

Client Alert

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Digital Single Market Update: European Commission Concludes No New Regulation for Online Platforms

By Susan McLean

Online platforms have transformed the way we live and work and, as a result, platform operators have become some of the world's leading brands. But the EU is concerned that Europe is not currently keeping pace with the U.S. and Asia in creating these tech giants. The European Commission, keen to stimulate European innovation and growth in this sector, triggered a review of the existing regulatory framework as part of its Digital Single Market initiative.

Following a year-long consultation, the Commission has concluded that new regulation is not required. It believes that existing EU rules are sufficient to deal with online platforms, and it does not intend to introduce any new laws unless and until any specific problems are identified (and only then if it is established that better enforcement of existing rules won't address those problems). In some circumstances, a reassessment of existing rules could actually result in a reduction in regulation.

ONLINE PLATFORMS

"Online platforms" is an umbrella term coined by the Commission to describe a variety of web services, including online marketplaces, search engines, social media and collaborative economy platforms (e.g., the likes of eBay, Google, TaskRabbit and Amazon).

The Commission has attracted criticism in some quarters for lumping together such a wide variety of platforms with different business models. However, the Commission believes that, even if there are differences between business models, all "online platforms" share the following characteristics:

- they create and shape new networks, challenge traditional ones and involve new business models based on data;
- they operate in multisided markets, but with varying degrees of control over interactions between users;
- they benefit from "network effects", with the value of services generally increasing with the number of users;
- they heavily rely on technology; and
- they play a key role in digital value creation.

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The Commission believes that online platforms increase consumer choice, efficiency and competitiveness. It also recognises that the platform economy represents a major growth opportunity for Europe. Europe is not keeping pace with the levels of innovation and competition coming out of the U.S. and Asia. Indeed, European platform companies currently represent only 4% of the total market capitalisation of the sector. Therefore, the Commission is focused on ensuring that the EU's regulatory framework is conducive to the sustainable development and scaling up of online platform companies in Europe.

Despite the benefits that online platforms bring to consumers and businesses, various concerns have been raised with the sector, such as:

- a perceived lack of a level playing field across the EU and against traditional operators;
- a perceived lack of transparency;
- the suggestion of certain questionable business-to-business practices; and
- the challenges of tackling illegal content online.

COMMUNICATION

To help explore these perceived concerns and identify any regulatory challenges, the Commission has carried out a year-long comprehensive assessment and consultation into the sector. On 25 May 2016, the Commission issued a Communication setting out its conclusions.

The Commission has concluded that no new regulation is required at this time – whether that's new law specifically addressing online platforms or making changes to existing laws (such as changes to the intermediary liability regime available to online platforms under the e-Commerce Directive). The Commission believes that existing rules (including, in terms of competition, consumer protection and data privacy) are sufficient. Instead, the Commission proposes a light-touch approach based on the following principles.

1. It is vital to ensure harmonisation of rules across member states.
2. It is important to establish trust and confidence in the sector, which can be brought about by ensuring platform operators comply with existing laws and improving cross-border enforcement action where non-compliance is identified.
3. Regulation may be introduced to target specific issues that are identified in the future, where this is considered necessary. Equally, existing rules should be re-assessed and, where appropriate, overly broad or restrictive legislation removed.
4. There should be an emphasis on self-regulation and co-regulation. Underpinned by appropriate monitoring, such measures can help strike the right balance between predictability, flexibility, efficiency and the need to develop future-proof solutions.

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NEXT STEPS

The Commission's next steps include:

- the publication of a Communication setting out the Commission's conclusions on how member states should approach regulation of the sharing economy – learn more [here](#);
- proposed amendments to the Audiovisual Media Service Directive to address the issue of harmful content (see more [here](#));
- the re-assessment of existing EU telecoms legislation and the e-Privacy Directive later this year;
- the introduction of a new copyright reform package later this year;
- the further encouragement of coordinated EU-wide self-regulatory efforts by online platforms;
- exploring the need to provide guidance to online platforms in terms of combatting illegal content;
- a review of the need for formal notice and action procedures;
- consideration of options to facilitate the switching and portability of data among different online platforms and cloud services; and
- carrying out a targeted fact-finding exercise on B2B practices in the online platforms sector and reporting any actions by Spring 2017.

IMPACT OF BREXIT

The UK's traditional policy on online platforms is consistent with the approach proposed by the Commission in the new Communication. The UK's view has been that concerns over online platforms should not lead to reactionary and restrictive law-making. Indeed, a recent UK House of Lords Committee concluded that existing laws were sufficient to deal with concerns raised in relation to online platforms. Instead of new laws, it believed that the focus should be on the proper enforcement of existing laws and the swift resolution of disputes arising under them. As with the Commission, the UK is aware of the negative impacts on innovation that more red tape would bring about. Therefore, it seems likely that even if the UK adopts a Brexit model which takes it outside of EU law and regulation, the UK government will seek to maintain a consistent "less is more" approach to the regulation of platforms.

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