

Openforum europe

open, competitive choice for IT users

« Towards an Open Digital Single Market »

An OFE Vision Paper

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Introduction

The European Commission has announced its planned programme for a Digital Single Market (DSM) and has invited stakeholder comment and input. OpenForum Europe (OFE) is a not-for-profit, advocacy organisation focussed on an 'open, competitive market for the IT user', so 'openness' is core to OFE's beliefs and credentials.

The Commission has made it clear that the key objectives for DSM are economic growth and jobs, global competitiveness, and improving cross-border opportunities for businesses and citizens. Digital is seen to offer the greatest opportunity amongst all sectors, **but time is not on the Commission's side** – by its very nature, the digital market is fast-moving, constantly refreshing technology, but also reworking and reinventing previous business models. Little will be gained by 'looking in the rear view mirror', but everything is to be gained from **being bold and looking to intercept new thinking**.

As the EU correctly focuses on the minimization or elimination of barriers within the EU, there must be recognition that markets are ever-more global. As such, EU policy makers must also consider the positioning of the EU with global policies and markets to avoid where possible the potential for needless or duplicative burdens and unintended consequences which might diminish the international competitiveness of the EU.

Big Data, Cloud Computing and the Internet of Things create a core of emerging technologies and business models that will support both economic growth from, and societally beneficial uses of, ICTs across government departments, business sectors and many other segments of society. These technologies and business models are essential to supporting a growing digital economy and flourishing information society, which are the twin pillars on which the Digital Single Market is built.

In this summary paper, OFE recommends a **three-pronged approach**:

1. An **open culture**, seeking to build collaborative communities, measures and innovative adoption of new opportunity, allowing Europe to maximise its opportunity in what is by definition a global market. Trust and confidence are essential, but policies founded on protectionism and a 'Fortress Europe' approach have no future in a digital world.
2. A light-handed approach to legislation, seeking only to ensure that there is a **common framework** for all to operate within, on an equal footing, removing barriers to entry or cross-border growth, and encouraging entrepreneurial development. Ensuring a level-playing field in the marketplace is essential to reaping the full benefits of competition and innovation.

3. Within the public sector, encourage best practice, take a ***digital by default approach***, and internal take-up of innovative and inclusive technologies through public procurement as a way of kick-starting opportunities and providing value. Maximising competitiveness and speed of completion should be key.

Success should not be measured by whether there are one or two European 'Facebooks', or by simply counting numbers of patents awarded, but both by whether the overall digital market has grown for the benefit of the citizen, and whether European IT has developed from the bottom up, rather than top-down. Have we seen a significant growth in local services businesses, as well as national players able to operate across Europe and globally?

What is clear is that attempts to protect the status quo, and existing business models, will be a major hurdle. Past lock-in within ICT to single supplier solutions has cost the European public sector dearly.

As IT and Telecomms technologies continue to merge, we see an increasing clash between the differing business models. Telecomms has traditionally developed models built on creating value within the technology, whereas IT is now predominantly building innovation on the technology. For a Digital Market, Europe should look no further than the innovative success being built within a content and data driven market enabled by a truly open Internet.

“There will be vested interests fighting us all the way. We will be moving one step at a time.” -
Andrus Ansip, Vice President of the European Commission

OFE's Openness Principles in the context of the Digital Single Market

OFE would argue that these Principles should underpin the whole essence of the approach being taken in developing the Digital Single Market in Europe.

There is general consensus in both government and businesses that 'Openness' is both pivotal and positive. Few would seek voluntarily to be labelled 'closed', and inevitably 'open' can be tagged to a product or service by many companies seeking a little 'magic dust' in support of their marketing - but maybe with little attempt to justify and evidence the differentiation which they seek.

The “Open” definition is also a potentially critical dynamic in the competitive landscape of the ICT industry. As a result, there are various points of views, and conflicting definitions.

So how do we come to terms with what is 'open'? How can 'openness' be leveraged to support dynamic, responsive, and cost-effective government and business? Is it now the time to seek consensus on the use of the term 'open', and how it can be used via a set of Principles applied in the context of key ICT areas such as in Standards, Cloud, (e)Government, Data and Procurement?

Openness is not a political statement, development method, or assessment of competing economic models. Openness is simply a means to an end. It is essential that we do not lose sight of objectives, including:

1. Providing choice to consumers, including options (for example, in terms of cost or accessibility) that eliminate digital exclusion. This is the principle of *User-Centricity*. Within the context of the Digital Single Market, this principle underpins a pan European, cross border citizen led approach opening up the digital opportunity to all.
2. Providing a level playing field between producers, forcing them to compete on functionality and quality, and ensuring constant innovation. This is the principle of *Competition*. Within the context of the Digital Single Market, competition ensures that not only the European digital market incurs no unnecessary barriers to entry, thereby promoting fair and equal competition, but additionally that European players can compete on a Global stage. It demands a legislative and collaborative framework suitable for the future, not built on the past.
3. Enabling the construction of complex combinations of products and/or services from different providers, where parts of the combinations can be upgraded or replaced when

better products or services become available in the future. This is the principle of **Flexibility** (which implies the concept of *interoperability*). Flexibility can help in achieving a Digital Single Market by ensuring full interoperability of solutions, ability to mix and match, and encourage new innovation through technology, service or business model - without lock-in to past practice.

4. Enabling the construction of products, services and combinations thereof that are sustainable in terms of access to information, cost and impact on the environment. This is the principle of **Sustainability**. This is a result of good practice within all levels of government, ensuring that decisions are taken in a way that guarantees continued value for money, implying regular re-assessments of user needs versus options offered by the marketplace.

To fully meet these objectives, some coordination is needed: coordination between providers and consumers to ensure user-centricity or between providers to ensure flexibility. For this reason, openness in a specific area implies some form of community in which everyone can participate, where no single entity dominates the debate and where decisions are taking via a transparent process. This defines an additional principle, the principle of the (open) **Community**. Within the context of the Digital Single Market, this principle sets the scene for collaborative action, across governments, between the private and public sector, which is likely to prove decisive. Much is said about the need to consolidate action across 28 Member States in Europe. Little is said about the 50 states in the US where similar potential issues arise. Perhaps Europe needs to focus more on its collegiate abilities, rather than seeking excuses for non-delivery?

OFE is in the process of developing and applying these high level Principles to specific focus areas. Early ones are of course Open Standards, Open Source, Open Data, Open Access and Open Internet, but they can apply additionally to areas such as Cloud Computing, Big Data, Public Procurement, etc.

Equally, we believe that they are applicable and useful guidance for the completion of the Digital Single Market. These Principles can then be applied both the specific focus areas addressed under the programme of the DSM, and in the context of the three pronged approach proposed by OFE:

Our recommendations

1. Open Culture

European Member States have proved tardy in adopting pan-European initiatives ahead of national interests, but good examples are apparent. The Interoperability Solutions for European Public Administrations (ISA) programme has provided a strong basis for pan-European interoperability and best practice sharing, but too few real examples exist of live applications that are core to public sector implementation. Are national applications for ID, health, tax, transport... etc. really that fundamentally different, so that collaborative development can not be considered?

A key deliverable of ISA is the European Interoperability Framework. This is due to be extended, expanded into areas of interoperability covering greater functionality of common access, identification and authentication.

A root cause is one of culture, where local, in-house development will always take preference. But in a Global digital marketplace is such thinking even viable, let alone preferred? Is the first step of increasing collaboration within Europe across national boundaries not an essential, non-debatable first step? Within industry the concept of Open Innovation, introduced by Professor Henry Chesbrough, created much interest where innovation and value was built not just within a company but by focussing on its network of partners. The rapid take up of Open Source in the IT market is but one example of how a collaborative approach can revolutionise a market. More recently OFE has developed the Open Innovation thinking applied into the Digital Economy through a series of White Papers and [publications](#) from its OpenForum Academy think tank, based on contributions from a global network of OFA Fellows. Key is an open, collaborative approach to development, access to knowledge and IP, and value creation.

“Copyright rules should be modernised in the light of the digital revolution and new consumer behaviour.” - Jean-Claude Juncker, President of the European Commission

Trust and security have already been raised as an essential pre-emptor to citizen acceptance of Digital. Cloud computing and Big Data have both been identified as major technological steps which act as major market discontinuities. To be successful, both depend on user trust and confidence in managing their data and service supply. In an open, competitive market there is limited role for legislative mandate on trust and security-but far more on encouraging best practice and providing qualified choice.

The DSM will, by definition, be data driven, and in the 'post Snowden' period much has been said

about data sovereignty, particularly for cloud-based services. Pragmatism, however, indicates that with the exception of national security based services, little benefit will be realised by physical restriction of location.

Limiting boundaries to service supply is simply for yesterday's markets. A single telecommunications market, visible to the citizen through lack of data roaming or unjustified online geo-blocking would seem to be early signs of intent. It is difficult to understand the response of the European Council which seems to prefer to defer implementation of such measures and whether these are more about protecting national proprietary interests, rather than looking to the future.

On the eve of starting the dialogues for the Network and Information Security (NIS) Directive, Europe needs to make sure that the efforts of improving cross-border e-commerce, cloud computing and other pan-European services are not nullified by the cybersecurity negotiations. If the implementation of the NIS Directive results in a differing set of definitions and standards among Member States, service providers will be discouraged to offer pan-European services and this will hamper the achievement of a truly European digital market.

An open culture can only be built on an open infrastructure that allows full interoperability and portability of data. Lock-ins to past single supplier solutions have not only proved costly to public procurements, but have demonstrably limited the ability to innovate in the future. New business solutions, based for example on Cloud, provide a high risk of re-introducing lock-in, both via commercial contractual practice or through technical proprietary interfaces. Vigilance in the use and communication of best practice in procurement in the use of Open Standards is but one practical step that can be supported.

In a collaborative environment Europe needs to look to all systemic players worldwide in the development of appropriate interoperability standards. The role of global fora and consortia will remain in a dominant position rather than formal Standards Development Organisations where timeliness of delivery remains a concern. Europe, rather than seeing this as a threat to its competitiveness, should fully embrace this opportunity, recognising the existence of truly open, global standards can create and maintain the competitive market that Europe seeks.

The Multi-Stakeholder Platform is proving an invaluable and effective mechanism on bringing together the interests of all stakeholders involved in the European market, minimising overlap and maximising value..

Specific Recommendations:

1. The European Union should ensure that any review of the European Standardisation system gives greater emphasis to maximising the opportunity of adopting truly open, global

standards, including those produced by Fora and Consortia. It should also adopt an ambitious follow-up to the ISA programme, actively encouraging the re-use of ICT solutions between public services and a European-level interoperability based on open standards.

2. The European Union should resist temptations of economic protectionism and data sovereignty rules. Instead, it should fully embrace its role in promoting accountability and help build trust and understanding in the way data is transferred and processed by innovative services like cloud computing and data analytics. The European institutions should recognise the importance of encryption to ensure secure data storage and management, when correlated with good authentication, authorisation and auditing. Education has a very important role to play in promoting the understanding of these complex aspects.
3. European copyright rules should be reviewed to make them fit to the new digital age and enable additional flexibility and transparency to benefit creators, consumers and digital innovation. The European Union needs to recognise that new technologies allow for new forms of creativity.

2. Common Framework

As introduced above, a single cross-Europe infrastructure should be seen as an imperative, providing the level playing field for competition and acting as a catalyst for citizen and user innovation and adoption. The Connected Continent legislative package presented in 2013 provides the basis for such legislation. Recognising the pressure to maintain the status quo from incumbent suppliers should not provide a reason to delay or to seek to modify business models – all that will happen is that Europe will be asked to compete sub-optimally in a Global market. The Commission should, however, as an alternative, seek to encourage behavioural change through research and infrastructural grants, available at a national level.

Building on that core network infrastructure is the fundamental need to preserve the openness of the internet. OFE has consistently supported the position formed of the European Parliament which has sought to ensure in statute the principles of net neutrality. Essential in that legislation is one of clear, unambiguous definitions, particularly to notoriously difficult and potentially grey areas of 'specialist services'. The Council have sought, we think entirely wrongly, to use the concept of principles to provide compromise wording. It is difficult to understand, if the objectives of the DSM are seen to be a priority, why such a route is being followed, rather than one which seems more intent on preserving business models of the past. The US government has seen similar discussions and lobbying, but most recently the FCC has published clear guidelines seeking to preserve net neutrality by giving itself the capacity to disallow discriminatory practices.

“Maintaining net neutrality is critical for the future of the Web and the future of human rights, innovation and progress in Europe.” - Sir Tim Berners-Lee, inventor of the [World Wide Web](#)

In a digital world where European culture and the creative sectors have made a substantial contribution to Europe's economy in the past 15 years with the creation of 8.5 million jobs, we have to acknowledge the new business models, based on online interaction and technological development. In addition, exceptions and limitations need to be harmonised in order to reduce legal uncertainty and encourage the take-up of new opportunities, such as text and data mining for scientific and education purposes, or the re-use of public domain works for the benefit of citizens.

As (by definition) these technologies and business models are transnational, the aim of the DSM to eliminate barriers to trade and information flows, whether policy-based, bureaucratic or regulatory, within the EU is an essential element to facilitating the diffusion and implementation of the ICTs that fuel the Digital Economy and Information Society. When considering cloud computing, resolving or eliminating these internal roadblocks, whether from problematic vestiges of existing

regulation or from new approaches to concerns related to emerging technologies, are essential to enabling the EU to benefit from the potential economic and societal benefits of Cloud Computing. Disparate policies, regulations or implementations within the EU in any number of disciplines - from data protection to telecommunication to consumer protection - can serve to increase the costs of doing business across EU Member states or otherwise fragment addressable markets. The latter issue of market fragmentation is one of the most limiting factors to providing the needed market size to justify investment as well as the ability seamlessly to move data across Member States to achieve the potential economies of scope and scale that technologies such as cloud computing can provide.

Specific Recommendations:

1. The EU should adopt strong Net Neutrality rules, guaranteeing the continued openness of the Internet ecosystem, where no single actor can act as a gatekeeper.
2. Copyright exceptions and limitations need to be harmonised throughout the EU, in order to reduce legal uncertainty, and copyright protection should not be unduly expanded, directly or indirectly.
3. Efforts should continue to be made to combat vendor lock-in and to level the playing field in public procurement of ICT. As the public sector is the biggest single purchaser of ICT in Europe, this is a concerning trend and more efforts should be made to raise awareness and educate public procurement officials around this issue.

3. Digital by Default

OFE strongly believes that the Public Sector can have a significant impact on the market through two routes. Firstly, in the establishment of the strategy and policy in the market, primarily through legislation and research actions. And secondly, through its huge, yet underused power as a procurer of solutions. The public sector is by far the largest purchaser of ICT, with an estimated spending of €94 billion in 2007¹, yet seems largely unaware on how this could be used to influence both market behaviour and citizen/end user take up of Digital.

Digital by Default as a term is used here to simplify a new way of solution building and procurement where the assumption is made that an (online) digital solution can best be followed, with the need either to:

- re-engineer a past monolithic single supplier solution,
- introduce 'agile' development techniques,
- reconstitute the contract elements into bite-sized chunks allowing greater competition for SMEs,
- pilot innovative new thinking,
- create innovation, now and in the future, or
- lower costs.

Typically this would be introduced alongside one or more other programmes, such as a 'Cloud First' approach.

OFE believes that Digital by Default should be used both as a model and open culture through both its Research and Development programmes, and in a more forward and collaborative approach to procurement. A key potential benefit is not only the avoidance of lock-in to the past structures, but also of timeliness of result.

On Research and Development, OFE would recommend that all current and planned research priorities be carefully reviewed, in order not only to reduce output timescales and reduce overlap between projects, but also to test the potential impact of each project in terms of deliverables, rather than necessarily core technologies.

In procurement, the public sector seems to learn little, even in following existing IT policies and

1 <http://cordis.europa.eu/fp7/ict/ssai/docs/study-action23/d2-finalreport-29feb2012.pdf>

strategies. OFE has for some years been monitoring major IT procurements against use of trade marks, yet still some 15% of tender notices for software issued by European public authorities include a reference to trademark², which indicates a discriminatory effect. The European Institutions themselves, in their own use of IT, have an even greater responsibility to support and endorse EU thinking, in 'practicing what they preach'. DG DIGIT have made strides to improve their use for example of open standards, open source, and avoiding the use of 'negotiated agreements' which typically have been used to avoid many procurement rules. In Parliament, the use of live video streams now for the first time allows all citizens to observe Parliament without recourse to the use of single proprietary solutions. But the wider situation is far from ideal. The recent Cloud contract has imposed restrictions which are at odds to the work being done elsewhere in the Commission on policy. Many of the applications forms for EU funding demand the use of the Adobe pdf format for editable documents (rather than just for archiving) but where the application to be used is [only available](#) from one proprietary supplier, and not at all on certain operating systems.

Specific Recommendations:

1. The European Union should continue its efforts to accelerate its own transition as well as that of Member States' towards full electronic procurement and e-signatures. These should become the default option going forward.
2. Inclusivity and interoperability should be high priorities in the development and deployment of new e-government services. User-centric design and use of Open Standards should be the norm, so that no EU citizen or company is forced to use a piece of technology from any single vendor just to communicate and interact with its administration.
3. The European Institutions should lead by example and always be the first to apply any principles and specific recommendations addressed to Member States and other public administrations.

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About OpenForum Europe

(OFE) is an independent, not-for-profit organisation, supported by major IT suppliers including Google, IBM, Oracle and Red Hat, as well as SMEs, user and consumer organisations, and national partners across Europe. It focuses on delivering an open, competitive ICT market. Views expressed by OFE do not necessarily reflect those held by all its supporters.

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- 2 OFE Procurement Monitoring Report 2014 – 1st Snapshot. Available at:
http://openforumeurope.org/openprocurement/openprocurement/open-procurement-library/Report_2014_1st-Snapshot_final.pdf