

## ANNEX document

### techUK response to the European Commission consultation on the regulatory environment for platforms, online intermediaries, data and cloud computing and the collaborative economy

December 2015

techUK welcomes the opportunity to submit evidence to the European Commission on the regulatory environment for platforms, online intermediaries, data and cloud computing and the collaborative economy. In addition to techUK's consultation response, there are a number of points techUK would like to raise in light of this consultation.

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#### 1. Additional/ elaborated responses to consultation questions

The character limit for responses to some of the consultation questions was not sufficient for techUK to make all relevant points, and techUK was not permitted to respond to Question 16. Please see techUK's full **answers to Questions 1, 2, 3, 16** below.

#### **Q. 1. Do you agree with the definition of "Online platform" as provided below?**

Please explain how you would change the definition.

#### **techUK response:**

The European Commission definition is too broad to function as a basis for policy development or potential legal intervention.

In the online just like in the offline world, 'platform' businesses and services encompass a wide range of businesses, websites, and organisations – so the Commission's definition is inherently broad and vague.

The Commission's definition captures many more businesses and services than the 34 specific services which the consultation lists individually. It includes various SME business models including B2B and B2C businesses; globally operating (e.g. for search) as well as locally operating businesses (e.g. holiday home rentals).

It also captures Europe's own most successful new technology companies such as JustEat (platform for food delivery), Skyscanner (platform for travel bookings), and Spotify (platform for music listening), all of which are 'unicorns' i.e. valued at more than \$1 billion.

Platforms are not a new technology, business model or industry. Rather, they are the continuation of existing marketplaces online:

- a) Supermarkets, travel bureaus, libraries, temporary employment agencies are all 'offline platforms'. When they start (partly) operating online they become 'online platforms'.
- b) Already established pay TV platforms using DTT, cable or satellite distribution. These established TV platforms increasingly use IPTV distribution alongside other delivery mechanisms in a hybrid offer.
- c) Platform services may require offline devices, such as a credit card or a smart TV, which makes it impossible to clearly delineate 'online platforms' from 'offline platforms'. These services are 'hardware based' as well as 'software based'. Delineating services on the basis of whether a business operates solely online risks treating some players in the same industries differently.

Platform services may constitute only a part of a business, in which case it is undefined whether the businesses would be considered an 'online platform'.

Defining 'online platforms' is not instructive in identifying specific problems that may occur in relation to specific 'platform' functions and businesses. A more specific articulation of potential concerns, underpinned by evidence of harm, is needed to address potential problems in relation to platforms.

## Q. 2. What do you consider to be the key advantages of using online platforms?

### techUK response:

Platforms provide many and varied benefits to consumers, businesses, and the wider economy including contributing a €100bn<sup>1</sup> consumer surplus and contributing over €430bn to the EU economy.<sup>2</sup>

Benefits for consumers include:

- Facilitating navigation of the internet, making it easier to find information, services and products
- Empowering consumers to make more informed decisions including by comparing prices and customer satisfaction of sellers
- Enabling instant access to products, information and services from anywhere on a 24/7 basis
- Reducing travelling time and costs and enabling physically immobile consumers to benefit from more services, goods and digital content
- Allowing consumers to re-sell used products more easily and become sellers themselves without significant capital investment

Benefits for businesses include:

- Driving innovation and unlocking new value in the way they operate

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<sup>1</sup> P.6, Plum Consulting, 'The Open Internet – a platform for Growth', October 2011

[http://www.plumconsulting.co.uk/pdfs/Plum\\_Oct11\\_The\\_open\\_internet\\_-\\_a\\_platform\\_for\\_growth.pdf](http://www.plumconsulting.co.uk/pdfs/Plum_Oct11_The_open_internet_-_a_platform_for_growth.pdf)

<sup>2</sup> Copenhagen Economics, 'The impact of online intermediaries on the EU economy', April 2013 <http://www.copenhageneconomics.com/dyn/resources/Publication/publicationPDF/6/226/0/The%20impact%20of%20online%20intermediaries%20-%20April%202013.pdf>

- Lowering the barrier to entry as platforms require little capital investment and may manage certain non-key aspects of running a business, such as payment mechanisms
- Enabling access to new consumers across borders and in geographically remote regions, thereby increasing cross-border trade opportunities<sup>3</sup>

Benefits for the wider economy include:

- Platforms help create new markets such as the App economy which generated 2 million jobs in Europe by 2015<sup>4</sup>
- Platforms are often valuable businesses in themselves, creating high value jobs, building Europe's digital skills base, and investing in a supporting the wider digital ecosystem through initiatives such as start-up incubators.
- Facilitating e-commerce which contributes already 7.2% of all retail in Europe<sup>5</sup>

### **Q. 3. Have you encountered, or are you aware of problems faced by consumers or suppliers when dealing with online platforms?**

#### **techUK response:**

techUK members have not reported significant problems with platforms. On the contrary they believe that platform thinking opens up huge opportunities for innovation across the private and public sector in Europe. techUK has a broad membership of large, medium and small companies, with two thirds of techUK members being SMEs. Many of these companies make extensive use of a wide range of services that would meet the European Commission's definition of 'online platforms'. The businesses use these services to engage more efficiently with customers and suppliers and to drive their own productivity.

### **Q. 16. If you own/develop an online platform, what are the main constraints that negatively affect the development of your online platform and prevent you from extending your activities to new markets in the EU?**

#### **techUK response:**

All of techUK's members either fall under the European Commission's definition of 'online platforms' or use platform services to run and improve their business. The constraints affecting the development of online platforms affect a vast range of businesses using platform technologies and services to drive their business.

It is worth noting that several EU-wide, national, and sectoral regulations apply to online platforms at present including:

- consumer protection law
- contract law
- national data protection regulation

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<sup>3</sup> Platforms provide increased access to a wider audience which has led to a surge in SME exports: intra-EU cross-border trade by online SMEs grew four times that of traditional firms in the period 2010 to 2014. Trade costs are 80% lower in the online marketplace compared to the traditional one, and as many as 71% of SMEs trading online via eBay continue exporting after three years, to be contrasted with only 16% of traditional firms. For more information view eBay Public Policy Lab 'European Small Business Online Trade Summary 2015', May 2015

[http://www.ebaymainstreet.com/sites/default/files/pan\\_emea\\_growthreport\\_1.pdf](http://www.ebaymainstreet.com/sites/default/files/pan_emea_growthreport_1.pdf)

<sup>4</sup> Developer Economics 'European App Economy', February 2015

<https://www.developeconomics.com/reports/european-app-economy-2015/>

<sup>5</sup> Centre for Retail Research, 2013

- sector-specific regulations
- paid-for search is already within remit of several national advertising self-regulatory codes, including in the UK and Ireland
- the liability regime enshrined in the EU e-Commerce Directive has been applied to search activities
- search is within scope of the DMCA notice process and is a tool for rightsholders to take action against copyright infringements

**Regulatory obstacles in the UK and EU:** Platforms and other digital technology businesses face significant obstacles to growth in the EU, including red tape regulations, divergent national regulation in the different EU member states and the requirement to register a cross-border operating business in several EU member states. To help platform businesses emerge and thrive in Europe, it is crucial to work on a functioning Digital Single Market and to focus on removing burdens placed especially on high-growth technology businesses.

Regulatory efforts to boost the European Digital Single Market should stay clear of differentiating between global and European businesses. It is important to maintain a global outlook and to not create a disjuncture between regulation that supports more investment from abroad in Europe and European 'home-grown' businesses to succeed. A Digital Single Market will help existing businesses grow and therein will foster innovation, competition, and a regulatory framework that empowers European technology businesses to thrive and grow as well.

**Practical obstacles in the UK and EU:** Platforms and other digital technology businesses suffer from a lack of access to Venture Capital and a lack of digital skills and technology professional talent. Unlocking more data in Europe would open the door to more platform businesses succeeding and growing in the UK and the EU. Technology businesses welcomed the European Commission's Digital Single Market strategy and the Single Market strategy which address most of these issues and view the Digital Single Market as a unique opportunity to overcome these obstacles and unlock the potential of the digital economy across Europe.

## 2. Format of the consultation

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techUK noted the European Commission has used a multiple-choice question format in recent consultations. This format is not always helpful in providing information that is likely to be of interest to the Commission. Often, the multiple-choice format requires a choice between specific binary answers, but techUK's answer may be more nuanced or may be different to either of the suggested multiple-choice answers.

For example, the present consultation asks about 'cloud service providers'. But 'cloud service providers' are not a homogenous group. There are different types of cloud service providers, including infrastructure as a service (IaaS), platform as a service (PaaS) and/or software as a service (SaaS). Responses to the consultation questions may differ between the different types of cloud services.

techUK would further like to highlight that in some cases consultation questions seem to be phrased in a leading way. This is problematic as an analysis of multiple-choice responses to such questions may lead to a distorted picture of the respondents' views.

Finally, techUK finds it problematic that several questions in this consultation are open to answers only for one specific group of stakeholders. For example, self-identifying as a 'rightsholder' or as an 'Internet of Things provider' is necessary in order to answer some of the consultation questions that are of relevance to several more stakeholder groups. This means that not all groups affected by an area of inquiry can submit their evidence to the European Commission.

### **3. The need for a positive vision on 'online platforms' in the European economy**

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'Online Platforms' are a value-driver in the EU economy, and a key aspect to achieving a thriving Digital Single Market for jobs and growth in Europe. Whilst potential concerns should be investigated and addressed by the appropriate policy and regulatory mechanisms, this should not detract from the ambition to create a Digital Single Market in Europe.

Those platforms listed by the Commission are successful businesses in themselves, but are also used by small, growing and large, old and new, businesses right across the UK economy to drive their own innovation, unlock new value in the way they operate, and to engage with new and existing customers and suppliers.

So fundamental is the platform model to the functioning of the digital economy that it is difficult to separate out the benefits of platforms from the benefits of the digital economy as a whole. As a result, generic concerns on platforms overlap with wider issues on the development of the digital economy, including on privacy and security, copyright and data protection, competition, consumer rights and more. This generates a risk: attempts at formulating regulation on 'online platforms' risks overlap with existing regulation at many levels, including EU-wide, national, and sectoral rules which can already be applied to 'online platforms'. Creating overlapping or conflicting legislation must be avoided as it would lead to legal uncertainty with potentially far-reaching consequences for consumers and businesses.

In order to avoid scenarios of conflicting legislation it is crucial that the Commission focuses on specific concerns and assesses the corresponding evidence-base that harm is being caused. Relevant authorities such as competition regulators, consumer rights enforcement or others should then address each specific evidenced problem individually. Existing regulatory tools should be fully utilised to address any potential concerns before new regulatory interventions are proposed. More narrowly focused legal concepts such as Intellectual Property, competition, or data protection law remain important but it is the strategic vision of the Digital Single Market that should be the framework for the platform debate.

### **4. Further evidence on 'online platforms' by techUK**

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techUK oral and written evidence to the UK House of Lords inquiry into Platforms and the Digital Single Market (October and November 2015),

<https://www.techuk.org/insights/reports/item/6146-techuk-responds-to-the-house-of-lords-inquiry-on-platforms>

techUK position paper 'Platforms in the Digital Economy - Key priorities for policy-makers in creating the conditions for European tech success' (December 2015)

<https://www.techuk.org/insights/reports/item/6780-techuk-launches-six-priorities-to-inform-ongoing-debate-on-online-platforms>

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