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EU's digital single market strategy will affect US firms

By Roger Bickerstaff

On May 6, the European Commission issued a new digital single market strategy for Europe laying out the proposed roadmap for action over the next 18 months. The aim is to create an online free market of goods, persons, services and capital across Europe so citizens and business can seamlessly carry out online activities irrespective of nationality or place of residence.

The commission believes fragmentation and barriers in the European online world are holding the EU back, and the aim is to remove these barriers. It estimates that a digital single market could contribute an additional 415 billion to European GDP.

A more prosperous and effective European digital single market ought to provide increased opportunities for U.S. business, but a key issue is whether implementing the proposals could lead to increased complexities and regulatory burdens for U.S. companies doing online business across Europe.

The commission has put forth an array of legislative proposals to create the digital single market. These cover areas well beyond the scope of transitional e-commerce legislation. For example, the commission believes affordable, high-quality cross-border parcel delivery is required for the digital single market. In this area, the commission will assess and launch measures to improve delivery price transparency and enhance the regulatory oversight of the cross-border parcels market. The commission also has proposals of interest to U.S. companies in more traditional online fields that are doing online business in Europe. Many of the proposals are not new.

The legislative process in Europe is a well-known minefield. It requires political agreement across 28 member states with varying agendas and different levels of involvement in the online world. Andrus Ansip, the commissioner for the Digital Single Market, is confident there is a good level of agreement from the member states regarding the proposals and that the proposals can be driven through the process quickly. Time will tell, but the entrenched attitudes of the member states coupled with heavy commercial lobbying may suggest progress will be slow and difficult in many areas.

Some of the more important legislative proposals include:

Copyright

The commission believes EU copyright restrictions are preventing consumers from using content services in member states other than where they reside. To change this, the commission plans to reduce the differences between national copyright regimes and allow for wider EU access. The commission will make legislative proposals before the end of 2015 to reduce the differences between national copyright regimes and allow for wider online access to works by users across the EU, including through further harmonization measures.



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A battle is looming over approaches to online market segmentation on a geographical basis across Europe. Such restrictions are an anathema to a digital free market for the supply of goods throughout Europe. The commission intends to abolish "unjustified" geo-blocking in 2016. This brings the spectre of an EU regulatory environment impinging on areas which until now have been regarded as the legitimate domain of right-holders to determine by private contract. The ability of the commission to drive legislation through to the final stages will be tested in this area.

Networks and Platforms

Radio spectrum is in increasingly short supply, and the way it is deployed across Europe varies from country to country. The commission intends to harmonize how spectrum is used across the EU, but spectrum revenues will stay with the member states. The commission will make proposals in 2016 aiming for a consistent single market approach to spectrum policy and management tackling the regulatory fragmentation to ensure a level playing field with the hope of increasing investment.

The commission feels that online platforms enable consumers to find online information and businesses to exploit e-commerce, but that growth is held back by "fragmented markets." The evidence of these fragmented markets across the EU seems lacking, but the commission thinks it gives grounds for review. The commission also considers that it is "widely believed" the current approaches for dealing with illegal content on the Internet are unacceptable, ineffective and lack transparency. Different member states have different approaches to how illegal content is dealt with, leading to a lack of fluidity in the EU.

As a result, the commission will launch a comprehensive assessment of the role of platforms in such areas as transparency presentation of search results; platform usage of acquired data; use of copyright material by intermediaries; removal of constraints on portability and dealing with illegal content. Whether this is a "smoke-screen" for a more extensive investigation of (mainly U.S.) platforms remains to be seen.

More generally, the attempt to create a unified EU-wide online marketplace could provide benefits across the EU for both consumers and businesses. However, issues remain to be considered that will play a pivotal role when implementing the proposals. For example, the strategy provides only a cursory mention of the wider, non-EU international environment. While a unified online EU would be beneficial, there would be dangers if this developed inconsistently to global standards. If the online EU becomes a "walled-garden" with a different legal framework to much of the rest of the world, there is a danger that the EU will be bypassed by the online world.

Also, if the EU legal framework for the online world were to develop inconsistently to that in the rest of the world, it would negatively affect U.S. businesses by driving up costs and reducing access to markets that could otherwise be fruitful for them. U.S. digital business ought to monitor, and potentially, lobby on these proposals to influence their development in sensible directions.

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