BUILDING A DATA ECONOMY

WORKSHOP

EMERGING CHALLENGES IN THE EUROPEAN DATA ECONOMY

AGENDA[1]

DAY 1: ACCESS TO AND TRANSFER OF DATA

I. What are the main data-based business models? Who in these business models has access to data and under which conditions?

09.30 - 10.00: Introduction by the Commission and the Contractor

10.00 - 11.15: Discussion

Questions guiding the discussion

Business models:

- How big is the role of data in your business models?
- What data-based models do you work with? Closed models (e.g. in-house data analytics and data sharing) or open models (e.g. outsourcing analytics, using open data, sharing data through licences), and what are the advantages and disadvantages?
- Who of you are considering licencing your data to third parties in the near future? Any specific difficulties or obstacles encountered? What would incentivise companies to share their data with third parties? Do you consider that data sharing can boost or deter your innovation strategy?

Data sources/types/services:

- Where do you acquire data from (customers, data brokers, market places, manufacturers); what kind (IT systems data, sensor-generated, data from web collaboration, open data, etc., aggregated data sets or raw data)?
- What services do you build upon data and do they aim at optimizing internal processes, understanding customers' behaviours/marketing purposes or innovating?
- How often do you use big data analytics?

[1] The detailed questions are solely intended as a means to facilitate the debate, not as a mandatory list of topics to be addressed. While not each of these questions may be of relevance or interest for your organisation/company, we encourage you to take the floor on those points which concern you so as to share any particular problems you may have faced in that respect and, more generally, your specific expertise.

Value of data:

- Data becomes more refined, complex with each stage of the data value chain. Are there emerging generally accepted methods to quantify its value at each of those stages?
- How would you establish the value/set the price you would request/be prepared to pay?
- Does the value established by the market ensure that data can be sold and bought or are there prohibitive prices which make data practically impossible or at least difficult to be transferred? Are there data transaction failures due to diverging data valuation methods?

'*Ownership*' *and access to/transfer of data:*

- Who typically holds rights, including exclusive rights, to the data (if any)?
- Which actors retain control over data – the originator of the data (e.g. a manufacturer or consumer), a specialised data analytics company, a company offering different services built on data?
- Do other actors in the chain, such as the manufacturer of the sensors or the cloud/IT platform providers, claim any rights over data? How are these rights exercised?
- Who are the market players who typically would like to gain access to data? Under which commercial reasoning and legal conditions is this granted? How is the access to and transfer of data organised contractually?
- Is retaining control over data access and usage a problem or not? Are technical means (e.g. encryption) and contractual clauses defining the rights of the parties with regard to access/usage of data sufficient in this respect?

Platforms:

- On multi-sided markets such as online platforms, what are the conditions for access and use of data collected through the platforms by the business user?
- Do platforms assert rights on the aggregated data?
- Are there specific terms for use of data by the business user extending outside of the platform's environment?
- Do platforms allow access to data to third parties? Under what conditions?
- What effect would a portability right (also for non-personal data) have? On the platform? On the business users? On the overall flow and trade of data? What effect would this have on innovation?

11.15 - 11.30: Coffee break

II. Possible contractual restrictions on access to, and transfer of data: are there restrictions and are they justified? What are the effects of those restrictions on other business models and on the market in general? Is the current legal framework fit for purpose?

11.30- 12.00: Introduction by Contractor and by the Commission

12.00-13.00: Discussion

Questions guiding the discussion

Problems:

- What are the typical problems or contractual restrictions you have been confronted with?
- What is the effect of those problems or contractual restrictions on your business or the market in general?

Contractual clauses:

- Are there any standard ('ownership') clauses on (exclusive) access to data in the contracts? To whom are they usually attributed? Do you make a distinction between the B2B and the B2C contexts?
- What are the typical clauses in data license agreements? Are there non-exclusive rights to use/access the data, only granted as far as necessary for the provision of the service? Are there broader licences (to modify, distribute the data), with possible conditions, e.g. upon condition of non-distribution to competitors? Are there also exclusive licenses granted? Do licences refer to the authorisation/prohibition of sublicenses?
- What level of control do you have on data from the machines you produced or use? Do you control the conditions under which data may be further reused by a third party? What is the level of control of other actors along the value chain?
- Generally, who can use data generated for instance by sensors?

13.00 - 14.00: Lunch break

14.00 - 16.00: Discussion – continued (point II)

Competition:

- Do you see any potential concentration of data 'ownership' or access/use restrictions in your sector?
- Do you see a distortion of competition? How does it affect you?
- To what extent do secondary markets (i.e. repair, service & maintenance), relying on data, gain access to data stemming from primary markets (manufacturer of specific products)?

SMEs

- To what extent do SMEs and start-up have access to the data sets in your sector?
- Any specific problems or limitations for SMEs? If the use of the big data by SMEs in your sector is limited, what are the inhibitors and what could be the right enablers?

Consumer rights:

- In addition to individuals' rights related to the treatment of their personal data, do you consider that individuals/consumers should also receive more information to understand how aggregated data is reflected in, for instance, tailored services or in general in relation to what happens with aggregated data?
- Should consumers have more control over their data, even if these data are anonymised?

IP rights:

- Are IP rights claimed in relation to big data or raw machine-generated data?
- If yes, are you aware of any challenge in claiming them in cross-border deals?
- Is there a need for a specific protection for algorithms?
- Are there claims under the sui generis databases right?

16.00-16.15: Coffee break

III. What is the right balance in terms of access to and transfer of data between the relevant actors? Should there be a role for the EU and if so which one?

16.15- 18.00: Discussion

Questions guiding the discussion

- Do you think existing problems justify EU initiatives (of whatever kind)? If so, how do you think the EU can best support the data driven economy? What should be the policy aim?
- If there are EU initiatives, what nature (e.g. information exchange, guidance, EU model contracts, regulatory intervention) should they have?
- Do you think that sector specific problems require sector-specific solutions or would you have a preference for possible horizontal solutions, which could build and expand on sector-specific solutions?

IV. Closing remarks by the Commission