

Emerging trends & points of consensus:

- In general, MS positions seem to fall into two categories:
 - Agreement that ex-ante regulation is needed to improve the contestability of digital markets and protect European consumers. This marks a shift in position for some countries (e.g. Germany, NL) since the P2B discussions in 2018.
 - In the early stages of development and likely to wait for the Commission to present its proposal before finalising a formal position (e.g. the Nordics).
- Awareness that certain large platforms are unavoidable trading partners for many businesses, and leverage this position at the expense of competition and innovation.
- Agreement that while competition law is a useful tool, ex-ante regulation would complement it by providing a fast legal means to challenge unfair practices that affect many businesses. It is important to make clear to businesses and authorities alike how ex-ante regulation interacts with existing and future competition instruments.
- A general view that the scope of regulation should be narrowly focused on digital platforms holding a gatekeeper position across a large part of the EU Internet Market. MS largely agreed that an overly broad scope covering all platforms or platforms with a strong market position in their home country would be disproportionate and may reduce support for regulation.
- Regarding the criteria to define gatekeeper platforms, MS still seem to be considering the merits of quantitative vs. qualitative metrics, or a combination of both.
- There does not seem to be a clear consensus around the regulatory approach yet; several Member States are still reflecting on this point. However, most governments seemed receptive to a possible combination of prohibitions/obligations and tailor-made remedies as a way to address the need for both speed and flexibility in fast-paced digital markets.
- A general agreement that remedies must result in a change of behaviour, and that monetary fines will not be a sufficient deterrent.
- Regarding enforcement, the preference appears to be either for an EU authority (e.g. the Commission) to take the lead, or not to finalise the government position before the scope and substance of regulation are clearer.
