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From: Trio Presidency
To: The High Level Working Group on Competitiveness and Growth
Subject: Data and competition policies related to platform economy

Delegations will find in Annex a note on data and competition policies related to platform economy, in view of the meeting of the High Level Working Group on Competitiveness and Growth on 11 April 2019.

Data and competition policies related to platform economy

1. This note is intended to provide input for the debate at the High Level Group on Competitiveness and Growth (HLG) on 11 April 2019, and in view of subsequent discussions concerning the future policy priorities in the field of growth and competitiveness. The aim is to discuss data and competition policies, as well as particular related issues in the platform economy¹, highlighting opportunities and challenges for Europe. The European Commission has already done ambitious work on data and competition policies.
2. The objective of this paper is to set the scene for Europe illustrating how data driven economy can contribute to global competitiveness of European businesses. The discussion will serve as a continuation of digitalisation themes previously discussed at the HLG, latest on 24 January 2019 on Artificial Intelligence. In the policy debate, access to data, data protection and ethical standards were highlighted, as well as the relation between data, AI and competition rules.
3. Data and platform economy is a key success factor for Europe to sustain its competitiveness, and it holds a great potential for the EU's industrial success and digital economy. Data driven business models and data enhanced manufacturing processes are among the key drivers to accelerate European productivity, growth and employment in the global context as well as to ensure that Europe retains its top position as a base for manufacturing excellence.
4. Global competition in the digital era demands focus on the quality of data, and a balance to furthering access to data, data transfer, use and re-use of data. Enablers such as interoperability within and across sectors, data standards, frameworks for data exchanges and data markets are needed to enable data flows as well as to allow European enterprises to make use of the EU's vast data pools.

¹ Terms data (driven) economy and platform economy are used in this context to describe broadly the use of data and digital platforms in all economic activities.

5. Increasing real time availability of data will change the operating environment towards Real Time Economy², most concretely in business processes. Also, flow of real time data can be crucial in sectors like automated transport, manufacturing and maintenance processes, health technology and e-commerce in various sectors.
6. Discussion with stakeholders in all economic sectors is important in order to promote the use of data as well as to increase the capacity to use data for innovation and efficiency. All new initiatives concerning the processing of data should aim at making data accessible with interfaces that ensure interoperability in a technologically neutral manner³. This will also contribute to creating a favorable environment for new companies to enter the market.
7. Efforts to develop a human-centric data economy in Europe should be strengthened by ensuring efficient implementation of the General Data Protection Regulation (GDPR)⁴ including the right to port data. The EU's vision for 'data sharing' should be purpose-driven and seek to increase the re-use of data beyond the purposes for which the data was originally collected. The European Commission should continue putting in place mechanisms to encourage and to incentivise sharing, joint use and pooling of data. Improving access and use of both non-personal and personal data in a manner compliant with competition rules would promote the EU's competitiveness.

² Real-time economy is an environment where businesses are mainly in digital format and completed in real-time.

³ Such as the use of the Application Programming Interfaces (API) for datasets of high-value for the economy and society, as envisaged in the updated-re-use of public sector information directive (PSI).

⁴ Although the EU legal framework for data protection allows some matters to be regulated nationally, the overall harmonised data protection legislation makes it easier for enterprises established in or providing products and / or services to individuals in the EU to conduct business and to ensure the same and high level of data protection throughout the EU. This is a competitive advantage in a world where individuals are increasingly aware of their rights and risks in relation to the processing of their data.

8. The success of global platform companies provides a learning opportunity on data-driven innovation to raise user attractiveness and service promise as well as scalability of services. The European data economy would be well placed to learn from their ability to invest in data and to use it for developing their business. At the same time, we need to ensure a level playing field for new innovative companies and SMEs to compete. Global platform companies have gathered vast amount of data about the users, which could in certain circumstances give them advantages for entering new markets and creating new services. In order to gather advice and expertise on the evolution of the online platform economy, the European Commission should continue its analysis, notably through the Observatory of the Online Platforms Economy, and inform the HLG regularly on the progress of their deliberations.
9. In terms of strategic digital and data autonomy for Europe, strengthening the capabilities and skills for data-driven innovation of European companies in the wider digital economy is critical. European efforts in this domain should be further supported by European Union's multiannual financial framework 2021-2027 (e.g. Horizon Europe and Digital Europe) proposed by the Commission.
10. With the rapid scalability of online platforms, some companies may have gained significant market power based on the amount and value of data they hold. In addition, the core feature of the online platforms business model is the ability to create direct and indirect network effects at a large scale. It must be ensured that companies do not misuse any potential dominant position, restrict competition and prevent other companies from entering the market.

11. It is not excluded that the behavior of online platforms may be assessed under article TFEU 102 concerning the prohibition of abuse of dominant position. A dominant position is defined in relation to the relevant market in each individual case. If the company is considered to have a dominant position on the market, in certain circumstances, it may abuse its dominant position. This could be the case, for example, when a company treats its customers differently in similar situations or when it unduly prevents potential competitors from entering the market.
12. The purpose of EU Merger regulation is to prevent mergers that significantly impede effective competition on the relevant markets. Under the EU Merger Regulation the Commission examines mergers where the combined turnover of the merging companies is above certain thresholds. However, in the field of data economy, it might be the case that a company has a high market value, but it does not yet have much turnover. Cases involving the acquisition of data these companies may thus fall outside the scope of the Merger regulation. The Commission is currently evaluating whether or not the turnover-based thresholds of the EU Merger Regulation allow to sufficiently capture all transactions which may have a significant impact on competition in the EEA markets.
13. From the perspective of the EU competition rules, it is also important and sometimes very challenging to distinguish data and a product which have been developed by using data resources. However, this division is crucial as the relevant market may be defined differently in these two situations affecting also the outcome of an individual case under EU competition rules.

14. Data, including personal data, can be crucial to develop new and competing products and business opportunities. It is therefore necessary to ensure a good interaction between GDPR (and data portability, privacy and security rules) and competition rules. One example of using GDPR to enhance competition would be to ensure that users are given tools to control their data and to allow them to grant access to their data for other service providers, thus levelling the playing field from the competition point of view. The fair data economy should be based on this notion, and the focus of consumer choice towards who offers the best services, privacy and security. The future competition is about peoples' trust and can lead into new business opportunities with the reusing and combining data from various sources. Europe now needs commonly agreed concrete principles, practices and tools to make this opportunity a reality.
15. The future data policy needs to build on the European framework for data protection and leverage it as a driver for novel and powerful types of services that represent European values. When developing new business and operating models for Platform Economy, the human-centric data models e.g. MyData concept could serve as an alternative model to the centralised data aggregator model of platforms. The Commission under its Next Generation Internet and Data Economy initiatives supports work at this area, and interesting initiatives are underway in the Member States and across borders.

16. The European Union should aim at creating a business environment capitalising on the use of data and online platforms in relation to the competition policy to foster European economic growth. Data-driven economy is a cornerstone for the EU's future success in the global market. Europe needs a whole set of policy actions related to data economy, i.e. access to data, data sharing, use and re-use of data, interoperability, trust as well as integrity, in addition to a world-leading skill set and expertise in building data-driven innovation. In this context, next steps would be to create a strategic governance model for data-driven economy together with the competition policy and platform economy to boost European businesses and value chains. In practice, the governance model and its implementation should be included in the next Commission's work programme.

Questions to be discussed:

- 1) *How can we boost Europe's ability to benefit from data and platform economy opportunities and their potential to improve economic growth in Europe?*
- 2) *How do you see the role of competition policy in the development of data economy?*