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Big Tech's Differentiated Lobbying

Analysing the Political Activity of Alphabet, Meta and Microsoft in EU Media Policy

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15.1 INTRODUCTION

The relationship between news media and big tech corporations is complex. It entangles important public interests and democratic values. As Bell puts it, digital platforms are 'swallowing' journalism in that they 'enable journalists to do powerful work, whilst at the same time contributing towards making publishing journalism an uneconomic venture'.[1] Technology companies increasingly play a key role in the media ecosystem by distributing news content with algorithmic recommender systems, channelling audience attention and controlling the digital advertising scene.[2] There is a widely shared concern that growing dependencies of news media on global digital platforms are contributing to the crisis in journalism, undermining news media's ability to fulfil their democratic functions.[3] Recently, debates around the use of news content for the training of generative artificial intelligence (AI) systems have once again illuminated the conflicting interests and power asymmetries between the news media sector and technology companies.[4]

Remedying this uneven playing field has been a regulatory hot topic globally. The Australian News Media Bargaining Code, addressing the bargaining power imbalance between news media and digital platforms, has been a global trendsetter

[1] E. Bell, 'Facebook is eating the world: It's the end of the news as we know it', *Columbia Journalism Review*, 7 March 2016, available at: www.cjr.org/60th/facebook-is-eating-the-world-emily-bell-end-of-news-as-we-know-it.php.

[2] R. K. Nielsen and S. A. Ganter, 'Dealing with digital intermediaries: A case study of the relations between publishers and platforms' (2018) 20 *New Media & Society* 1600–1617.

[3] R. K. Nielsen and S. A. Ganter, *The Power of Platforms: Shaping Media and Society* (Oxford: Oxford University Press, 2022).

[4] On this topic, see further Chapter 20 by Daniel Gervais and Chapter 21 by Martin Senftleben in this handbook.

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as similar interventions have been proposed in Canada,[5] the UK,[6] some states in the US,[7] and elsewhere in the world.[8] On the European Union (EU) regulatory stage, the news media–big tech nexus and the alleged value gap have also been extensively debated, resulting in various legislative initiatives.[9]

This chapter focuses on the political activities of selected big tech companies in this EU media policy debate in order to shed a light on their lobbying narratives. We use the term 'corporate political activity' to refer to strategies that corporations deploy to shape public policy in a way that best suits their interests.[10] Big tech companies have considerable lobbying power in the EU, and the domain of EU media law and policy has been a battleground on which they display this lobbying power. To understand the role and influence of dominant technology companies in this domain, this chapter explores how big tech companies position themselves in the EU media policy dialogue and how they articulate their interests in relation to policy-making that aims to strengthen journalists, news media and press publishers' rights online.

For the purposes of this chapter, our concept of big tech is aligned with the approach of the Digital Services Act (DSA), which governs very large online platforms (VLOPs) and very large online search engines (VLOSEs).[11] Our analysis particularly focuses on the VLOPs and VLOSEs operated by Alphabet, Meta and Microsoft, which are among the top spenders on EU tech lobbying.[12] Alphabet, with Google Search including Google News, plays a central intermediary role in the news ecosystem. Meta and its social media platforms Facebook and Instagram also remain prominent gateways to news content. Our decision to include Microsoft in the analysis is partially motivated by the fact that while the company does operate the networking platform LinkedIn and the search engine Bing, it has been carrying

[5] M. Ives, 'Canada forces Google and Facebook to pay news outlets for linking to articles', *New York Times*, 23 June 2023, available at: https://tinyurl.com/4t87ntpu.

[6] H. Barghouthi, 'Can a UK news media bargaining code serve independent publishers?', *Public Interest News Foundation*, 8 March 2023, available at: https://tinyurl.com/3wbfeds.

[7] J. Ding, 'California bill would force Big Tech to pay for news content', *Los Angeles Times*, 22 March 2023, available at: https://tinyurl.com/mwkyduzx.

[8] See, for example, D. McLeod, 'Commission to probe South Africa's digital media sector', *TechCentral*, 17 March 2023, available at: https://tinyurl.com/4ct9ur3n.

[9] On legal interventions introduced to support the press sector vis-à-vis digital platforms, see further Chapter 16 by Ula Furgał and Martin Kretschmer and Chapter 17 by Eleonora Rosati in this handbook.

[10] A. Hillman, G. D. Keim and D. Schuler, 'Corporate political activity: A review and research agenda' (2004) 30(6) *Journal of Management* 837–857.

[11] Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services and amending Directive 2000/31/EC (Digital Services Act), OJ 2022 No. L277. For a list of designated VLOPs and VLOSEs, see https://digital-strategy.ec.europa.eu/en/policies/list-designated-vlops-and-vloses.

[12] M. Bank, F. Duffy, V. Leyendecker and M. Silva, 'The lobby network: Big tech's web of influence in the EU', *Corporate Europe Observatory*, 31 August 2021, available at: https://corporateeurope.org/en/2021/08/lobby-network-big-techs-web-influence-eu.

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out public relations campaigns globally supporting publishers.[13] Moreover, the fact that the research project culminating in the present edited volume has received financial support from Microsoft[14] merits a critical investigation into the underlying motivations for mitigating potential risks to academic integrity. We excluded X from the analysis, despite the strong connections to media content of its social media platform, because of its comparatively limited presence on the EU lobby scene in connection with the legislative initiatives analysed here.

In terms of substantive focus, the chapter is concerned with the lobbying activities of these three companies around three EU legislative initiatives that touch on the issues of dependencies and power asymmetries between big tech and news media: the Copyright in the Digital Single Market Directive (CDSMD),[15] the Digital Services Package (DSA and the Digital Markets Act, DMA[16]), and the European Media Freedom Act (EMFA).[17] We collected openly accessible written output (position papers, open letters, submissions to consultations) as well as correspondence sent to the European Commission (received through freedom of information requests) from Alphabet, Meta and Microsoft, analysed and synthesised these, and compared the preferred policy approaches. It is important to point out that big tech companies employ complex influence networks and often use proxies to represent their interests in the EU lobby scene.[18] With our focus on written output released by these companies themselves we do not, and cannot, fully depict the political activity of big tech in this policy arena.

The chapter argues that while these big tech companies primarily seek to preserve their own business models and reputations in the context of their lobbying activities on EU media law and policy, this policy domain has also seen a split in their narratives. Due to lower exposure to reforms in digital media policy, Microsoft has been less opposed to, and in fact has campaigned for, stronger protections for news media against digital platforms. We posit that EU media law and policy has turned into an arena where conflicts between tech companies are played out, and lobbying in this arena has been instrumental for Microsoft in advancing its public image as a socially responsible tech company.

[13] See e.g. Microsoft Blogs, 'Europe's press publishers & Microsoft call for Australian-style arbitration mechanism in Europe', 22 February 2021, available at: https://tinyurl.com/56srrksp.

[14] For more information regarding the project, see www.ivir.nl/projects/news-and-media-law-in-europe/.

[15] Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC, OJ 2019 No. L130.

[16] Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act), OJ 2022 No. L265.

[17] Regulation (EU) 2024/1083 of the European Parliament and of the Council of 11 April 2024 establishing a common framework for media services in the internal market and amending Directive 2010/13/EU (European Media Freedom Act), OJ 2024 No. L1083.

[18] Bank et al., 'The lobby network'.

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The chapter proceeds as follows. Section 15.2 reflects on the literature and empirical data regarding interest group lobbying and corporate political activity in the EU, which serves as the analytical framework of this paper. Section 15.3 unravels the complex relationship between big tech and news media, focusing in particular on the different ways Alphabet, Meta and Microsoft relate to the media sector. Section 15.4 presents and analyses the lobbying activities and main narratives employed by the three companies in relation to the proposal and legislative procedure of the four legal instruments in focus. Section 15.5 reflects on the findings, and Section 15.6 concludes.

15.2 CORPORATE POLITICAL ACTIVITY IN THE EU: THE CASE OF BIG TECH

Lobbying by corporations has become a standard element surrounding EU policy-making processes. This section reflects on the theory of corporate political activity and interest group lobbying in order to explore how corporations lobby, why they enter certain policy dialogues and how they formulate their interests. This analytical background will be crucial to better understand the positioning of Alphabet, Meta and Microsoft in the EU media policy dialogue.

Corporations deploy diverse strategies in order to influence the formation of public policy.[19] According to the traditional pluralist approach to lobbying, interest groups form, mobilise and join policy debates in order to provide information to policy-makers and shape the formation of policy.[20] Lobbying is seen as purely instrumental within this framework: in response to a policy disturbance, interest groups enter a policy dialogue with the goal of ensuring that the resulting policy aligns with their interests. Neopluralist approaches to interest group activities see lobbying as a more complex phenomenon that needs to be considered in a broader, more long-term context. Lobbying by the same interest group in different forms and on different issues cannot be considered in isolation but forms part of a broader corporate strategy. Therefore, while pluralist approaches see lobbying as instrumental to achieving a favourable outcome in a given policy arena, neopluralist approaches do not see 'a simple and straightforward relationship between lobbying and final policy decisions'.[21]

As Lowery writes, different stages of influence processes are 'linked in complex ways' because of which interest groups may be motivated to lobby for a multitude of reasons.[22] For instance, they may lobby on issues that are 'less than central' to them

[19] Hillman, Keim and Schuler, 'Corporate political activity'.
[20] D. B. Truman, *The Governmental Process: Political Interests and Public Opinion* (New York: Knopf, 1951).
[21] D. Lowery, 'Why do organized interests lobby? A multi-goal, multi-context theory of lobbying' (2007) 39(1) *Polity* 29–54.
[22] Ibid.

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in order to secure 'support from political elites or coalition allies on issues the organisation does care about'.[23] According to McCormick, lobbying may also constitute the 'price that must be paid' to secure regulation that inflicts particularly high costs on competitors.[24] In this sense, lobbying can be employed as part of a competitive strategy to 'raise rivals' costs', rather than aiming to achieve favourable outcomes for the corporation.[25]

On the EU stage, businesses dominate the lobby scene: research has repeatedly demonstrated that businesses have a considerably louder voice in EU policy-making processes than other interest groups.[26] Because corporations can provide information and expert knowledge that is necessary for devising, implementing and executing relevant policies, they are recognised as integral parts of EU policy-making.[27] In particular, corporations with high credibility, firm alliances with policy-makers and an understanding of how to navigate the complex political landscape of the EU have a strong voice in EU policy dialogues.[28]

As a result of a growing range of digital policy developments on the EU regulatory stage, big tech companies have been active in EU policy dialogues. Relevant policy debates touch on a wide range of issues such as data privacy, competition, content moderation and artificial intelligence, generally seeking to mitigate the societal harms of big tech. Big tech companies respond to such policy disturbances by entering policy debates at the EU level and also at the level of its Member States with the aim of preserving their existing business models and modifying proposed policies where these would undermine their profit margins.

Big tech companies have developed sophisticated political strategies in the EU. Their lobbying capacities constitute a 'core component of [their] political power'.[29] Corporate Europe Observatory has usefully documented this big tech lobbying machine, reporting that tech is the biggest lobby sector by spending in the EU.[30] This tech lobby universe is highly imbalanced: ten companies are responsible for the lion's share of tech lobbying expenses, with three companies (Alphabet, Meta and Microsoft) leading the pack and significantly outspending all other tech companies.[31]

[23] Ibid.

[24] R. E. McCormick, 'The strategic use of regulation: A review of the literature', in R. A. Rogowsky and B. Yandle (eds.), *The Political Economy of Regulation: Private Interests in the Regulatory Process* (Federal Trade Commission, 1984), p. 13.

[25] S. C. Salop and D. T. Scheffman, 'Raising rivals' costs' (1983) 73(2) *American Economic Review* 267–271.

[26] A. Dür and D. de Bièvre, 'Inclusion without influence? NGOs in European trade policy' (2007) 27 *Journal of Public Policy* 79–101.

[27] R. Eising, 'The access of business interests to EU institutions: Towards elite pluralism?' (2007) 14 *Journal of European Public Policy* 384–403.

[28] Ibid.

[29] R. Gorwa, G. Lechowski and D. Schneiß, 'Platform lobbying: Policy influence strategies and the EU's Digital Services Act' (2024) 13(2) *Internet Policy Review* 1–26 at 2.

[30] Bank et al., 'The lobby network', 6.

[31] Ibid., 11.

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Direct lobbying is not the only way big tech strives to influence EU policy-making: it is only the 'tip of the iceberg'.[32] In Europe, big tech companies have developed a far-reaching, largely opaque influence network that represents and echoes the interests of the tech sector. Business associations representing big tech such as Digital Europe, DotEurope, and Business Software Alliance have massive firepower in Brussels. More hidden strategies include cultivating close relationships with, and a revolving door for, EU officials; financing think-tanks and interest groups; and nurturing academic partnerships.[33] There is a concern that ostensibly independent groups funded by big tech can advocate for the interests of the tech sector, creating a 'useful impression of objectivity and impartial scholarship'.[34]

A leaked document from Alphabet usefully demonstrates the sophisticated political strategies of big tech. Outlining its arsenal against the Digital Services Package, the company emphasises that it has to 'mobilise third parties (such as think-tanks and academics) to echo Google's message' along with lobbying and reframing the political narrative.[35] These opaque influence networks have led commentators to aptly describe big tech's political operations as 'interference strategies'.[36] Following such concerns, members of the European Parliament submitted a complaint to the EU transparency register arguing that Alphabet, Meta and Amazon, along with some lobbying groups, have deceived the EU legislator by financing and instructing small lobbying groups that seemingly represented the interests of small companies.[37] An official channel called LobbyLeaks has also been set up with the support of members of the European Parliament in order to report instances of 'deceptive and opaque' operations that are 'central to big tech's lobbying tactics'.[38]

This large, and often opaque, lobbying power means that big tech companies have a significant influence on the very EU digital policy that is precisely aiming to curb their influence and dominance. However, not all big tech lobbying and political activity is equally problematic from the perspective of advancing socially

[32] G. Riekeles, 'I saw first-hand how US tech giants seduced the EU – And undermined democracy', *The Guardian*, 28 June 2022, available at: https://tinyurl.com/26rmpvj7; Gorwa, Lechowski and Schneiß, 'Platform lobbying', 3–6.

[33] Bank et al., 'The lobby network', 6; Tech Transparency Project, 'Google Academics Inc.', 11 July 2017, available at: www.techtransparencyproject.org/articles/google-academics-inc; W. Knight, 'Many top AI researchers get financial backing from big tech', *Wired*, 4 October 2020, available at: www.wired.com/story/top-ai-researchers-financial-backing-big-tech/.

[34] Bank et al., 'The lobby network', 35.

[35] Corporate Europe Observatory, 'Big tech brings out the big guns in fight for future of EU tech regulation', 11 December 2020, available at: https://tinyurl.com/pwd4nvha; J. Espinoza, 'Internal Google document reveals campaign against EU lawmakers', *Financial Times*, 28 October 2020, available at: www.ft.com/content/d9d05b1e-45c0-44b8-a1ba-3aa6d0561bed.

[36] G. Riekeles, 'A personal account – And warning – On big tech's tentacular powers in Europe's capital city', *Medium*, 5 July 2022, available at: https://medium.com/@georg.riekeles/teknopolis-7cbe48a5fcf2.

[37] C. Goujard, 'Big tech accused of shady lobbying in EU Parliament', *Politico*, 14 October 2022, available at: www.politico.eu/article/big-tech-companies-face-potential-eu-lobbying-ban/.

[38] J. Rankin, 'MEPs launch site for EU officials to report "shady lobbying" by big tech', *The Guardian*, 2 February 2023, available at: https://tinyurl.com/mv4f32d9.

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responsible digital policy. As Gorwa, Lechowski and Schneiß assert, it is imperative not to treat big tech as a unified industry because of their diverging services, business models and strategies.[39] In particular, 'enterprise-oriented firms like Microsoft' may have fundamentally different policy interest compared to more 'consumer-oriented (and user-generated content oriented) firms like Facebook'.[40] How these intra-industry variations of interests translate into variations in lobbying activities has so far not received much attention in academic literature. These variations in lobbying activities in respect of news media will be at the focus of the rest of this chapter.

15.3 NEWS MEDIA AND BIG TECH: COMPLEX AND DIVERSE RELATIONSHIPS

Before delving deeper into the lobbying efforts of big tech, it is necessary to first briefly outline how news media and big tech companies relate to one another and why this relationship has become a policy problem in the EU. This section discusses this policy issue, the EU's regulatory responses and the conflicting stakes and interests of publishers and big tech companies in this policy space.

The effects of digital transformations on news media and journalism have been among the key focuses of EU digital policy. The rise and dominance of big tech companies, and of digital platforms in particular, have contributed to the various layers of crises faced by news media. Digital platforms have emerged as powerful information intermediaries. As audiences rely more prominently on online platforms to access news than on news media itself, these platforms also turn into powerful intermediaries in the media sector.[41] On digital platforms, reliable journalism competes on an equal footing with user-generated content, disinformation and other less socially productive information. Digital platforms algorithmically moderate this crowded information ecosystem in order to maximise attention and profit, rather than to ensure that the public interest is served. By serving as a bridge between news media and audiences, organising news content and channelling audience attention, digital platforms 'integrate themselves into the fabric of the news industry'.[42] With the resulting platformisation of the news media industry, the operations of newsrooms are progressively aligned with, and reliant on, digital platforms' distribution functions.

Legacy news media have struggled to adapt to this new, platform-dominated media landscape. Advertising revenues, which traditionally sustained news media,

[39] Gorwa, Lechowski and Schneiß, 'Platform lobbying', 8.

[40] Ibid., 8–9.

[41] N. Newman, R. Fletcher, K. Eddy, C. T. Robertson and R. K. Nielsen, 'Reuters Institute Digital News Report 2023', Reuters Institute, University of Oxford, 2023, available at: www.digitalnewsreport.org/.

[42] E. Bell, 'Do technology companies care about journalism?', in A. Schiffrin (ed.), *Media Capture: How Money, Digital Platforms, and Governments Control the News* (New York: Columbia University Press, 2021), p. 291.

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have been to a large extent usurped by big tech companies; this has uprooted the financial stability of the news industry.[43] Moreover, the growing importance of digital platforms has created dependencies that further destabilise the position and sustainability of news media. As summarised by Nielsen and Ganter, news media are simultaneously seeking to take advantage of the 'short-term, operational opportunities' offered by the platformised media environment, while expressing 'long-term worries about becoming too dependent on intermediaries'.[44] Because of the possibilities to reach wider audiences and to leverage news-related features and products on digital platforms, news media are compelled to take advantage of platforms. But in this process, news media have become dependent on a small number of powerful platforms for infrastructure, for the ability to reach audiences, for audience data, and in the hope of monetising news content online.[45] Moreover, AI, a field dominated by big tech companies, is increasingly important for all stages of news-making; this may lead the news industry 'to become even more tethered to platform companies in the long-run'.[46] Importantly, this dependence is one-sided: while for news media, cooperation with platforms has become essential to their operation, for platforms, news is just one small segment of an abundance of content.[47] In this highly asymmetric relationship, news media are not able to negotiate and collaborate with platforms on an equal footing.[48]

This complex interface between news media and certain digital platforms has been a key focus in EU media policy, prompting the proposal and adoption of various interventions. The CDSMD, the DSA, the DMA and the EMFA all include, or included in earlier versions, provisions that respond to the power imbalances between big tech and their digital platforms, and news media.

The CDSMD, adopted in 2019, aimed to address challenges to copyright brought about by digital transformations. As other contributions in this volume discuss,[49] one of the most controversial provisions of the Directive is the press publishers' right encapsulated in Article 15. The provision seeks to respond to the financial difficulties of publishers and aims to redirect revenues from big tech to publishers. The press publishers' right is built on the concern that the re-use of press publications is integral to the business model of digital platforms but publishers struggle to license

[43] P. L. Parcu et al., 'Study on media plurality and diversity online', Publications Office of the European Union, 2022; Cory Doctorow, 'Saving the news from big tech', *Electronic Frontier Foundation*, 17 May 2023, available at: www.eff.org/deeplinks/2023/04/saving-news-big-tech.

[44] Nielsen and Ganter, 'Dealing with digital intermediaries', 1602.

[45] Nielsen and Ganter, *The Power of Platforms*, p. 9.

[46] F. M. Simon, 'Uneasy bedfellows: AI in the news, platform companies and the issue of journalistic autonomy' (2022) 10 *Digital Journalism* 1832–1854 at 1833.

[47] T. Poell, D. B. Nieborg and B. E. Duffy, 'Spaces of negotiation: Analyzing platform power in the news industry' (2022) *Digital Journalism* 1–19.

[48] On the asymmetric negotiations between press publishers and digital platforms, see Chapter 16 in this handbook.

[49] See Chapters 16 and 17 in this handbook.

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their rights and thus recoup their investments.[50] As a result, the CDSMD awards publishers a new neighbouring right that allows them to claim remuneration for the online use of their press publications.[51] The Directive envisions that this will contribute to the 'sustainability of the publishing industry and thereby foster the availability of reliable information'.[52]

The Digital Services Package (DSA and DMA), adopted in 2022, seeks to horizontally address issues stemming from the rise and dominance of digital platforms. The DSA addresses illegal content online and sets out standards for platforms' content moderation practices and recommender systems. The way that digital platforms algorithmically curate and moderate content, channel audience attention and enforce their terms and conditions dictate, to a large extent, how news media reach and engage with the public online. As the DSA provides a new framework for digital platforms to carry out these practices, its provisions are also enormously influential for news media.[53] The DSA provides users of digital platforms, including news media, with various procedural rights to help them better understand and contest content-related decisions and restrictions imposed by platforms. Moreover, Article 14 mandates that platforms have 'due regard' to freedom of expression and media freedom when moderating content.[54] Although not included in the final version of the DSA, the introduction of specific exemptions from content moderation for media content on digital platforms was a hotly debated, and widely criticised, topic in the negotiation of the regulation.[55]

The DMA focuses on the gatekeeping position of platforms and aims to level the playing field between platforms and businesses that use them. As the media sector is a business domain where the adverse effects of the gatekeeping power of big tech are particularly strongly felt, the DMA's approach to addressing this platform power has important consequences for news media too, notwithstanding the fact that the legislation does not contain specific standards for the media sector. The DMA takes a competition law approach as it seeks to reduce information asymmetries between big tech and businesses that use their gatekeeper services; it addresses anti-competitive practices such as self-preferencing and bundling of services. Particularly relevant from the perspective of the media sector, Articles 5(10), 6(8) and 6(10) of the DMA require gatekeepers to provide publishers, upon request, with detailed information

[50] J. P. Quintais, 'The new copyright in the digital single market directive: A critical look' (2020) *European Intellectual Property Review*.

[51] CDSMD, Art. 15.

[52] CDSMD, recital 55.

[53] D. Buijs, 'The Digital Services Act and the implications for news media and journalistic content (Part 1)', *DSA Observatory*, 29 September 2022, available at: https://tinyurl.com/2thahuk.

[54] DSA, Art. 14.

[55] For the proposed amendment 511, see www.europarl.europa.eu/doceo/document/A-9-2021-0356-AM-509-514_EN.pdf. For commentary, see C. Papaevangelou, '"The non-interference principle": Debating online platforms' treatment of editorial content in the European Union's Digital Services Act' (2023) 38(5) *European Journal of Communication* 466–483.

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regarding advertisements, performance-measuring tools and real-time data relating to the business's use of the gatekeeper's services.[56] Taken together, the provisions have the potential to contribute to mitigating the power imbalance between big tech and news media.[57]

The EMFA in turn responds to a wide range of challenges faced by news media and journalism, such as media ownership concentrations, the deployment of spyware against journalists and the unfair allocation of state advertising. Article 18 of the regulation builds on the DSA and introduces specific content moderation standards for news content. The provision requires digital platforms to provide a functionality to platform users to declare themselves 'media service providers'.[58] Before platforms block or restrict the visibility of content from a media service provider, Article 18 stipulates that platforms should inform the media service provider of the reasons for the decisions and allow them to respond to this.[59] When a platform repeatedly restricts or suspends content for a media service provider, a 'meaningful and effective dialogue' is to take place between the platform and the media service provider to find an 'amicable solution'.[60] The EMFA thus envisions a privileged position for news media in digital platforms' content curation practices, complementing the EU's existing regulatory strategies, which aim to re-balance the relationship between big tech and news media on the basis of public interest values.

15.3.1 *The Interests of Publishers and News Media in This Policy Debate*

Publishers' associations and news media outlets have voiced strong concerns over the dominant position of big tech companies in the news ecosystem. As the CEO of Axel Springer expressed in an open letter to Google, the relationship between big tech and news outlets is 'evidently schizophrenic': while news outlets are in perpetual dispute and competition with big tech companies, news media also continue to benefit from traffic and cooperation with digital giants.[61] Tense relations have materialised in lawsuits and official complaints filed by media outlets against big tech companies in various European states, raising concerns over different aspects of big tech's dominance in the information ecosystem.[62] In the latest iteration of these legal challenges, thirty-two European media groups have teamed up to sue Google

[56] DMA, Art. 6(8), 6(10).
[57] Parcu et al., 'Study on media plurality and diversity online', 392.
[58] EMFA, Art. 18(1).
[59] EMFA, Art. 18(4).
[60] EMFA, Art. 18(6).
[61] M. Döpfner, 'Why we should all fear Google: Open letter from Axel Springer to Eric Schmidt', 24 May 2016, available at: www.webintravel.com/fear-google-open-letter-axel-springer-eric-schmidt/.
[62] See e.g.: European Commission, 'Antitrust: Commission sends Statement of Objections to Google over abusive practices in online advertising technology', 14 June 2023, available at: https://ec.europa.eu/commission/presscorner/detail/en/ip_23_3207.

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for anti-competitive practices in the ad-tech space.[63] The media groups involved assert that they 'would have received significantly higher revenues from advertising' without Google's anti-competitive behaviour.[64] This underpins the unfairness perceived by news media for the role of big tech in undermining the financial stability of the news sector, and their sense of entitlement for compensation.

Evidently, then, as the contentious relationships between news media and digital platforms are at the centre of EU policy debates, news media are actively and skilfully lobbying their cause. News media and press publishers have been vocal about their support for the introduction of regulatory measures supporting media and media content on platforms. Publishers' associations have lobbied for the press publishers' right, positing that this right is 'urgently needed' in order to 'improve press publishers' bargaining position in the digital environment'[65] and to 'help news publishers continue to invest in the creation of fact-checked, professional content'.[66]

In the context of the DSA, a core concern for publishers was that the terms and conditions of digital platforms enforced by obscure algorithms, rather than fundamental rights law, will define the limits of freedom of expression.[67] Publishers' associations argued that there was a clear 'need for the legal content of the free press to be protected against the arbitrary interference of the very large online platforms'[68] and noted that in the absence of a media exemption the regulation lacks 'the necessary safeguards to ensure a pluralistic media landscape online'.[69]

The DMA negotiations gave publishers a further regulatory context in which to lobby for legislative reform in relation to big tech's effects on news media.[70] The DMA, in the eyes of publishers, is an 'opportunity for the news media sector to

[63] P. Haeck, 'Google hit with €2.1B lawsuit from more than 30 European media companies', *Politico*, 28 February 2024, available at: www.politico.eu/article/32-european-media-groups-claim-e2-1-billion-from-google/.

[64] Ad Tech Claim, 'European news media file €2.1 billion ad tech claim against Google', 28 February 2024, available at: https://adtechclaim.eu/press-release/.

[65] European Magazine Media Association (EMMA), European Newspaper Publishers' Association (ENPA), European Publishers' Council (EPC) and News Media Europe (NME), 'EU copyright reform adopted by Member States: Publishers call for quick and appropriate implementation', 12 September 2019, available at: https://tinyurl.com/3fs3f8rh.

[66] EMMA, ENPA, EPC and NME, 'European Parliament votes to adopt an EU Copyright Directive fit for the 21st century', 26 March 2019, available at: https://tinyurl.com/mwnju329.

[67] EMMA and ENPA, 'EMMA and ENPA regret that the adopted Digital Services Act (DSA) will weaken freedom of the press online', 5 July 2022, available at: www.magazinemedia.eu/press-releases/emma-and-enpa-regret-that-the-adopted-digital-services-act-dsa-will-weaken-freedom-of-the-press-online.

[68] Ibid.

[69] EMMA, ENPA, EPC and NME, 'European media call on co-legislators to protect editorial content integrity and free media in the Digital Services Act', 25 November 2021, available at: https://tinyurl.com/4rjknrzd.

[70] EMMA and ENPA, 'Position paper on the Proposal for a regulation on contestable and fair markets in the digital sector Digital Markets Act', 23 March 2021, available at: www.magazinemedia.eu/storage/103/2021-09_EMMA-ENPA-Position-Paper-on-the-DMA.pdf.

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emerge stronger and more resilient from the current crisis'.[71] Publishers were vocal in their support for measures that improve news media's access to audience data and advertising data, asserting that these are 'critical for the development of [the news] ecosystem'.[72] Publishers' associations, furthermore, campaigned for the DMA to remedy some of the perceived shortcomings of the press publishers' right. According to news media, big tech companies had been offering 'take-it-or-leave-it agreements' in the context of the press publishers' right with unfair clauses which deepen publishers' dependencies on platforms.[73] To address this, publishers insisted that the DMA prescribes 'some regulatory oversight' or imposes bargaining codes where necessary.[74]

In the context of the EMFA, publishers similarly advocated for firm privileges for media content on online platforms. Associations have urged European legislators to protect 'editorial outputs from unjustified and arbitrary actions by platform operators'[75] and have campaigned for the establishment of 'due process for how platforms deal with lawful content under the editorial control and legal liability of the publisher'.[76]

15.3.2 *The Interests of Big Tech Companies in This Policy Debate*

Big tech companies have also actively participated in the policy debate on the EU's media policy interventions. However, not all big tech companies land in this policy arena with identical stakes and interests. While tech giants such as Alphabet, Meta and Microsoft share several characteristics, such as their quasi-monopolistic positions in certain markets, their reliance on big data and the large network effects of their products,[77] they also vary in many important ways given their diverging services and underlying business models.[78] Their relations to the news industry also show important variations, resulting in unequal exposure to EU media policy.

[71] News Media Europe, 'News Media Europe position paper on the European Commission proposal for a Digital Markets Act (DMA)', April 2021, available at: www.newsmediaeurope.eu.

[72] Ibid.

[73] Ibid.

[74] Ibid.

[75] Association of European Radios (AER), European Broadcasting Union (EBU), European Federation of Journalists (EFJ), Association of Television and Radio Sales Houses (egta), EMMA, ENPA, EPC, NME, Media, Entertainment & Arts sector of UNI Europa (UNIMEI), 'Media sector urges to vote in favor of Article 17 of the CULT report on the EMFA', 26 September 2023, available at: https://tinyurl.com/bdexz3c3.

[76] EPC, 'Submission to the public consultation on a European Media Freedom Act from the European Publishers Council', 21 March 2022, available at: https://tinyurl.com/bdeydyux.

[77] P. Barwise and L. Watkins, 'The evolution of digital dominance', in M. Moore and D. Tambini (eds.), *Digital Dominance: The Power of Google, Amazon, Facebook, and Apple* (Oxford: Oxford University Press, 2018).

[78] For an overview of the different services offered by big tech companies, see H. R. Varian, 'Seven deadly sins of tech?' (2021) 54 *Information Economics and Policy* 100893.

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15.3.2.1 Alphabet and News Media

Through its vast service conglomerate, Alphabet is strongly involved with news media in various forms: as an intermediary linking audiences to news content, as a digital advertising giant connecting news media with advertisers but also competing for digital advertising revenues, and, recently, as a funder of journalism.

Google Search and its Google News tab hold dominant positions as search engine and news aggregator respectively, making the company a central gateway to news in contemporary societies. Research has demonstrated that a significant proportion of internet traffic to online news content comes from search engines, and Google in particular.[79] For news media, being easily findable on Google has become indispensable in order to be accessible to the public. Google and its search algorithms, therefore, have a tremendously important position in the news ecosystem, shaping the universe of information that audiences are exposed to, how they encounter it and how they judge it.[80] In order to fare well in the Google universe, news media resort to 'search engine optimisation' as they adapt their news content so that it ranks high in search results.[81]

As video news consumption increases, YouTube, owned by Alphabet, has also become a venue to access news. According to 'Digital News Report 2023', the majority of video news consumption takes place on video-led platforms, rather than directly on news websites.[82] Again, this could further entrench the dependence of news media on Alphabet's services.

As a digital advertising behemoth, Alphabet is furthermore intertwined with the news industry in several ways. First, a key assumption is that digital intermediaries such as Google benefit handsomely from monetising user attention to online news content that they did not pay for.[83] Second, Google is a dominant supplier of digital advertising services and hence generates revenues whenever press publishers place or receive digital advertisements using Google's services. Third, Google's services compete with press publishers for digital advertising spending and have succeeded in being the foremost recipient of digital advertisement revenues today. As a result, the large-scale migration of advertising revenues from news media to Google has eroded the business models of predominantly advertising-funded news media.

[79] Newman et al., 'Digital News Report 2023'.

[80] D. Trielli and N. Diakopoulos, 'Search as news curator: The role of Google in shaping attention to news information' (2019) *Proceedings of the 2019 CHI Conference on Human Factors in Computing Systems*; R. Fletcher and R. K. Nielsen, 'Automated serendipity: The effect of using search engines on news repertoire balance and diversity' (2018) 6 *Digital Journalism* 976–989; B. Pan, H. Hembrooke, T. Joachims, L. Lorigo, G. Gay and L. Granka, 'In Google we trust: Users' decisions on rank, position, and relevance' (2007) 12 *Journal of Computer-Mediated Communication* 801–823.

[81] S. Richmond, 'How SEO is changing journalism' (2008) 19(4) *British Journalism Review* 51–55.

[82] Newman et al., 'Digital News Report 2023', 28.

[83] C. C. Radsch, 'Making big tech pay for the news they use', *Centre for International Media Assistance*, 7 July 2022, 12, available at: www.cima.ned.org/publication/making-big-tech-pay-for-the-news-they-use/.

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Finally, Alphabet is increasingly involved in the industry as a funder which it is feared will compound dependencies for news media outlets further.[84] Through the Google News Initiative (previously Digital News Initiative), Alphabet has been channelling multiple millions of euros to media companies, media researchers and other media-related organisations, as well as organising and financing media training, fellowships and conferences.[85] With an extensive range of funding programmes, Alphabet is among the biggest investors in journalism. However, the positive impacts of these initiatives have been debated, and it has been suggested that these funding programs should be seen merely as a 'subtle diversification and expansion of their lobbying activities'[86] or even just as a 'clever PR ploy to woo media outlets and placate regulators'.[87]

15.3.2.2 Meta and News Media

Launched under the holding's new brand in 2021, Meta is primarily involved in the news industry through its dominant social media platforms, notably Facebook and Instagram. The Digital News Report has repeatedly found that social media is the most prominent gateway to news content.[88] With features such as Instant Articles and Facebook News, the platform has provided tools specifically tailored for news media to disseminate content. While publishers are in principle free to decide whether to circulate their news content via Facebook, the dominant gatekeeping position of the platform essentially forces them to do so in order to reach Facebook's users. This, again, underpins the news industry's strong dependence on the platform. The automated ordering of content on the Facebook News Feed, driven by what has been labelled the 'single most controversial, influential, and secretive algorithm', has thus far-reaching implications for news media's ability to reach the public.[89]

Amidst widespread controversies around the role of misinformation in the 2016 US presidential election, Facebook intensified its initiatives in the journalistic field. With the launch of the Facebook Journalism Project, since re-branded as the Meta Journalism Project, the company 'broadened its fronts of action, became associated with new and diverse actors connected to journalistic activities and launched

[84] A. Fanta and I. Dachwitz, 'Google, the media patron. How the digital giant ensnares journalism', *Otto Brenner Foundation*, July 2020, available at: https://tinyurl.com/3h2exv5.

[85] Ibid.

[86] C. Papaevangelou, 'Funding intermediaries: Google and Facebook's strategy to capture journalism' (2022) *Digital Journalism* 1–22.

[87] M. Dragomir, 'Big tech funding: A band-aid solution for journalism's struggles', *Media Power Monitor*, 1 August 2023, available at: https://mpmonitor.org/big-tech-funding-a-band-aid-solution-for-journalisms-struggles/.

[88] Newman et al., 'Digital News Report 2023'.

[89] E. Bell and T. Owen, 'The platform press: How Silicon Valley reengineered journalism', *Columbia Journalism Review*, 29 March 2017, available at: https://tinyurl.com/yc8dbfzr.

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a number of initiatives in favor of journalistic institutions, especially what it called "local journalism"'.[90] Along with Alphabet, Meta also pledged to roll out multi-million-dollar support schemes in the context of the Meta Journalism Project.

In recent years, Meta has started to gradually distance itself from news and to scale back on its initiatives in the journalistic field. Meta executives have expressed that 'hosting news on their sites can often be more trouble than it is worth'.[91] As a result, content from news media has been deprioritised in comparison to content from friends or influencers, and the Digital News Report has accordingly documented the slowly decreasing role of Facebook as a gateway to news.[92] Meta has reportedly shifted resources away from news-specific products and cut back on its grants in the context of the Meta Journalism Project.[93] In September 2023, Meta also announced that it was stopping its Facebook News feature in the United Kingdom, France and Germany because 'people don't come to Facebook for news'.[94] Some of the audience attention to news on Facebook has shifted to another Meta-owned platform, Instagram. However, news media have struggled to gain a foothold on this platform, as influencers are more prominent, 'even when it comes to conversations around news'.[95]

Finally, the wide reach and usage of its platforms, the oceans of behavioural data collected and highly targeted advertising give Meta a significant edge in digital advertising on its platforms. Similarly to Alphabet, the dominance of Meta has contributed to the decrease in the advertising revenues that traditionally sustained news media.

15.3.2.3 Microsoft and News Media

While Alphabet and Meta are relative newcomers as digital giants, Microsoft has been a dominant technology company since the 1990s largely due to its stronghold in software applications for personal computers (PCs).[96] In contrast with Alphabet and Meta, Microsoft's business model does not rest predominantly on digital advertising and intermediating information is not central to its profile; this means that it has a fundamentally different relationship with news content and media.

[90] A. C. Jurno and C. F. de Brito d'Andréa, 'Between partnerships, infrastructures and products: Facebook journalism project and the platformization of journalism' (2020) 16 *Brazilian Journalism Research* 502–525 at 503.

[91] M. Isaac, K. Robertson and N. Grant, 'Silicon Valley ditches news, shaking an unstable industry', *New York Times*, 19 October 2023, available at: www.nytimes.com/2023/10/19/technology/news-social-media-traffic.html.

[92] Newman et al., 'Digital News Report 2023'.

[93] J. Toonkel and K. Hagey, 'Facebook shifts resources from news to focus on creator economy', *Wall Street Journal*, 19 July 2022, available at: https://tinyurl.com/y63tdnwm.

[94] 'An update on Facebook News in Europe', *Meta Newsroom*, 5 September 2023, available at: https://about.fb.com/news/2023/09/an-update-on-facebook-news-in-europe/.

[95] Newman et al., 'Digital News Report 2023'.

[96] Barwise and Watkins, 'The evolution of digital dominance', 31.

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While Microsoft retains its dominance in the realm of software applications, in the broader digital market it has been 'increasingly overshadowed' by platform giants such as Alphabet and Meta.[97] Beyond producing software for PCs, Microsoft also operates search engine Bing and news aggregator Bing News. Although Bing follows Google as the second most popular search engine, Google maintains a more than 90 per cent share in the European search engine market.[98] As a result, Bing occupies a much less central role as news intermediary; news media outlets are not dependent on Bing to reach audiences in the same fashion as with Google.

Since 2016, Microsoft has also owned the career social media platform LinkedIn. In the context of the LinkedIn News program, LinkedIn now employs more than 200 journalists producing and curating news items and newsletters relating to business and economics. These news-related initiatives have not seen LinkedIn's role in the news ecosystem grow: while it is a popular platform for business networking, it is not extensively used as an access point for news.[99]

Microsoft has set up its own funding and support schemes for journalism and local media. Since 2020, the Microsoft Journalism Hub has run various initiatives that pledge to rebuild the capacity of local newsrooms, restore trust in news and contribute to the financial viability of journalism.

What is more, since 2021, Microsoft has taken a public stance in support of news media in which it has openly advocated for Alphabet and Meta to pay for news content in Australia,[100] the US[101] and Canada.[102] In 2021, Microsoft notably sided with European press publishers to ensure that platforms 'remunerate press publishers fairly for use of content'.[103]

In comparison to the comparatively limited involvement of Microsoft's services with news media, the business models of both Alphabet and Meta are much more intertwined with news content and corresponding user engagement as well as digital advertisement revenue. Although Meta has actively scaled back its involvement with news media, its social media platforms are still prone to be used to disseminate and engage with news media content. Google's search engine, its news aggregator service and its digital advertising business continue to exert the largest impact on the news media industry, followed by Meta and to a much lesser extent Microsoft.

[97] Ibid., 33.
[98] Statcounter, 'Search engine market share Europe', available at: https://gs.statcounter.com/search-engine-market-share/all/europe.
[99] Newman et al., 'Digital News Report 2023'.
[100] B. Smith, 'Microsoft's endorsement of Australia's proposal on technology and the news', *Microsoft Blogs*, 11 February 2021, available at: https://tinyurl.com/r6vpzb5k.
[101] B. Smith, 'Technology and the free press: The need for healthy journalism in a healthy democracy', *Microsoft Blogs*, 12 March 2021, available at: https://tinyurl.com/223em9dc.
[102] K. L. E. Bureau, 'Microsoft voices support for Canadian news publishers getting paid by big tech companies', *Toronto Star*, 11 February 2021, available at: https://tinyurl.com/fuapc7.
[103] Microsoft Blogs, 'Europe's press publishers & Microsoft call for Australian-style arbitration mechanism'.

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15.4 ANALYSIS OF BIG TECH'S LOBBYING POSITIONS

Whereas news media and publishers' associations have been outspoken in their support of initiatives strengthening the position of media and media content in relation to digital platforms, the legal instruments under examination here have also attracted intense lobbying from big tech companies. This section will summarise how Alphabet, Meta and Microsoft have positioned themselves during the legislative process leading to the adoption of the CDMSD, the DSA Package and the EMFA, and their news media-relevant aspects in particular.

15.4.1 *Alphabet: We Already Support the News Industry Enough*

Alphabet has been generally pushing back against stronger legal protections for news media in the digital sphere and has presented its own contributions to the European media ecosystem as overwhelmingly positive. Evidence suggests that the company joined the legislative debate on the press publishers' right relatively late, but at later stages of the negotiation phase it reportedly unleashed 'a legion of lawyers and lobbyists to work behind the scenes to water down the reforms'.[104] In public, Alphabet's remarks regarding the press publishers' right were more modest: it expressed its 'disappointment' with the proposal, saw it as a 'backward step for copyright in Europe',[105] and claimed that it would disadvantage small publishers and limit audiences' access to diverse news.[106] Alphabet was similarly opposed to the introduction of specific safeguards for editorial content in the context of the DSA and more recently in the context of the EMFA, arguing that granting special privileges to news media content on online platforms would 'make it harder to fight disinformation and have a pluralistic media'.[107]

In its lobbying outputs, the main narrative of Alphabet has focused on the funding programs through which the company is already supporting the media sector. In the context of its lobbying on the press publishers' right, Alphabet highlighted that its Digital News Initiative delivers 'game-changing' opportunities for news media to disseminate and monetise content, and it also pointed to its multi-million-euro investments in European media innovation projects.[108] Alphabet's submission to the consultation on the DSA further reflects this narrative. Here the company insisted

[104] M. Karnitschnig and L. Kayali, 'Google's last stand on copyright', *Politico*, 12 December 2018, available at: www.politico.eu/article/google-last-stand-copyright-rules-silicon-valley-eu-fight/.

[105] C. Atkinson, 'European copyright: There's a better way', *Google Blog*, 14 September 2016, available at: https://blog.google/outreach-initiatives/public-policy/european-copyright-theres-better-way/.

[106] K. Walker, 'EU Copyright Directive: One step forward, two steps back', *Google Blog*, 3 March 2019, available at: https://tinyurl.com/2s3r9kdb.

[107] Alphabet, 'Public consultation for European Media Freedom Act. Google submission', Document received from the European Commission via Freedom of Information request.

[108] C. Atkinson, 'European copyright'.

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that Alphabet is 'committed to supporting local news' and pointed to the Journalist Emergency Relief Fund, the Google News Initiative and the training programs it has offered for publishers in order to suggest that it is already doing its bit to support the news industry, making regulatory obligations in this area redundant.[109] In its position papers in relation to the EMFA proposal, Alphabet echoed this argument and went as far as to declare itself 'one of the world's biggest financial supporters of journalism'.[110] According to Alphabet, the company has successfully helped improve the financial sustainability of news outlets, has elevated quality journalism and has facilitated an innovation culture in the news industry.[111]

Beyond stressing its subsidies and innovation programmes in European news media, Alphabet also repeatedly highlighted that its products predominantly bring value to the European media ecosystem. In its response to the DSA consultation, it acknowledged the 'undeniable difficulties' faced by the media sector but argued that these just happened 'in parallel with the emergence of platforms'.[112] According to Alphabet, digital platforms create 'substantial value' both for publishers and for citizens.[113] The company insisted that Google Search promotes news content and refers significant traffic to news media, which can then lead to more ad-based and subscription-based revenue for news outlets. The company pointed out that it creates this value for publishers 'for free', while publishers do not deliver similar value to Alphabet. Alphabet argued that digital platforms not only bring benefits to publishers but also provide 'for greater media plurality than could ever previously have been imagined'.[114]

In its lobbying activities on the EMFA proposal, Alphabet continued framing its platforms as a support for pluralist, quality media. It asserted that 'Google and YouTube make a rich and multi-faceted contribution to the EU's media ecosystem', particularly by facilitating access to information, contributing to media plurality, increasing choice and diversity and promoting independent news outlets.[115] Elsewhere, Alphabet claimed that digital transformations have brought about 'the golden age of high-quality content', resulting from Google's 'strongly positive contribution to media plurality'.[116]

Finally, Alphabet has repeatedly asserted that even if news media are struggling in the digital environment, it is not legal intervention that is necessary to address this

[109] Alphabet, 'Digital Services Act package: Open public Consultation. Google's submission', 7 October 2019.
[110] Alphabet, 'Public consultation for European Media Freedom Act'.
[111] Alphabet, 'Public consultation: Feedback on the European Media Freedom Act', 26 March 2022, Document received from the European Commission via a Freedom of Information Request.
[112] Alphabet, 'Digital Services Act package: Open public Consultation. Google's submission', 7 October 2019.
[113] Ibid.
[114] Ibid.
[115] Alphabet, 'Public consultation for European Media Freedom Act'
[116] Alphabet, 'Public consultation: Feedback on the European Media Freedom Act'.

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issue. Instead of the press publishers' right, it advocated for business innovation that is 'key to a successful, diverse and sustainable news sector in the EU'.[117] Similarly, in its lobbying outputs on the EMFA, it emphasised that instead of legal interventions that aim to preserve legacy media, the focus should be on helping media organisations 'thrive in 21st century markets'.[118]

In sum, Alphabet has positioned itself as a key patron of news media in the EU media policy dialogue. It has underlined the positive impacts of its funding programmes and services for the sustainability of European news media and downplayed the need for additional regulatory measures such as the press publishers' right, the media-specific provisions of the DSA proposal and the EMFA's provisions on platforms.

15.4.2 *Meta: We Do Not Need Regulation*

Meta has similarly been opposing regulatory interventions that strive to strengthen news media vis-à-vis big tech. It has generally questioned the assumption that digital platforms have harmed the publishing industry and has seen a 'regulatory push' such as the press publishers' right as unnecessary.[119]

The most prominent theme in Meta's lobbying outputs is its objection to regulatory intervention as a way to support news media. In the context of the DSA package, it asserted that it is 'not necessary or appropriate to include any regulatory proposals with regards to the media sector' because technological innovation is the 'most appropriate way to ensure media pluralism'.[120] According to Meta, 'innovation is critical to building a sustainable news ecosystem' and the regulatory environment needs to be conducive to this.[121]

The company has also praised the contributions of its services to the European media ecosystem. In a position paper on the EMFA proposal, it emphasised that online platforms create more 'choice, diversity, access and engagement', as well as a 'free means' for publishers to reach audiences and monetise their content.[122] Meta put forward that it 'invested in products, programs and partnerships that drive value for news providers'[123] and pledged to 'help the news industry build long-lasting

[117] C. Atkinson, 'European copyright'.
[118] Alphabet, 'Public consultation for European Media Freedom Act'.
[119] Meta, 'Facebook's approach to IP', Document received from the European Commission via Freedom of Information request; L. Kayali, 'Inside Facebook's fight against European regulation', *Politico*, 23 January 2019; available at: www.politico.eu/article/inside-story-facebook-fight-against-european-regulation/.
[120] Meta, 'Facebook Response to EC Public Consultation on the Digital Services Act (DSA)', 8 September 2020.
[121] Ibid.
[122] Meta, 'Meta's views on the European Media Freedom Act consultations', Document received from the European Commission via Freedom of Information request.
[123] Ibid.

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business models' by rolling out products on its platforms tailored for news media such as Facebook News and Facebook Watch.[124]

Similarly to Alphabet, Meta has also been eager to enumerate its existing funding programs in the news arena. Particularly, it has pointed to the commercial deals it has entered into with publishers in some EU Member States.[125] Meta committed to 'pay for news to be available to people' and continue its 'global investments' in the news sector.[126]

At the same time, Meta downplayed the significance of news content for its platforms. This narrative has become especially prominent in the context of its EMFA lobbying activities, in which it started to deprioritise news content and scale down on news-related initiatives. According to the company, 'news is only a small part of the content on Facebook', and social media platforms are 'just one small element' of a broader media ecosystem.[127] Moreover, Meta lobbyists have become increasingly eager to point out that Facebook is an opt-in platform, so publishers have the choice to publish their articles or not.[128]

In the EU media policy dialogue, Meta has positioned itself as a neutral provider of services that help news media succeed in the digital media landscape. It strongly opposed the introduction of legally binding mechanisms that would strengthen the position of journalists and media organisations against platforms and repeatedly asserted that it is business innovation, with the help of Meta's products, that is needed for a sustainable news sector.

15.4.3 *Microsoft: Make Big Tech Pay for the News They Use*

Although Microsoft has been an avid lobbyist on the EU stage, it has traditionally not taken up a vocal role in media policy dialogues, which can be explained by the comparatively limited stakes it holds in media regulation. As the EU legislator increasingly moved to regulate big tech and digital media, starting in 2021, Microsoft has also increasingly asserted its voice in this policy debate.

In its lobbying activities on the DSA package, Microsoft devoted limited attention to news-media-specific aspects of the proposal. It reiterated that any regulation of digital platforms should 'carefully balance the competing interests at stake' and avoid impeding innovation and consumer welfare.[129]

[124] Meta, 'Facebook response to EC public consultation on the Digital Services Act', 8 September 2020.
[125] Meta, 'Meta's views on the European Media Freedom Act consultations'. See for the commercial deals for example: N. Lomas, 'Facebook agrees to pay French publishers for news reuse', *Tech Crunch*, 21 October 2021, available at: https://tinyurl.com/4ywzx4sm.
[126] Meta, 'Facebook response to EC public consultation on the Digital Services Act'.
[127] Meta, 'Meta's views on the European Media Freedom Act consultations'.
[128] Ibid.
[129] Microsoft Corporation, 'Microsoft response to Digital Services Act consultation: proposal for ex ante regulation of gatekeeper platforms', 8 September 2020.

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In the context of the DMA proposal, Microsoft did express its concerns over the adverse effects of the dominance of big tech companies on news media and democracy. In its submission to the European Commission consultation on the DMA, the company pointed out that 'some large platforms' have a disproportionate impact on society and economy.[130] According to Microsoft, the success of these 'supercharged' gatekeepers 'is undermining fundamental pillars of our society, politics, and democracy'.[131] Moreover, in the context of its lobbying on the DMA, Microsoft devoted special attention to the issue of digital advertising. It pointed out that the profitability of publishers is under pressure because the 'lion's share of digital advertising revenue is being siphoned off by two companies: Google and Facebook'. Microsoft argued in particular that 'Google's role as a gatekeeper in search and digital advertising' needs to be strictly regulated in the DMA in order to allow other search engines and advertisers to compete fairly with its services.

In an even clearer step away from the usual 'no hard regulation' argument advanced by big tech companies, Microsoft joined forces with European publishers' organisations to call for regulatory measures to make digital gatekeepers pay for the news content they use.[132] In a position paper published during the negotiation of the DSA package, Microsoft asserted that the press publishers' right introduced by the CDSMD will not produce fair outcomes and thus additional legal intervention is necessary to support publishers vis-à-vis platforms and mitigate the 'dominant market power' of gatekeepers.[133] Microsoft, along with publishers' associations, argued that the DSA or DMA should introduce an 'Australian-style arbitration mechanism' in order to ensure that 'Europe's press publishers get paid for the use of their content by gatekeepers."[134]

15.5 DISCUSSION

The EU has been making strides in media law and policy in the past few years. A key issue that has preoccupied the growing EU media regulatory agenda is the impact of the dominance of digital platforms on the sustainability of European news media. Because regulations in this area have evident implications for the tech sector, EU media law and policy has gradually turned into a new arena in which big tech can flex its lobbying muscles. In this policy domain, different interests collide: publishers and news media have been outspoken about the urgent need for regulatory interventions that protect and promote news content and legacy media against digital platforms, while the digital platforms most exposed to such regulation have

[130] Microsoft Corporation, 'The Proposal for a Digital Markets Act dated 15 December 2021. Submission by Microsoft Corporation', May 2021.
[131] Ibid.
[132] Microsoft Blogs, 'Europe's press publishers & Microsoft call for Australian-style arbitration mechanism'.
[133] Ibid.
[134] Ibid.

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generally advocated for preserving the status quo and a hands-off approach when it comes to regulation.

While this reflects the recurring lobbying opposition to hard regulation of the global tech sector in many policy domains, in media law and policy the interests of big tech companies do not fully align. News content, user engagement and digital advertising are less central to the core services of Microsoft, which means that media law and policy have less far-reaching implications for its business model than for those of Alphabet and Meta. This variation of exposure to stricter EU media law and policy is then reflected in variations in lobbying activities, resulting in an 'unusual split within the tech sector'.[135]

In their lobbying output, all three companies have been first and foremost eager to protect their own reputations and have painted their own contributions to the European media ecosystem in an overwhelmingly positive light. Alphabet has claimed its services make a 'strongly positive contribution to media plurality'.[136] Meta has argued that its products and global investments 'help the news industry build long-lasting business models'.[137] Microsoft has praised its long-standing 'commitment to preserving and promoting journalism'.[138] This is in line with the instrumentalist view on business lobbying, according to which corporations enter given policy dialogues in order to 'win' policy battles and preserve their business models in the face of policy disturbances.

Moreover, our findings demonstrate that corporations define their lobbying positions not only in relation to their own business models but also in relation to their competitors' stakes and interests. As Nielsen and Ganter have proposed, big tech companies' 'dealings with publishers' have been influenced by the competition among them.[139] This intra-industry competition is also manifested in their lobbying activities. Microsoft has not only been less opposed than the other two platforms to stronger protections for news media and media content in a platformised media environment, but has also actively advocated for these and has explicitly called for stronger regulation of Alphabet and Meta. These lobbying activities may thus be understood as Microsoft's attempts to raise its rivals' costs by securing regulations that are particularly burdensome for them.[140]

In addition, these lobbying narratives follow the general trend of Microsoft's decade-long efforts to recast its reputation 'as a responsible developer of technology compared with the Wild West of its newer rivals'.[141] Microsoft president Brad Smith

[135] Smith, 'Microsoft's endorsement of Australia's proposal on technology and the news'.
[136] Alphabet, 'Public consultation: feedback on the European Media Freedom Act'.
[137] Meta, 'Facebook response to EC public consultation on the Digital Services Act'.
[138] Microsoft Blogs, 'Europe's press publishers & Microsoft call for Australian-style arbitration mechanism'.
[139] Nielsen and Ganter, *The Power of Platforms*, p. 23.
[140] Salop and Scheffman, 'Raising rivals' costs'.
[141] M. Scott, 'Microsoft returns to its brawling global lobbying tactics', Politico, 3 May 2023, available at: https://tinyurl.com/38sv9xr2.

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has been running a vocal public affairs campaign calling for tech regulation.[142] In its efforts to portray itself as the socially responsible tech company, Microsoft has advocated for tighter content liability rules for platforms; it has supported competition claims against big tech in the US and Europe and has even testified against Google and its 'ubiquitous power' in a high-profile anti-trust case in the US.[143] EU media law and policy emerges in our analysis as a new domain where Microsoft can advance this public image by taking the side of the European publishing industry and calling for regulatory measures that help re-balance the relationship between big tech and news media.

It has been regularly noted that these endeavours by Microsoft are motivated not by purely philanthropic goals but rather by an agenda to 'exploit the difficulties of its Silicon Valley rivals' and 'keep Microsoft on top'.[144] Indeed, as was highlighted earlier, in the field of media law, regulatory reforms carry more serious threats to the business models of Microsoft's competitors Alphabet and Meta. Instead of demonstrating genuine efforts to promote a vibrant and sustainable media ecosystem, Microsoft's lobbying activities might, arguably, reflect a strategic positioning to undermine its competitors. Recent purchase of stakes in OpenAI,[145] opposition to regulation of artificial intelligence,[146] and a clash with regulators over the acquisition of Activision[147] have led commentators to conclude that despite its efforts to portray itself as the 'good corporate citizen', Microsoft is still ready 'to throw sharp elbows to defend itself in the trillion-dollar game of thrones that is the global tech sector'.[148]

Microsoft's public image as the responsible tech company is also starting to splinter in the domain of media policy as growing evidence shows that the company's public statements supporting the media sector are not reflected in its actions. For instance, a major European collecting society has sued Microsoft for not providing appropriate remuneration in accordance with the CDMSD for the use of press publications on

[142] B. Smith and C. A. Browne, *Tools and Weapons: The Promise and the Peril of the Digital Age* (New York: Penguin, 2021).

[143] See, for example, D. Hakim, 'Microsoft, once an antitrust target, is now Google's regulatory scold', *New York Times*, 15 April 2015, available at: https://tinyurl.com/2ny9uvye; D. McCabe and C. Kang, 'Microsoft C.E.O. testifies that Google's power in search is ubiquitous', *New York Times*, 2 October 2023, available at: www.nytimes.com/2023/10/02/technology/microsoft-ceo-testifies-google-search.html.

[144] A. Barker, 'Microsoft joins forces with European news publishers', *Financial Times*, 22 February 2021, available at: www.ft.com/content/a3532236-40cf-4968-b99d-d6c18a78ca4b.

[145] C. Radsch, 'The real story of the OpenAI debacle is the tyranny of big tech', *The Guardian*, 27 November 2023, available at: www.theguardian.com/commentisfree/2023/nov/27/openai-microsoft-big-tech-monopoly.

[146] C. Schyns, 'The lobbying ghost in the machine: Big Tech's covert defanging of Europe's AI Act', *Corporate Europe Observatory*, February 2023, available at: https://tinyurl.com/3w99vzcc.

[147] A. Hern, 'Activision Blizzard calls UK "closed for business" after Microsoft takeover veto', *The Guardian*, 26 April 2023, available at: https://tinyurl.com/5n8yyms3.

[148] M. Scott, 'Microsoft returns to its brawling global lobbying tactics'; R. Waters, 'How Brad Smith used Microsoft's $1bn law and lobbying machine to win Activision battle', *Financial Times*, 14 October 2023, available at: www.ft.com/content/07c507bd-2ce7-4345-85bd-0c27f408afbe.

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its Bing search engine.[149] In the United States, Microsoft also faces a lawsuit for the alleged unauthorised use of news articles for the training of AI systems.[150]

In light of this, Microsoft's activities in EU media policy need to be understood within the broader context of the company's long-term political strategies and its competition with other tech giants for dominance in the tech sector. This is consistent with the neopluralist approach to business lobbying according to which interest group lobbying is driven not only by a desire to win a policy battle but also by more complex and long-term reasons. Through the lens of the neopluralist approach to interest group lobbying, Microsoft's political activity in EU media policy, a domain that is traditionally less central to its business, may be understood as a strategy to 'secure support from political elites' in the EU on issues that are more central to its operations.[151]

Eventually, despite intense lobbying from Alphabet and Meta, the EU has gradually tightened its grip on big tech and moved to regulate big tech's relations with news media. In their adopted versions, all the regulatory instruments discussed here include provisions that aim to re-balance the power between big tech and news media, address the dominant position of digital platforms in the information ecosystem, and mitigate the negative effects of algorithmic curation and distribution of news content.[152] This does not mean that European media 'won' the policy battle – commentators have expressed strong doubts over the potential effectiveness of the regulatory interventions in fostering a vibrant and sustainable media ecosystem. Academics have deemed the press publishers' right an 'ill-conceived plan' that will harm rather than support journalists.[153] The discarded 'media exemption' proposal of the DSA, as well the EMFA's media privilege, have attracted vehement criticism from academics and civil society alike: for its potential to be manipulated by disinformation peddlers,[154] for its controversial definition of media,[155] and for further entrenching the role of platforms as governors of fundamental rights.[156] As long as regulatory interventions deepen, rather than reduce, the dependencies of news media on big tech, it is difficult to see the EU's adopted regulatory framework

[149] L. Kabelka, 'Corint Media sues Microsoft for €20m over press content use', *Euractiv*, 4 April 2022, available at: https://tinyurl.com/3s2rtdtn.

[150] M. M. Grynbaum and R. Mac, 'The Times sues OpenAI and Microsoft over A.I. use of copyrighted work', *New York Times*, 27 December 2023, available at: https://tinyurl.com/3s2rtdtn. There are many other pending lawsuits lodged against AI providers for the alleged unlawful use of data for training purposes, here our focus is on lawsuits lodged by media companies and press publishers.

[151] Lowery, 'Why do organized interests lobby?'.

[152] See e.g. CDSMD, Art. 15; EMFA, Art. 18; DSA, Art. 14; DMA, Arts. 5(10), 6(8) and 6(10).

[153] 'Academics against press publishers' right', *Institute for Information Law*, 24 April 2018.

[154] P. Collings and C. Schmon, 'EU Media Freedom Act: A media privilege in content moderation is a really bad idea', *Electronic Frontier Foundation*, 12 July 2013, available at: https://tinyurl.com/56aeze4t.

[155] J. Barata, 'Protecting media content on social media platforms', *Verfassungsblog*, 25 November 2022, available at: https://verfassungsblog.de/emfa-dsa/.

[156] M. van Drunen, N. Helberger and R. Fahy, 'The platform–media relationship in the European Media Freedom Act', *Verfassungsblog*, 13 February 2023, available at: https://verfassungsblog.de/emfa-platforms/.

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as a success for vibrant and sustainable news media and a defeat for big tech.[157] Consequently, policy debates will continue to revolve around how to genuinely reinvigorate news media in the digital era. As big tech companies are markedly abandoning news content and news-related projects, policy debates might see a reconfiguration of stakes and interests in this arena.[158]

15.6 CONCLUSION AND REFLECTION

This chapter has presented and compared the political strategies of selected big tech corporations over EU media policy efforts to promote news media's position vis-à-vis digital platforms. Alphabet, Meta and Microsoft are all highly invested in lobbying EU policymakers across a wide range of issues. The chapter has demonstrated that the three corporate behemoths have adopted different and even starkly contradicting lobbying narratives about the need for regulatory intervention to strengthen news media and press. While Alphabet and Meta broadly dismissed any need for regulatory intervention, Microsoft essentially campaigned for stronger protection for news media against digital platforms. We contend that EU media law and policy has turned into an arena where conflicts between tech companies are played out: where Microsoft can advance its public image as a socially responsible tech company and simultaneously raise the costs of its rivals.[159]

Journalists who have interrogated Microsoft's motivations to co-opt democracy in its arsenal of political activity interpret this as a move that positions the company as a reliable partner for governments and policymakers.[160] This would correspond well with the literature on neopluralist approaches to interest group activities, according to which lobbying is seen as a broader effort to build political capital with governments and policymakers. The question remains whether Microsoft's overall engagement with democracy is consistent even where it does affect own products, revenues and strategies. Especially now that Microsoft has integrated the generative AI model ChatGPT into its office software suites and search engine Bing, the company may become exposed to claims that it benefits from the AI being trained on publishers' content without any agreement or remuneration.[161]

[157] Doctorow, 'Saving the news from big tech'.

[158] M. Isaac, K. Robertson and N. Grant, 'Silicon Valley ditches news, shaking an unstable industry', *New York Times*, 19 October 2023, available at: www.nytimes.com/2023/10/19/technology/news-social-media-traffic.html.

[159] See Smith and Browne, *Tools and Weapons*.

[160] Barker, 'Microsoft joins forces with European news publishers'; Scott, 'Microsoft returns to its brawling global lobbying tactics'; A. Shahani, 'Democracy is at stake. Regulate Big Tech', *NPR*, 13 September 2019, available at: https://tinyurl.com/5hbdw7kz.

[161] See e.g. M. Grynbaum and R. Mac, 'The Times sues OpenAI and Microsoft over A.I. use of copyrighted work', *New York Times*, 27 December 2023, available at: www.nytimes.com/2023/12/27/business/media/new-york-times-open-ai-microsoft-lawsuit.html; AP, 'Eight US newspapers sue OpenAI and Microsoft for copyright infringement', *The Guardian*, 30 April 2024; available at: www.theguardian.com/technology/2024/apr/30/us-newspaper-openai-lawsuit.

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From the outset, the fact that Microsoft provided financial support to the research project on 'Rethinking News and Media Law in Europe' fits neatly into its corporate commitment to promoting a healthy information ecosystem.[162] The analysis in this chapter has demonstrated that hidden goals and benefits may lie under the surface of lobbying narratives. When corporations fund scientific research, researchers should be particularly careful to develop a proper understanding of the underlying motivations of the funder in order to safeguard the integrity of their research. The collaborative research project from which this handbook emerged has been realised with the research funding Microsoft has provided. In order to safeguard the scientific integrity of this research initiative our research team has taken the following measures.

Firstly, the financial support was arranged through a donation coupled with explicit guarantees that researchers in this project enjoy complete intellectual independence from any third parties, including Microsoft.[163] The research project's scope and description were crafted by the research team and contributors were able to develop their chapters bottom-up in order to alleviate any potential risk that Microsoft's funding could influence the outcomes of this research project.

Secondly, this chapter has been a way of interrogating the stakes and motivations of the funder in relation to EU media policy in order to clarify whether our research project could be used to advance the funder's own agenda. Based on this chapter's analysis, we can conclude that our research on European media law and policy has very limited intersections with Microsoft's current business model. Consequently, Microsoft's funding of this research project does not directly or indirectly advance the business model of the funder in a way that would be incompatible with scientific integrity. If Microsoft's business model becomes more entangled with news content and the media sector, the risks for scientific integrity would correspondingly increase.

[162] In Microsoft's current Corporate Social Responsibility strategy this is part of the so-called Democracy forward commitment, see www.microsoft.com/en-us/corporate-responsibility/democracy-forward.

[163] See for the project description and the safeguards: www.ivir.nl/projects/news-and-media-law-in-europe/.

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