

A Long Road to an Ambitious Goal: the Digital Single Market

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The concept of a European Single Market without trade barriers has had a lasting impact on key product and service markets, stimulating legislative competition between Member States (often leading to a liberalisation of once rigid regulations), bringing forth transnational economic competition and innovation. Meanwhile, European telecom markets, still dominated by former national monopolies, are strikingly segregated, at least at the commonly visible end-user level.

Major European telecom companies are active on several European markets through subsidiaries, yet end-user markets for telecommunication services are separate: A German consumer can't simply choose a Polish telecom company as their landline provider; mobile users are second-class citizens outside their respective home countries, despite the Commission's ongoing efforts to bring roaming fees down to a negligible amount. Not being able to utilize unlimited data plans abroad is a nuisance for smartphone users; looking at the increasing number of Europeans residing in one Member State and working in another, it's fair to say that market development has not kept pace with the reality of European life.

The Juncker Commission is ambitious about changing the state of things, designating the establishment of a *Digital Single Market* as the first pillar of the *Digital Agenda for Europe*. Günther Oettinger, newly appointed Commissioner for

Digital Economy and Society, is in charge of the Digital Agenda as a whole; the new Commission even has a dedicated Commissioner for Digital Single Market: Andrus Ansip, also Vice-President of the Commission, formerly Prime Minister of Estonia.

The vision of a Digital Single Market was unveiled in 2013 by former Commissioner for Digital Agenda, Neelie Kroes; the 2013 draft regulation primarily targeted telecom companies.¹ Revisiting the example of the German customer who can't choose the Polish telecom company, the issue here is not that the Polish company doesn't own a phone line leading to the customer's home; as a matter of fact, most German telecom providers can only operate because the incumbent – Deutsche Telekom AG (DTAG) in this case – is obliged to offer competitors *wholesale* access to its comprehensive network of subscriber lines (*Access Regulation*) at a fixed price (*Rates Regulation*) previously authorised by the *National Regulatory Authority*.

Such regulatory instruments marked the liberalisation of European telecom markets back in the 1990s, and were initiated by the European Commission. The liberalisation was accomplished mainly by means of directives, allowing Member States to specify the effective legislation. This was a necessary strategic decision ensuring national governments' acceptance, but it led to a myriad of regulatory regimes, hampering the establishment

of a truly pan-European telecom market. By standardising wholesale access products, harmonising radio wave spectrum assignment and authorisation procedures, and further cutting roaming fees, the Commission intends to finally realise the older vision of a European Single Market for telecommunications.

Ideally, market movements stimulated by the Digital Single Market would lead to higher investments in European broadband infrastructure. It seems fair to meet these prospects with slight scepticism: Would European telecom companies actually invest in rural regions, where the lack of broadband access is especially pronounced? Politicians might complacently point to increasing average bandwidth figures, but average figures only tell half the story as long as whole regions don't have any kind of acceptable broadband access.

European Copyright and Data Protection: a Constitution for the Information Age

The Juncker Commission has vastly broadened the scope of the Digital Single Market: Not only telecoms regulation and management of radio waves, but also copyright and data protection legislation are proposed to be unified on the European level.² The declared goal is that European companies offering digital services are subject to the same essential rules, regardless of the Member State in which their offices and servers are located. European consumers should benefit from legal consistency, freedom of choice, and innovation.

The expanded scope makes the Digital Single Market project a legislative behemoth. Such projects are prone to failure, yet the risk is worth taking: There is a widespread perception among European academics and consumers that national copyright and data protection laws, often structurally unaltered for decades, don't meet the practical requirements of the digital era. Europe's IT industry has fallen behind; most global players (Google, Facebook, Apple, Microsoft) were founded and are headquartered in the

USA. Complex and opaque legal frameworks might be partially at fault. The inability of many national governments to enact overdue reforms certainly supports Juncker's plans: In the age of cross-border digital business, laying the legal foundations for the IT market is a challenge that needs to be met on the European level.

Unified European copyright and data protection laws, however, will have considerable ramifications for 500 million citizens and for decades to come; what the Commission plans to enact might be dubbed *a constitution for the information age*. It is crucial for Europe's future not only as a technology market, but also as a region of personal freedom, that the legislative process can unfold devoid of temporary political moods and imbalanced economic interests. The academic community should demand the greatest possible transparency during all stages of the legislative process; it has to participate in a continuous, rigid assessment of the proceedings.

Regarding Europe's future as a technology market, successful reforms must significantly reduce complexity. Many American technology giants which Europe's digital industry look up to, started their operations in garages; such start-up companies ground upon innovative ideas rather than massive capital and don't yet have vast legal departments available. An elegant legal framework will eliminate the pitfalls that young companies all too often face whilst still ensuring high customer protection standards.

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1. Proposal for a regulation of the European Parliament and of the Council, COM(2013) 627; Bartóki-Gönczy, Towards a Single Market for Telecoms, in: ENLR 2014, 3.

2. Juncker, Political Guidelines for the next European Commission, http://ec.europa.eu/priorities/docs/pg_en.pdf#page=6