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The Digital Single Market

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Introduction

After much anticipation, on 6 May the European Commission issued its proposals, in the form of 16 Actions, to create the EU Digital Single Market, a market where individuals and businesses can easily and fairly access online goods and services regardless of nationality or which Member State they are resident in.¹

This briefing paper considers what these proposals are and the contribution they will make to the creation of a Digital Single Market.

Background

At this point it is useful to re-cap the challenges to creating a Digital Single Market in Europe. Put simply, the market currently is incomplete: there remain barriers both to firms doing business across the 28 Member States and to consumers buying goods and service online across the EU. As a result, consumers do not get the full advantage of the Single Market. In some cases they face unfair differences in prices for the same goods or services depending on where they live. And consumers travelling to one Member State cannot access online content, such as music or films, which they have paid for in their home Member State.²

In terms of businesses, having to comply with different rules in different Member States means they do not have easy access to the whole EU market with its 500 million citizens. In short, e-commerce firms based in the EU do not have the precious advantage of scale. New digital business models are restricted by national regulations, thus stifling innovation. Nor are EU businesses making full use of the new tools and technologies: over 40 per cent of companies say they do not use advanced digital technologies such as social media, the cloud, and big data.³ And as digital is the foundation of modern innovative economies, the effect of this is felt across the economy, not just in the information technology sector.

An incomplete Digital Single Market means that today only 15 per cent of EU consumers shop online across borders; and only seven per cent of small and medium-sized enterprises sell cross-border. This is not to say that EU consumers are not digital-savvy, many of them are, with the European Commission estimating that 315 million EU consumers use the internet every day. And European consumers have repeatedly demonstrated early and mass take-up of new digital services such as Uber and Airbnb, to name just two examples.⁴

¹ European Commission, *A Digital Single Market Strategy for Europe*, COM (2015) 192 final, 6 May 2015, p. 3

² European Parliamentary Research Service, *Digital Single Market and geo-blocking*, 13 May 2015

³ Andrus Ansip, *Speech: Turning Europe digital, preparing for future growth*, 14 April 2015, p. 1

⁴ European Commission, *A Digital Single Market Strategy for Europe – Analysis and Evidence*, SWD (2015) 100 final, 6 May 2015, pp. 6, 8; European Commission, *Why we need a Digital Single Market*, 24 March 2015

Europe also has some catching up to do in the underlying digital infrastructure. Fast broadband accounts for only about a fifth of all subscriptions and only about a quarter of EU citizens (much lower in rural areas) have access to 4G mobile, compared to 90 per cent of US citizens.⁵

This last point demonstrates the concern that Europe has lagged behind the US despite the EU having a larger market. Europe has failed to develop the key platforms – search engines, internet stores and websites – that dominate today's digital world. US-based services account for 54 per cent of the EU digital market and not one of the world's largest internet companies is European.⁶

A fully functioning Digital Single Market could bring considerable rewards. It is estimated that consumers could save over €11 billion if they could choose goods and services from across the EU.⁷ And looking at the overall economy, the European Commission estimates that it could add over €400 billion in additional growth through increased efficiency, flexibility and competitiveness as well as thousands of new jobs.⁸

The Commission's proposals

The European Commission has presented its Digital Single Market Strategy under three pillars:

- 1) Better access for consumers, including businesses, to digital goods and services;
- 2) creating the right conditions and rules to allow digital networks and markets to flourish; and
- 3) maximising the growth potential of the European digital economy and society.

The proposals themselves are a mix; new EU laws that will replace disparate national regulations; better enforcement of existing laws, including competition law; measures to build confidence; and measures to stimulate infrastructure. Some are more speculative, such as proposals for a 'European Cloud'. Most are addressed to the digital world but the Commission has not overlooked the more low tech but vital element of e-commerce, physical parcel delivery, where 62 per cent of companies say high costs are a barrier.⁹

More details are set out in the Commission's *Fact Sheet* and accompanying *Communication*.¹⁰ Some of the most notable include:

- Rules to make e-commerce easier – the Commission proposes new EU legislation to harmonise rules on contracts and consumer rights protection when buying online, for example, to enable all consumers to get a remedy for non-performance;
- An end to 'geo-blocking' – this is a convenient label usually used to describe business practices that segment markets along national boundaries, meaning

⁵ HIS Inc. & VVA Consulting, *Broadband Coverage in Europe 2013: Mapping progress towards the coverage objectives of the Digital Agenda*, 4 November 2014, pp. 7, 19; The Executive Office of the President, *Community-based broadband solutions: The benefits of competition and choice for community development and highspeed internet access*, 13 January 2015, pp. 3, 7

⁶ European Commission, *Why we need a Digital Single Market*, *supra* n. 4

⁷ Andrus Ansip, *supra* n. 3, p. 1

⁸ European Commission, *supra* n. 1, pp. 2-3

⁹ European Commission, *Flash Eurobarometer 413: Companies engaged in online activities*, 5 May 2015, pp. 5, 36

¹⁰ European Commission, *Questions and answers – Digital Single Market Strategy*, MEMO/15/4920, 6 May 2015; European Commission, *supra* n. 1

consumers based in one Member State may be denied access to online services based in another Member State; they may face different prices for the same service or good; or, as described above, consumers travelling to one Member State may be unable to access online content such as music or films that they have paid for in their home State. The Commission is careful to say that it only wishes to bar “unjustified” geo-blocking, noting the role that territorial licensing plays in the financing of the audio-visual sector;

- Modernisation of copyright – “to reduce the differences between the national copyright systems and provide comprehensive online access to protected works for users across the EU”. The Commission will propose portability of legally acquired content (to solve the problem mentioned above) as well as better access to online services in other Member States. They are clear that they do not seek to change the principle of territoriality of rights in the creative sector;
- Another overhaul of the telecoms rules, once the current Telecoms Single Market package currently before the Council and Parliament is agreed. The focus will be on common EU criteria for spectrum allocation while leaving management of the spectrum (and the revenues from it) in the hands of Member States;
- Competition – the Commission intends to use the tool of competition law to ensure fair competition in digital markets. On 6 May, the Directorate General for Competition announced an e-commerce sector enquiry. This comes shortly after the opening of a formal investigation into possible abuse of dominance by Google. The Commission’s paper also announces further analysis of market power of online platforms such as search engines, social media, e-commerce platforms and price comparison websites;
- More speculatively, the Commission proposes a “European free flow of data initiative” as well as a ‘European cloud’ initiative covering certification of cloud services;
- Less eye-catching but nevertheless important, steps to reduce burdens from different VAT regimes through a common threshold and extending the single electronic registration and payment mechanism to cross border online sales of goods.

What are we to make of the Commission’s proposed Actions?

The first thing to say is that the proposed actions are only the starting point; we don’t yet have any specific proposals and in some areas details are scarce. There is a lot of water to flow under this bridge before the new legislative framework is in place. And in some areas it could be significantly changed from what the Commission has proposed.

Nevertheless, the Commission proposals set the agenda: they are a response to the European Council’s June 2014 Strategic Agenda objective of establishing a Digital Single Market by the end of 2015; they are comprehensive and ambitious; and there is a clear timetable for proposals to issue. All of these are positives.

Turning to the contents, some of the proposals are familiar and concrete, such as the measures for cross-border e-commerce. The UK should be reassured that much here is in line with suggestions from the previous Government. Others such as VAT simplification are less high profile but potentially very valuable and should, one hopes, be agreed quickly.

Some will be controversial and generate more heat than light. The battle lines are already drawn over modernising copyright with intensive lobbying, even though the Commission has gone out of its way to try to assuage some of the concerns regarding the safeguard of financing for creative content and genuine remuneration of its authors. And whether or not to regulate the mainly US-owned platforms such as Google and Facebook is another potentially controversial topic with France and Germany already indicating a preference for regulation.

Future developments

The test of these proposals will be their delivery. Are the Council and the Parliament ready to take the difficult decisions required? Can they look below some of the lobbying and find balanced solutions? Will the end result remove barriers and enable business to take advantage of the scope and scale of the Single Market? Will new entrants be encouraged rather than the status quo entrenched? Will it enable European industry and business to grow but without losing the benefits to consumers from US-based services? Will it all take too long and will the world move on in the meantime?

We don't yet know if these tests will be passed but we can say that this is a good start overall. Member States and the European Parliament need to be equally ambitious to take the difficult decisions and move forward to make the Digital Single Market a reality. They must work in the interests of European businesses and consumers. The potential gains are substantial. And if the Digital Single Market project is successful it will show how the EU can work to bring benefits to both consumers and business.

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