

CONSULTATION ON BEST PRACTICES REGARDING THE NEW REGULATORY FRONTIERS SERVING DIGITAL TRANSFORMATION

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The digital economy unquestionably offers consumers new and exciting possibilities, as well as fascinating challenges on which regulators need to focus particular attention.

Consumers face new challenges linked to the broad availability of new information and communication technologies (ICTs) in the form of numerous online and offline products and services (devices, equipment, applications etc.). In order to protect users in this open, transparent and inclusive digital world, it is essential to define in advance new policies and regulatory measures to complement solutions and initiatives involving co-regulation and self-regulation with a view to educating, raising the awareness of and empowering consumers and promoting accountability among them.

It would be helpful to achieve a balance between the rights of all stakeholders in this new digital process to ensure that everyone, users, businesses and governments alike, can enjoy the benefits of digital. Consequently guidelines on best regulatory practices serving digital transformation should be developed and approved in order to protect consumers' and governments' interests, while ensuring equal opportunity for existing and new market players, while promoting a collaborative and harmonized regulatory approach.

1 Regulatory framework for digital transformation

Governments must continue to play a leading role in the protection of consumers at all levels through the development of dedicated legislation and government policies, such as national ICT and universal access policies, specific consumer protection legislation, cybersecurity and cybercrime legislation, including on child online protection, regulations on quality of service and electromagnetic exposure limit regulations, as well as complementary initiatives, such as guidelines on prohibited acts and best practices in tackling various issues, such as hacking, transmission of personal data (between service and/or content providers) and online fraud.

In addition, measures can be prioritized to establish self-adaptive regulatory mechanisms in order to ensure a secure and reliable cyberspace. Cross-border initiatives might also be developed to foster greater cooperation and the implementation of complementary policies on an international scale.

Regulations should redefine legitimate consumer rights and interests, which include but should not be limited to: access to publically available information and services over the Internet, quality of service, privacy, confidentiality and protection of personal data, the possibility to opt-out of functions and services; the right to file a complaint; number portability; and intellectual property rights. Regulators and policy makers should strive to protect those rights universally and equally within the scope of laws and regulations.

To ensure the proper and effective implementation of measures, regulators and policy makers must establish effective mechanisms for cooperation (such as memoranda of cooperation) with dedicated consumer protection authorities, service providers and other relevant bodies at the

national, regional and international levels. In doing so, it is crucial to define roles and responsibilities clearly and to share information and resources, as appropriate.

Furthermore, multinational cooperation and harmonization are required in order to deal effectively with cross-border phenomena such as issues related to content and services provided by “over-the-top” players (OTTs), such as privacy, online fraud and cybercrime related to e-commerce and social media activities. Likewise, specialized regional entities can be empowered to deal with matters affecting multiple countries in a harmonized and focused manner.

Thus, establishing an integrated legal system for effectively protecting personal data and information is paramount for the digital world to thrive.

OTT service providers, and social media-based service providers in particular, are committing themselves to greater transparency in data processing and request the consent of their customers before sharing their data and provide users with the option to clearly choose the nature (public or private) of their communications. Users should be able to make informed decisions about the degree to which their data can be accessed by others and the use that third parties may make of that data.

The online world exposes children and youth to specific risks, notably in terms of adult-only content and sexual predation. Thus, it is important to supplement existing legal tools with a series of measures that include public advocacy, dubious content alerts and industry self-regulation initiatives while engaging further efforts in consumer education for targeted user groups, such as women, children, youth, parents and teachers.

Establishing a cybersecurity emergency response team (CERT) can be extremely beneficial to consumers in terms of providing, inter alia, an early warning service on threats and possible cyberattacks to both the general public and government agencies.

2 Commercial and economic approach

Legal and regulatory frameworks need to be kept open, forward-looking, neutral and flexible to allow leveraging on new technologies, innovative services and new business practices, such as cloud computing, social media, mobile broadband, “Big Data”, and the Internet of Things, for users to benefit from a variety of services provided at all levels of the ICT markets.

With regards to the storage and transmission of information, regulated telecom and ICT market players and OTT service providers not subject to regulation should be treated on an equal footing when it comes to the enforcement of legal instruments concerning the protection of consumers and their data.

Private sector enterprises have a vital role to play not only in ensuring transparency and accountability in their business practices, but also in willingly adopting measures geared towards protecting the rights of consumers, such as protecting personal data, fighting unfair and misleading mass advertising, spam, the permanency of data and child online protection.

Regulators should encourage the development of Codes of Practice for service providers, including OTTs, to ensure that content, offer, promotion and operation of services comply with all the rules of fair and healthy competition.

It is good practice to legally prohibit the use of general terms and conditions that provide to the customer’s detriment. Furthermore, unjustified and disproportionate differences between the

rights and obligations arising under the contract for ICT services should be prohibited irrespective as to whether or not it was concluded online.

There is a need to draw up transparent rules on the terms and conditions for concluding contracts online, the form of such contracts as well as the related procedures (e.g. user identification and order confirmation, cancellation and termination).

3 New technologies

A series of measures can be taken to ensure that the consumer has easy, reliable and affordable access to ICT services and web content. This could involve developing and regularly reviewing minimum quality of service standards and specifications of new technologies and services; monitoring the activities of network service providers; regularly assessing the quality of telecom/ICT services and publishing the results.

ICT regulators should be proactive in leading promotional, educational and awareness raising campaigns for stakeholders on the benefits and challenges of a permanently connected broadband world. At this stage, it is important to recognize the need to protect and educate consumers with different access needs who may be particularly vulnerable to deceptive commercial practices or have difficulties understanding proposed terms and conditions of service (e.g., the illiterate, the disabled, children and youth). In addition, a bottom-up approach targeted at citizens through the involvement of schools, community centres and NGOs – particularly an approach supported by social media – could greatly contribute to raising consumer awareness. Also, it is necessary to create discussion forums bringing together all stakeholders, including representatives of consumer associations, allowing consumers to take part in the decision making process and the development of policies and regulations. In such an approach, consumers are able to make themselves heard in an ongoing dialogue.

Regulators need to ensure that all service providers make available timely and accurate information on their products and services in a clear, transparent and comparable manner that is conducive to rational decision making. Consumers would thus be in a position to understand not only their rights and obligations, but also the nature of the services, including the prices, and how they are calculated, and the quality of service provided. All regulations related to the consumer's right to information should be systematically and regularly updated so that they can be enforced in practice.

ICT regulators are increasingly seen as a partner to market players and an advocate for consumers' rights. Their decisions are taken based on evidence and technical expertise to foster access to and use of ICTs, competitiveness of the markets and overall social and economic development.

It is, therefore, necessary to reconsider the mandate of ICT regulators with a view to strategically strengthening their enforcement power to respond to the challenges of the dynamic digital environment both through collaboration with structures such as banks, central banks, competition and price and quality control services etc. and through the harmonization of national texts with international, regional and subregional texts.

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