

CEPS COMMENTARY



Thinking ahead for Europe

The New Juncker Commission: The Digital Agenda

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A major innovation in the Juncker Commission is the new hierarchical structure and the coordination between portfolios. This is particularly significant with regard to the digital agenda, where the portfolio has been split between the Vice-President for the Digital Single Market, Andrus Ansip, and the Commissioner for Digital Economy and Society, Günther Oettinger. At first sight, this new approach would appear to deliver on Juncker's pre-election promise to make the digital single market a key priority for the new Commission. It's an important but elusive goal.

Mr Ansip's brief is to "make Europe a world leader in information and communication technology, with all the tools to succeed in the global digital economy and society". Through a connected digital single market, the prize is estimated at approximately €250 billion of additional growth in Europe during the time of the new Commission, "thereby creating hundreds of thousands of new jobs, notably for young job-seekers, and a vibrant knowledge-based society".

This will mean breaking down national silos in telecoms regulation, in copyright and data protection legislation and in management of the radio spectrum. Mr Ansip's responsibilities also include ensuring that competition and taxation rules enable higher levels of public and private investment, Europeanising the application of competition rules, creating a fair level-playing field for online and digital goods and services in the EU, ensuring that the same data protection and consumer rules apply to all companies regardless of where their servers are based, and promoting creative industries in Europe.

Mr Oettinger, as part of the project team steered by Mr Ansip, is charged with assessing the obstacles and preparing ambitious legislative steps towards a connected digital single market, within the first six months. His tasks also include reform of telecoms rules, a harmonised approach to radio spectrum, modernisation of copyright rules, supporting creative industries and supporting freedom of expression,

At the same time, and as a consequence of the new structure of the Commission, both Mr Ansip and Mr Oettinger have responsibilities that go beyond the previous digital agenda. Apart from overseeing Mr Oettinger, Mr Ansip will also direct and coordinate the work of the Commissioners for Internal Market, Industry, Entrepreneurship and SMEs; Employment,

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Social Affairs, Skills and Labour Mobility; Justice, Consumers and Gender Equality; Economic and Financial Affairs, Taxation and Customs; Regional Policy; and Agriculture and Rural Development. Meanwhile, Mr Oettinger has other duties including contributing to the jobs, growth and investment package, encouraging entrepreneurship, and supporting work to modernise administration in the European Commission, to name just a few.

What is wrong?

Both Mr Ansip and Mr Oettinger inherit a full in-tray. This is not meant as a criticism of Vice-President Neelie Kroes, who was well respected for her work. Rather, it reflects that policy continues to lag behind the technology advances in information and communications technologies (ICT), and the rapid market developments and social changes that result. Moreover, as ICT has assumed a more fundamental role in the economy and society, the stakes get higher, the issues become more complex, and positions of various stakeholders become even more entrenched.

For the moment, the 'Connected Continent' package of telecoms reforms, adopted by the European Parliament in March 2014, is in limbo, pending a decision by the European Council. In the interregnum, the proposals have been criticised for going too far and for not going far enough. Key areas of concern include:

- Radio spectrum management – the Commission's view that spectrum management is failing with transfer of powers to the Commission is opposed by the Body of European Regulators for Electronic Communications (BEREC), and it is inconceivable that it will win support in the Council of Ministers.
- Net neutrality – the Commission's proposals were amended by Parliament to avoid a so-called fast lane/slow lane on the internet, but traditional access providers (telcos) and national regulatory authorities have not given up.
- Roaming – while BEREC supported the abolition of retail roaming by December 2015, still there are concerns that not all the pieces are in place to ensure this comes about.

In addition, following adoption by the Parliament of the Commission's proposals for a General Data Protection Regulation (GDPR), which extends the scope of the EU data protection law to all foreign companies processing data of EU residents, again legislation awaits a decision by the European Council. Moreover, the content of the new regulation seems hardly suitable for emerging cloud computing markets: in this respect, ongoing negotiations to revive the EU-U.S. Safe Harbour are taking so long that the industry is left in an undesirable limbo of uncertainty. Copyright reform is also in the doldrums with a White Paper expected after a public consultation earlier in the year shelved for the time being.

As to the overarching goal of a digital single market, little if any progress was made during the last Commission – to all intents and purposes, it doesn't exist. For now, the long-term benefits of being a member of this club seem to be outweighed by the short-term costs. And apart from incumbent telcos, who at once advocate less regulation but fear too much consolidation, also national regulators appear worried about a pan-European regulatory framework that would rule them out of the regulatory landscape.

What needs to be done?

ICT now underpins everything and is embedded everywhere and so policy on the digital economy matters to all sectors. Placing digital matters at the top of the agenda of the new Commission is a recognition of the critical importance of ICT to the European economy and society. This, and its new structure, are a good start for the Juncker Commission. But, as already mentioned, policy is lagging technology advances and market and social developments. Moreover, these drivers of change are accelerating. This means it is imperative

that policy is more forward looking – not just for the next five years but for 10 years and beyond. It seems clear that we are heading towards a hyper-connected society – an Internet of Everything – that will bring new opportunities for Europe to establish a competitive position with benefits to the economy and society. But it also brings new challenges and reinforces the need to tackle currently unresolved issues.

The digital single market is a long-term project and will not be built overnight, regardless of the urgency with which Juncker himself hands over the issue to his own Commissioners. It requires leadership and determination to impress upon the Member States the considerable benefits at stake. Proper assessment of the obstacles is key, followed by ongoing monitoring. Achieving consensus on new copyright rules won't be easy but is feasible, and a forward-looking and ambitious White Paper following the public consultation should be an early priority. Greater harmonisation in spectrum management will be more difficult and so must be a long-term plan taken a step at a time: to be sure, the earlier one starts, the sooner results will be achieved.

In the Internet of Everything and a world of Big Data, a balance must be struck between enabling new services while empowering citizens and consumers to protect themselves. The passing of the GDPR into legislation is a priority, but ensuring data protection rules achieve the right balance will be an ongoing task, which could partly be addressed if the US and EU push for more constructive talks within the TTIP on creating a more trustworthy environment for cloud computing and the Internet of Things.

As far as telecom rules are concerned, the keyword should be “balance”, in particular between the incentives to deploy new infrastructure and the preservation of an open, end-to-end internet in terms of applications and content. Europe's traditional access providers argue that regulation should be relaxed for them, otherwise investment in new infrastructure will suffer. Although this argument should not lead to a deregulation of the sector where competition issues remain, a simplification of the list of relevant markets and a more careful assessment of market power and related remedies may be needed in the e-communications field, in compliance and full consistency with competition law. At the same time, new collaborative business models and partnerships between telcos and OTTs should be encouraged: consolidation of Europe's many telecom operators should be welcomed but should be left to market forces, unless the EU manages to trigger developments through means such as pan-European spectrum allocation.

Net neutrality rules as currently set out in the Connected Continent package appear viable only if investment in infrastructure is incentivised in some way (including with public money, provided it does not crowd out private investment), and only if EU institutions clarify what problem do they want to fix with these rules: for example, whether they would want to tackle also other forms of neutrality, such as search neutrality (think about the ongoing Google antitrust investigation) and cloud neutrality. In addition, these rules as they stand do not fully mirror the ongoing evolution of the internet, which makes it no longer a “neutral” setting but rather a patchwork of contents and platforms that flow already at very different speeds due to widespread traffic acceleration practices.

Encouraging digital entrepreneurship, digital start-ups and development of skills needed in the future will require public support. On the latter point, the Commission has considerable scope to assess which jobs and skills will be needed in the future and to work more closely with Member States and universities to ensure that companies located in the EU are not reliant on Asia for skilled workers (e.g. for data analysts). The Commission has recently estimated that as many as 900,000 jobs will not be filled in the European ICT sector in the coming years due to lack of competences.

Thus, Vice-President Ansip and Commissioner Oettinger face a considerable challenge. They have broadly a sound basis to build on from the work of Vice-President Kroes. The key will be leadership and building real consensus among the Member States to achieve what is, perhaps, the most ambitious and important of the new Commission's objectives. And their challenge is even bigger if one considers that, if successful, their Digital Agenda will have to be the last one. In five years from now, the "digital agenda" will have become, simply, the agenda.

References

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