



Brussels, 25.5.2016
COM(2016) 288 final

**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN
PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL
COMMITTEE AND THE COMMITTEE OF THE REGIONS**

**Online Platforms and the Digital Single Market
Opportunities and Challenges for Europe**

{SWD(2016) 172 final}

1. INTRODUCTION

Online platforms have dramatically changed the digital economy over the last two decades and bring many benefits in today's digital society. They play a prominent role in the creation of 'digital value' that underpins future economic growth in the EU and consequently are of major importance to the effective functioning of the digital single market.

In a Communication setting out a strategy for the digital single market (DSM),¹ the Commission committed to undertake a comprehensive assessment of the role of platforms, including in the sharing economy, and of online intermediaries. Subsequently, the Commission has conducted a series of workshops and studies² and a wide-ranging public consultation, which attracted a high number of responses.

The objective of this Communication is twofold:

1. To outline the key issues identified in the assessment of online platforms.
2. To present the Commission's position on both the innovation opportunities and the regulatory challenges presented by online platforms, and to set out its approach to supporting their further development in Europe.

This Communication is accompanied by a Staff Working Document and synopsis report on the results of the public consultation which provide additional analysis and evidence in support of the proposals which follow below.³

2. THE GROWING IMPORTANCE OF ONLINE PLATFORMS IN THE DIGITAL ECONOMY

Online platforms come in various shapes and sizes and continue to evolve at a pace not seen in any other sector of the economy. Presently, they cover a wide-ranging set of activities including⁴ online advertising platforms, marketplaces, search engines, social media and creative content outlets, application distribution platforms, communications services, payment systems, and platforms for the collaborative economy.

Online platforms share some important and specific characteristics. In particular:

- they have the ability to create and shape new markets, to challenge traditional ones, and to organise new forms of participation or conducting business based on collecting, processing, and editing large amounts of data;
- they operate in multisided markets but with varying degrees of control over direct interactions between groups of users;
- they benefit from 'network effects', where, broadly speaking, the value of the service increases with the number of users;

¹ COM(2015) 192 final.

² These include an economic study of online platforms by the Commission's Joint Research Centre, two Eurobarometer studies on the impact of online platforms, a hearing on online platforms organised by the European Political Strategy Centre, as well as the conclusions of numerous interactions with academics and stakeholders that fed into the Commission Staff Working Document that accompanies the present Communication. Additional studies will follow in the second half of 2016.

³ SWD(2016) 172 final.

⁴ Non-exhaustive set of examples: Google's AdSense, DoubleClick, eBay and Amazon Marketplace, Google and Bing Search, Facebook and YouTube, Google Play and App Store, Facebook Messenger, PayPal, Zalando marketplace and Uber.

- they often rely on information and communications technologies to reach their users, instantly and effortlessly;
- they play a key role in digital value creation, notably by capturing significant value (including through data accumulation), facilitating new business ventures, and creating new strategic dependencies.

These features of online platforms have brought a range of important benefits to the digital economy and society. Online platforms facilitate efficiency gains, and act as a magnet for data-driven innovation.⁵ They increase consumer choice, thereby contributing to improved competitiveness of industry and enhancing consumer welfare.

Online platforms also offer the potential to enhance citizens' participation in society and democracy, as they facilitate access to information, in particular for younger generations⁶ and across borders⁷.

However, the growing importance of the digital economy linked with the diversity and fast-changing nature of platform ecosystems also raise new policy and regulatory challenges. This Communication addresses both the innovation and growth dimension, as well as any regulatory challenges.

3. SETTING THE RIGHT ENVIRONMENT TO ATTRACT, RETAIN AND GROW NEW ONLINE PLATFORM INNOVATORS

A number of globally competitive platforms originated in Europe, for example Skyscanner and BlaBlaCar. However, on the whole, the EU currently represents only 4% of the total market capitalisation of the largest online platforms: the vast majority of platforms originate in the US and Asia.⁸

The platform economy presents major innovation opportunities for European start-ups, as well as for established market operators to develop new business models, products and services. Europe has a thriving start-up community with dynamic entrepreneurs targeting new opportunities in the collaborative economy, energy, health, banking, creative content and beyond. As an illustration, apps made by European developers account for 30% of global revenue in the leading application distribution platforms.⁹

Creating the right framework conditions and the right environment is essential to retain, grow and foster the emergence of new online platforms in Europe.

First and foremost this involves creating a functional digital single market, breaking down barriers to allow businesses to enter and scale-up fast in Europe and not move elsewhere.

⁵ On the opportunities offered by data-driven innovation, see also European Commission Communication 'Towards a thriving data-driven economy', COM(2014) 442 final.

⁶ See details in Report on 2015 public consultation on «EU Citizenship: Share your opinion on our common values, rights and democratic participation» (available at http://ec.europa.eu/justice/citizen/document/files/2015_public_consultation_booklet_en.pdf), page 10. The by far biggest group among the 2.170 respondents were young people aged 18-30 (29%). See also: Eurobarometer survey on media use in the EU – Fall 2014.

⁷ Nine out of 10 respondents (91%) to the public consultation on EU Citizenship believed that access to political information across borders would allow EU citizens to form clearer opinions on issues relevant to democracy in Europe. http://ec.europa.eu/justice/citizen/document/files/2015_public_consultation_booklet_en.pdf, page 10.

⁸ See SWD(2016) 172 final.

⁹ Plum (2016), A policy toolkit for the app economy — where online meets offline.

The forthcoming European agenda for the collaborative economy will in this respect already provide guidance on applicable EU legislation and make recommendations for Member States, with the aim of supporting a balanced development of the collaborative economy.

The recently adopted strategy to digitise European industry¹⁰ identifies a series of measures that help to advance these ambitions. They include investment in world-class data and computing infrastructure for science and innovation, with an estimated investment of EUR 50 billion of public and private funds to upgrade Europe's digital innovation capacities. There are also measures included in this package for a streamlined approach to standardisation that aims to foster the necessary cross-border and cross-domain interoperability.

A number of ongoing initiatives in the research arena and other specific funding actions already aim to help the emergence of innovative platform-based ecosystems. These include the provision of high-speed internet access across the EU¹¹ and support for open service platforms¹². In this context, the Commission sees the need to start a reflection on how to shape the future internet as a powerful, open, user-centric, interoperable platform ecosystem, in particular with the support of Horizon 2020.¹³

Finally, projects like the Startup Europe initiative¹⁴ provide advice and funding, thereby promoting opportunities for start-ups to experiment and scale-up.

In all, online platforms foster digital value creation that will generate economic growth in the digital single market. Their importance implies that facilitating and supporting the emergence of competitive EU-based platforms is both an economic and strategic imperative for Europe.

4. A BALANCED REGULATORY FRAMEWORK FOR ONLINE PLATFORMS IN THE DIGITAL SINGLE MARKET

The right regulatory framework for the digital economy must be conducive to furthering sustainable development and scaling-up of the platform business model in Europe.

Firstly, in order for Europe to reap the full benefits from the platform economy and stimulate growth in European platform start-ups, self-evidently, there cannot be 28 different sets of rules for online platforms in a single market. Differing national or even local rules for online platforms create uncertainty for economic operators, limit the availability of digital services, and generate confusion for users and businesses. Harmonised rules at EU level such as the recently adopted General Data Protection Regulation¹⁵ and the Network

¹⁰ See: European Commission Communication 'Digitising European Industry — Reaping the full benefits of a Digital Single Market', COM(2016) 180 final.

¹¹ Digital infrastructure is one of the sectors of key importance identified as a focus for the European Fund for Strategic Investments, see: <http://www.eib.org/efsi/what-is-efsi/index.htm>. Innovation and research, and the digital agenda are also two of the four priority areas for investment (including in infrastructure) under the European Regional Development Fund, see: http://ec.europa.eu/regional_policy/en/funding/erdf/.

¹² One example is the open-source FIWARE software ecosystem project supported by the EU's Future Internet project. Its mission is 'to build an open sustainable ecosystem around public, royalty-free and implementation-driven software platform standards that will ease the development of new Smart Applications in multiple sectors'. <https://www.fiware.org/>.

¹³ The Commission will initiate work on the elements of a next-generation internet research initiative, including a public consultation.

¹⁴ See: <https://ec.europa.eu/digital-single-market/en/startup-europe>.

¹⁵ Regulation (EU) 2016/679.

and Information Security Directive¹⁶ are important to facilitate growth and rapid scaling up of innovative platforms.

Secondly, online platforms are subject to existing EU rules in areas such as competition, consumer protection, protection of personal data and single market freedoms. Compliance with these rules by all including platforms is essential to ensure that all players can compete fairly. This will create trust for both businesses and the general public to confidently engage with online platforms.

Effective enforcement is crucial. The cross-border nature of platforms means that enforcement requires good cooperation between relevant authorities, such as that envisaged in the reform of the Regulation on Consumer Protection Cooperation¹⁷ and as provided for in the General Data Protection Regulation. The ability of public authorities to respond effectively to new and possibly disruptive market and technological developments and business models will also be critical. This could include investment in new technology that supports public action, including big data analytics, to gather more detailed information on online platforms ecosystems¹⁸, as part of broader measures to ensure a data-driven public sector.¹⁹ The Commission will explore further, together with Member States and platforms, how these objectives might best be achieved.

Thirdly, the need to foster the innovation-promoting role of platforms requires that any future regulatory measures proposed at EU level only address clearly identified problems relating to a specific type or activity of online platforms in line with better regulation principles. Such problem-driven approach should begin with an evaluation of whether the existing framework is still appropriate. The collaborative economy is a good example where rules designed with traditional and often local service provision in mind may impede online platform business models. This issue will be addressed in the forthcoming Commission Communication on the collaborative economy.

Finally, principles-based²⁰ self-regulatory/co-regulatory measures, including industry tools for ensuring application of legal requirements and appropriate monitoring mechanisms, can play a role. Underpinned by appropriate monitoring mechanisms, they can strike the right balance between predictability, flexibility, efficiency, and the need to develop future-proof solutions.

As a general rule, when elaborating responses to issues related to online platforms, the Commission will take the following principles into account:

- **a level playing field for comparable digital services;**
- **responsible behaviour of online platforms to protect core values;**
- **transparency and fairness for maintaining user trust and safeguarding innovation;**
- **open and non-discriminatory markets in a data-driven economy.**

¹⁶ Agreed by the European Parliament and Council on 7 December 2015, following the Commission's proposal from 2013: COM/2013/048 final - 2013/0027 (COD).

¹⁷ Regulation (EU) 2006/2004.

¹⁸ See the JRC/IPTS Digital Economy Working Paper "An economic policy perspective on online platforms", 2016.

¹⁹ OECD Ministerial Declaration Helsinki 2015: "We look forward to the strategic use of new digital tools and of Big Data to enable a data-driven public sector", see: <http://www.oecd.org/governance/ministerial/chair-summary-2015.pdf>.

²⁰ The Commission has published best practice principles at <https://ec.europa.eu/digital-single-market/en/news/principles-better-self-and-co-regulation-and-establishment-community-practice>.

The next section illustrates how the Commission intends to translate these principles into policy.

5. IMPLEMENTING MAIN PRINCIPLES FOR PLATFORM DEVELOPMENT IN THE EU

i) *Ensuring a level playing field for comparable digital services*

'Over-the-top' (OTT) messaging is forecast to reach a market share of 90% of the total messaging market in 2020.²¹

In response to the public consultation on the evaluation and review of the regulatory framework for electronic communications, the majority of respondents — including a number of Member States, operator associations, most incumbents and vendors — consider that OTT services provide consumers a functional substitute for traditional telecommunications services.²²

Respondents to the public consultation across different stakeholder groups suggested there should be a focus on the specific activities that online platforms perform and to ensure a level playing field.²³

Competition from online platform-based business models provides incentives for traditional market players to innovate and improve their performance. Many online platforms have challenged conventional business models and offer services that are increasingly seen by users as substitutes for services offered in the conventional manner. The OTT online communications service providers are a case in point as they increasingly compete with traditional telecommunications service providers.²⁴ Yet these new services are not subject to the same rules as traditional telecommunications services.

What is considered to be a comparable service may vary with the public policy context. For some purposes (e.g. as security and confidentiality of communications), it may be necessary to address all services facilitating interactive communications between their users; for others, end users may associate guarantees such as quality of service assurances, or seamless interconnection between different service providers, with the use of public resources like phone numbers.

Creating a level playing field in relevant areas should be the general principle in the digital single market. To achieve a level playing field, there may be a need to simplify, modernise and lighten existing regulation. These modernisation efforts should seek to avoid imposing a disproportionate burden on new as well as traditional business models.

²¹ [http://www.europarl.europa.eu/RegData/etudes/STUD/2015/569979/IPOL_STU\(2015\)569979_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2015/569979/IPOL_STU(2015)569979_EN.pdf).

²² See the synopsis report: http://ec.europa.eu/newsroom/dae/document.cfm?doc_id=15294.

²³ See the synopsis report on the public consultation on online platforms.

²⁴ Certain of these online communications services (e.g. those whose business model is based on revenues from advertising or data collection) show typical features of platforms, i.e. they operate in multisided markets and they benefit from 'network effects'.

As a general principle, comparable digital services should be subject to the same or similar rules, duly considering opportunities for reducing the scope and extent of existing regulation. As part of its **review of EU telecoms rules to be completed still in 2016**, the Commission is assessing the possibility of proposing a targeted mix of proposals involving a degree of deregulation (taking into account certain rules that are at present only applicable to traditional electronic communications services such as for example some universal service obligations), together with the application, where necessary, of a more limited set of communications-specific rules to all relevant and comparable services including when provided by OTT players.

As part of the **review of the ePrivacy Directive in 2016**, the Commission will consider simplification and adjustment of its scope and potential application of some of its rules, for example those relating to confidentiality, also to OTT online communications services.

ii) Ensuring that online platforms act responsibly

One in three internet users is a child.²⁵ Compared with 2010, children aged 11-16 are now up to 20% more likely to be exposed to hate messages. Children are also more easily exposed to adult material online, often with unrestricted access (23 of the top 25 adult websites visited by UK internet users provide instant, free and unrestricted access to hard-core pornographic videos).²⁶

In 2015 alone, the UK Internet Watch Foundation identified 68,092 unique URLs containing child sexual abuse content, hosted anywhere in the world.²⁷

Around three quarters of all respondents to the public consultation, including a majority of consumers, citizens and businesses, called for greater transparency on platform content policy. More than two thirds considered that different categories of illegal content require different policy approaches in respect of notice-and-action procedures.

As of July 2015, more than 400 hours of video content was uploaded to YouTube every minute.²⁸ In their replies to the public consultation, rights holders across several content sectors (music, images, press publishing and broadcasting) claimed that their content is used by some online platforms without authorisation or through licensing agreements that, in their view, contain unfair terms.

In respect of access to information and content for many parts of society, platforms are increasingly taking centre stage. This role, necessarily, brings with it a wider responsibility.

The present liability regime for intermediary service providers, as set out in the e-Commerce Directive, was designed at a time when online platforms did not have the

²⁵ One in Three: Internet Governance and Children's Rights, Sonia Livingstone, John Carr and Jasmina Byrne, November 2015.

²⁶ EU Kids Online survey [www.eukidsonline.net]. In the UK, the Authority for Television on Demand found that at least 44 000 primary school children accessed an adult website in one month alone. 2014 report 'For adults only? Underage access to online porn'.

²⁷ IWF's 2015 Annual Report <https://www.iwf.org.uk/about-iwf/news/post/444-iwf-announce-record-reports-of-child-sexual-abuse-online>. 69% of victims were assessed as aged 10 or under and 1,788 of victims were assessed as aged 2 or under.

²⁸ See: <http://www.statista.com/statistics/259477/hours-of-video-uploaded-to-youtube-every-minute/>.

characteristics and scale they have today. However, it did create a technology-neutral regulatory environment that has considerably facilitated their scaling-up. This is in part due to the harmonisation of the exemption of certain types of online platforms from liability for illegal content and activities, in respect of which they have neither control nor knowledge.²⁹ While certain concerns were raised on liability issues the consultation showed broad support for the existing principles of the e-Commerce Directive.³⁰

Given this background, the Commission will maintain a balanced and predictable liability regime for online platforms. This is crucial for the further development of the digital economy in the EU and for unlocking investments in platform ecosystems. At the same time, a number of specific issues relating to illegal and harmful content and activities online have been identified that need to be addressed to render this approach sustainable.

The first issue relates to the proliferation on online video sharing platforms of content that is harmful to minors and of hate speech. Children are increasingly exposed to harmful content through video sharing platforms,³¹ while the incitement to violence or hatred through online audio-visual material is a particularly acute problem. The Commission is addressing this through sector-specific regulation as part of the amendment of the Audio-visual Media Services Directive.

The second issue concerns the allocation of revenues for the use of copyright-protected content. New forms of online content distribution have emerged that may make copyright-protected content uploaded by end-users widely available. While these services are attracting a growing audience and gain economic benefits from the content distribution, there is a growing concern as to whether the value generated by some of these new forms of online content distribution is fairly shared between distributors and rights holders. The Commission intends to address this through sector-specific regulation in the area of copyright. The Commission will also aim to address the issue of fair remuneration of creators in their relations with other parties using their content, including online platforms.³² In the context of the evaluation and modernisation of the enforcement of intellectual property rights the Commission will assess the role intermediaries can play in the protection of intellectual property rights, including in relation to counterfeit goods, and will consider amending the specific legal framework for enforcement. The Commission will also continue to engage with platforms in setting up and applying voluntary cooperation mechanisms aimed at depriving those engaging in commercial infringements of intellectual property rights of the revenue streams emanating from their illegal activities, in line with a "follow the money" approach.

Third, there are important areas such as incitement to terrorism, child sexual abuse and hate speech on which all types of online platforms must be encouraged to take more effective voluntary action to curtail exposure to illegal or harmful content. Many laudable initiatives

²⁹ Directive 2000/31/EC.

³⁰ The vast majority of individual users, content up-loaders and intermediaries consider the liability regime fit-for-purpose, whereas respondents who are dissatisfied with the current regime (right holders, their associations and notice providers) find it insufficiently clear or not well implemented, see: Synopsis report on the public consultation on online platforms.

³¹ EU Kids Online: <http://www.lse.ac.uk/media@lse/research/EUKidsOnline/EU%20Kids%20III/Reports/Intheirownwords020213.pdf>.

³² Part of the on-going assessment of the need to increase legal certainty, transparency and balance in the system that governs the remuneration of authors and performers in the EU – COM(2015) 626 final.

by industry already exist in this area. The dialogue with IT companies towards a code of conduct on illegal hate speech online, the EU Internet Forum on terrorism content and the CEO Coalition to make the internet a better place for children are important examples of multi-stakeholder engagement processes aimed at finding common solutions to voluntarily detect and fight illegal or harmful material online. As online platforms continue to scale-up and expand into additional sectors, these efforts have to be sustained and developed across the EU to reinforce their positive role in society.

Fourth, a number of online platforms in the public consultation raised the concern that the introduction of voluntary measures would mean they would no longer benefit from the exemption from intermediary liability under the e-Commerce Directive. Providing more clarity to online platforms with regard to the exemption from liability for intermediaries under that Directive in light of any such voluntary measures taken by them would, therefore, be important in enabling them to take more effective self-regulatory measures.

Finally, there is a need to monitor existing procedures for notice-and-action to ensure the coherence and efficiency of the intermediary liability regime. Before considering launching an initiative, the Commission will first assess the results of ongoing reforms such as the review of the Audio-visual Media Services Directive, the copyright review and voluntary initiatives such as the EU Internet Forum.

The Commission will **maintain the existing intermediary liability regime** while implementing a sectorial, problem-driven approach to regulation:

- with its proposal for **an updated Audio-visual Media Services Directive** to be presented alongside this Communication, **the Commission will propose that video sharing platforms put in place** measures to protect minors from harmful content and to protect everyone from incitement to hatred.

- in the next **copyright package**, to be adopted in the autumn of 2016, the Commission will aim to achieve a fairer allocation of value generated by the online distribution of copyright-protected content by online platforms providing access to such content.

Starting still in 2016, the Commission will **further encourage coordinated EU-wide self-regulatory efforts by online platforms**. It will regularly review the effectiveness and comprehensiveness of such voluntary efforts with a view to determining the possible need for additional measures and to ensure that the exercise of users' fundamental rights is not limited.

The Commission will, during the second half of 2016, explore the need for guidance **on the liability of online platforms when putting in place voluntary, good-faith measures** to fight illegal content online.

The Commission will review the **need for formal notice-and-action procedures**, in light of the results of, *inter alia*, the updated audio-visual media and copyright frameworks and ongoing self-regulatory and co-regulatory initiatives.

iii) *Fostering trust, transparency and ensuring fairness*

- ***Informing and empowering citizens and consumers***

A 2016 Eurobarometer survey on online platforms³³ showed that 72% of responding consumers were concerned about the data collected about them or their activities. 72% also considered that online platforms should be regulated to limit the extent to which they display different results to users based on the data collected about their activities. At the same time, 56% of responding consumers indicated that they did not read the terms and conditions of online platforms.

Over 75% of respondents among the general public³⁴ consider that more transparency is needed, in particular on how platform remuneration influences the listing of search engine results, on identification of the actual supplier of services or products, and on possible misleading practices including fake reviews.

Access to data spurs marketplace efficiency and innovation, but it can also help save lives, improve education, as well as improve government services [and policy development](#). The future internet cannot succeed without the trust of users in online platforms, and without online platforms respecting all applicable legislation and the legitimate interests of consumers and other users.³⁵ The recently adopted review of the EU rules on the access to and processing of personal data already includes important provisions to better inform and protect users regarding the collection of personal data, in particular with explicit consent requirements and the establishment of new principles such as ‘data protection by default’ and ‘data protection by design’.

However, large parts of the public remain apprehensive about data collection and consider that more transparency is needed. Online platforms must respond to these concerns by more effectively informing users what personal data is collected and how it is shared and used, in line with the EU data protection framework.³⁶ More generally, this issue includes the ways in which users identify themselves in order to access online platforms and services. It is recognised that a multitude of username and password combinations is both inconvenient and a security risk. However, the frequent practice of using one’s platform profile to access a range of websites and services often involves non-transparent exchanges and cross-linkages of personal data between various online platforms and websites. As a remedy, in order to keep identification simple and secure, consumers should be able to choose the credentials by which they want to identify or authenticate themselves. In particular, online platforms should accept credentials issued or recognised by national public authorities, such as electronic or mobile IDs, national identity cards, or bank cards.

Greater transparency is also needed for users to understand how the information presented to them is filtered, shaped or personalised, especially when this information forms the basis

³³ Eurobarometer Special 447 on online platforms (2016).

³⁴ See the synopsis report on the public consultation on online platforms.

³⁵ Only 22% of Europeans have full trust in companies like search engines or social networks, see: Special Eurobarometer 359, 'Attitudes on Data Protection and Electronic Identity in the European Union'. A high level of trust is at the same time essential to the data-driven economy, see: European Commission Communication 'Towards a thriving data-driven economy', COM(2014) 442 final.

³⁶ Currently Directives 95/46/EC and 2002/58/EC and once applicable, the General Data Protection Regulation. The GDPR was adopted in April 2016 together with the Directive on the Protection of individuals with regard to the processing of personal data by competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences by Council and Parliament.

of purchasing decisions or influences their participation in civic or democratic life. If consumers are properly informed of the nature of the products that they view or consume online, this assists the efficient functioning of markets and consumer welfare.

Online ratings and reviews of goods and services are helpful and empowering to consumers, but they need to be trustworthy and free from any bias or manipulation. A prominent example is fake reviews, where loss of trust can undermine the business model of the platform itself, but also lead to a wider loss of trust, as expressed in many responses to the public consultation.³⁷

Finally, existing EU consumer and marketing law already requires online platforms to be transparent and to not mislead consumers, for example as regards sponsored search results and online rating and review systems. Improved enforcement of, and better compliance with, this legislation will foster more trust, transparency and fairness.

The Commission presents a legislative proposal revising the Regulation on Consumer Protection Cooperation together with this Communication, to facilitate more efficient enforcement of EU consumer law in cross-border situations.

The Commission has reviewed the guidance on the Unfair Commercial Practices Directive to be adopted together with this Communication. The Commission will further assess any additional need to update existing consumer protection rules in relation to platforms as part of the regulatory fitness check of EU consumer and marketing law in 2017. It will also monitor the implementation of the principles for comparison tools that were drawn up by the multi-stakeholder dialogue on comparison tools that the Commission instigated.³⁸

In order to empower consumers and to safeguard principles of competition, consumer protection and data protection, **the Commission will further promote interoperability actions, including through issuing principles and guidance on eID interoperability at the latest by 2017. The aim will be to encourage online platforms to recognise other eID means** — in particular those notified under the eIDAS Regulation³⁹ — that offer the same reassurance as their own.

In the context of the continued dialogue with all stakeholders, **the Commission encourages industry** to step up voluntary efforts, which the Commission will undertake to assist in framing, to prevent trust-diminishing practices, in particular — but not limited — to tackle fake or misleading online reviews.

- Safeguarding a fair and innovation-friendly business environment

Nine out of ten respondents to the public consultation considered that there is room for improvement in business-to-business (B2B) relations between platforms and suppliers. They

³⁷ See the synopsis report on the public consultation on online platforms.

³⁸ See COM(2011) 942 final.

³⁹ Regulation (EU) No 910/2014 of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market.

highlighted allegedly problematic examples of contractual clauses and practices covering a wide number of sectors.⁴⁰

Among those respondents expressing dissatisfaction with these B2B relations, more than 80% consider that market dynamics will not address the issue and that a mix of regulatory and non-regulatory actions are needed.

Many respondents considered that internal complaint mechanisms set up by platforms are not effective and cost efficient to solve the problems that arise between online platforms and their suppliers.

As online platforms play an increasing role in the economy, the terms of access to online platforms can be an important factor for online and offline companies. For SMEs and micro-enterprises, some online platforms constitute important, sometimes the main, entry points to certain markets and data. For their part, online platforms have a key interest in a sustainable and positive relationship with their business users on whom they rely for the creation of value.

The public consultation highlighted a number of concerns from certain stakeholders about unfair trading practices from online platforms. The most common alleged problems include the following:

1. platforms imposing unfair terms and conditions, in particular for access to important user bases or databases;
2. platforms refusing market access or unilaterally modifying the conditions for market access, including access to essential business data;
3. the dual role that platforms play when they both facilitate market access and compete at the same time with suppliers, which can lead to platforms unfairly promoting their own services to the disadvantage of these suppliers;
4. unfair ‘parity’ clauses with detrimental effects for the consumer; and
5. lack of transparency — notably on platform tariffs, use of data and search results — which could result in harming suppliers’ business activities.

A significant number of business respondents to the public consultation highlighted the potentially negative consequences of these alleged unfair trading practices, and suggested that additional measures — a mix of regulatory and non-regulatory measures — are needed.⁴¹

Finally, the consultation also showed the potential need to explore issues around ownership and use of, as well as access to data. This is necessary to ensure a more suitable and balanced contractual relationship between service providers and business users, which is important in stimulating investment.

Competition and internal market policy should be seen as complementary policies which have an important role to play in the effective functioning of the DSM with regard to online platforms.

⁴⁰ See the synopsis report on the public consultation on online platforms.

⁴¹ See the synopsis report on the public consultation on online platforms.

Competition law addresses issues of competition between market players, thus creating wider choice for consumers at lower prices and maximising opportunities for innovation. EU competition policy is based on constant principles, but its tools are flexible and can be effectively applied to the specificities of different markets, including online platforms.

Beyond the application of competition policy, the question arises as to whether EU-level action is needed to address fairness of B2B relations. At this stage, more information is needed concerning relations between platforms and their suppliers or partners in order to assess, and map out, the nature and extent of problems which could result in harm to these suppliers' business activities, in particular where this may negatively affect innovation. Where business models of entire ecosystems of SMEs are dependent on access to a small number of online platforms, or where platforms have access to datasets of unprecedented size, new asymmetries may be created. In such situations, some suppliers to platforms can be disproportionately exposed to potentially unfair trading practices, even in the absence of established dominance of a platform.

The Commission will carry out a targeted fact-finding exercise⁴² on B2B practices in the online platforms environment. This will examine more closely the issues raised in the public consultation as well as the potential means of redress beyond the application of competition law, e.g. (voluntary) dispute resolution mechanisms, transparency and better information measures or guidance. In particular, the Commission will engage closely with stakeholders and public authorities. **By spring 2017, the Commission will determine whether additional EU action is needed.**

iv) Keeping markets open and non-discriminatory to foster a data-driven economy

A majority of all respondents to the public consultation saw the need for strengthening the capacity of online platforms to address switching.⁴³ Many businesses and individuals raised as issues the design of application programming interfaces (APIs) of online platforms, or the changing conditions to access them.

In a functioning digital single market it is beneficial that users can switch platforms as easily as possible. The decision of users to stay with an online platform and share their data should be a free choice linked to the quality of the service provided, and not due to obstacles to switching to another platform, including transferring their data. This point was clearly made by the European Council in its October 2013 conclusions,⁴⁴ and strongly supported in the public consultation. Respondents to the public consultation proposed, *inter alia*, the development of common standards for data transfers, and argued in favour of general portability or transferability of raw personal and non-personal data. For business users, this is seen as important since they store and process personal data of clients and employees, but they also deal with large volumes of non-personal data that are vital for business continuity.

⁴² Involving stakeholder workshops, expert group meetings, surveys and studies.

⁴³ See the synopsis report on the public consultation on online platforms.

⁴⁴ 'There is also a need to address the bottlenecks in accessing one's 'digital life' from different platforms which persist due to a lack of interoperability or lack of portability of content and data. This hampers the use of digital services and competition. An open and non-discriminatory framework must therefore be put in place to ensure such interoperability and portability without hindering development of the fast moving digital sphere and avoiding unnecessary administrative burden, especially for SMEs'.

From the point of view of public authorities, facilitating and reducing switching costs is important. Data portability, the development of standards and interoperability — including via open API-based ecosystems — are key enablers for the free movement of data in a digital single market. More generally, APIs can allow smaller firms to use or reuse business data. In this context, a well-functioning access to business data via user-friendly and well-designed APIs contributes to create and expand ecosystems with new and innovative products using data that has already been gathered, and that is sometimes left unexploited.⁴⁵

Major online platforms and intermediation services such as app stores and e-commerce marketplaces may take the form of closed ecosystems. This is for a variety of reasons including quality control, issues of liability and security. Closed platform ecosystems can further lead to efficiencies, including greater competition between platforms but they can also have adverse effects.⁴⁶ When public money is used to support platform innovation, open platform models should generally be favoured. These include the EU's innovation investments in emerging areas such as virtual reality, smart cities and the Internet of Things, and more generally to form the basis of a sustainable future internet. Open platform ecosystems can offer key advantages in terms of savings on switching costs and market efficiencies. Support by the Commission to ensure that **future developments of digital technologies remain open** is therefore particularly relevant.

As part of the 'free flow of data' initiative scheduled for the end of 2016, the Commission will consider options for effective approaches, including technical standards, to facilitate switching and portability of data among different online platform and cloud computing services, both for business and private users.

In this context, the **Commission will also examine the potential barriers to a single EU data market** that may arise from legal uncertainties **regarding the ownership and usability of — or access to — data**, including issues related to application programming interfaces.

⁴⁵ This is in particular the case for platforms in the area of the Internet of Things, as explained in the Staff Working Document *Advancing the Internet of Things in Europe*, SWD(2016) 110/2.

⁴⁶ As for example also noted by Germany's Monopolkommission in its report 'Competition policy: The challenge of digital markets' of 2015, para 243.

6. CONCLUSION

In this Communication, the Commission has laid out its overall assessment of online platforms as part of its strategy for the digital single market.

Online platforms play a key role in innovation and growth in the Digital Single Market. They have revolutionised access to information and have made many markets more efficient by better connecting buyers and sellers of services and goods. While there are some online platforms that reach historic numbers of users across the world, and that expand continuously into new areas of the economy, there are also still many opportunities for competitive European platforms to emerge. Effectively stimulating innovation in these areas, while adequately protecting the legitimate interests of consumers and other users, is perhaps the most important challenge the EU faces today in terms of securing its future competitiveness in the world.

The present assessment has also identified a number of areas where public or private interests need to be carefully assessed and where better compliance with EU regulatory standards should be ensured.

In this respect, this Communication underlines the need to adopt policy and regulatory approaches that respond directly to the challenges, and which are flexible and future-proof.

Where appropriate, self-regulation and co-regulation can often achieve better outcomes for enabling the development of strong platform ecosystems in Europe and can complement or reinforce the existing legislation that already governs certain activities of online platforms.

The industry's compliance with applicable EU law and the effectiveness of voluntary measures taken to maintain the trust of their user base will be key in addressing the challenges identified in the assessment.

Finally, in order to fulfil the promise of a digital economy for all, the Commission calls upon all public authorities and interested parties concerned, and in particular Member States and the European Parliament to support this approach so that the EU fully embraces this digital future while preserving its common values.