DIGITAL SINGLE MARKET

On behalf of Seznam.cz, the strongest media house and technological company in the Czech Republic and the only European competitor to Google in both search and digital services, we hereby provide you with some comments concerning Digital Single Market.

A. MAIN THESES

1) INTERNET AS A MEDIUM WITHOUT BORDERS

- Taking into consideration the very essence of the Internet as a medium without borders, is it even possible to create Digital Single Market just on European continent? In internet business, every single digital services provider is a competitor (China, Africa, LATAM, Russia …). Even language barriers do not count anymore.
- Moreover, can the EU ensure the same effectiveness of EU rules to non-EU countries? While in the end probably easy to deal with the USA, what about the above mentioned states/regions?
- Which are the main factors to define when is particular service/digital content dedicated to Europeans?

2) GENERAL REGULATORY FRAMEWORK VS. DETAILED REGULATION

- The regulation shall establish a general legislative framework able to provide adequate space for self-regulation.
- Thus, the EC should ceased its approach of detailed regulation of particularities. Why should the GDPR tell businesses where to place, within their own organizational scheme, data protection inspector? In general, the legislation should provide us with general principles to follow and not to lay down particular/detailed tools that must be used.
- The detailed regulation could generates unwilling barriers for the free market and competition. Digital world specifics must be taken into account. Its development is too fast for the law to react on this evolution.

3) IN THE SHADE OF MULTINATIONALS

- The EU institutions must refrain from looking at the Internet economy through negative experience with multinationals. They are not the only ones on the market and the ones to be overwhelmingly influenced by the regulation.
- The inability of the EC to progress in antitrust cases with Google must not lead to overregulation of the whole digital environment. There are enough antimonopoly tools and powers to deal with such cases. But that is exactly what we see in case of proposals for unbundling of internet search engines.

4) THE QUESTION OF TRUST

- Seznam.cz has 90 % reach in the Czech Republic. It means that 90 % of Czech internet population trust in our Internet services. Thus, why we still here from the EU institutions that people do not trust to digital services? We would not be on the market for more than 18 years without trust. And we would definitely not be the only European competitor to Google.
- A trust is the very essence of any success on the digital market, together with innovativeness and the quality of human resources. We have many trustful digital companies in the EU.
- The EC should base its approach on market numbers, not one/few opinion polls. There is anyone to say that he or she is not afraid of possible harms arising from the use of digital technologies.
- To reach competitiveness and trust is possible without overregulation.

B. SELECTED ISSUES

1) **GENERAL DATA PROTECTION REGULATION**: the regulation shall establish a general legislative framework, able to provide adequate space for self-regulation. Data protection rights shall be balanced with other fundamental rights, in accordance with the principle of proportionality.

- **Online identifiers**: neither cookies nor IP addresses belong to personal data category; "cookies policy" is not effective for all website providers; the EC does not distinguish the technical formats of various cookies; ban of cookies by users is manually and technically possible; for example, the EC´s websites currently use cookies to store information about user cookies preferences; the same conditions and legal enforceability for both EU and non-EU players (China, Africa, Russia …).
- **Profiling**: the definition of profiling should be specified; better approach to profiling based on practice; it is seen from negative side of view only: advantages are not taking into consideration.
- **Personal data of children below the age of 13 years**: unrealistic or at least very questionable to obtain the verifiable consent with the processing of personal data in a virtual environment; we strongly recommend to improve digital skills and literacy of children in Europe;
- **Data portability** (to another automated processing system): needs a balanced approach reflecting know-how and work behind the processing on the side of controller; the possibility to misuse this provision in unfair competition as well as connected technical issues.

The regulation should reflect the nature of the Internet and so be aware of the fact that each measure that restricts European companies in comparison with global competition would lead to their lower competitiveness to the world.

2) **RIGHT TO BE FORGOTTEN (RTBF):** search engines should not take responsibility for content published by third party. Moreover, they should not be "penalized" for their technological advancement and the fact that they are few in numbers in comparison with source pages. An education and prevention instead of unnatural interference from public authorities.

- **Search engines as arbiters of third-parties´ interests**: based on the decision of the European Court of Justice, search engines are assigned the role of arbiter between competing interests of various stakeholders and given duty to determine what is and what is not in public interest; such roles should be left in a sole authority of law courts or relevant national authorities and not delegated to any private company;
- **The role of source sites**: based on the decision, the source pages are not responsible for the content they publish – instead, search engines are; most debates over the right to be forgotten either somehow ignores the role of source sites, or those inadequately addressed; where is their responsibility?
- **Personal responsibility**: there is any substantial EU-level debate on each user´s personal responsibility for their digital footprint on the Internet; a need to improve digital skills of Europeans;
- **Quality of search engine systems:** an artificial intervention to the natural system of searching; it seems that search engines pay for their technological forwardness and innovations

Moreover, the right to be forgotten itself demonstrates the inability of the EU to achieve EU laws on non-European firms, or difficulty and often illogical nature of their application in the digital world in general. Take the example of identified links delisting from search engine results based on EU/EEA domains only. On global domain (.com) you can still find them.

3) **AUDIOVISION:** a fair and balanced conditions and opportunities for both TV and Internet TV broadcasting; media literacy instead of detailed technical arrangements

- **Interoperability of TV and Internet**: TV and Internet streaming consumption should be accessible for consumers in the same quality and user-friendliness; smooth connection of Internet

broadcasting on TV channels; inappropriate format – Hbb TV – support for the unified standard for TV and Internet broadcasting.

- **Broadcasting rights**: different right holders for different platforms (cinema, TV, VoD) in one member state: not easy to follow; problem with the different legislation for the different EU member states – elimination of geo-blocking.
- **Exclusivity of the broadcasting content** (premium content): granting of the exclusive law should reflect the particular meaning of the event – there should be a possibility to transmit one program in the same time but on a different distribution channels with the different providers
- **Creation and promotion of EU´s audiovisual content**: EU should implement the tools for stimulation its own production; quality must prevail over quantity of content - broad solutions are expensive and inefficient.
- **Measurement of the viewer ratings** (Internet content): the very essence of the Internet asks for different type of measurement; a unified measurement of both TV and internet broadcasting based on the tools used for the last mentioned one; among others, among others, this type of measuring brings the information for other development of media services.
- **Protection of minors**: key role of family and media literacy of underage users instead of the establishing of the eliminating technical arrangements; protective tools exist – better information for parents from all stakeholders (manufactures, producers, public authorities, NGOs …).

4) NETWORK NEUTRALITY: openness and fair conditions for all stakeholders must prevail.

- **Competitive environment**: the network neutrality as a prerequisite for the competitive and quality digital service environment.
- **Digital (audiovisual) services**: open competitive environment without any preferences for one actor (net operators).
- **"Specialized services":** without the negative impact on the general accessibility and quality of the access on Internet

5) COPYRIGHT: a unified legislation for fragmented European market?

- **Purchasing of the licensing law**: impossibility to find out the owner for the specific work of art in each country of EU.
- **Registration of audio-visual piece of art**: an identification of a piece of art simplifies the purchase; "the digital ISBN" for audiovisual digital content/works of art.
- **Payments for copies**: copies for the personal use must be without any fees; payments for the digital content are practical improvable; appropriate remuneration/rules/standards for their distribution for the real authors needed.
- **Web storage** (violation of authors´ rights): the necessity to prevent the dissemination of the illegal copies at this place.
- **Digital content in public libraries** (public authorities in general)**:** fully digitalized collections are accessible only at the libraries – obsolete system asking for the personal participation; support for open data principles and shared/open formats.

6) CYBER SECURITY: the necessity to distinguish the level of risks.

- **Search engine/providers of information society services** should not be a part of the critical infrastructure;
- **General regulations instead of detailed ones**: general regulations give the space for self-regulation and voluntary activities (private companies´ CSIRTs) – individual responsibility of each entity to ensure the security of their own systems; NIS arrangements will in reality lead to ISO-like standardization (it should be left in a sole responsibility of companies to decide how to organize/ensure their internal processes);
- **Risk-based approach** through the all cyber security provisions.

CONCLUSION

Though a market leader with a unique position within the whole Europe we are following the EU´s digital environment development with rising concerns. Regardless the number of declaration in support of EU competitiveness and digital market development we see the following bottlenecks on a way to successful European digital market:

- A fear driven legislation based on negative experience with particular US multinationals with any respect to both challenges faced by European digital business and their manner on the market. There must be add that a competition will definitely not be reach by an overregulation.
- General lack of confidence in European companies expressed by the EU´s institutions aspiration to detailed regulation instead of support for its alternative forms, be in self-regulation or the others.
- European Union efforts to think for Europeans, which ultimately lead to the collapse of entrepreneurial skills, their readiness to take the risk, inability to develop critical thinking and problem-solving skills.
- We lack the correlation between the declared steps and really taken measures on the EU level. While the EC repeatedly declared the importance of data-driven economy for the EU, its practical approaches are defined by their phobia of the companies that process large volumes of them. And there are more of such examples.
- Both the EU and national governments should be faster and flexible enough in facing new challenges.

And last but not least, we would like to highlight the following: Nowadays, Seznam.cz is facing only two subjects on the market – Google and the EU legislation.

Seznam.cz is on the market for more than 18 years, currently employing more than 1200 people, to whom are 300 in R&D and innovations. For many Czechs, Seznam.cz is synonymous with the Internet. More than a half of Czechs have Seznam.cz installed as their main home page. Seznam.cz has a 90% reach. This means that 90% of Czechs using the Internet in the Czech Republic use our services at least once a month. Seznam.cz generates 60% of all Czech page views as well as visits. There is no other Internet company on the Czech market that would have such a great reach.