EUROPEAN BUSINESS SUMMIT

Copenhagen Economics

THINK DIGITAL 2017: KEY THEMES DISCUSSED

28 November 2017

SUMMARY NOTE

Copenhagen Economics is pleased to be Knowledge partner in support of Think Digital 2017. We look forward to see all participants in 2018.

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Throughout the day, speakers and audience interacted and covered a broad spectrum of themes. The present note summarises key elements of the discussion.

Keynote speech by Giovanni Buttarelli, European Data Protection Supervisor (EDPS)

The event was opened by an engaging contribution from the EDPS.

At a time where ever rising amounts of data are shared using digital means, privacy and data protection is as important a policy area as ever. This is because, as highlighted by the EDPS, there is an imbalance between firms and consumers and the resulting opacity is a challenge.

Thus, the EU is leading by example, by setting the highest standards of data protection: both the GDPR and the initiative for a European data protection board are key reference points globally. Indeed, key countries like Japan have taken notice and, while they have devised data protection with their own structures, they have done so in a way that shows alignment to Europe.

Europe is today in a privileged situation, which emphasizes the need to look forward and ensure future-proof regulations. GDPR endorses technology neutrality, though naturally may lead to some shortcomings, since the digital transformation process is rapid. Good practice involves ethical and correct use of personal data.

The subsequent discussion covered the question of what is the biggest threat to online privacy protection. According to the EDPS, what is key are business practices fomenting a culture that is supportive of human right protection. The matter ultimately is what is the ability and attitude of businesses (and public sector) to follow that direction. The acknowledged risk is that, even with the new tools of GDPR, we may fail to foster a new culture of data protection.

Data protection & privacy of the European digital future

The first session covered at length the consumer and business impact of the privacy rules for communications services. Communication services convey data and ultimately all sectors in the economy increasingly rely on data and software to operate and be productive – thus this topic is of broader European significance.

While privacy of citizens and businesses is an established objective for policymakers, digital transformation is challenging how future proof current regulations can be. Recognising the rapid development in the area, the Commission has proposed a new e-privacy

regulation, so to replace the e-privacy directive currently applicable to Electronic Communication Services (ECS), such as those of telecoms providers. At the same time the GDPR is introduced to provide safeguards across a broader spectrum of activities and services, with rules that differ from the e-privacy regulation.

Panellists agreed that ePrivacy is an example of a *lex specialis*, introduced with the specific purpose to safeguard the confidentiality of communication – a fundamental right. At the same time, panellists debated whether and why there remains a need for a special legislation that goes above and beyond the safeguards now enshrined in the GDPR. Other sectoral data like banking data, arguably as sensitive, is not protected twice and relies on GDPR alone to ensure data protection.

There was agreement that, since the time of introduction of the ePrivacy Directive, the world has changed and value chains have converged – with many more players, e.g. Over-The-Top (OTT) applications which both compete and collaborate with telecoms services. All agreed that protecting data is very important; a noted asymmetry is that telecom services have been regulated from day 1, thus there was and is not yet one fate for all companies "under the same sky".

However, there were different views on incentives and business impact in a situation without special norms in a forthcoming ePrivacy regulation (above and beyond GDPR rules). One view is that this would lead over time to gaps and misunderstandings, as well as uncertainty affecting business. Another view is that telecom operators have business incentives and track record to continue to be trusted providers, thus safeguarding the confidentiality of communication, even if GDPR rules were the only legislation in place.

Several open questions remained, with "the devil being in the detail" and the need for sensitive balancing in finding the best way to protect rights while fostering investment and handling communications data for current and future applications. In particular, references included rules for further processing, treatment of metadata (distinct from personal data), e.g. for statistical purposes, technology neutrality in rules applicable to geolocalisation (different rules for device/OTT vs telecoms network localisation). The emergence of new technologies and applications such as Artificial Intelligence (AI) and Machine-to-Machine communications (M2M) raised the twin questions: Who is accountable? Is regulation future-proof enough to accommodate also the (un)expected new uses of data that industrial and consumer applications will demand?

In conclusion, panellists noted the need to avoid opposed extremisms that in the past have chilled the debate. It was highlighted that Europe is embracing a data protection approach not based on privacy by default but instead privacy by design, which is a more flexible principle. A challenge and opportunity is to provide consumers with a data protection dashboard, a good representation of data treatment, particularly important given the mobility / portability dimension. A final, more optimistic, note was that digital tools are also part of the solution and can help solve the challenges of privacy and data protection, with practical solutions on the ground.

Boosting growth for SMEs in the digital single market

The second session was suitably kicked off by an example of SME competing with very large corporations, with the SME benefiting from realising that large companies were not a tech savvy as consumers and coming in to bridge that gap. This demonstrates that the EU Digital Single Market is a cornerstone in helping SMEs succeed in the digital transformation. A fully-fledged Digital Single Market would enhance the growth opportunities for the economy in general and the SMEs in particular, which are a key contributor to the EU economy.

The discussion thus highlighted that the Digital Single Market is not relevant only for companies that are born digital. Learning and transition of older companies and traditional sectors is just as important. In other words, digital is not a new industry per se but rather a new way that SMEs can embrace to go forward. However, it was noted that, in some countries and in some sectors, most SMEs are not active in the digital sphere.

Thus the Commission actively promotes policies that are designed to help SMEs with the digital transformation through a number of initiatives under the Digital Single Market. The initiatives include, harmonising e-commerce regulations to ensure sellers are not de-

terred from cross-border sales as well as promoting e-government services, resulting in facing fewer administrative burdens – which would other-wise weigh disproportionately on SMEs. This was confirmed in the discussion, which highlighted many of the practical obstacles that an SME faces when e-selling throughout Europe – due to the divergence in national regulations.

Indeed, DG Connect has launched Startup Europe, which includes networking and helping eco-systems that foster startups. It was highlighted that, while there are as many start-ups in Europe as in US, the EU still lags behind on scale-ups. This may be linked to broader gaps identified, that remain a challenge for the EU: (i) investment and financing gap, (ii) innovation gap and (iii) skills gap (digital and also, more broadly, STEM).

All of these factors can enable SMEs to tap into the benefits of a "flat world" efficiencies, e.g. using the services of different online platforms in order to find and sell to new consumers. This is a sales opportunity that previously only giant multi-nationals could achieve, yet now digital tools enable micro-multinationals to work cross-border. This is why the evidence of barriers to e-commerce due to national regulatory divergence is leading to initiatives to promote harmonisation, so to make the Single Market function exactly as it was envisaged.

Digital infrastructure – towards maximum connectivity

The third session was forward looking in its nature and enabled a discussion of future networks and services. A first element discussed was spectrum – a key fuel for all wireless communications and the further industrial transformations expected to occur with 5G. Broader and more efficient use of electronic communications spectrum will enable advanced consumer communication and industrial / service applications like Internet of Things and Machine-to-Machine communications. This requires the EU to get the basics right and deliver certain, sufficient and timely releases of spectrum.

As current and future smart devices go online, the increased flow of information exchanged will benefit from new standards like 5G, yielding more efficient networks, carrying more data. Thus, over-specified data protection would push up exponentially transaction costs and frictions, as the number of data interactions demanded by consumers and business services increases fast.

5G is an example of demand and supply co-acting, since consumers will not demand services or features that they can not foresee. Thus 5G will be driven by consumers, once it is demonstrated how 5G works and what it is capable of. It was also agreed that 5G is mainly fixed, stressing the need for fixed infrastructure investments.

However, looking at the basics, it was noted that it is very difficult for EU policymakers to devise rules on the overall EU-wide level, since there are large differences between Member States in the state of digitalisation. Irrespective of this challenge, the policy desire to reach not just a Gigabit but a "100 Gigabit Society" was highlighted, so to serve future needs and promote consumer and business activity. It was agreed that further investments are needed, so to achieve the policy aim to enable a broader set of European citizens and firms to access the necessary infrastructure to contribute to societal and economic progress in the decades to come.

The discussion then turned to the question of what polices can best promote the business case for further investments, for the benefit of EU consumers and firms. The next debated question was then whether competition and regulatory tools can be expected to deliver investments in new coverage and services, including to areas and features currently not served. Both competition on prices and quality of service were mentioned as relevant factors. In turn, the distinction was made as to whether the EU expects access-based

competition to deliver investments or whether the focus should be promoting infrastructure-based competition.

Thus, it remained unclear whether the necessary investments to upgrade and extend networks will materialise, though it was agreed that achieving the aims of the Digital Single Market requires coordinated policy efforts, as well as the contribution of industry, in order to perform the heavy lifting necessary to extend and enhance the networks that power the Digital Single Market.