

e-Commerce and enforcement

Options for enforcement and cooperation between Member States

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Structure of the Presentation

1. Regulatory goals and enforcement choices
2. Digital Market enforcement approaches
3. Member State cooperation
4. Recommendation

1. Regulatory goals shape choices

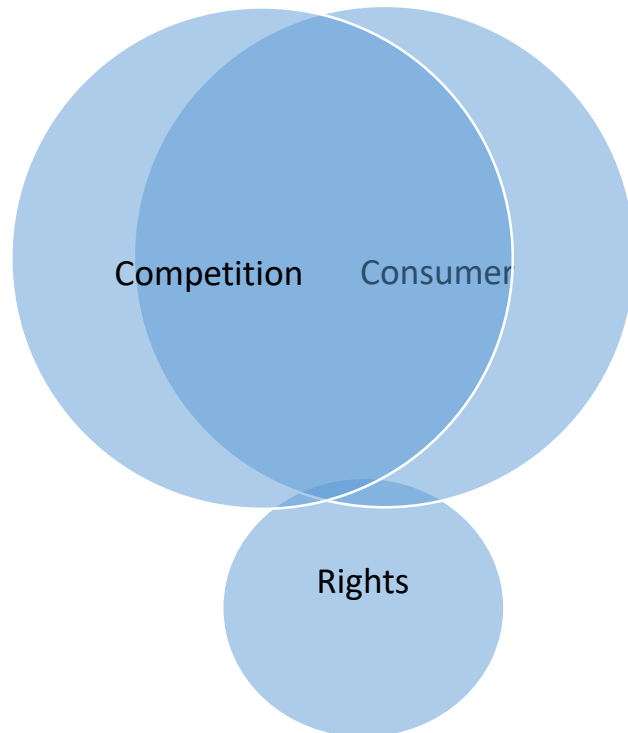
Regulatory framing is imperative

- Should not be innovations vs fundamental rights but innovation through a fundamental rights framework

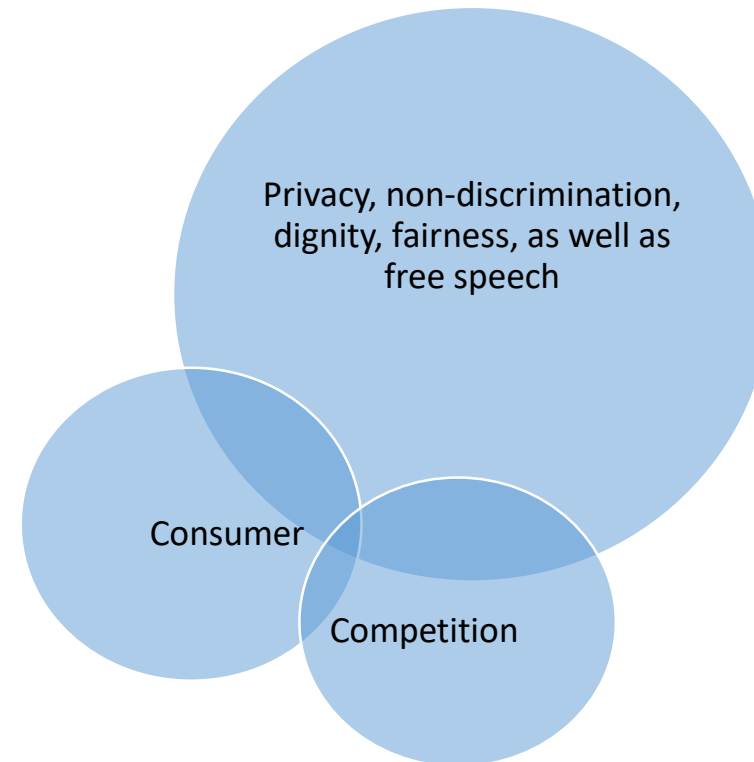
Digital constitutionalism should be new frame

- e-Commerce liability shield no longer fit for purpose
- Reform requires different enforcement regime: ECD inadequate
- Self/ voluntary and co-regulatory codes inadequate for coherent internal market
- Lack of regulatory certainty harms innovation

Current frame: consumer choice



Public values / law frame



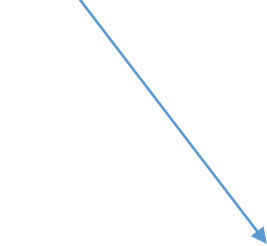
Regulating the internet:

'Firstly, there is...Libertarianism: (1) the market will regulate; (2) there is no one government or regulator who has authority, or even the legitimacy to regulate; (3) the community is the source of legitimate authority to regulate. **Then in time there will be...realism: (1) the market cannot control this; (2) key players will set the agenda and should be the focus of regulation; (3) regulation should focus on discrete risks and harms rather than processes or structures.**

Much later may come the realisation that as **governments stood by a few large corporations have stolen a march and have become self-governing within the sphere through contractualisation.**'*

*Murray and Black

Where we are



2. Choices in DSM

Range from soft to hard

- Soft self regulation (ECD, geoblocking, parcel)
- Layering enforcement (AVMS, copyright)
- Cooperation prioritised (Consumer protection)
- Rights frame (GDPR)

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European Parliament

	E-Comm	Geo	Parcel	AVMS	Copyright	Consumer	GDPR
None		Reliant on CPCR					
Report	X	X	X	X		X	
Voluntary	X			X			
Co-Reg				X			
Internal Complaints					X		X
NEB Oversight		X	X	X			X
ADR Suggested							
ADR/ODR Req				X	X	X	
NEBs Enforce						X	X
Specific NEB Powers Req						X	X
NEB+				X		X	X
NEB+ Stakeholder						X	X
NEB+ EU Reg						X	X
Court Rem accord to national law				X	X (copyright law)	X	X (inc Rep actions)
Penalties specified							X

3. Barriers to enforcement

- Externalities
- Unequal distribution
- Expertise
- Complexity
- Lack of transparency

3. Options for better enforcement and cooperation

Range of options

- Non-binding self/ co regulation (no change)
- NEBs left to Member State discretion (not recommended, lack of co-operation etc)
- Co-regulation with complete industry transparency (unlikely)
- NEBs+ Network and EU regulator

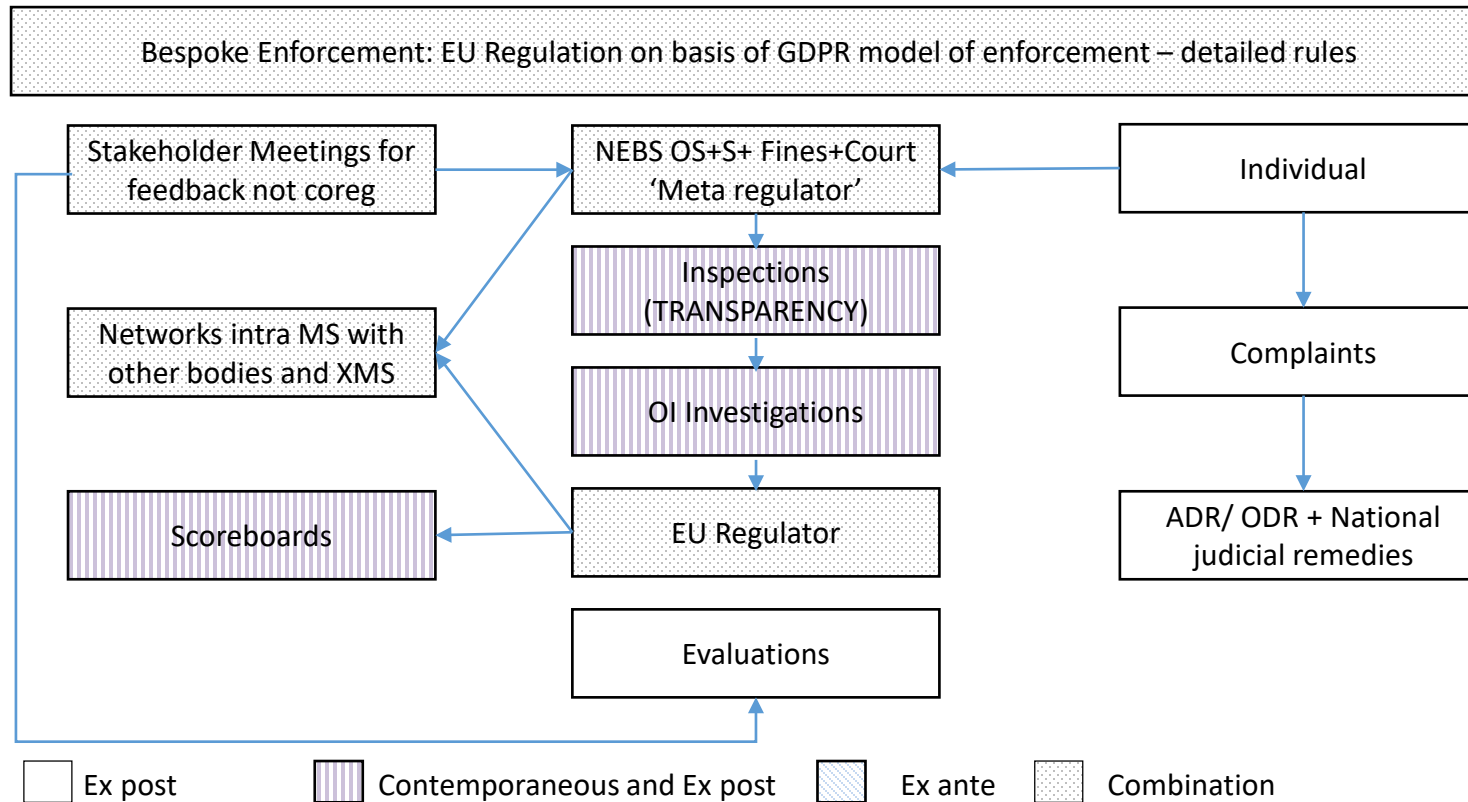
4. Recommendations

- DSA cannot solve all regulatory issues
- Correct regulatory frame essential
- Goals and values – knowledge and understanding – tools and techniques – behaviour of individuals – behaviour of organisation – trust and legitimacy*

*Murray and Black

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**Thank you for your
attention!**