An update on the Digital Markets Act

FOSDEM 2022

Vittorio Bertola – 5 February 2022

Who am I

Internet engineer and free software activist since 1995

Also experience in startups, Internet policy, politics

Loves Perl but doesn't sleep with it any more

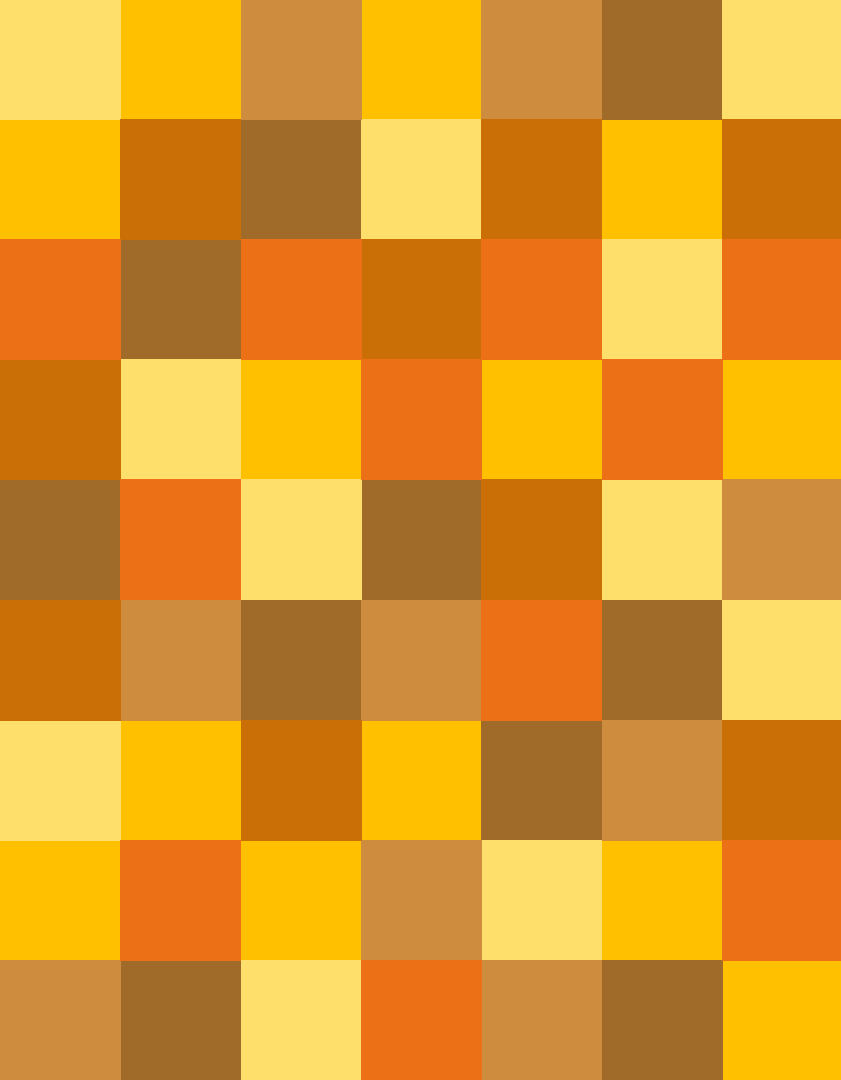Involved in Internet governance since ages

Currently head of policy at **Open-Xchange**

OX® *Stay Open.*

German open source software company

Maker of **DOVECOT**

POWERDNS

1.

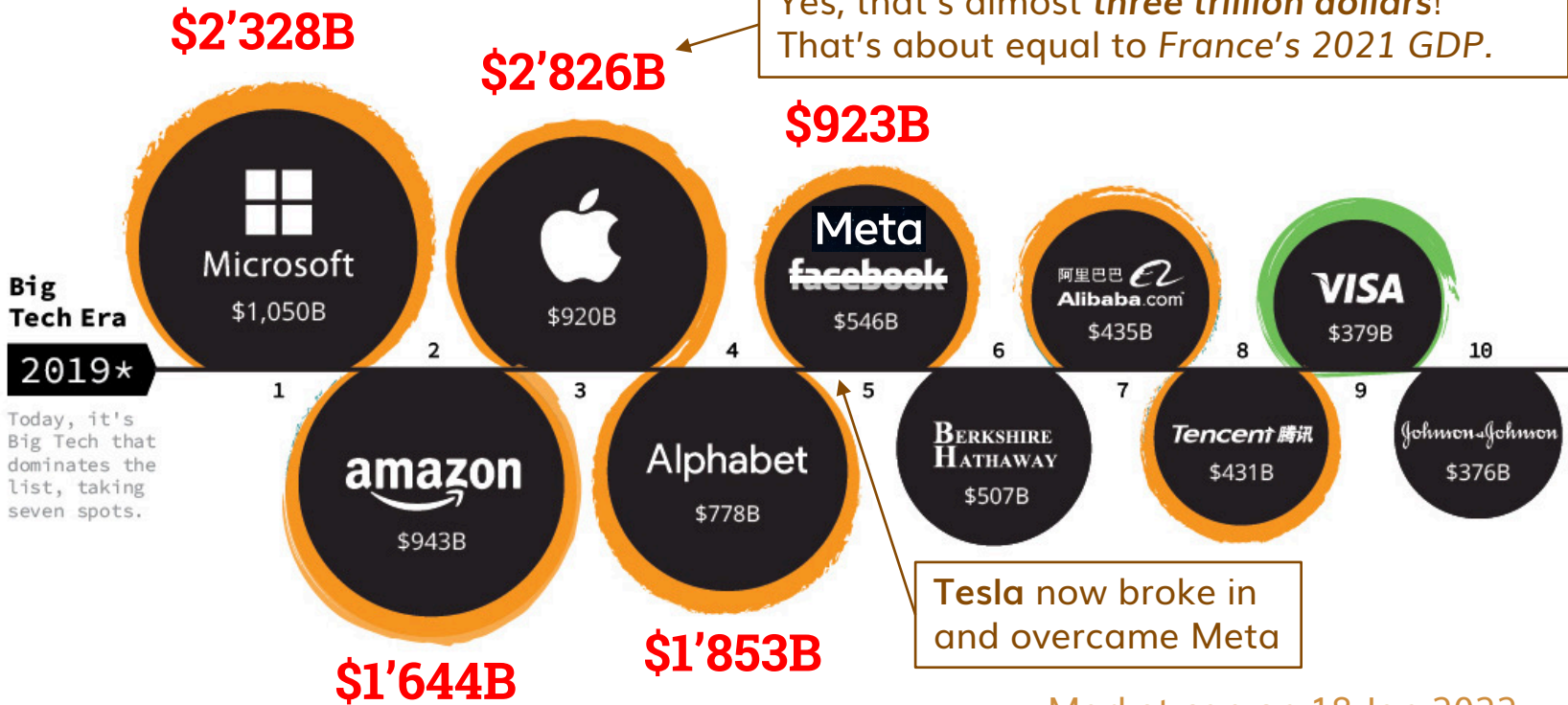## Still checked into the Hotel California

1. Platform
2. Silo
3. Lock-In
4. Trojan Horse
5. Control
6. One-stop
7. Over-the-top
8. Closed

Monopoly Records

...you can check out any time you like,
but you can never leave!

Hotel California

$2'328B

$2'826B

$923B

Yes, that's almost *three trillion dollars*! That's about equal to *France's 2021 GDP*.

Meta
facebook
$546B

Big Tech Era
2019*

Today, it's Big Tech that dominates the list, taking seven spots.

Microsoft
$1,050B

Apple
$920B

阿里巴巴
Alibaba.com
$435B

VISA
$379B

1   2   3   4   5   6   7   8   9   10

amazon
$943B

Alphabet
$778B

BERKSHIRE HATHAWAY
$507B

Tencent 腾讯
$431B

Johnson&Johnson
$376B

$1'644B

$1'853B

Tesla now broke in and overcame Meta

Market cap on 18 Jan 2022

5
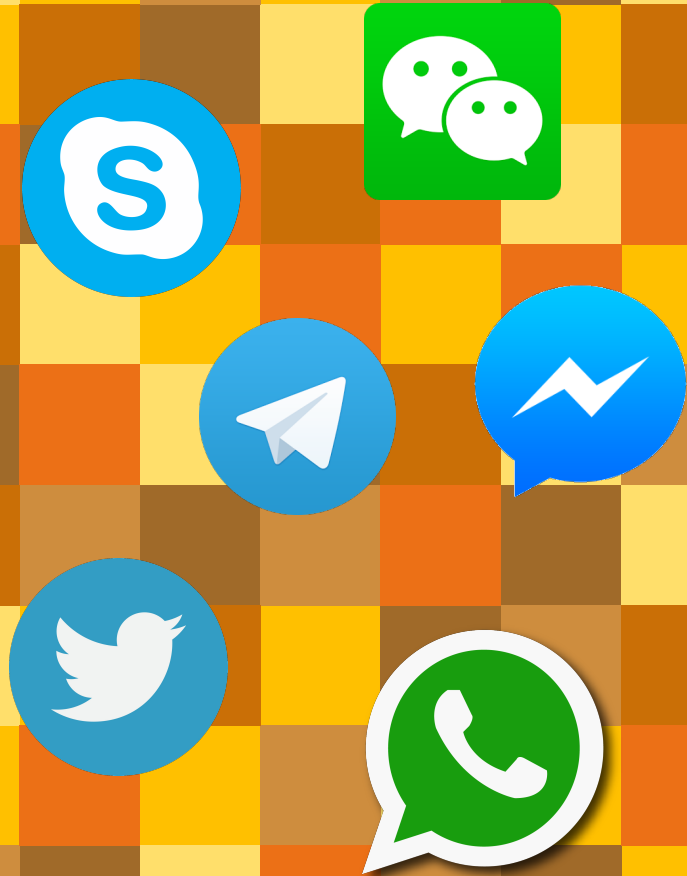
Siloed services: Instant messaging

Each IM service is a walled garden

You cannot communicate with users of other IM services – you need an account on each service

If you move, you lose your contacts and history – you are locked in

Only a few IM services can exist – you cannot compete or run yours

Either standards are closed, or deployments are closed

Bundled services: Mobile OS and apps

Bundling: The platform merges services and applications together

Pre-installation: All the apps come pre-installed with the OS

Defaults: The system will by default use or suggest the platform's own version of the service

Integration: The platform's version has better access to the system and works better
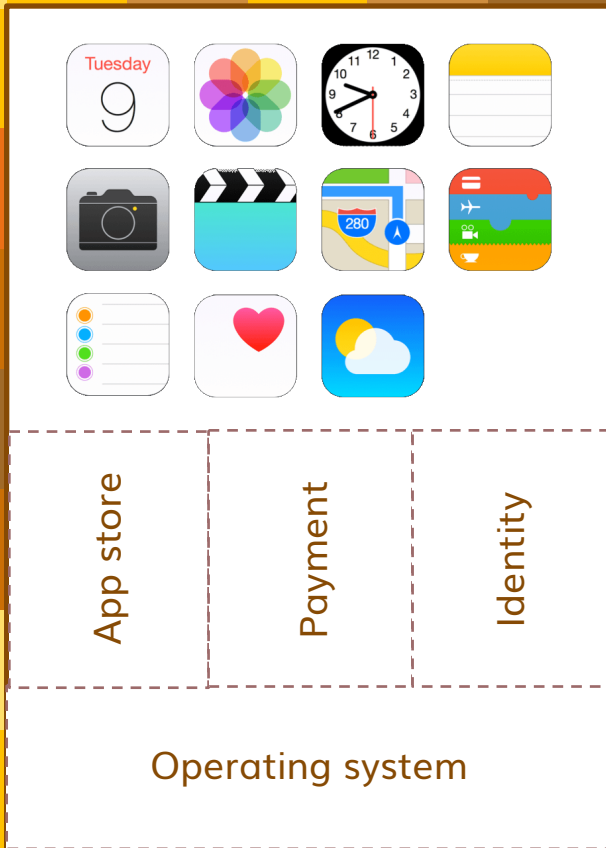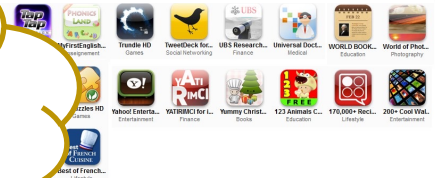
2.

Apple's App Hotel – the only one in the country

App stores: a bundle within the bundles

Editorial content
App database
Installation and update
App analysis and scrutiny
App subscription products
Payments

Apple's App Store bundles together numerous functions

Some of them do not really belong there

Bundling them has technical, social and human rights implications – it should not be judged on competition merits only

But it still has deep competition consequences

Why do we have mobile app stores?

We never really had app stores on computers

In some cases we have package managers

    They never asked for money

    They never prevented installing applications through other channels

    They never prevented installing applications that didn't have their approval

Nobody would say that computer programs are less secure, private, successful or innovative because of the lack of monopolistic app stores

What is the «Apple tax» for?

For using the payment system?

- 30% is exhorbitant
- Why can't users/apps choose a more effective provider?

For the cost of app scrutiny?

- Nobody ever asked for it
- Why can't users/apps choose a more effective provider?

As a royalty to the device maker?

- Computers never worked this way

Editorial content
App database
Installation and update
App analysis and scrutiny
App subscription products
Payments

3.

All your base
are belong to us
(encrypted)

Encryption is a good thing

*You should encrypt
your communications*

*State-run backdoors in encryption
are a bad idea*

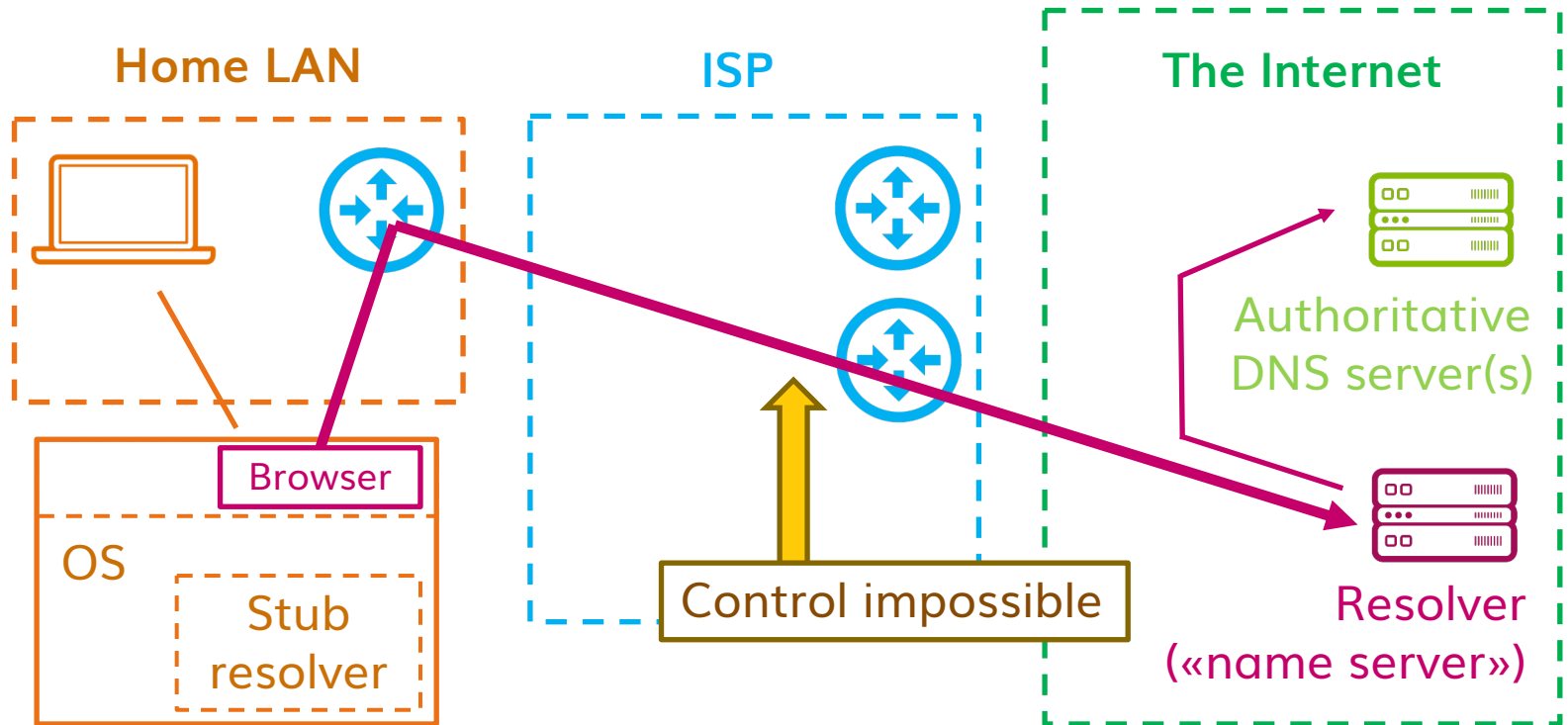*Is this really only about privacy and freedom?*

The Internet of other people's things

We are filling our homes with devices that send back encrypted data all the time

We have no control over what they send

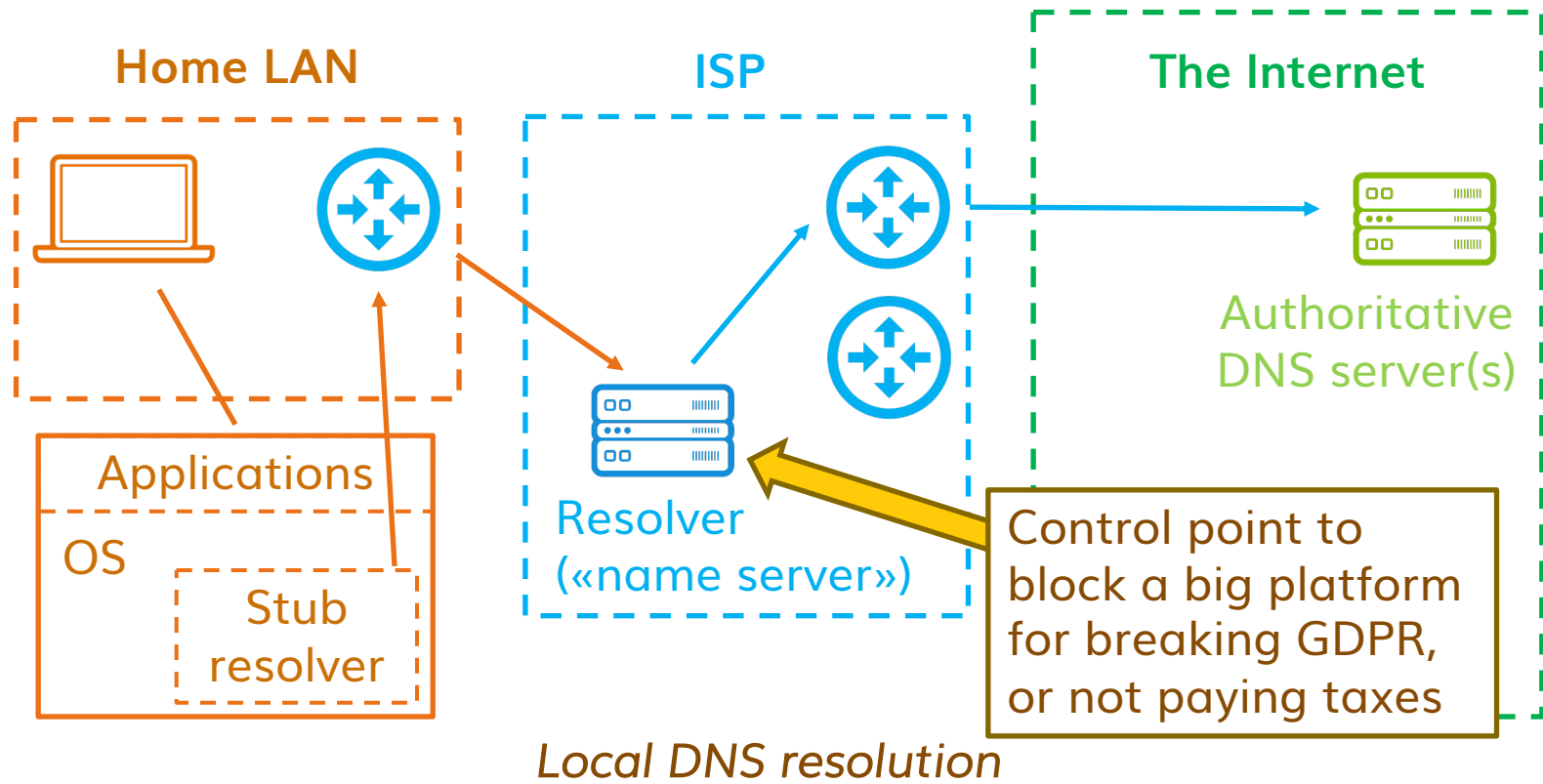Even if there are laws to protect us, it is increasingly impossible to enforce them

Home LAN

ISP

The Internet

Browser

OS

Stub resolver

Control impossible

Authoritative DNS server(s)
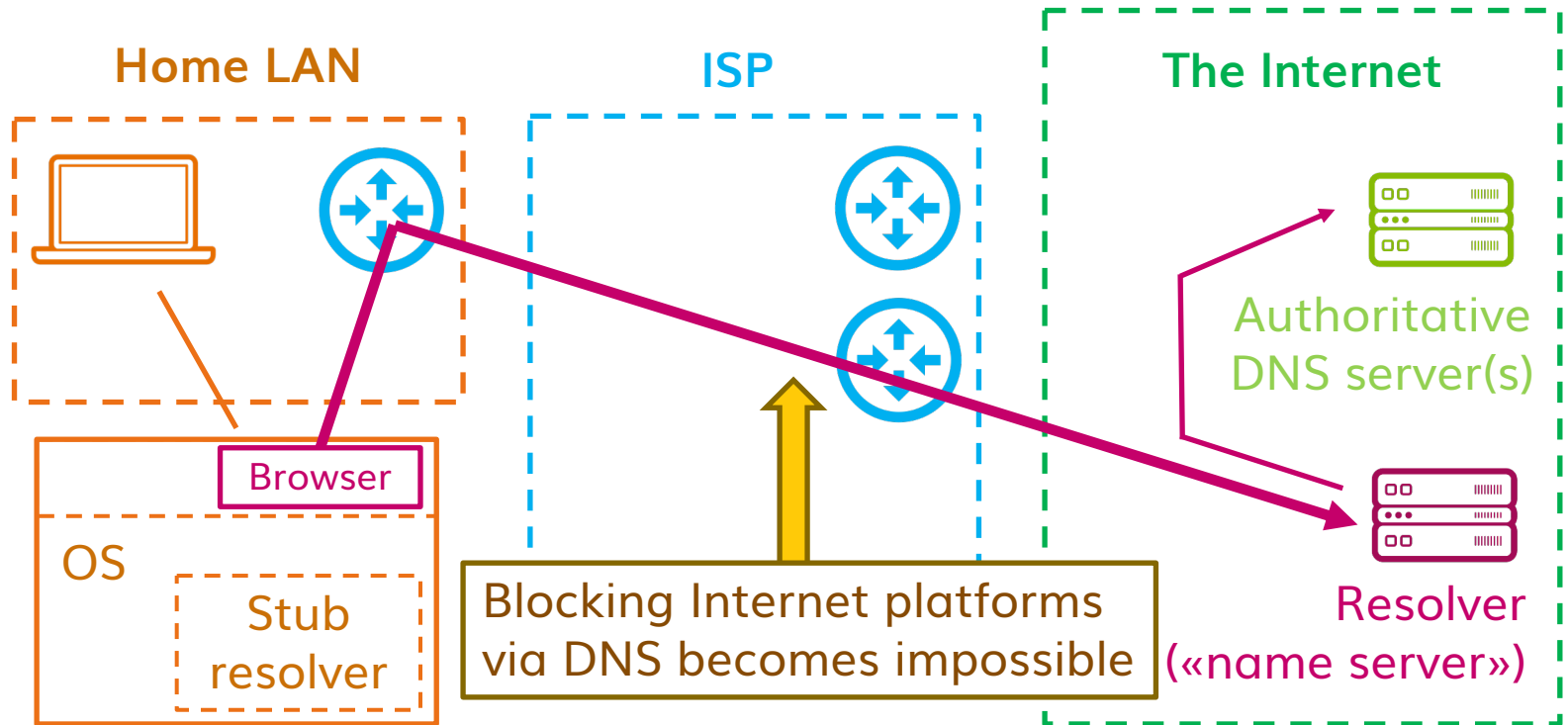
Resolver («name server»)

Remote DNS-over-HTTPS resolution

Europe likes DNS filters

1. Blocking malware and phishing
2. Detecting active botnets
3. Providing parental controls
4. Blocking child sexual abuse material
5. Blocking fixed gambling websites, counterfeit shops, illegal pharmacies…
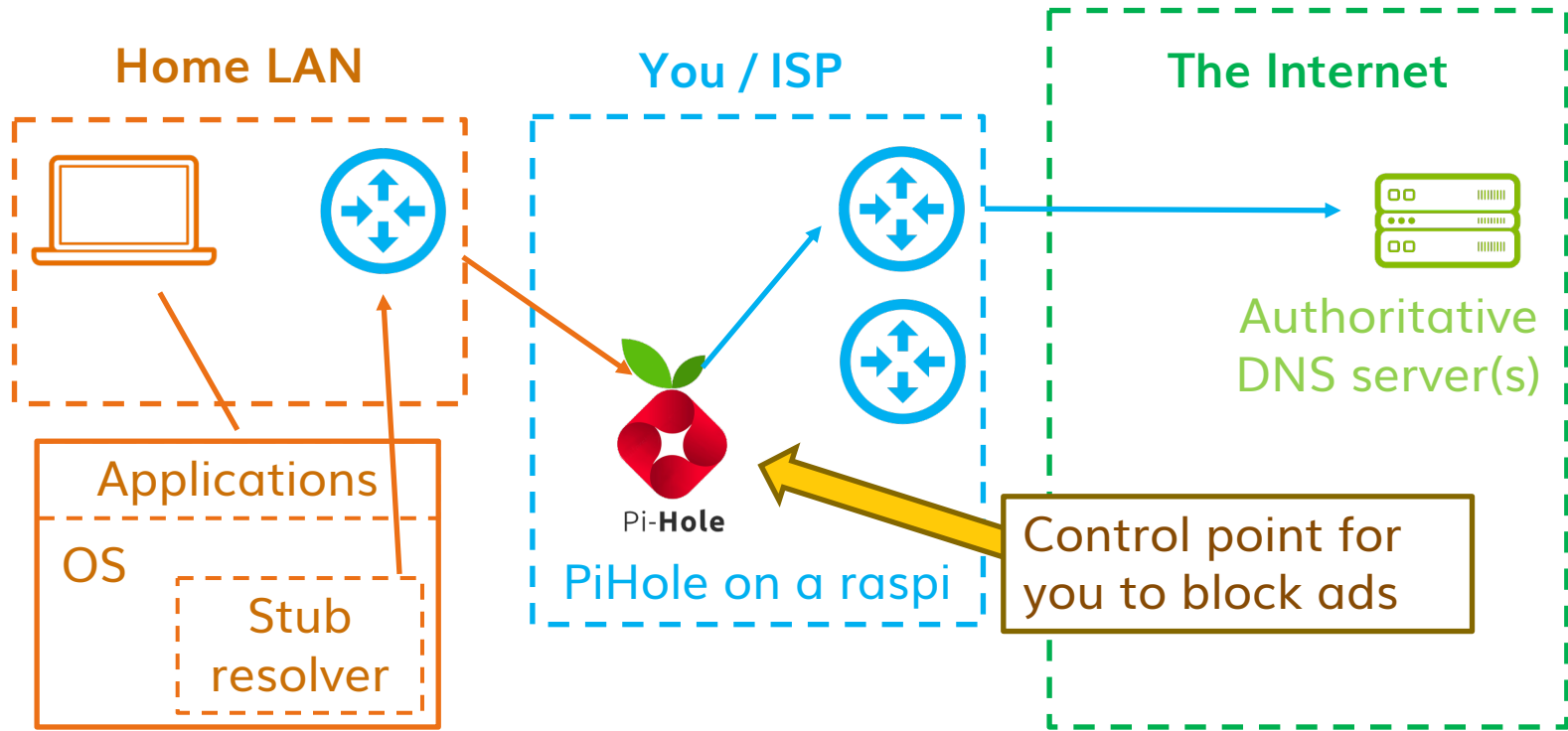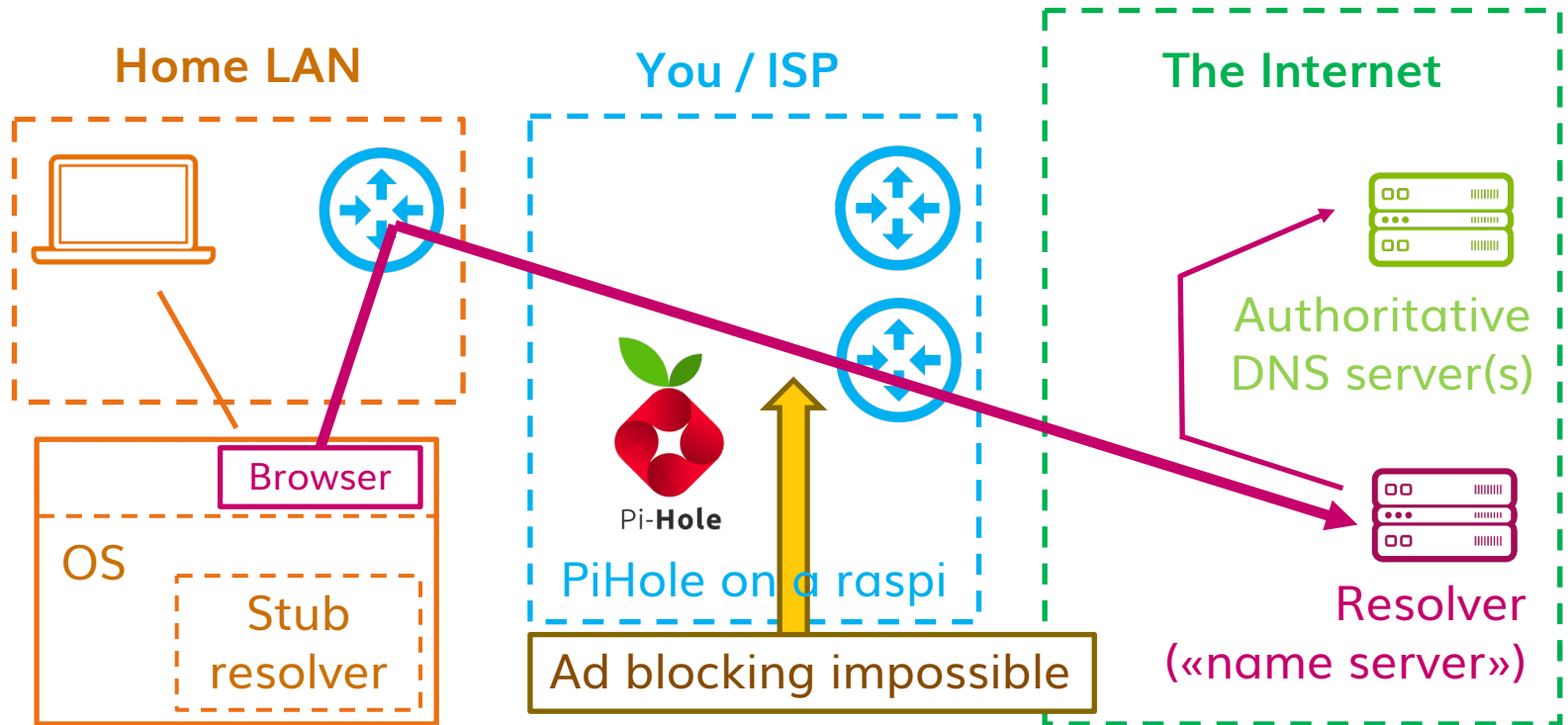
Home LAN

ISP

The Internet

Applications

OS

Stub resolver

Resolver («name server»)

Authoritative DNS server(s)

Control point to block a big platform for breaking GDPR, or not paying taxes

Local DNS resolution

Home LAN

ISP

The Internet

OS

Browser

Stub resolver

Blocking Internet platforms via DNS becomes impossible

Authoritative DNS server(s)

Resolver («name server»)

Remote DNS-over-HTTPS resolution

Home LAN

You / ISP

The Internet

Applications

OS

Stub resolver

Pi-**Hole**

PiHole on a raspi

Authoritative DNS server(s)

Control point for you to block ads

Local DNS resolution

Home LAN

You / ISP

The Internet

Browser

OS

Stub resolver

Pi-Hole

PiHole on a raspi

Ad blocking impossible

Authoritative DNS server(s)

Resolver («name server»)

Remote DNS-over-HTTPS resolution

Plus, all traffic now becomes centralised in fewer, bigger global service providers in the cloud

Home LAN

ISP

The Internet

Browser

OS

Stub resolver

First proxy

Second proxy

Destination (e.g. resolver)
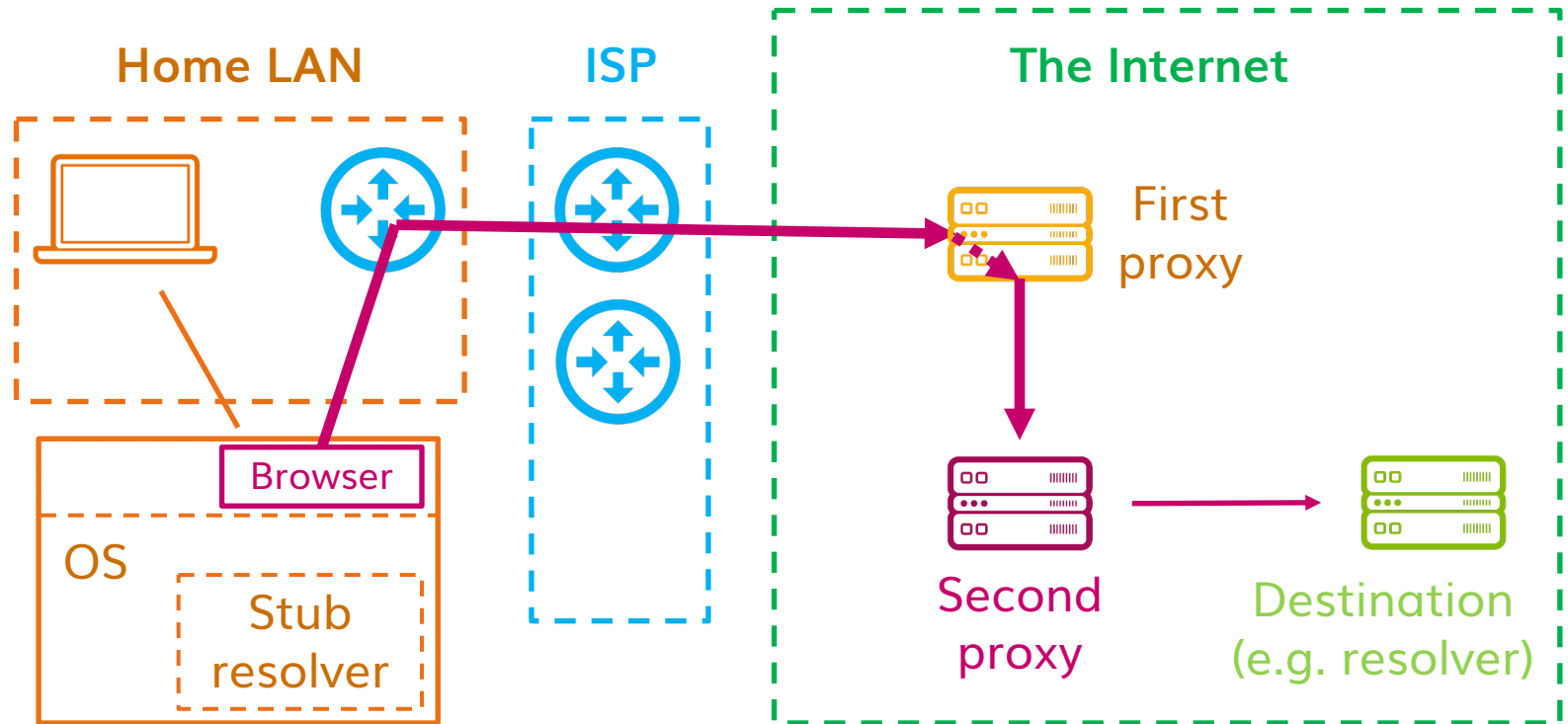
The «oblivious» connection model

Apple's iOS 15 implementation

Region A

Region B

Ingress Proxy   Egress Proxy   Server

IP: Region A
IP: Region A
IP: Region B

Client IP   Ingress Proxy IP   Egress Proxy IP
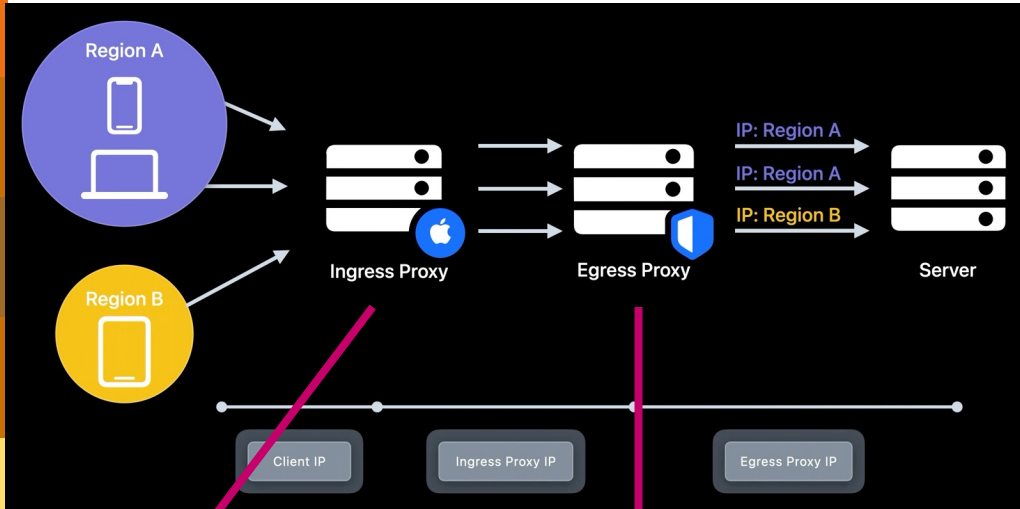
Apple   **Cloudflare, Fastly, Akamai...**

Second proxy provided by private CDN operators under contract with Apple

Not on by default (yet)

A double-edged sword

Pros

It prevents your ISP and your government from tracking or blocking you

It reduces what websites see about you

It offers you an in-built VPN

Cons

You can't choose your proxy operators

Now all your Internet traffic goes through Apple

Who guarantees that Apple and their supplier will never cross-match your metadata?

Encryption really is about control
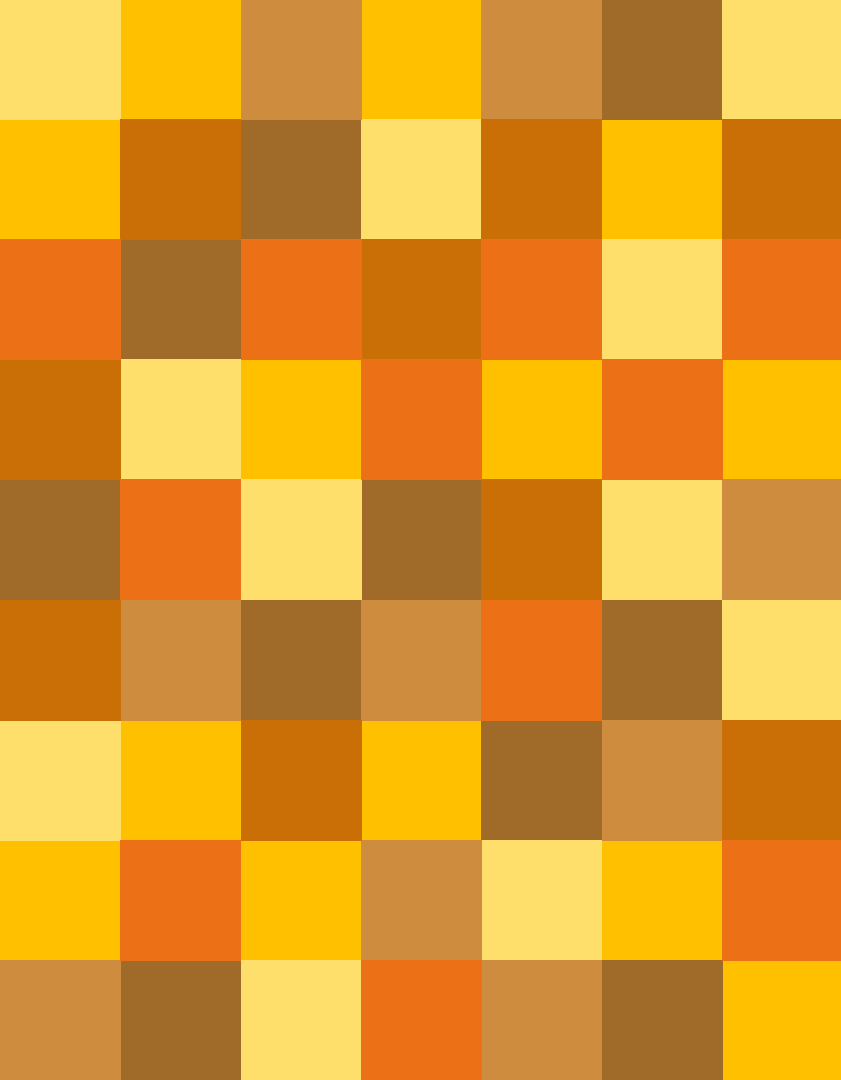
4.

(Europe) Still running for the door

In the meantime, please give us money

France: €150M Google, €60M Facebook for cookies

Italy: €10M Google, €10M Apple for lack of user info

Italy: €120M Google for Auto

Italy: €1.2B(!) Amazon for anticompetitive practices

Even San Marino fined Facebook for €4M
(120€ per citizen)

Still coming soon (hopefully)

1. Digital Services Act
   - Rules and liability on content
   - Accountability in advertising and in moderation
2. Digital Markets Act
   - New competition tool
   - Blacklist of business practices
   - Interoperability requirements
3. Data Governance Act
   - Rules for open access to public data

Maybe coming soon (hopefully)

4. Computer Chips Act
   - Promote European chip factories
5. Minimum Corporate Tax Directive
   - Reduce profit offshoring
6. eIDAS Regulation Revision
   - Open public identities (maybe)
7. GAIA-X
   - Common cloud standards for portability
   - Common data ontologies for interaction

The remedy: interoperability

Let's get back to the original Internet principles

If modules are separated and their interfaces are standardized, then it is possible to replace individual modules seamlessly with competing implementations

You also have to ensure that replacing modules is not made hard for the user (pre-installation, defaults, dark patterns...)

App store | Payment | Identity

Operating system
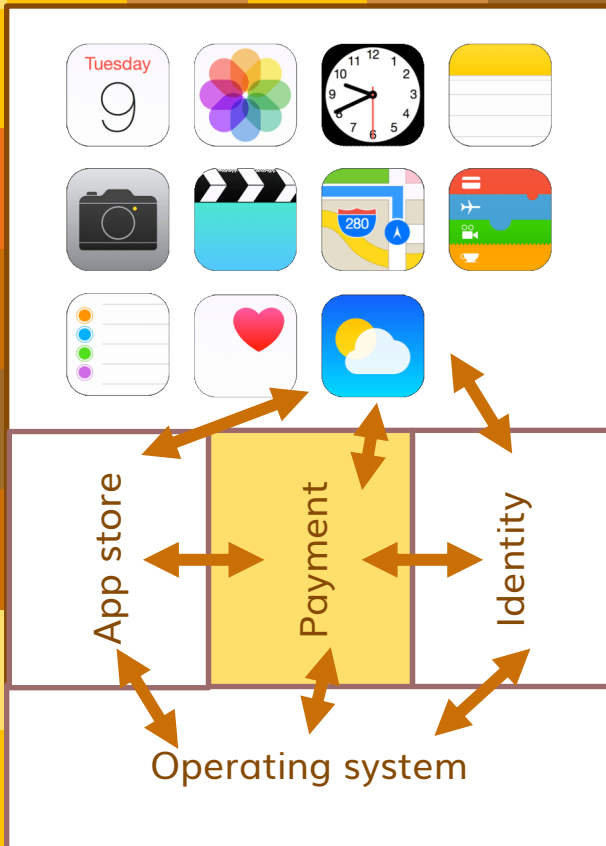
Interoperable apps
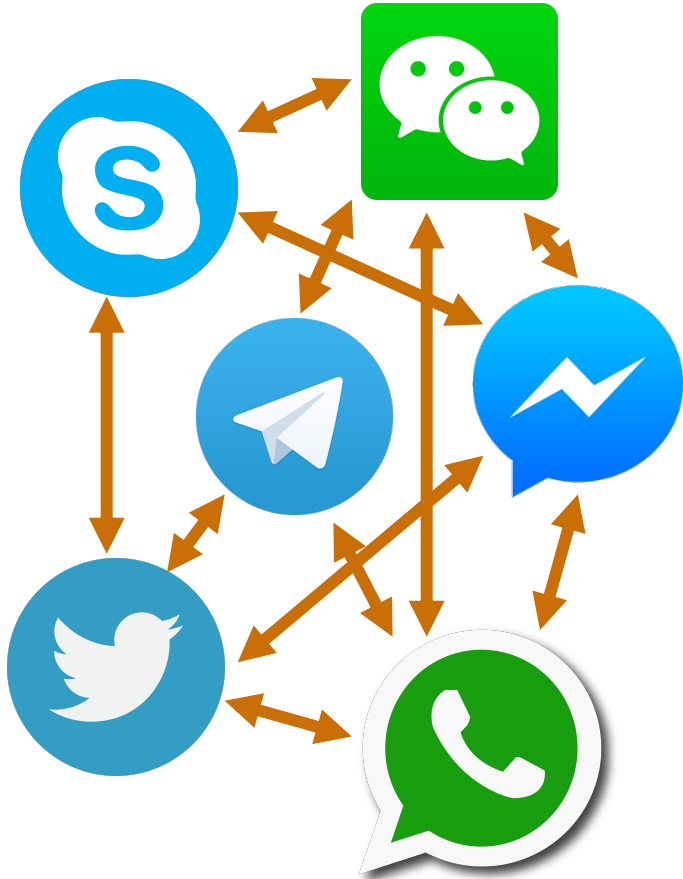
Dominant platforms should be required to interoperate with competitors

Users could choose any app and service provider and interact with users of all apps

New entrants would have a chance to succeed

This would enable more competition and promote private, user-friendly services

Digital Markets Act

The Commission's proposal was widely discussed

The Parliament approved it on 15.12 with *229 amendments*

Trialogues ongoing to reconcile EP, EC and Council versions

French presidency pushing

Could be finally approved mid 2022

Digital Markets Act

Aimed at *[business]* users of specific platform services

Affects global «gatekeeper» online platforms

- ☐ Over ~~6.5~~ *8B€* turnover
- ☐ At least 3 EU countries
- ☐ Over 45M consumers
- ☐ Over 10k business users

New anti-trust instrument for non-traditional dominant positions

Digital Markets Act

Covered services:
- ☐ Marketplaces
- ☐ Search engines
- ☐ Social media
- ☐ Video sharing
- ☐ Instant messaging
- ☐ Operating systems
- ☐ Cloud computing
- ☐ Advertising by the above
- ☐ *Browsers*
- ☐ *Voice assistants*
- ☐ *Smart TVs*

Digital Markets Act's no-no's
(Art. 5)

1. Forced data integration across services
2. Exclusivity/best price clauses
3. Mandatory bundling of services
4. Clauses against public recourse
5. Mandatory use of own identity system
6. Intransparent advertising pricing

The DMA's anti-bundling clauses

(as of mid December 2021 – Text approved by the Parliament)

Art. 5.1(f) – Must allow business users to use only one of their services without the others

Art. 5.1(gb) – Must prompt end-users to choose from a list at installation; must not prevent uninstallation of own apps

The DMA's interoperability clauses

(as of mid December 2021 – Text approved by the Parliament)

Art. 6.1(f) – *Equal access to OS features;* interoperability for ancillary services for business users (payments, identification, delivery, ads...)

Art. 6.1(fa) – Interoperability for instant messengers

Art. 6.1(fb) – Interoperability for social media

Art. 6.1(h) – Real-time data portability

Concerns around interoperability

The institution's concerns

Is there actual industry demand for IM/social interop?

Will this reduce privacy by scattering personal data everywhere?

The community's concerns

Who will pick the interop features and the technical standards?

Will interop be open to any interested party and at which conditions?

Should we push interop for other core services?

Many open questions

Different technical models

Should each gatekeeper expose their own API (and control it)?

Should everybody adopt a neutral, open standard?

Different business models

Will we be offered «interop-as-a-(paid)-service»?

Mio DISPATCH

Slack + Microsoft Teams + Webex News

Zoom & Cisco Embrace Chat Interoperability With $8.7 Million Investment In Mio

Thanks!

Any questions?

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