a process can be represented, read, and edited. These standards are mostly developed in sector-specific working groups, such as the European Multi-Stakeholder Platform on ICT Standardization and the European Interoperability Framework, or transferred from the national to the European level, as in the case of Gaia-X. Mandatory interoperability can be applied to all data access regimes with different levels of openness, such as data portability, data sharing, or open data—in each case, interoperability should facilitate the transferability and reuse of data to mitigate vendor lock-ins.

communication between users of “number-independent interpersonal communications services” (Article 7). If this plan were implemented, an account on a single messenger platform would be sufficient to communicate with all publicly visible users on WhatsApp and other messenger gatekeepers, which could lead to an effective decentralization of the messenger landscape, as platform operators would not be able to exclude users from third-party platforms, which could reduce network effects (cf. Piétron, 2022).

The legislative proposals challenge *price control* by platforms with two requirements: First, best-price clauses will be prohibited; gatekeeper platforms will no longer be able to contractually hinder their clients from offering the same products or services elsewhere at different conditions and prices. This will also inhibit the gatekeepers’ practice of market closure by means of provider lock-in, and absolute price control will become impossible. Second, where platforms effectively determine the level of remuneration of external platform contributors, this will be regarded as an indicator of an employment relationship – the platforms will have to take full responsibility for their workers. A serious push for proper employment could substantially weaken the platform operators’ ability to dictate prices (pay) to their workers, as minimum wage rules would apply and labor relations would be opened up to collective bargaining. The EU Commission’s recently published draft for a Platform Work Directive addresses exploitative working conditions on digital labor platforms. By providing clear guidelines on employment status, the directive attempts to end the circumvention of labor law through bogus independent contracting. The decisive criterion in the draft is whether the platform controls “the performance of work” (Art. 2), for example, by determining the remuneration, controlling the labor process, or restricting the possibility of building a customer base. The directive also strengthens protection against unfair dismissal and grants workers a right to comprehensive information about the use of automated monitoring and decision-making systems.

Regarding *performance control*, the EU aims to prohibit platforms from technically restricting users’ activities and employing inscrutable algorithmic control tools. Freedom of choice on meta-platforms is to be increased through access to alternative apps and app stores. Users on social media platforms and workers of digital labor platforms will have a right to information on the algorithms shaping their platform experience, monitoring their activities, and managing their performance; thus, automated decisions are to be made controllable. Social media users will even have the possibility to opt out of the platform’s standard recommendation algorithm. Another platform-related law, the DSA, which was released in tandem with the DMA, proposes comprehensive rules for dealing with illegal content in the platform economy. Analogous to the German “Netzwerkdurchsuchungsgesetz” of 2017, it addresses hate speech and disinformation on social media platforms but also covers dangerous physical products on e-commerce platforms. Large and very large platforms will be obliged to delete illegal content and/or user profiles themselves and, under

specific circumstances, inform law enforcement (Chap. 3). The DSA also proposes – for the first time – a general right to appeal, and it requires member states to establish independent arbitration tribunals (Art. 17, 18).

Drawing on our survey of how the EU’s regulatory initiatives address platform power, we identify four central strategic goals (see Table 1). First, the *prohibition of self-preferencing*: Gatekeepers may not give preferential treatment to their own goods or display them in an unduly prominent position on their online marketplaces or on their hardware devices; second, the *prohibition of vertical restraints* by protecting commercial platform users’ right to offer their services or products on other platforms and at other prices and conditions; and third, the *prohibition of lock-in mechanisms*, which are intended to stop large platform providers from locking users into their own digital ecosystem and hindering their switching to other services. Gatekeeper platforms must allow third-party services and ensure interoperability with the core applications. Furthermore, gatekeepers must take technical measures to guarantee so-called “data portability” allowing users to move to another platform along with their data. Finally, the *prohibition of data misuse*: On the one hand, the DMA forbids gatekeepers from using the data of their business customers for their own purposes; on the other hand, user profiles may no longer be combined with data from other services, as done by Google and Facebook, on a large scale to provide targeted advertising.

4 Discussion

We conclude that the EU Commission’s legislative proposals remain within the European tradition of rule-setting, while seeking to rewrite its granular code for the algorithmic age by disrupting or modifying the platforms’ data control strategies as the main source of power in digital markets. This approach of *political digital market design*, most strongly epitomized by the DMA, is also reflected in several related press statements of EU officials. Andreas Schwab, rapporteur for the DMA, openly argued for greater regulatory intervention, as “competition rules alone cannot address all the problems we are facing with tech giants and their ability to set the rules by engaging in unfair business practices.” The Digital Markets Act would “rule out these practices, sending a strong signal to all consumers and businesses in the Single Market: rules are set by the co-legislators, not private companies.”³

It must be emphasized that EU decision-makers are not speaking with one voice on the issue of platform regulation, and the consequences of the EU’s

³ <https://www.europarl.europa.eu/news/en/press-room/20211118IPR17636/digital-markets-act-ending-unfair-practices-of-big-online-platforms> (30/05/22).

succession of initiatives to regulate the market power of private platforms remain unclear, with divergent technopolitical goals apparent among certain member states as well as political and economic stakeholders and interest groups. However, our analysis of current EU platform regulation initiatives reveals a broader conflictual dynamic that transcends conflicts within the political realm. As the central dynamic plays out between private platform providers and policymakers, EU platform regulation must be understood not only (and obviously) as a contestation of private platform power, but also as a conflict over digital market design. Essentially, it represents an attempt to (re)instate the primacy of political rule over essential features of proprietary platform markets. As such, the conflict should be understood as a struggle between privatized and political market design.

This framing of what is, to date, the most powerful contestation of platform market dominance not only reveals the principal dimensions of the conflict over platform power, but it also tentatively situates the respective contestations within the particular political path dependencies of the platform economy and within European market regulation. First, if we consider the two historical sources of the rise of the platform economy, current political efforts to influence digital market design are evidently not about entrepreneurial or developmental engagement by the state. This is not, of course, to say that such engagement does not exist at all. Indeed, research points to increasing state activity in the realm of public investment in the EU: The European Green Deal and NextGenerationEU recovery fund both include finance for digital innovations. The EU's approach to innovation policy also seems to have become more mission-oriented (Staab & Piétron, 2020), and the EU increasingly provides public venture capital – for example, through the European Investment Bank (Mertens & Thiemann, 2018; 2019) – to provide platform startups with better access to the kind of patient public capital (Cooiman, 2020) that was so crucial to the rise of the US platforms (Rahman & Thelen, 2019; Klingler-Vidra, 2018).

In fact, however, the string of initiatives investigated above is much closer to the politics of telecommunication market (de)regulation, which historically broke AT&T's monopoly in the US in the 1980s. It is essentially a program of market regulation and design. It thus seems reasonable to frame it as a continuation of negative European integration, given that it rejects the economic policy option and insists on restoring “free” competition and “real” markets in the digital economy. If it ultimately strengthens the EU's regulatory capacities, it could eventually go beyond negative integration. However, if the problems it addresses are considered to be resolved, it might also lead to a lack of interest in promoting public alternatives to the existing platform ecosystems and to hesitancy over stronger state interventions in the platform economy.

Broadly speaking, the EU's program of platform regulation seems to reflect a deep historical “preference” for rule-setting and market regulation that is attributable to the prolonged influence of ordoliberalism. While this accounts

for the overall goals of the program, and the role attributed to the state, Birch and Staab demonstrate how we can also make sense of the much more granular approach to political market design that the EU is pursuing in its platform regulation. On the one hand, political digital-market design represents a lesson learned from the digital platforms' privatized digital market design, as it targets exactly those granular tools and strategies of algorithmic management and data-based market design that those same companies have developed. On the other, it reproduces the central approach of contemporary neoliberalism to the governance of society in terms of market design – and conflicts over market design, as represented in the EU's program, are bread-and-butter challenges within the neoliberal marketization of society.

5 Conclusion

Our empirical analysis of recent EU platform regulation, focused on the interlinkage of platform businesses and EU policy strategies, suggests that European policymakers are currently attempting to reassert public control by taking over the very tools that the platform giants rely on to build and exercise their power. As power in the digital economy is largely manifested in private control over digital markets, their design has become a site of fierce conflict between the platforms' privatized market design versus policymakers advocating a primacy of political digital-market design. Although European digital policy largely remains in the institutional default mode of rule-setting and negative integration, the advent of giant platforms usurping entire markets has forced the EU to rewrite the granular code of its policy response. The current politicization of digital markets in the EU is critical of private power over the market – distinguishing this program from the kind of historical market (de)regulation approaches that combatted political power in the economy by breaking up mostly public monopolies. By maintaining and reinforcing the market as the essential organizing principle of social exchange, the EU is nevertheless enforcing a neoliberal vision of the digital society. If neoliberalism in practice is regarded as market design, the EU's platform politics epitomize a political neoliberalism that adopts a defensive stance toward economic actors disputing its very own terrain. It is neoliberalism claiming to be counter-hegemonic without ever leaving the confines of neoliberal thought.

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