

**Complementary response of Deutsche Telekom**  
**to the European Commission consultation on**  
**Regulatory environment for platforms, online intermediaries,**  
**data and cloud computing and the collaborative economy**

Deutsche Telekom operates fixed and mobile networks, provides communications services including Internet access, and IPTV products and services for consumers. Furthermore, Deutsche Telekom provides information and communication technology (ICT) solutions for SMEs, multinational corporations and public-sector institutions with a global infrastructure of data centers and networks in more than 50 countries. In Europe alone, we serve about 95 million mobile customers, 30 million fixed-network lines and more than 17 million broadband lines.

Deutsche Telekom offers fixed and mobile connectivity services, communication services (fixed/mobile voice calls and related services, standard messaging services based on SMS and RCS standards), content delivery services (fixed and mobile TV) and a range of adjacent services such as security, cloud, payment etc. These services are either implemented as native features on terminal devices (e.g. on mobile handsets as “green buttons” for voice and messaging) or as downloadable apps.

Deutsche Telekom is committed to investing in advanced communications networks in Europe and providing best-in-class services to our customers across the EU. We are not only heavily investing in communications infrastructures, but also in large and secure data centers. To further improve cross border communications and the provision of cross border services, we are building the first pan-IP network in Europe. With the best networks and the highest security standards we take our responsibility for Europe to stay an attractive region to invest and to live. As architects of digitization we work closely with our partners to support the transformation of whole industries on their way to connected work, production and distribution. With ambitious projects in the field of eHealth, eEnergy and eMobility we contribute to mastering the challenges to our societies for a more sustainable future.

Deutsche Telekom welcomes the analysis of the role of online platforms – such as search engines, social media, app stores, etc. – by the European Commission. A reform of the framework conditions for Europe’s Digital markets is urgently needed to improve the competitiveness of the EU and to enable European citizen to reap the full benefit of digitization. Europe is struggling to keep pace with other world regions with regard to investment and innovation. It is important that the initiatives under the DSM strategy of the European Commission result in a consistent legislative approach to the whole digital economy. Therefore, the analysis of the role of online platforms and possible resulting measures should not be done in isolation, but in conjunction with other measures within the DSM Strategy of the European Commission, including in particular the review of the EU framework for electronic communications to ensure that European citizens can benefit from equal consumer rights and from a level playing field in the digital economy.

## Context of this consultation

This consultation is one of 16 measures under the DSM Strategy of the European Commission. Measures planned by the EU Commission to create the right conditions for digital networks and services to flourish include legislative proposals to reform the current telecoms rules, a comprehensive analysis of the role of platforms in the market including illegal content on the Internet, the Review of the e-Privacy Directive and the Establishment of a Cyber-security contractual Public-Private-Partnership. To maximise the growth potential for the Digital Economy, the Commission further plans initiatives on data ownership, free flow of data and on a European Cloud, the adoption of a Priority ICT Standards Plan and extending the European Interoperability Framework for public services and a new e-Government Action Plan.

Depending on their nature and position on the markets, online platforms are able to control access to online markets and to influence the distribution of value between different players on the market. Often there are concerns regarding a lack of transparency on pricing and usage of collected information (including personal data), strong negotiation powers, preferential treatment of own services and restrictions imposed on platform users for their offers.

The European Commission, with this consultation, wants to study the possible need for an appropriate regulatory framework for platforms and intermediaries. This is done separately from the review of the EU telecoms framework. The Commission has further limited the scope of this consultation to online platforms like search engines, social media, e-commerce platforms, app stores and websites comparing products and prices. Other players in the internet value chain such as operating systems and terminal devices are not addressed. Measures related to media regulation and the protection of personal data are treated in separate legislative proceedings. It remains to be seen how far the Commission will be able to provide for comprehensive and coherent EU framework conditions in a converging market environment with a fragmented legislative approach. It will be all the more important that particular consideration is given to ensuring that the different initiatives together will eventually deliver a coherent framework and a level playing field for all market player in the digital market.

## Economics of Over the Top (“OTT”) players

Today’s digital economy, and the increasing use of mobile internet, give rise to Over the Top (“OTT”) Players who challenge existing players in traditional markets with new business models. These business models are often multi-sided platforms that serve multiple customer groups, and in which customers “pay” for a service by providing personal data. These types of businesses have strong incentives to provide an open platform in order to reach scale in early stages, and to “close down” once they become leader.

OTTs that are multi-sided platforms, have strong incentives to gain a critical mass of users as quickly as possible. There is often a race between platforms regarding who can establish himself as a market leader first. Reaching the critical mass is necessary

for a platform to ‘ignite’<sup>1</sup> at which point network effects come into play that make the platform ever more attractive to users. Given that mainly software is involved, OTTs can scale their product instantaneously and reach global scale quicker than any hardware company could. In addition OTTs often pursue a free-of-charge strategy to attract users, or distribute software as open source, to ensure their software becomes the standard.

Once an OTT has established itself as the leader, it will have a strong user base creating network effects that make it difficult for others to challenge its position. In addition, OTTs will have strong incentives to “close down” their system even if they pursued an open source strategy at first.<sup>2</sup> This can occur gradually through the creation of proprietary extensions to an open source software.<sup>3</sup> This leads to a factual customer lock-in even though the underlying platform may remain open source.

A market-leading OTT might be indispensable from the perspective of users, manufacturers or other market participants, giving it a certain degree of market power. OTTs in this position will have an incentive and the capability to extract value from other players along the value chain. This could for example entail “[c]ommoditizing Complementary Products: Once you’ve won, you want to keep your network alive and healthy. This means that you’ve got to attend not only to your own products but to the products produced by your complementors as well. Your goal should be to retain your franchise as the market leader but encourage a vibrant and competitive market for complements to your product.”<sup>4</sup>

In the context of regulation or competition policy, it is therefore of utmost importance to carefully assess the business model of OTTs and their impact on existing players relying on “traditional” business models.

## Internet platforms in today’s converging markets

Companies operating and providing services at different levels in the Internet value chain (telecoms operators, search engine operators, social platforms, app stores, e-commerce platforms, media platforms, providers of operating systems and manufacturers of terminal devices) are no longer only complementing each other’s services but increasingly compete to conquer as much as possible value within this new ecosystem.

Internet platforms (also known as online platforms or services platforms) are ‘digital network goods’ allowing two or more market players to interact. Online platforms are using hardware platforms (computers, networks, ...) and are at the same time part of software platforms, in particular operating systems (Windows, Android, iOS, ...). Today, already significant turnovers are generated with those platforms. Per Minute hundreds of thousands Dollars are earned by companies like Google, Amazon or

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<sup>1</sup> Evans, David S., Economics of Vertical Restraints for Multi-Sided Platforms (January 2, 2013). University of Chicago Institute for Law & Economics Olin Research Paper No. 626. Available at SSRN: <http://ssrn.com/abstract=2195778> or <http://dx.doi.org/10.2139/ssrn.2195778>

<sup>2</sup> “Try to retain control over technology, even when establishing an open standard”, Carl Shapiro & Hal R. Varian “war” slide pack

<sup>3</sup> “Once You’ve Won, Stay a leader - Develop proprietary extensions”, Carl Shapiro & Hal R. Varian “war” slide pack

<sup>4</sup> Carl Shapiro and Hal R. Varian. Information Rules: A Strategic Guide to the Network Economy. Boston, Massachusetts: Harvard Business School Press, 1999, p.279

Apple. As opposed to infrastructure platforms (hardware and communications networks), Internet platforms (software and operating systems) are much less capital intensive, involving less implementation efforts, are not dependent on scarce resources and achieve global reach as well as high adaptability. Due to their very nature, service platforms can become global within a second.

Service platforms are characterized by positive network effects, i.e. every new user of such a platform typically increases the value of the platform for all users. These network effects are by no means new to the industry. However, with digitization and the widespread use of the Internet they can more easily lead to monopolization as one provider of a specific digital service or platform can easily match the global demand without the need of distribution partners (instant scalability). Limiting factors as for providers of physical products or network infrastructures are not known to mere software based services and platforms. It is therefore in the interest of such online services or platform providers to establish protected de-facto standards incompatible with competing services to monetize monopoly rents at one point in time ('winner takes it all').

The larger an online platform, the higher the incentive for other companies or users to connect to this platform (e.g. for advertisers, software developers, retailers, service companies). Over 40 bn. messages per day are sent within „WhatsApp“ with its one bn. customers. More than 95 per cent of all Internet searches in Germany are processed by Google, 70 per cent worldwide and 90 percent on mobile devices. Huge amounts of data are generated in this context and sold on the advertisement market. The extremely high valuation of successful new economy platform operators on the capital markets reflect the high earnings expectations driven by lock-in effects (due to high switching costs).

The proposition of most platform providers has always been a personalized experience towards consumers that is built upon behavioral and contextual data collection and analysis. Taking into account the first mover advantage due to hitherto diverging data and consumer protection regimes coupled with an aggressive growth and foreclosure strategy, some platform providers are currently able to leverage their global data inventory advantage, linking customer profiles across different platforms and utilizing the previously collected data to offer an unparalleled efficiency in targeted advertisement and product development.

While acknowledging the benefits that online platforms bring to European consumers, such as innovative services, choice and convenience, the special characteristics of multi-sided platforms has become a challenge for the development of a competitive digital economy in Europe where network effects combined with lock-in lead to market foreclosure.

### **Legal asymmetry in the Digital Single Market**

The EU regulatory framework has not kept pace with the dynamics of the digital markets. The present EU regulatory framework stems from the pre-IP time and does therefore not provide for a level playing field between telecom operators and Internet-based service providers (OTTs).

Telecommunication operators are subject to extensive sector-specific regulation whereas Internet-based service providers and platforms, that enjoy similar or stronger market positions in their respective segments, are not subject to specific regulatory

obligations. In a converging market environment where operating system providers, device manufacturers, search engines, social platforms and traditional telecoms network operators compete for a higher share in the value chain, it is important and in the interest of the EU citizen that principles such as transparency, openness and non-discrimination apply in an appropriate way across all digital services.

While services provided by telecom operators fall under strict sector-specific regulation based on outdated definitions in the EU telecoms framework focusing on technical aspects of communication, other providers of digital services and platforms are not subject to such strict rules on open access, non-discrimination, consumer protection including universal services and security requirements. As a consequence, telecom operators have to compete on an unlevel playing field with Over The Top platform and service providers. For telecom operators compliance costs are higher, business opportunities restricted and the ability to innovate is limited and slowed down. Imbalances also include obligations in the areas of transparency, interoperability or portability.

On the other hand, users cannot rely on consistent protection standards across the digital market even when using comparable services. This is also linked to the fact that the framework does not yet recognize personal data as an increasingly important payment method in the data driven economy. While users benefit from the large user base of these services, it also creates strong lock-in effects. Combined with a lack of data portability switching costs for users are high which effectively limits choice.

Start-ups and smaller service providers are faced with high market entry barriers or exposed to unfair practices due to asymmetric negotiation powers as only a few players have reached very strong or even dominant market positions driven by network effects.

### **A comprehensive and consistent framework for digital services and platforms**

To adequately respond to the challenges resulting from these major changes, a comprehensive revision of all rules applicable to services in the digital market is required, as opposed to a fragmented and a merely incremental approach. Such a future-proof framework should be technology- and industry-agnostic and should be applicable as much as possible to all digital services and platforms to guarantee that users enjoy effective protection standards and markets are not distorted by diverging rules.

Definitions of services such as electronic communication services (ECS), internet access services (IAS), information society services (ISS) or audiovisual media services (AVMS) need to be reconsidered taking into account online platforms like search engines, social networks, app stores, operating systems or terminal devices. Revised and new rules need to be proportionate as well as effective.

Fragmentation of service-related rules within the EU increasingly is an obstacle for cross border service provisioning, thereby limiting scale efficiency for European service providers. However, any harmonisation of rules must build on a reasonable level of consumer protection not leading to further additional costs or creating disproportionate barriers to innovation for European operators.

While we should strive as much as possible for horizontal rules, the characteristics of certain digital services will require specific rules, justified either by public interest or safety requirements or to prevent market foreclosure.

Specific obligations imposed on telecoms service providers with regard to the duration and termination of contracts or on cost control would need to be re-assessed. Rules on transparency and on quality standards under the current telecoms framework should apply in an appropriate way to all digital services. This includes mandatory and pro-active information of customers e.g. regarding reliable emergency call functionality or end-to-end-quality of a voice service.

Many online platforms or services monetize personal data of their users in a two-sided market. Users 'paying' with their personal data ('data as a currency') do not enjoy the same level of protection compared to those who pay with money. In a data driven economy this diverging treatment is no longer justified. Any forward looking consumer protection legislation should no longer discriminate between different business models and means of payment but ensure similar protection standards with regard to all commercially provided services.

End-users increasingly face significant barriers when switching from one online platform or operating systems to another. Data portability obligations can be an effective tool to tackle such barriers and to facilitate competition in those markets often dominated by few players. Portability requirements shall include personal data as well as user generated or acquired content and software (apps). As regards personal data, in principle, data portability obligations will be included in the forthcoming General Data Protection Regulation, which is horizontally applicable and therefore extends to all digital services.

As Competition authorities struggle to address competitions problems related to online services and platforms, including operating systems and terminal devices, effective sector specific rules are needed to prevent foreclosure of competition through the exploitation of network effects and lock-in effects. This should include market observation by a responsible regulatory authority. The threshold for intervention should be a market penetration of 30% across the EU or 60% within in a member state. Such thresholds would ensure that only services enjoying a very strong position in one or more national markets within the EU are affected.