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## Position Paper

### on the Regulation of Digital Platforms

**Berlin, 30.10.2019**

In order to promote the further development of digital platforms in Europe and Germany, attractive and competitive conditions are necessary. A future-proof resilient legal framework should ensure long-term planning security to enable both investments and innovation, should take due account of the characteristics of the market and its players, and should ultimately ensure protection against possible abuse of market power. With regard to the EU's regulation of digital platforms and business models, eco – Association of the Internet Industry has identified the following as required fields of action:

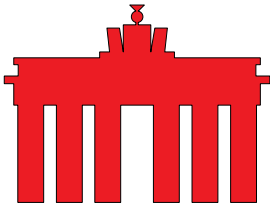
- Completing the European (Digital) Single Market
- Steering clear of just one generic competition regulation for the range of different digital platforms
- Data protection with potential for digital business models
- Enabling innovative cooperation on the basis of competition law
- Lowering bureaucratic hurdles and facilitating access to venture capital

#### Introductory remarks

In the course of the past few years, digitalization has increasingly permeated almost all areas of life. Two outcomes of this development have been the commercialization of the Internet and the successful market entry of digital platforms. Due to their exponential growth, digital platforms are regarded as key players in the steadily growing digital economy.

The companies behind the digital platforms stand out for their high degree of willingness to innovate and be flexible. Their services and products are designed with the aim of constantly increasing benefits for the customer(s). Digital platforms are defined as two-sided or multi-sided markets in which different customer groups are brought together using so-called "indirect network effects". Indirect network effects include setting standards for complementary products or leveraging learning effects. The platform fulfills the function of a broker – a so-called "intermediary" – whose actions are aimed at the successful conclusion of a business transaction, also known as "matching". In addition, platforms can make positive feedback effects more usable for the connected users, or even usable for themselves.

In some cases, the services offered by platforms are giving rise to societal and competitive challenges, which can culminate in conglomerate and monopolization tendencies. These must be addressed in a targeted and problem-oriented manner in order to enable fair competition and open markets for innovative companies and forms of cooperation. Since the market penetration by digital platforms has occurred, numerous business models with the following user constellations have become established:



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- 1) Business-to-Business (B2B) platforms provide product information exchange between companies, business people, and tradespeople. Examples are Klöckner Connect or scrappeL.
- 2) Business-to-Consumer (B2C) platforms organize trade or knowledge exchange between companies and private individuals. Examples are Facebook, Lieferando, or Amazon.
- 3) Consumer-to-Consumer (C2C) platforms enable trade and exchange between end customers and private individuals. Examples are eBay classifieds or second-hand clothing circuits.

The above examples underscore the diversity of industries served by platform-based business models. In principle, the offerings of the digital platforms can be divided into three basic types, whereby mixed versions of these can also exist:

- 1) markets,
- 2) social networks, and
- 3) industry platforms.

In order for companies to venture into developing and launching digital platforms and to operate successfully under fair conditions, not only are competitive market conditions necessary; so too is a high degree of digital sovereignty.

### **Digital sovereignty**

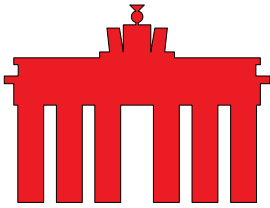
Digital sovereignty describes the freedom of everyone and every organization to act independently and to make self-determined decisions in the digital world. The concept of sovereignty encompasses a legal and a technical sphere. With regard to platforms, the legal level of digital sovereignty requires that platform users can make free decisions concerning the collection, storage, processing, and access of the data generated by the platform. The technical level requires the “ability to independently develop, change, and control technological components and systems, and to substitute these with other components”<sup>1</sup>. When it comes to the platform economy, however, the question of technical sovereignty must also take into account aspects of selection and switching between individual platforms. Only if both spheres of the concept of sovereignty are fulfilled can companies confidently operate on digital platforms.

### **Regulation**

In order to achieve the development and anchoring of a successful platform economy in Germany and Europe, attractive framework conditions are absolutely essential. An accompanying legal framework must guarantee digital platforms planning security for investment and innovation ventures, offer appropriate protection against possible abuse of market power, and grant competitive market conditions. The specific characteristics of digital and mostly flexible and innovative business models must be given due and targeted consideration. At the same time, the interests of platform users must be taken into account in order to ensure fair conditions in the horizontal competition between individual platform users and vertical competition between platforms and platform users.

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<sup>1</sup> Digital Summit 2018, Platform Innovative Digitalization of Business: Focus Group “Digital Sovereignty in a Networked Society”, Digital Sovereignty and Artificial Intelligence – Prerequisites, Responsibilities, and Recommendations for Action, p. 3.



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## **Completing the European (Digital) Single Market**

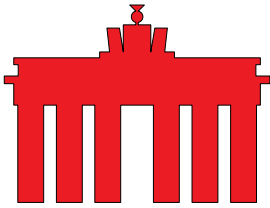
The completion of the European (Digital) Single Market is seen as one of the key factors for the future development of platform-based business models. The completion of the Single Market must remove barriers and obstacles to market entry to pave the way for cross-border digital business models in Europe.

## **Steering clear of one generic competition regulation for the range of different digital platforms**

While the American and Asian markets have produced numerous successful and well-known platform companies, the European market has seen the emergence of only a few successful platform companies. One of the causes of this divergent development is the competition regulation which prevails in Europe, which is restrictive in some respects. In the current dynamic market environment, the provisions are also sometimes inefficient and cumbersome in their bid to counter competition problems such as substantial market power and non-competitive business practices. The business models of the digital platforms display a high speed of innovation and growth; the regulatory framework, on the other hand, reflects the corporate structures and characteristics of the business models of the traditional economic order. Past regulatory practice has shown that competition rules are only partially compatible with digital business models. In order to grant founders and entrepreneurs competition-friendly market conditions, it is necessary to turn away from the “one size fits all” and the sweeping regulatory concept that has been pursued to date. Instead, regulatory measures should be stringently and purposefully geared to genuine market imperfections. If the regulatory practice hitherto implemented is continued, this will have a negative impact on the growth and competitive development of the European digital economy. In recent years, European legislators have made initial efforts to regulate digital groups and to curb the market power of these companies. One example is the Platform-to-Business Regulation, the application of which is intended to increase the fairness and transparency of commercial users integrated into a platform. This regulation has a blanket effect on almost all digital platforms and does not take adequate account of their market relevance or their economic, personnel, or technical capabilities. What is required are differentiated provisions, especially for platforms in the growth phase, but also for small and medium-sized platforms. The above-mentioned regulation only allows exemptions for small and medium-sized platform enterprises if they establish an internal complaints management system. Future legislative proposals on the regulation of digital business models must take due account of the special features and special need for protection of smaller and more medium-sized enterprises in the sector, and must focus on ensuring fair and effective competition.

## **Data protection with potential for digital business models**

With the adoption and implementation of the European General Data Protection Regulation (GDPR), a Europe-wide harmonized standard for the processing of personal data has been adopted. Further legal provisions on data protection, such as the ePrivacy Regulation currently under review, could cause the provisions of the GDPR to fall asunder, and are not required at this point in time. Further data protection requirements in Europe would make the development of digital business models more difficult and would be detrimental to international competition. The GDPR stipulates the requirement of consent for the processing of personal data as a significant opportunity for legitimate data



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processing. Since the introduction of the GDPR, this requirement has not adversely affected the market power of the large providers; rather, the providers have been able to exploit further economies of scale and expand their market lead to a much greater extent. Platform-based business models will open up new market segments with the integration of artificial intelligence (AI) and provide previously unavailable added value. In order to take full advantage of the opportunities offered by AI and thus level the playing field for the success of digital business models, sufficient data sets must be available for testing and researching AI applications. The legally mandated evaluation of the GDPR must take sufficient account of these forthcoming developments and establish further risk-based conditions of permission, for example for the processing of pseudonymous data sets.

### **Enabling innovative cooperation on the basis of competition law**

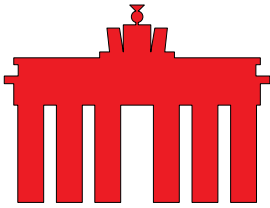
European and national regulatory efforts must take into account the importance of cooperative alliances – both horizontal and vertical – in future legislation. The willingness of industrial companies in particular to cooperate has increased significantly in recent years in parallel with the development of digital industrial platforms. On the strength of cooperation, the companies involved want to move their pre-existing business models into the digital age and increase customer loyalty by enhancing their benefits. This trend towards cooperation should not be restricted per se by legal requirements; in particular, accelerated preliminary inspections by the competition authorities are desirable. Prospective partners will only enter into cooperation if the necessary legal certainty is established in a timely manner by the relevant institutions at European and national level. In future, the existing competition law review procedures must be backed up by reasonable and predictable deadlines and relevant information obligations for all parties involved. In addition, clearly formulated rules for joint research and development work are necessary for European and national consortia. On the basis of such consortia, innovations and standardizations can be promoted in a targeted manner.

### **Lowering bureaucratic hurdles and facilitating access to venture capital**

In order to promote the emergence of digital platforms in Europe, it is not only questions of competition regulation and data protection that need to be considered. Business location conditions must also be improved by alleviating bureaucratic burdens and providing access to venture capital. In order to boost the willingness to set up a business in Germany, for example, the bureaucratic requirements of state institutions for companies in the start-up phase, as well as young companies, must be reduced by an innovation-conducive and investment-friendly legal framework. The administrative law provisions should be reduced to a minimum and simplified. Access to venture capital for young companies in the growth phase must also be strengthened. A survey by the Federal Association of German Private Equity and Venture Capital Companies (BVK), as well as the 2018 Start-Up Barometer of the Ernst & Young consultancy firm both revealed that American and Asian investors in particular are prepared to support German start-ups with venture capital. In an annual evaluation, 17 venture capitalists in Germany contributed an amount totaling 1.2 billion Euro. In contrast, the investment volume of the 257 venture capitalists from North America was 54 billion US dollars, i.e. about three times as high per committed investor<sup>2</sup>. It is precisely these investors who provide German

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<sup>2</sup> Köhler, Peter: Venture Capital – Deutschland liegt im EU-Vergleich in Sachen Start-up-Investitionen unter dem Durchschnitt (Status:16.08.2019).  
<https://www.handelsblatt.com/unternehmen/mittelstand/familienunternehmer/venture-capital-deutschland-liegt-im-eu-vergleich-in-sachen-start-up-investitionen-unter-dem-durchschnitt/24515910.html?ticket=ST-2196771-9DRBbGMRZ97tNKVdAUoY-ap1>



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start-ups with the necessary venture capital to finance the growth phase. These investments often go hand-in-hand with the migration of what once were national innovations. In order to avoid potential innovation losses, attractive framework conditions are essential for venture capital companies, insurance companies, investment companies, as well as public and private bond funds.

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**About eco:** With over 1,100 member companies, eco is the largest Internet industry association in Europe. Since 1995 eco has been instrumental in shaping the Internet, fostering new technologies, forming framework conditions, and representing the interests of members in politics and international committees. eco's key topics are the reliability and strengthening of digital infrastructure, IT security, and trust, ethics, and self-regulation. That is why eco advocates for a free, technologically-neutral, and high-performance Internet.