

Fast-Follower Digital Competition Regimes: Leveraging Lessons from First Movers

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Fast-follower digital competition regimes can learn from first-moving frameworks to ensure regulatory coherence through legislative measures, regulatory decisions, and incentives for voluntary compliance.

1 Introduction

Digital competition regimes are on the rise. Countries such as Brazil, India, and Australia have proposed legislation to regulate the business practices of large online platforms within specific digital markets. Others, like the United Kingdom and Japan, are starting to implement their regimes. These emerging "fast-follower" regimes often draw inspiration from "first-moving" frameworks already in force in Europe and Germany¹.

Fast-follower regimes benefit from learning from first movers. By leveraging the experiences of established regimes, they can design, implement, and enforce laws more effectively while addressing domestic market characteristics and concerns.

Such learning fosters regulatory coherence. It promotes convergence and strengthens international cooperation among digital competition regimes globally. This is particularly important as these regimes often target similar firms operating globally and business practices and aim to benefit similar stakeholders.

¹ For an inventory of rules, see OECD, G7 Inventory of New Rules For Digital Markets Prepared by the OECD Competition Division Under the Framework of the Yearly G7 Competition Policy Makers and Enforcement Summit, October 2024 (accessed 10 January 2025). Available at: <https://www.oecd.org/content/dam/oecd/en/topics/policy-sub-issues/competition-and-digital-economy/g7-inventory-of-new-rules-for-digital-markets-2024-update.pdf> / [icr_content/renditions/original/g7-inventory-of-new-rules-for-digital-markets-2024-update.pdf](https://www.oecd.org/content/renditions/original/g7-inventory-of-new-rules-for-digital-markets-2024-update.pdf)

This analysis explores the benefits of convergence and offers recommendations for fast-follower jurisdictions to enhance coherence and effectiveness in their digital competition frameworks.

2 Benefits of Convergence

Fast-follower jurisdictions gain significant advantages by learning from first movers' experiences, as they follow the same legislative structures, with a designation phase and a compliance phase.

The designation phase identifies firms subject to digital competition regimes. Europe and Germany offer contrasting approaches and have already designated firms subject to their regimes, providing valuable insights for fast-follower countries².

In Europe, the designation phase is formalistic and requires firms providing core platform services to notify the European Commission if they meet specific qualitative and quantitative criteria. Firms can contest designation by showing that they do not meet the qualitative criteria despite meeting the quantitative criteria. However, they cannot provide economic arguments that the designation is not needed due to the market environment. The process avoids lengthy market investigations. Moreover, the phase is time-bound, with a statutory deadline for designation decisions, ensuring pace.

By contrast, in Germany, the process is evidence-based, requiring the German competition authority to conduct detailed investigations into firms' services. However, there is no statutory deadline, enabling the authority to conduct thorough assessments without time constraints. The designation decision applies to firms as a whole rather than to specific services.

An effective designation phase should combine the proportionality of Germany's evidence-based model with Europe's predictability and pace, targeting certain digital services with statutory deadlines. The UK regime exemplifies this balance by requiring evidence-based

² For a tracker of the digital competition regime in Europe, See, Christophe Carugati, Digital Markets Act (DMA), *Digital Competition* (accessed 10 January 2025). Available at: <https://www.digital-competition.com/dmatracker>

For a tracker of the digital competition regime in Germany, See, Christophe Carugati, Section19a GWB, *Digital Competition* (accessed 10 January 2025). Available at: <https://www.digital-competition.com/section19agwb>

assessments of certain digital activities and stakeholder consultations by the UK competition authority before adopting the designation decisions under a statutory deadline³.

Then, the compliance phase ensures that designated firms adhere to obligations designed to address competition concerns.

In Europe, the designated firms must follow a predefined list of positive and negative obligations and submit compliance reports without the ability to escape the obligations with pro-competitive objective justifications. The Commission thus oversees compliance but can open non-compliance investigations. Those investigations are time-bound, ensuring pace, and may result in corrective measures such as behavioural or structural remedies and fines. Moreover, the participatory approach allows firms and stakeholders to collaboratively address concerns and design compliance solutions. As of January 2025, several non-compliance investigations are already ongoing.

By contrast, in Germany, the German competition authority can impose compliance obligations following evidence-based investigations that enable the firms to present pro-competitive justifications to escape the obligations. The process is not subject to statutory deadlines, allowing for thorough assessment but potentially slow resolutions.

An ideal compliance phase should combine the proportionality of Germany's evidence-based model with the process and pace of Europe's participatory approach and statutory deadlines. The UK regime offers a quasi-ideal model, requiring the UK competition authority to conduct an evidence-based assessment of the obligations targeting the identified harm, with the ability for firms to provide pro-competitive justifications for some obligations. Moreover, the process is subject to a participatory approach with stakeholder consultations before adopting the compliance decisions under a statutory deadline. Finally, fast-follower countries can learn from the effectiveness of the European and German regimes and the compliance solutions adopted by designated firms.

Although these first-moving regimes are in their early stages, their global influence is already apparent. Fast-follower jurisdictions closely monitor developments in Europe and Germany, adapting some elements of these models to their domestic conditions. However, full replication of the European or German frameworks is rare. Similarly, extraterritorial effects

³ For a tracker of the digital competition regime in the UK, See, Christophe Carugati, UK Digital Markets Act, *Digital Competition* (accessed 16 January 2025). Available at: <https://www.digital-competition.com/ukdigitalmarketsact>

remain limited, as firms often restrict compliance measures to the jurisdictions where they are required⁴.

Moreover, first-moving jurisdictions can also learn from fast-followers. By reviewing and adapting their frameworks based on global experiences, they can improve the effectiveness of their regimes.

The mutual learning process enhances convergence and international cooperation. It leads to a reduction in regulatory burden for designated firms. They can implement similar compliance strategies across jurisdictions, achieving economies of scale. It also enhances stakeholder benefits. They can benefit from consistent rules and compliance solutions, enabling scalability with minimal regulatory complexities to navigate various jurisdictions. Finally, it lowers administrative costs for competition authorities. Competition authorities can streamline implementation by replicating proven rules and solutions, reducing legal challenges and administrative resources.

3 Recommendations

Fast-follower jurisdictions can ensure convergence in digital competition regimes through legislative measures, regulatory decisions, and incentives for voluntary compliance.

First, fast-follower regimes can replicate provisions from first-mover jurisdictions when proven effective and cost-efficient. Alternatively, they can introduce compliance recognition mechanisms, allowing them to accept solutions implemented overseas while retaining flexibility to address domestic concerns. For instance, Australia has included a compliance recognition mechanism in its proposed regime⁵.

Second, regulators can impose similar requirements or accept compliance commitments based on solutions adopted in other jurisdictions. This approach is particularly effective when targeting the same firms and business practices. For example, Google extended its European

⁴ OECD, Competition Policy in Digital Markets The Combined Effect of Ex Ante and Ex Post Instruments in G7 Jurisdictions, October 2024 (accessed 10 January 2025). Available at: https://www.oecd.org/en/publications/2024/10/competition-policy-in-digital-markets_554eb7d5.html

⁵ Australian Government, Digital Platforms – A Proposed New Digital Competition Regime, The Treasury, 2 December 2024 (accessed 15 January 2025). Available at: <https://treasury.gov.au/consultation/c2024-547447>

compliance solutions under the European regime to Germany to resolve a German investigation under the German regime⁶.

Finally, they can incentivise large online platforms to adopt voluntary measures, such as extending overseas compliance solutions, in exchange for reduced regulatory scrutiny or the abandonment of stricter proposals.

⁶ Bundeskartellamt, Bundeskartellamt Gives Users of Google Services Better Control Over Their Data, 5 October 2024 (accessed 13 January 2024). Available at: https://www.bundeskartellamt.de/SharedDocs/Meldung/EN/Pressemitteilungen/2023/05_10_2023_Google_Data.html;jsessionid=B596200F4514AE3E530BB1ED40816B6E.2_cid508?nn=3591568

About

Digital Competition

Digital Competition (www.digital-competition.com) is a research and strategy consulting firm dedicated to promoting open digital and competition policies that foster innovation for businesses, law firms, and government agencies. Led by Dr. Christophe Carugati, a passionate and impartial expert in digital and competition policy, the firm combines expertise in law, economics, and policy to address the most pressing challenges in the rapidly evolving landscape of digital and competition policies. This analysis was conducted independently and did not receive any funding.

This paper is part of our Digital Competition Coherence Hub (<https://www.digital-competition.com/digitalcompetitioncoherencehub>). The Hub aims for global coherence in digital competition rules for effective and cost-efficient regulation.

We provide research on international coherence and strategic advice on digital competition regimes, including responses to consultations in Europe, the UK and Australia. Our services also include tailored training sessions on digital competition frameworks, with a particular focus on the European and UK models, as well as speaking engagements at conferences.

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