

Last chance for Europe in the digital saloon?

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With the rise of the digital economy over the past decade and as internet platforms and over-the-top (OTT) players take centre stage, Europe has struggled to compete with other regions. The new Juncker Commission has kept its promise to propose legislative steps towards a connected Digital Single Market, but will the member states buy into this strategy and will it be enough to reignite Europe's ailing digital economy?

Over the past decade, the electronic communications landscape has been transformed into a digital IP world dominated by internet platforms and 'over-the-top' services that pay no heed to geographical boundaries. Now, Europe's patchwork of national markets and its strength in core transmission networks look increasingly anachronistic in this new world. Moreover, Europe's traditional telecoms sector, more heavily regulated for legitimate reasons, is struggling to compete and invest in next generation infrastructure.

It has long been a European refrain that, although it is inventive, it seems unable to capitalise on its creativity in the same way as the USA and Asia - for a variety of reasons. So will the European Commission's new strategy for a Digital Single Market (DSM) kickstart Europe's efforts to regain a leading position in the digital economy, or are Europe's problems so deep-rooted that changing course is practically impossible?

This commentary examines some notable features of the Commission's Digital Single Market strategy to assess the barriers to achieving a true Digital Union, looking first at the overall objectives and the ambition. Second, it highlights some of the more contentious aspects and concludes with issues concerning implementation of the strategy.

Aims and ambition

Overall, the DSM strategy should be broadly applauded for its aims and ambition. It recognises, implicitly, that the EU's economy is undergoing profound transformation to a service and a knowledge-based society. An ambitious vision for a dynamic social market economy is essential if Europe's economy is to grow and become more competitive while improving public services and maintaining a welfare state. A strategy to implement that vision for the digital economy is fundamental now that information and communication technologies underpin all industrial sectors and enable their development - the digital economy is now *the* economy.

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The strategy also acknowledges that Europe has fallen behind other regions and that there is a need for policy and regulation to shift focus from the past to the future. Fifteen years ago, EU legislation was focused on liberalising state-owned monopoly telecommunication operators to enable a competitive e-communications sector, in a world being revolutionised by mobile but still dominated by voice. The internet was still nascent at that time. Although this strategy has been broadly successful in delivering a measure of competition and relatively widespread coverage of broadband at reasonable prices, the action has shifted into the applications layer where Europe's 'telcos' (telecommunications operators) are finding it difficult to compete. Europe's telecoms sector finds itself trapped in a vicious circle of low demand, low revenue and low investment. There is widespread acceptance that something must be done to break this cycle, and the DSM strategy is in part aimed at addressing this fundamental issue.

The DSM strategy is largely characterised by deregulating, simplifying and harmonising rules across the EU, for instance, regarding online and digital cross-border transactions, reviewing VAT rules, ending unjustified 'geo-blocking' (i.e. limited access to content based on geographic location), and so on. Likewise, modernising copyright law, completing the data protection reforms currently under discussion and reviewing the e-Privacy Directive, investing in digital skills and boosting digital government, are all good for the development of a dynamic digital economy. Of course, there are important details still to be settled with some of these initiatives, such as achieving the right balance in the General Data Protection Regulation (GDPR) between protecting human rights and not stifling the innovation that Europe so badly needs. Thus, breaking down regulatory barriers is the right ambition and will broadly benefit both consumers and businesses, including innovative digital startups.

Re-regulation sends the wrong message

At the same time, though, the DSM strategy heralds a more regulated approach, most notably illustrated by the proposed investigation into the role of online platforms, intermediaries and the sharing economy. This is shortsighted and, following the investigation into the abuse of dominance by Google, further smacks of 'regulate my competitor' and gives the impression that Europe is anti-American. Not only are such moves based on dubious grounds – that platforms have achieved monopolistic positions that they are abusing – it signals to the rest of the world that Europe is minded to protect its less innovative, more heavily regulated domestic industries rather than create an innovation-friendly environment to stimulate European creativity.

Why can we say this? First, because regulating platforms – and remember that many, many businesses can be defined as platforms, including e-commerce sites, cars, and shopping malls – are likely to hinder Europe's platforms even more than foreign ones. Given that US and Asian platforms will not face the same burden in their domestic markets, European regulation will simply hamper Europe-based platforms while foreign platforms grow stronger outside Europe. In this regard the DSM strategy seems rather parochial. Breaking down barriers to make a European market work more efficiently is all very well but the digital economy is a global economy and a Canute-like approach is unlikely to succeed. Moreover, Europe's innovative businesses need these platforms – from wherever they emerge – if they are to compete in the global economy. Take the app economy, for instance, where European companies perform as well as if not better than their US counterparts, which employs about 1 million people in the EU and is worth about €20 billion in revenue. This is evidence of a thriving, innovative and entrepreneurial culture in the EU, which has been enabled rather than hampered by the rise of global platforms.

I am all in favour of gathering evidence – indeed, there is a notable lack of evidence for some of the Commission’s proposals – but the mood music strongly suggests that many politicians and policy-makers have already made up their minds to regulate so-called ‘global actors’. However, we should urge caution in the desire to limit the power of US-based tech-giants, as it will likely result in tougher regulation for European start-ups that operate in the sharing economy, as marketplaces or as platforms themselves. It is to be hoped that the European Commission will keep an open mind on this issue and if there is to be any ‘levelling of the playing field’ it should be a levelling down and a relaxation of regulation on telcos rather than passing imprudent legislation with possibly undesirable consequences.

Overhauling the telecom rules

Turning specifically to the telecoms single market, which is fundamental to a successful Digital Single Market, progress on the current Connected Continent package has been disappointing, to say the least. By all accounts the current text is much watered down, with attempts to harmonise the radio spectrum dropped, the abolition of roaming charges delayed until 2018, and continuing disagreement about net neutrality. The DSM strategy recognises that little will be achieved in the current round and believes that a major and more ambitious overhaul is necessary to address issues of isolated national markets, the lack of regulatory consistency and predictability across the EU, particularly for the radio spectrum, and the lack of sufficient investment, particularly in rural areas. Encouragingly, the DSM strategy recognises that, “There is a need for simpler and more proportionate regulation in those areas where infrastructure competition has emerged at regional or national scale”. This reflects a growing view that we should recognise that, over the past 15 years the EU’s telecoms rules have largely been a success and a more nuanced approach is necessary in future.

It remains to be seen whether agreement can be reached in the current package on net neutrality. It remains a controversial topic and one where policy is being formulated without much evidence. The concept of neutrality is difficult for politicians to disagree with – it just sounds so fair. Nevertheless, there is little evidence that net neutrality will solve any of the problems that have been raised at one time or another over the past decade – whether they be anonymity, competition and fair business practices, innovation, user choice, openness or freedom of expression. In my view, the case for legislating on net neutrality has not been made and it would have been better to do nothing. However, now that some EU member states, such as the Netherlands and Slovenia, have passed national legislation, a common EU position has to be reached.

On this topic, CEPS Senior Fellow Andrea Renda has recently attempted to debunk the myths around neutrality and highlight the dilemmas and contradictions in the net neutrality debate.¹ For instance, if strict neutrality rules were imposed, this would hamper traffic optimisation that would be detrimental, for instance, to the rollout of 5G networks likely to comprise a multi-tier architecture of macrocells, different types of licensed small cells, relays, and device-to-device networks to serve users with different quality-of-service. At the same time, it would be ridiculous to prohibit so-called ‘specialised services’, such as for medical applications, connected cars or for mission-critical communications for public protection and disaster relief (PPDR) provided over commercial networks. Some traffic is just more important and sensitive than others.

¹ Andrea Renda (2015), “Antitrust, Regulation and the Neutrality Trap: A plea for a smart, evidence-based internet policy”, CEPS Special Report No. 104, Brussels, April.

Moreover, 'neutrality' as a concept was originally restricted to the infrastructure layer, but today the neutrality rhetoric is being expanded to multi-sided platforms such as search engines and, more generally, online intermediaries. The idea of neutrality applied to search is particularly nonsensical – it is precisely because online intermediaries (including search engines) sift and select the most relevant results that they are valuable to us. A neutral search engine would be practically useless. And how can we expect online intermediaries to act neutrally and at the same time to filter traffic, protect privacy and children, combat hate speech and foster pluralism?

On a harmonised approach to the radio spectrum, the DSM strategy acknowledges that the current discussion on the Telecoms Single Market package will not resolve this, but it will be included as part of the more ambitious future review of legislation. Member states have consistently resisted the encroachment of European authority into this national competence and so it is difficult to see what will change. Nevertheless, as a first step, the DSM strategy is right to focus on strengthening the role of bodies in which the member states' authorities are themselves represented – such as the Body of European Regulators for Electronic Communications and particularly the Radio Spectrum Policy Group.

Implementing the DSM strategy

Finally, the key question is whether the DSM strategy can be fully implemented. After all, the biggest obstacle with past attempts to modernise and achieve a common and coherent approach to the digital economy has been the member states themselves. For despite the rhetoric of support for the digital economy, member states all too often put their short-term interests first – the lack of harmonisation in the radio spectrum being a good example.

The Digital Single Market strategy, while it may be criticised, is at least a coherent vision around which member states could conceivably unite in pursuit of a common approach in the long-term interests of the European Union. So far, of course, it is not much more than a vision and there is a lack of evidence to support some of its direction (for example on net neutrality, and the need to regulate platforms).

What is needed next is a more detailed roadmap that will also set out how and why such a strategy is in the long-term interests of all the members of the European club. This will require leadership from the Commission and Parliament and considerable powers of persuasion to convince member states that this is in their long-term interests. To help this process, more regular contact is needed between working-level officials in the European Commission and policy-makers and regulators in the member states to find workable solutions, as was the case with the ONP Committee which accompanied the ONP Directive back in the 1990s.

The key question is whether it is realistic to expect the member states to unite around the DSM strategy at a time when the appetite for greater European integration seems weaker than ever. What is increasingly clear, however, is that unless it adopts a bold and ambitious plan soon, and one that is truly supportive of innovation in the digital economy rather than being protective of the past, Europe's gradual decline in relation to the USA and Asia will be inexorable.