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PARLIAMENT, THE COUNCIL THE EUROPEAN ECONOMIC AND SOCIAL  
COMMITTEE AND THE COMMITTEE OF THE REGIONS**

**Online Platforms and the Digital Single Market  
Opportunities and Challenges for Europe**

## 1. INTRODUCTION

Online platforms have dramatically changed the digital economy over the last two decades and occupy a central position in the digital society. They play a pivotal role in the digital value chains that underpin future economic growth in the EU, and are thus critical to the effective functioning of the Digital Single Market. In order to make the most of the opportunities presented by online platforms, the EU needs to create the best possible business environment for online platform innovators. The fast evolution of the platform economy requires a responsive, agile and adaptive regulatory framework that keeps pace with evolving technology and the digital economy, especially as online platforms continue to reach out to new markets and areas of activities.

In its Digital Single Market Strategy of 6 May 2015, the Commission committed to undertake an in-depth analysis of the role of online platforms in the economy and society. Subsequently, the Commission conducted a series of workshops and studies<sup>1</sup> as well as a wide-ranging public consultation, which attracted a large number of responses.

The purpose of this Communication is to present the Commission's political approach to supporting the development of online platforms in Europe.

## 2. THE GROWING IMPORTANCE OF ONLINE PLATFORMS IN THE DIGITAL ECONOMY

Online platforms take various shapes and sizes, and continue to evolve at a pace not seen in any other sector of the economy. Today, they cover a wide-ranging set of activities including<sup>2</sup> online advertising platforms, marketplaces, search engines, social media and creative content outlets, application distribution platforms, communications services, payment systems, and platforms for the collaborative economy.

For the purpose of this Communication, online platforms are undertakings *"that are capable of facilitating direct interactions between users<sup>3</sup> via online systems, and that capitalise on data-driven efficiencies enabled by network effects"*. This definition is neither closed nor exhaustive. Nevertheless, it captures the essence of an entirely new business model that is not intended to control all content and risks related to the economic and social activities it facilitates, while at the same time offering entirely new capabilities to organise information flows, and thus to determine the exposure of users to goods and services online.

Online activities that are limited to retailing or single-sided content distribution, e.g. Netflix, are not directly covered by this definition, as they do not involve direct contacts between different users. Industrial platforms are also not within the primary scope of this Communication, as they focus on bringing various stakeholders together for agreements on specific technical issues, rather than focusing on direct transactions between different third-

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<sup>1</sup> These include an economic study of online platforms by the Commission's Joint Research Centre that was published in [early April], two Eurobarometer studies on the impact of online platforms that were completed by [May], a hearing on online platforms organised by the European Political Strategy Centre, as well as the conclusions of numerous interactions with academics and stakeholders which fed into the Commission Staff Working Document that is annexed to the present Communication. In addition, studies on asymmetry of information between platforms and their users, as well as on intermediary liability and notice-and-action will follow [in the second half of 2016].

<sup>2</sup> Non-exhaustive set of examples: Google's AdSense, DoubleClick, EBay and Amazon Marketplace, Google and Bing Search, Facebook and YouTube, Android and Apple Store, Facebook Messenger, PayPal, TOMTOM and BlaBlaCar.

<sup>3</sup> "Users" include *businesses and private consumers*.

parties. Industry platforms form core components of the *Digital industry package* adopted on 19 April.

Online platforms share the following important characteristics, the combination of which constitutes the crucial distinguishing feature from other businesses:

- capacity to facilitate, and extract value, from direct interactions or transactions between users, i.e. they are multi-sided and have limited control over direct interactions between groups of users;
- ability to collect, use and process a large amount of data in order to optimize, *inter alia*, the service and experience of each user;
- capacity to build networks where any additional user will enhance the experience of all existing users – so-called "network effects";
- ability to create and shape new markets, to disrupt traditional ones and to organise new forms of civil participation based on processing, collecting, altering and editing information;
- virtually exclusive reliance on information technology as the means to achieve all of the above features.

It is undisputed that online platforms are of key and growing importance to the digital economy and society; they facilitate unprecedented efficiency gains, invest comparatively heavily in research and development, and act as a magnet for innovation. They also offer the potential to enhance civil participation in society and democracy. Online platforms also open new avenues to data-driven innovation as they have access to very large data sets relating to user behaviour and preferences, facilitating new avenues of innovation and improving consumers' Internet experience.<sup>4</sup>

The rise of platforms benefits consumers through increased search facilities, choice and cheaper prices. In many markets, online platforms match supply and demand with radically greater efficiency and frequently increase consumer choice, thus contributing to improved competitiveness of industry and enhancing consumer welfare. Search, access to content, travel and tourism are just some examples where online platforms have transformed entire sectors and markets by filtering, organising, and selecting vast quantities of information. As a result, online platforms have become the main entry points for the online experiences of most ordinary users. More broadly, they are now extending their reach to many traditional sectors, such as transport, energy, banking, financial services, mobile health and smart cities. In many cases, online platforms fundamentally change traditional value chains by creating and shaping new markets, forcing existing players to adapt.

In certain cases, where efficient online platform-markets have become the benchmark, the central role played by a limited number of established online platforms can potentially lead to adverse effects for their users – be they businesses or consumers – through imbalanced relationships and the potential for unfair treatment. They may also potentially limit competitors' innovation capabilities, or they may offer only limited transparency on their

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<sup>4</sup> Ref. to Data Communication

collection and processing of data to consumers and businesses in order to maintain control of a superior dataset. In assessing and addressing some of these potentially adverse effects, the EU and national competition, consumer and data protection authorities have an important role to play.

### **3. SETTING THE RIGHT ENVIRONMENT TO ATTRACT, RETAIN AND GROW NEW ONLINE PLATFORM INNOVATORS**

The online platform economy presents major innovation opportunities for start-ups, but also for traditional sectors to organise themselves as platforms. A key objective for the EU is to put in place the right environment in Europe to create, attract, retain and grow new online platform innovators.

However so far Europe is not driving the online platform revolution: at present the EU represents only 4% of the total market capitalization of the largest online platforms, with the vast majority of platform enterprises originating in the US and Asia. As online platforms increasingly capture new digital value chains, this particularly limits the competitiveness and growth of the EU. Given the growing importance of online platforms in the economy and the disruptive role they play in business, including acting as gateways to customers, the EU must ensure favourable conditions for the creation and growth of online platforms. Many opportunities for platform innovation still exist for the EU, with the digitalisation of key industry sectors e.g. in areas such as smart cities, eHealth, automated driving, energy, banking, as well as creative content. Firms in the EU can leverage their strong position in these areas.

The current situation reflects a longstanding lack of financing and investment in the Digital Economy, as well as the presence of significant gaps in the present Digital Single Market.

Europe has started to address the problems faced by innovative online firms with the current priorities of the Juncker Commission: the DSM, the capital markets union, the European Fund for Strategic Investment and the Single Market Strategy are aiming at increasing the financing available, and addressing key internal market obstacles that stand in the way of a flourishing and competitive Digital Economy.

In addition, the Commission is taking specific actions to foster the emergence of platform-based ecosystems, including providing world-class high-speed internet access across the EU, performing fitness checks on existing legislation in light of such innovative business models, offering more room for start-ups to experiment, improving access to important datasets, and promoting open standards and interoperability in ICT. Important examples are:

- the Start-up Europe Initiative to inspire, advise and fund ICT start-ups to scale-up.
- the package on Digitising European Industry<sup>5</sup> adopted on 19 April 2016 contains a series of proposals aimed at creating EU-wide ecosystems which will foster the development of competitive online platforms. Of particular importance is the collective investment in world-

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<sup>5</sup> Ref to specific elements of the package

class data infrastructure for science and innovation empowered by high performance computing facilities which will enable EU players to process vast amounts of data and develop new business models. The action plan also shows how to mobilize a package of EUR 50 billion of public and private investments to upgrade Europe's digital innovation capacities and proposals for a streamlined approach to standardisation, aiming to foster the necessary cross-border and cross-domain interoperability.

- a public consultation on the next generation Internet, and the Commission's intention to follow-up thereon, to help shape the Internet of the future, in the form of a powerful, open, user-centric, interoperable platform ecosystem, without lock-in or dominance by a small number of players, and based on fostering innovative data governance mechanisms.

- the promotion, by the Commission, of sectorial self-regulation and standards in particular areas where platform business-models are now emerging, such as mHealth, connected and automated cars, smart cities and smart home appliances. This is to ensure openness, interoperability, and safety/quality of service from the start, thus creating the right framework conditions for user trust, innovation and value creation in Europe.

**In addition to recent and on-going efforts, the Commission will identify how to foster the development of competitive European online platform ecosystems in key strategic sectors such as health, automated vehicles and smart cities as an innovation funding priority.**

**This effort should be led by the proposed European Innovation Council, which specifically aims at supporting the scaling-up of disruptive innovators in Europe.**

#### **4. A BALANCED REGULATORY FRAMEWORK FOR ONLINE PLATFORMS IN THE DSM**

In addition to creating the right environment for new online platform innovators, the EU needs to ensure that its overall regulatory framework is conducive to the further development and scaling-up of the platform-business model in Europe.

First, there cannot be 28 different sets of rules for online platforms in a Digital Single Market. Remaining fragmentation across the different member states can prevent the emergence of new online platforms, as limiting the scale of online platforms to national silos slows down their growth and reduces the benefits of network effects. Differing local or national rules for online platforms generate uncertainty for economic operators, limit the availability of digital services and generate confusion for users and businesses. To avoid the risk of regulatory fragmentation in the area of cybersecurity, the Council of the EU and the European Parliament recently agreed on EU-level rules based on main country of establishment and maximum harmonization across the EU, in the context of the Network and Information Security Directive.

At the same time, existing rules must be up-to-date and fit-for-purpose to allow innovative business models to develop. The collaborative economy is an example where rules designed for traditional and local service providers threaten to impede the online platform business-model. To encourage the balanced development of the collaborative economy, the Commission will issue guidance for public authorities, market operators and citizens.

Secondly, the effective enforcement of existing rules on competition, consumer protection, data protection, single market freedoms and information security is needed to ensure that platforms abide by the law, including public obligations, so that all players can compete on the basis of fair competition and so that both businesses and citizens can safely deal with online platforms. In light of the rapid pace of online platforms' development and their ability to create and shape new markets, such effective enforcement may require better cooperation between enforcement authorities or the adjustment of existing legislation.

Thirdly, the need to foster the innovation-promoting role of platforms also requires that any future regulatory measures proposed at EU-level address clearly identified, specific problems relating to a specific type of online platform. Such a problem-driven approach should begin with an evaluation of whether the existing framework is still appropriate. In case the existing regulatory framework is found to no longer be appropriate, given the fast-paced development of online platform business models, and the need to develop future-proof solutions, principles-based self- and co-regulatory measures should be favoured to strike the right balance between predictability, flexibility and efficiency.

As a general rule, when framing its response to issues related to online platforms, the Commission will take the following principles - essential to the effective functioning of the Digital Single Market - into account,:

- **a level playing field for comparable services** based on proportionate and harmonised EU rules, to ensure that same activities are regulated the same way.
- **responsible behaviour of online platforms**, *inter alia* to fight against illegal and harmful content and to ensure adequate protection of all – and especially vulnerable – platform users as well as of core societal values.
- **transparency and fairness for maintaining user trust**, in particular where online platforms are controlling access to important user information, or deploy potentially discriminatory practices, as well as in relation to data collection<sup>6</sup>, law enforcement requests and search results.
- **open, fair and non-discriminatory markets for maximum innovation**, restricted access and user lock-in can constitute obstacles to competition and to the effective functioning of the Digital Single Market.

## 5. IMPLEMENTING DSM PRINCIPLES FOR ONLINE PLATFORMS IN THE EU

### i) *Ensuring a level playing field for comparable services based on proportionate and harmonised EU rules*

Online platforms have disrupted traditional business models and are increasingly regarded by users as equivalent or as substitutes of traditional services in various sectors. Current examples range from the media and entertainment sectors to the retail and communications sectors. As a general regulatory principle, the same activities must be subject to the same rules in the Digital Single Market. This principle is usually referred to as a “level playing

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<sup>6</sup> OECD 2015, data driven innovation

field". The Commission's analysis, as well as the results of the public consultation, indicate that there are a number of concerns in this regard.

Where the same activities are supplied by different actors, these activities should be regulated in the same way in order to avoid market distortion. Conversely, comparable activities that are provided under materially different conditions, such as broadcasters controlling content versus online platforms relying on user-generated content, should naturally be treated differently.

A case in point is so-called "over-the-top" online communications services. Such services are increasingly competing with traditional telecommunication services and used by consumers as an alternative to cover their communications needs. This has been confirmed by the responses to the public consultations on the Telecoms Review and the ePrivacy Directive Review. However, these online communication services are not subject to the same rules as traditional telecommunication services, such as the requirement for confidentiality of communications, information security requirements, interoperability requirements, provisions related to minimum contractual rights, or transparency and quality of service obligations. What is considered to be a comparable service may vary with the public policy context: for some purposes, such as security and confidentiality of communications, it may be necessary to address all services facilitating interactive communications between their users; for others, such as emergency communications, end users may associate guarantees such as quality of service assurances with use of public resources like numbers.

Competition from online platforms can provide incentives for traditional market players to innovate and improve their performance, as well as point to a need to simplify and modernise existing regulation. This modernisation should seek to avoid imposing a disproportionate burden on online platforms business models. At the same time, in areas where competitive pressures have been increased, deregulation of traditional sectors may offer the most beneficial response to achieve a level playing field.

**The Commission will ensure that in any sector where online platforms end up providing comparable services, the same rules will apply to all relevant actors, duly considering opportunities for reducing the scope of existing regulation. This will be done in the framework of the Commission's approach to Better Regulation, in particular the ongoing and future REFIT programme.**

**As part of its review of EU telecoms rules, the Commission will announce in 2016 a targeted mix of deregulation of current telecoms-specific rules and the applicability of a more focused set of communications-specific rules to all relevant and comparable services provided by over-the-top players where it is necessary to achieve the purpose of these provisions.**

**As part of its review of the e-Privacy Directive, the Commission will consider in 2016 the extension of its scope to over-the-top online communication services thus guaranteeing a level playing field for privacy protection.**

[Going forward, the Commission will analyse all other relevant areas where online platforms are starting to act as new intermediaries with the aim of establishing a level playing field across the board.]

ii) *Ensuring that online platforms act responsibly*

Maintaining a balanced and predictable intermediary liability regime for online platforms is crucial for the further development of the digital economy in the EU and for the unlocking of investments in platform ecosystems.

Although the present intermediary liability regime, as set out in the e-Commerce directive<sup>7</sup>, was designed at a time when online platforms did not have the scale they have today, it created a regulatory environment that has considerably facilitated their scaling-up. This is in part due to the harmonisation of the exemption of all types of online platforms from liability for illegal content and activities they do not control. The public consultation showed strong support for the existing principles of the e-Commerce Directive, but also for the need to clarify certain concepts, including the scope of the safe harbour for intermediary liability, including for online platforms. Given this background, the Commission intends to preserve the existing liability regime.

However, with the rise of online platforms monetising users' content and data, and with the need for online platforms to contribute to making the Internet a safer place, the EU needs to further define its approach to their broader responsibility. As they occupy a special role in the economy and society with unmatched influence, online platforms should behave responsibly and have frameworks in place to take reasonable and effective action to protect their users from illegal and harmful activities.

This is all the more important for those online platforms that derive most of their value and benefits from knowledge of and/or control over content, data or services supplied by third party users.

To address these specific problems without jeopardizing online platforms' innovation potential, the Commission considers that specific regulatory action would be more effective through sectorial legislation, on the basis of maximum harmonisation and a problem-driven approach, and without prejudice to the e-Commerce Directive. This is particularly the case for ensuring a fair allocation of revenues for the use of copyright-protected content, protecting minors from harmful content, and fighting incitement to hatred through audio-visual content, given that:

- An increasing number of online content distribution platforms are effectively supplying **audio-visual content**, without having editorial responsibility over it. Thus they do not have the obligation to take action pro-actively to protect minors from harmful content and all citizens from incitement to hatred. At the same time, children are more and more exposed to harmful content through video-sharing platforms<sup>8</sup>, while the incitement to hatred through online audio-visual material is a particularly acute problem.

<sup>7</sup> Directive 2000/31/EC.

<sup>8</sup> EU kids On line: <http://www.lse.ac.uk/media@lse/research/EUKidsOnline/EU%20Kids%20III/Reports/Intheirownwords020213.pdf>



- New forms of online content distribution have emerged which may involve several actors and where, for instance, content is distributed through platforms which make available **copyright-protected content** uploaded by end-users. While these services are attracting a growing audience and gain economic benefits from the content distribution, there is a growing concern as to whether the value generated by some of these new forms of online content distribution is shared in a fair manner between distributors and the right holders. In their replies to the public consultation, right holders across several content sectors reported that their content is increasingly used without authorisation or through licencing agreements which, in their view, contain unfair terms.

This sectorial approach also applies to specific actions in the framework of harmonised security measures, which will be addressed by the recently adopted Network and Information Security Directive, and digital evidence-gathering for security reasons. The safety of apps is another emerging issue in relation to which online app distribution platforms may have an important role to play.<sup>9</sup>

In addition to these initiatives, there is a need to further encourage all types of online platforms to take more effective voluntary action to safeguard key societal values, in order to effectively fight hate speech and ensure non-discrimination, or to ensure transparent, fair and non-discriminatory access to information in the context of democratic processes, especially where this information is filtered via algorithms, or manipulated through opaque moderation processes.

Respondents to the public consultation indeed underlined that the responsibility of online platforms is a key and cross-cutting issue.

In this regard, voluntary self-regulatory action can be very effective in particular when subject to a clear set of principles<sup>10</sup>, targeted, and continually improved to keep pace with the challenges as they evolve. The EU Internet Forum and the CEO Coalition to make the Internet a better place for children are important examples of multi-stakeholder engagement processes aimed at finding common solutions to voluntarily detect and fight illegal or harmful material online.

But online platforms raised the concern that by introducing voluntary measures they would no longer benefit from the safe harbour liability exemption clause of the e-Commerce Directive. Providing certainty to online platforms with regards to their liability in light of voluntary measures will, therefore, be central to enabling them to undertake such responsible behaviour.

Finally, there is a need to monitor and improve effective procedures for notice-and-action to ensure the coherence and efficiency of the intermediary liability regime, in a context where there is a risk of fragmentation and incoherence stemming from the multiplicity of reporting

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<sup>9</sup> The Commission is currently gathering evidence on the safety of apps and other non-embedded software, including through a public consultation to be launched over the course of 2016, with a view to developing policy options to address the above issue.

<sup>10</sup> See the principles for better co- and self-regulation, [http://ec.europa.eu/newsroom/dae/document.cfm?action=display&doc\\_id=1628](http://ec.europa.eu/newsroom/dae/document.cfm?action=display&doc_id=1628)

mechanisms designed by the platforms themselves or by Member States. However, before considering launching an initiative, the Commission will assess the impacts of on-going reforms such as the copyright review, the REFIT of the Audio-Visual Media Services Directive and important co-regulatory initiatives such as the EU Internet Forum.

The Commission will implement its sectorial approach on the basis of maximum harmonisation and a problem-driven analysis, in particular:

- in the context of the **updated Audiovisual Media Services Directive** to be adopted alongside this Communication, through which **the Commission proposes that video sharing platforms put in place by means of co-regulation**, measures to (i) protect minors from harmful content, to which access will have to be restricted and (ii) protect all citizens from incitement to hatred.

- in the next **copyright package**, to be adopted in the autumn 2016, the Commission will aim at ensuring fair allocation of the value generated by the online distribution of copyright-protected content by online platforms whose businesses are based on the provision of access to copyright-protected material.

The Commission will **ensure that the different initiatives affecting online platforms' liability** are fully coherent with the e-Commerce Directive.

The Commission will explore ways forward to clarify certain concepts used in the e-commerce directive and will **further encourage coordinated EU-wide self-regulatory efforts by online platforms**. It will regularly review the effectiveness and comprehensiveness of such voluntary efforts with a view to determining the possible need for additional measures. The Commission considers at this stage that **immediate and effective action by industry is needed to fight incitement to terrorism and to prevent cyber bullying**.

To inform this process, the Commission will convene before the end of 2016 a multi-stakeholder forum including leading academics, online platform operators, businesses and consumers. The multi-stakeholder forum will work on the self-regulatory measures outlined in this Communication and provide guidance to the European Commission. By spring 2017 it will draw up a plan to complete all self-regulatory actions mentioned in this Communication before the end of 2018..

To ensure that online platforms are provided the right incentives, the Commission will furthermore **issue guidance on the liability of online platforms when putting in place voluntary, good faith measures** to fight illegal content online.

The Commission will continue to review the **need for formal notice-and-action procedures** during the second half of 2016, taking into account the effect of the updated audiovisual media and copyright frameworks on illegal content online.

iii) *Fostering trust and ensuring fairness*

- *Informing and empowering citizens and consumers*

The future Internet cannot succeed without trust of users in online platforms.<sup>11</sup>

Data is the fuel of the digital economy and platforms need to collect data as part of their service and in order to optimise consumers' online experience. Data also underpins marketplace efficiency and innovative uses of data can boost economic productivity. Its importance goes beyond purely economic purposes as the collection and analysis of vast amounts of data can save lives, improve education, and enhance government services.

However, large-scale data collection also has the capacity to create new power asymmetries, and potentially reinforce disadvantages faced by low-income and underserved communities, or to unwittingly influence people's behaviour or choices – particularly in the context of purchasing a product or enlisting a service, but also in influencing other choices such as political or societal ones.

As shown in the public consultation, data collection is an area where more transparency is needed. Over 75 percent of citizens that responded to the public consultation<sup>12</sup> consider that more transparency is needed from online platforms in particular on the display of sponsored search results, identification of the actual supplier of services or products, and on possible misleading practices including fake reviews. Similarly, greater and more systematic transparency is needed when public authorities, including law enforcement, request online platform providers to access user data.

The lack of transparency in relation to the collection, storage and use of personal and non-personal data<sup>13</sup> also poses increasing challenges for public authorities to enforce single market EU policies, as most public authorities do not have sufficient information on data-based market practices, nor do they possess large-scale data processing and data analytics capacities. While ratings and online reviews can help build trust, further measures could be envisaged that aim to prevent the manipulation of consumer opinion. A prominent example is fake reviews, where loss of trust can undermine the business model of the platform itself, but also lead to a wider loss of trust, as expressed by many responses to the public consultation. [Result of the Euro-barometer to come]

In addition, the ways in which users identify themselves in order to access online platforms and services are increasingly becoming problematic: on the one hand, for every consumer to have a multitude of username and password combinations is not only inconvenient but becomes a security risk where they reuse passwords or use generic passwords. On the other hand, the frequent alternative of using one's platform profile to access a range of websites and services often involves non-transparent exchanges and cross-linkages of personal data between various online platforms and websites. As a remedy, in order to keep identification

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<sup>11</sup> Only 22 percent of Europeans have full trust in companies like search engines or social networks [insert reference]

<sup>12</sup> [insert reference to public consultation synopsis report]

<sup>13</sup> [insert reference to the synopsis report] Part on businesses and public authorities

simple and secure, consumers should be able to choose the credentials by which they may wish to identify or authenticate themselves. In particular, online platforms need to accept credentials issued or recognised by national public authorities, such as electronic ID cards, citizen cards, bank cards or mobile IDs.

In order to foster greater transparency and fairness in business-to-consumer online platform practices, the Commission will review the EU consumer and marketing law, including guidance on the Unfair Commercial Practices Directive, as part of its REFIT initiative in [2016].

In order to empower consumers and to safeguard principles of competition, consumer protection and data protection, the Commission will **promote interoperability actions to encourage on-line platforms to recognise other eID means**, in particular those notified under the eIDAS Regulation, that offer the same reassurance as their own. .

Further, the Commission will draw up a plan to strengthen **public authorities' capacity to process and analyse large-scale data** to support the enforcement of EU single market policies and to ensure platform users are more aware of the data collected by platforms and how it is used.

In the context of the multi-stakeholder forum, **the Commission calls on industry** to step-up voluntary efforts to prevent trust-diminishing practices, in particular – but not limited – to tackle fake or misleading online reviews.

#### - *For Businesses*

As platforms are becoming increasingly central to the economy, fair terms of access to online platforms have become crucial for online and offline companies. This is particularly the case for vulnerable businesses such as SMEs and micro-enterprises, as some online platforms constitute the main entry points to certain markets and data. Conversely, online platforms have a key interest in a sustainable and positive relationship with their business users on which they rely for the creation of value.

Competition law provides the primary means of addressing abusive practices in order to protect consumers' interests and to ensure a competitive environment. Such antitrust rules seek to secure adequate price competition or the countering of direct threats to innovation, based on ex-post assessments of specific harms in individual cases. There is currently a broad consensus that the EU antitrust framework can on the whole address emergent antitrust issues in online platforms. The Commission is at the same time duly aware of the need to ensure that competition rules effectively recognise the multi-sided and fast-paced nature of online platform-markets and the key role played by data therein. Better cooperation between competition authorities is in addition needed to avoid regulatory uncertainty through fragmented approaches. This approach is in line with the recent resolution of the European Parliament on the Annual report on EU Competition Policy,<sup>14</sup>

<sup>14</sup> The European Parliament resolution of 19 January 2016 on the Annual report on EU Competition Policy: "[The European Parliament] Notes that the original market models of the competition policy may be inappropriate for the digital economy, and that the use of price-based indicators in this dynamic economic

which calls upon the Commission to, amongst other issues, take proper account of the importance of data and of the specific market structures of the digital economy.

While issue-specific and ex-post action will remain the primary approach to addressing "effective competition"-issues, many SMEs cannot typically afford the lengthy and costly legal processes when addressing abuses of dominance in digital markets. In addition, business models of entire ecosystems of SMEs are in certain cases fully dependent on access to a small number of online platforms and are disproportionately exposed to potentially unfair trading practices that could threaten innovation even in the absence of established dominance by competition law. In these cases, fairness of B2B relations could be better and faster addressed by targeted ex-ante action. Such action must be harmonized at EU level to avoid regulatory fragmentation of the Digital Single Market.

The Commission's comprehensive assessment of online platforms has shed light on many of the specific issues at stake. Firstly, it should be noted that a vast majority - 9 out of 10 - of those responding on business-to-business relationships in the public consultation consider that there is room for improvement in B2B relations.<sup>15</sup> Secondly, it should be recognised that the presence and degree of intensity of these practices vary depending on the type of online platform and the sector in which it operates.

Thirdly, responding businesses frequently highlighted a perceived unfair exploitation of a marked imbalance in bargaining power across the supply chain and the fact that online platforms effectively control access to important user bases. The consultation indicates in particular that the most commonly experienced problematic practices include: (i) platforms imposing allegedly unfair terms and conditions, in particular when platforms effectively constitute the access point to important user or data bases; (ii) platforms acting as an authority, refusing or unilaterally modifying market access conditions, including access to essential business data necessary for the supplier to improve consumers' Internet experience; (iii) the dual role of platforms not only transacting in a capacity of supplier but competing with suppliers, where this leads platforms to unfairly promote their own services to the disadvantage of these suppliers; (iv) unfair "parity" clauses with detrimental effects for the consumer (v) lack of transparency notably on platform tariffs, on use of data, and on search results, which could result in harming suppliers' business activities.

Finally, the consultation shows that imbalanced terms and conditions imposed by platforms potentially have the most detrimental impact on businesses' activities. It also showed the need for legal certainty about access to, and ownership of, data in order to stimulate investment and allow a more balanced contractual relationship between service providers and business users.

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*sector often fails to achieve the desired outcome; calls on the Commission to carry out, on the basis of new criteria, a comprehensive legal and economic assessment of fast-moving markets and ephemeral business models employed by digital undertakings, in order to obtain a clear understanding of the market structure and market trends, take appropriate measures to protect consumers and take proper account of the importance of data and of the specific market structures of the digital economy; points out that, for the purposes of defining the relevant market, in particular in the digital economy, relevant assessment criteria in terms of competition must be applied".*

<sup>15</sup> SWD to be circulated

In conclusion, responses to the public consultation highlighted the potentially negative consequences of alleged unfair trading practices, and sent a clear signal in support of new action to ensure fair competition on the basis of a mix of regulatory and non-regulatory measures.<sup>16</sup> [Result of the Eurobarometer to come].

**The Commission will gather additional information over the next six months on b2B practices** in order to examine more closely the issues raised in the public consultation and the precise scale and impact of allegedly unfair trading practices on suppliers. At the end of this period, it will engage closely with all relevant stakeholders as part of an effort to determine how best to address the most harmful of any unfair B2B trading practices. **By spring 2017, the Commission will determine whether additional EU action is needed** beyond self- and co-regulatory efforts that may include dispute resolution mechanisms or the provision of better information or guidance.

As part of the DSM Free Flow of Data initiative, **the Commission will also examine the potential barriers to a single EU data market** that may arise from legal uncertainties regarding the ownership, usability or access to data created on online platforms.

#### *iv) keeping markets open, fair and non-discriminatory*

In a successful Digital Single Market, users must be able to switch platforms easily, avoiding lock-in. The decision of users to stay with an online platform and share their data should be a free choice linked to the quality of the service provided, and not due to obstacles to switching to another platform, including transferring their personal and non-personal data. This point was clearly made by the European Council in its conclusions on October 2013.<sup>17</sup>

In the consultation, the majority of respondents see the need for facilitating the ability to switch between online platforms. In particular, many citizens complain about difficulties in switching email providers. Respondents propose the development of common standards for all data transfers, and argue in favour of general portability/transferability of personal and non-personal data. This is just as important for businesses as it is for individual consumers, as business users store and process personal data of clients and employees, but also deal with large volumes of non-personal data with regard to their activities, inventory and accounts, which are vital for continuity in business operations.

From the point of view of public authorities, facilitating and reducing costs for switching is seen as critical to maintaining a competitive environment between platforms.

<sup>16</sup> Relevant evidence was also gathered at the occasion of the consultation on the green paper on Green Paper on unfair trading practices GROW to complete

<sup>17</sup> "There is also a need to address the bottlenecks in accessing one's "digital life" from different platforms which persist due to a lack of interoperability or lack of portability of content and data. This hampers the use of digital services and competition. An open and non-discriminatory framework must therefore be put in place to ensure such interoperability and portability without hindering development of the fast moving digital sphere and avoiding unnecessary administrative burden, especially for SME's".

Data portability in this regard contributes to reducing private and public obstacles to the free movement of data, as well as standards and interoperability, via open API<sup>18</sup>-based ecosystems.

Online platforms and intermediation services increasingly take the form of ecosystems, which may well be closed for different reasons: they may seek to control quality or security, but they may also seek to reduce competition or limit the contestability of market dominance. Closed platform ecosystems can also lead to efficiencies including greater competition between platforms.

But as a general rule, closed platform ecosystems lead to unpredictable or restrictive conditions for developers and suppliers for accessing the services, APIs or data of online platforms. These have been identified as widespread problems in the public consultation.

Especially where the EU is supporting innovation through its innovation investments in emerging areas such as virtual reality, smart cities and the Internet of Things, the need for stimulating the emergence of open online platforms becomes crucial for developing new data-driven business models, increasingly favouring open source platform technologies.

Open and interoperable platforms also create broader open markets, especially for start-ups and SMEs, to deploy interoperable services across platforms. An open innovation ecosystem for platforms should form the basis of a sustainable future Internet.

Enhanced support by the Commission for open initiatives in this field is particularly relevant, in particular to limit the risk that added value of the local innovation capacity and creativity of start-ups is being captured by a few closed platform providers.

**The Commission aims to ensure the possibility for consumers and business users to switch providers affordably and with minimum disruption.**

In this regard, the Commission will ensure **full implementation of the new General Data Protection Regulation** which ensures the right for individuals to portability of their personal data. In the proposed **Directive for the supply of digital content**, the Commission has in addition proposed the possibility for consumers to retrieve all content they have provided or was generated on the basis of their Internet use.

**The multi-stakeholder forum will put forward proposals for effective approaches, including technical standards, to facilitate switching and portability of personal and non-personal data among different online platform and cloud computing services**, both for business and private users. It will closely assess progress to determine the need for additional measures to attain the principle of open markets.

Finally, the multi-stakeholder forum will propose measures to **ensure that future development of digital technologies remains open**. This may include identification of appropriate incentives for firms (in terms of, for example, liability exemptions and funding), notably in the free flow of data initiative, defining funding priorities for open initiatives,

<sup>18</sup> Application Programming Interface.

**giving preference to the procurement of open service platforms by public authorities, s well as a voluntary code of conduct for online platforms.**

## 5. CONCLUSION

In this Communication, the European Commission has laid out its overall assessment of online platforms as part of the EU's Digital Market Strategy.

Online platforms play a key role in innovation and growth in the Digital Single Market. They have revolutionised access to information and have made many markets more efficient by better connecting buyers and sellers of services and goods. While there are some online platforms that reach historic numbers of users across the world, and that expand continuously into new areas of the economy, there are also still many opportunities for competitive European platforms to emerge. This is especially the case in areas of traditional European strengths. Effectively stimulating innovation in these areas is perhaps the most important challenge the EU faces today in terms of securing its future competitiveness in the world.

The assessment has also identified a number of challenges where the public interest needs to be carefully assessed. Overall, at this stage, there is no compelling case for general ex-ante regulation of online platforms across the board.

This Communication at the same time critically underlines the need to find new policy approaches, which are more agile, flexible and future-proof, to tackle the identified and emerging challenges raised by online platforms.

The follow-up of this assessment and implementation of proposed action offers a unique opportunity to test, implement, or expand principle-based regulations, as a key contribution to the Commission's "better regulation" agenda. In particular, co- and self-regulation can still achieve better outcomes for enabling the development of strong platform ecosystems in Europe.

In this regard, no significant breakthrough will be possible without the industry's commitment, and its capacity to step up the effectiveness of its own voluntary efforts to maintain the trust of their user base.

Public authorities' commitment to effectively respond to the new phenomena and business models will also be critical. A sustainable approach to better regulating the digital sector will require the public sector to invest in data analytics, and rely on fast and flexible multi-stakeholder advice, as well as tools for adaptive regulation.

Finally, in order to fulfil the promise of the Digital economy for all Europeans, the Commission calls upon Member States and the European Parliament to support this agenda in order that the EU fully embraces this digital future while preserving its fundamental values.