ITI Promoting Innovation Worldwide

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Policy Recommendations for a European Tech Agenda

Europe's opportunity to preserve an enabling environment for innovation and ensure its global competitiveness and security

The Information Technology Industry Council (ITI) is the premier advocate and thought leader for the global technology industry. ITI's membership comprises 70 of the leading technology and innovation companies from all corners of the information and communications technology (ICT) sector, including hardware, software, digital services, semiconductor, network equipment, cybersecurity, and Internet companies.

The technological innovations of ITI's members, and the digitalisation of the economy more broadly, bring innumerable benefits to European industry and society. The tech sector empowers European companies of all sizes and across industries – from agriculture to education, financial services to manufacturing, healthcare to energy and transportation – to leverage frontier innovations towards competition and success in the global marketplace. Whether it is sensors that detect health and safety hazards for workers in real time, or artificial intelligence that allows doctors to analyse complex medical data faster than ever, technology allows us to address some of the most challenging issues of our time and improve the quality of everyday life for Europeans. The tech sector is also already taking significant steps to help prepare the workforce of the future for the shifting skills and competencies that are required in the 21st century.

Tech policy is a crucial priority in the 2019-2024 EU term, one on which Europe has an opportunity to play an international leadership role on policy issues that are increasingly global. ITI and its members believe that building trust and fostering the public interest in the era of digital transformation are essential. Our companies have made great strides in bringing the positive societal benefits of transformative technologies to fruition and remain committed to upholding the fundamental principles of privacy, inclusivity, transparency, and democracy that underpin European society. We believe in the importance of preserving an enabling environment for innovation to ensure Europe's global competitiveness and security. Europe's digital infrastructure is the foundation for that. 5G is a core element to support digital transformations in industry and society, estimated to enable more than €2.2 trillion worth of economic output in Europe by 2030.

ITI has developed recommendations outlining concrete steps that policymakers can take, in partnership with industry, academia, civil society, and other stakeholders, to effectively implement the ambitious agenda for **"Shaping Europe's Digital Future"** launched by the European Commission in February 2020. Our recommendations address the economic and social implications of technology and the role of our industry, in a manner that supports innovation, while recognising the public interests at stake.

Read ITI's full EU Policy Recommendations here.

Global Headquarters
700 K Street NW, Suite 600
Washington, D.C. 20001, USA
+1 202-737-8888

Europe Office
Rue de la Loi 227
Brussels - 1040, Belgium
+32 (0)2-321-10-90

info@itic.org
www.itic.org
@iti_techtweets

Competition

Free competition focusing on consumer welfare is key to promote innovation

ITI strongly supports free and undistorted competition as key to promoting innovation and consumer welfare. The tech community is committed to addressing challenges arising from technological change globally and in the EU. Europe is a leader in several segments of the technology industry, such as app development, which creates revenues in the EU for about a third of the global market.

Consumers' trust in market rules and players is crucial. Companies are providing more and more relevant and innovative products and services at lower prices, thereby increasing consumer welfare. Big data and AI applications generate substantial efficiency gains that are passed on to consumers. By reducing entry barriers and making it easier for small suppliers to reach new customers, innovative technologies and businesses benefit consumers by increasing competition and creating new services, augment human capability and enable advances in education, healthcare, mobility, sustainability, and many economic efficiencies in innumerable fields. By doing so, they offer major opportunities to start-ups and SMEs, who can grow more and faster than they would otherwise do, underpinning future European prosperity.

Grasping differences in business models and user interaction across **digital platforms** is key to gauging potential non-competitive conduct and properly addressing any challenges. As business models and applications change rapidly, regulation should not create artificial boundaries that may stifle innovation and the creation of new businesses. Artificially constraining the size of a company or network may appear to increase competition, but it could also reduce consumer welfare. Policymakers should consider how to ensure that new market entrants are able to succeed, while not imposing rigid rules that disrupt the consumer experience or value that they receive from a platform. Strong **network effects** may disincentivize switching platforms and impact choice and competition. Whilst network effects may be offset by multi-homing and increased competition across platforms, they can be reinforced by lack of interoperability or gatekeeper applications. These factors should be considered, but only together with others like a company's conduct and market behaviour.

Proportionate instruments that ensure a consistent policy approach and fair competition should be considered wherever necessary. Consideration of issues related to switching, access to data and portability would necessarily have to **focus on the specific data concerned**, and the available alternatives. It would be difficult to enact a one-size-fits-all approach to these issues across all types of situations.

There are discussions on several significant potential changes to EU and national competition laws, including concepts such as **transcendence** (declaring a company as being of paramount significance for competition across markets and subjecting it to specific obligations); or broadening the **essential facility** concept, e.g. as regards access to data; extending concepts of **relative/significant market power** to intermediaries; or still introducing an **intermediation power** criterion, broadening the notion of dominance by looking at how significant an intermediary's services are for access to supply and sales markets, and whether sufficient and reasonable alternatives exist. Some of the above ideas would constitute a major shift from the current setting - when considering them, it is paramount to avoid undue discrimination against specific business models and account for the positive impacts of intermediaries. Consideration of these ideas should be based on rigorous application across sectors so that any potential benefits (e.g. wider access to data) spread across society. One should also take into account other rules (like the P2B regulation), parallel regulatory initiatives that are meant to address similar concerns (e.g. the announced data act), and finally the limitation posed by applicable, conflicting provisions such as GDPR.

Our Recommendations

1. **The EU should lead an international dialogue.** Given the intersection between competition and other policies in an increasingly digitalised global economy, international dialogue is needed on these policies, focusing on the complementarity between competition, consumer welfare and innovation.
2. **Competition enforcement should be separate from other policy issues.** The boundaries between **privacy and competition** enforcement must remain clear – antitrust rules ensure that markets function well, whilst data protection laws address privacy concerns. This will help ensure that both objectives are met, and avoid the risk of assessing data protection through the prism of market power or similar competition law constructs that are extraneous to privacy. Conversely, privacy and security are becoming a competitive element in their own right. Raising consumer awareness and making switching across competing applications easier, e.g. by allowing them to port their data while ensuring it does not lead to additional security risks, will encourage competition in providing services featuring greater privacy protections, thereby lowering the cost for more secure and privacy-friendly products.
3. **Consumer welfare should drive competition policy.** While the EU competition law framework is sufficiently flexible to address new challenges, the underlying principles for the debate on its future should be **interoperability**, **transparency**, **non-discrimination** and consumer **choice**, ensuring at the same time the protection of IP rights and avoiding hurdles for innovation. Regulators should in particular focus on **consumer welfare**, not on protecting competitors.
4. **Competitive dynamics need close assessment.** Market definitions should better reflect competitive dynamics, and recognise that digital platforms compete globally. Deeper analysis of **network effects** is needed – markets will not necessarily be less competitive or less innovative, as medium and smaller platforms continue to help customers reach a wide range of goods and services. Competitive dynamics across platforms offering different core services to the same customers should also be assessed.
5. **Company conduct matters.** Data should be assessed under competition law as any other asset that companies compete with in the market but taking into account how it differs from other assets due to its non-exclusive nature. Enforcement should focus on a company's conduct and not on structural issues, like the amount of data a company holds, or its size. Policymakers should particularly consider potential unintended consequences of an unduly strict approach to big data, avoiding new rules for every new product or business model, which might stifle more innovative or effective models. This is particularly true for **AI applications** – as these vary widely, policymakers should recognize the importance of sector/application-specific approaches; one approach will not fit all AI applications.
6. **Data portability should not be dealt with in a one-size-fits-all approach.** Consideration of issues related to **switching, access to data and portability** should take into account the data at play, the operator concerned and available alternatives. Every case should be assessed on its own merits, avoiding a one-size-fits-all approach. In order to increase competition in the markets and avoid lock-in effects and switching barriers, portability of data should be enhanced, provided this does not affect IP and trade secrets. Imposing rigid standards to enable data portability could however have unintended consequences, hardwiring the status quo, forestalling innovation and precluding future portability.
7. **Considering platforms' enabling capacities for consumers and other businesses.** As the notion of **platform** refers to very different models, policymakers should consider the role that specific platforms play in the markets they operate, the value they create, their relationship to customers and competitors, and the possible alternatives – ensuring markets remain open to innovative challengers, and keeping consumer welfare and economic efficiency as final objectives.