The Digital Single Market:
The viewpoint of a Polish firm that mines personal data from consumers in central Europe

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Summary:
The EU's Digital Single Market policy has to find an answer: how will improving the transparency and protection of consumers' personal information enable the firms that own and process data to draw profit from this digital asset? How will new methods for creating value from their personal data make individuals wealthier? What do corporations and customers expect from a Digital Single Market in Europe?

In 1989, Poland witnessed the fall of the Berlin wall and discovered a new world of consumption. New forms of commerce would soon radically alter consumption patterns. Big European retail chains have set up so many outlets that traditional small shops have nearly been forced out of business. Shopping malls and big commercial centers have shifted the center of gravity in Polish cities by replacing downtown shops. To these new meeting-places correspond new consumption patterns.[1]

At the start of the new century, the Internet revolution marched through Poland, its first effects hitting consumption patterns. No one had previously heard of the websites that would figure in the front ranks of e-commerce. At present, Allegro (the Polish equivalent of Amazon) is the top-ranking operator, accounting for 50% of on-line sales in the country. Poles have gone from nothing to everything electronic in a very short time span. Polish life has been deeply changed. The era when people did not even have telephones in their homes yielded to a new era when 90% of inhabitants have cell phones. Poles have gone directly from coins and paper money to bank (credit/debit) cards without going through the stage of checkbooks! Payment terminals "without contact" are, in 2016, current in Poland, more so than in western Europe. All this shows how fast the public has adopted the new technology. Thanks to easy access to digital devices, the country did not experience a long technological transition of the sort observed in the lands of "old" Europe.

In Poland, firms providing services to distributors (such as Axia from 2000 to 2010, and Axia Digital since 2011) have been the hub of this trend, which has affected the retail trade and consumption patterns. They have formulated digital service offers to retailers who have been forced to adapt to the new situation. The Internet signaled a turning point for most of them. The companies that did not make this sharp turn have vanished or are vegetating while waiting for better times, which, for sure, will never come. The others have dived into the Internet wave, with doubts of course; but have managed to reorganize their activities. This forced dive has given some firms the opportunity to propose new services in line with market expectations.

[1] Article translated from French by Noal Mellott (Omaha Beach, France).

By force of circumstance, these companies have been led to process data about consumers, who have made purchases after a multichannel itinerary over the web. Several types of data (declarative or behavioral) have been collected in- and outside the country. Their quantity and quality represent a potential wealth for the companies that have collected them, on condition that they know how to process and store them for later use.

In the reflection of the data collected by firms are the consumers who have transmitted the data to them. This is the origin of another important digital asset for firms: the consumer's "permission" or authorization for collecting data, itself a reflection of consumer confidence in the retailer. This authorization is a volatile asset, since it depends on the customer's propensity to give it to a salesperson or a brand name. At stake for retailers is to keep this confidence as long as possible.

How can the European Digital Single Market (henceforth DSM) stimulate the development of the transactions and authorizations that come out of a mutual agreement between e-consumers and the websites that manage their personal data?

Customers' personal data, a corporate asset for recognition by the DSM

We all know businesses with physical points of sale, and are familiar with the legal concept of goodwill, which refers to the customer base at the point of sale. The potential goodwill figures as an asset on the books: its value is set in line with definite legal and accountancy rules. The only source of regulation about an e-business's goodwill is jurisprudence; but it is not very precise about the criteria (and their weights) to be used to evaluate this asset.[2]

Several questions arise about how to assess the customer base of an "on-line showcase". On line, customers are anonymous and volatile; the seller does not know them. A customer might make a purchase in France today but in Germany tomorrow, without any physical or logistic restrictions. However the idea of a "local digital customer catchment area" does, however, exist through services, such as Click & Collect or Web-to-Store, that assign a customer to a local area, on a scale equivalent to a physical point of sale.

New tools for customer relationship management (CRM) facilitate digital interactions, thus boosting the collection of personal data from customers. These interactions are increasing in quantity, quality and complexity. They are declarative (surveys, subscriptions, records) and behavioral (on-line tracking, transfer of shopping carts, the analysis of purchases, website recommendations to other potential customers, etc.). For two years now, Polish retailers, whether of the brick-and-mortar type or "pure" e-players, have been turning toward these strategic tools in the hope of increasing sales and the worth of their firms.

The DSM should channel these trends in data collection so as to avoid eventual aberrations, such as poor data management or the fraudulent use of data, when they are sold without the customer's consent or transferred, unawares, to the Internet giants.

To pass their digital assets (the customer base) as an asset on financial statements, books, firms have expectations about a single European regulatory framework. Regulations should favor e-business practices for:

- facilitating the right procedures for collecting data on sales prospects and customers;
- structuring customer data;
- making the data usable so as to increase the return on investment (ROI).

[2] See CGVExpert, "Vente d'un site Ecommerce et cession du fonds de commerce". Available at: http://www.cgv-expert.fr/article/vente-ecommerce-cession-fonds-commerce_52.htm

The regulations stemming from the DSM should allow for precise uses of processable data in any European country. Furthermore, the same regulations should apply to the data collected by firms outside Europe when they intended for use inside Europe. In other words, it is necessary to have good regulations for collected data, processable data and processed data.

A Polish leader in the retail sector is about to launch plans for a crossborder e-business in 2017: Germany, the Czech Republic, Slovakia, Lithuania, Ukraine, Belarus, and Russia (via the Kaliningrad enclave) — four EU member states and three countries that are not. This retailer wants to increase his firm's worth by increasing its sales and enlarging its customer base. How should data about this customer base be structured and managed so that they can be processed without running the risk of sanctions because of poor business practices? How to make sure that the retailer's financial investment figures clearly on the firm's financial statement? What are the opportunities and drawbacks of EU regulations both inside and outside the Union's borders? What level of security is to be applied to data?

EU lawmakers might think that restrictions should concern only merchants, not customers. After all, if a seller does not collect data, tough luck for him! Besides, that will not stop him from doing business… But we should not forget that the other party, customers, has high expectations. The level of expectations on the Internet is quite different from in brick-and-mortar stores. Since on-line customers are free to buy where and when they want, they would like to receive personalized offers. This is the only purpose for which they accept to communicate personal details, and continue doing so. Lawmakers should not, therefore, see the merchant opposite the customer. They should see them together, joined in a community of interests.

The DSM should facilitate relational processes through an adapted set of regulations. As much might be said about data protection and the transparence of the regulations indispensable for fostering communication.

The customer's personal data: A potential asset for low-income persons

Having seen how the Internet revolution has generated a new digital asset for firms, let us turn attention to how it has created for each individual what we might call a personal digital asset. Each individual corresponds to a set of personal data that constitutes an asset for a firm. Does this chain of facts create a new source of wealth for the individual?

To whom do our data belong: to ourselves or to those to whom we have communicated them? Is the act of communicating personal data a transfer or a mere sharing? Can we not imagine that individuals have the likes of intellectual property rights on their data, even though personal data result, in fact, not from work but from one's way of being and behaving?

In Europe, we have all been "formatted" to work for the purpose of creating net worth and forming a personal estate. The Internet opens a new perspective for generating an asset as part of one's personal estate without actually working (in the usual sense of this word of having an activity). Starting from the assumption that everyone lives by performing actions, we can quite well imagine that firms, governments and organizations are interested in measuring these actions and linking them to an identification of the individual, the goal being to produce money-making data.

The principle of paying for users' actions already exists in the form of the apparently "free" services or programs offered by search engines or social media networks. Upon carefully reading the conditions for using Google Analytics, for example, we learn that Google claims the right to use the data communicated to the website associated with this "freemium". Using tools of this sort is, therefore, not for free. This service comes out of the exchange of a service in return for an unpaid transfer of behavioral data, which Google will be able to process. So, nothing is for free, unlike what the mass enthusiasm for new digital "apps" — "free" offers — would lead us to think.

Let us take another example: someone with connected devices at home, perhaps a toothbrush that will send information to applications to which the person has “free” access. The benefit for users is that the application will inform them about how to brush hard-to-get-to areas, how to optimize the time spent brushing teeth, etc. At first sight, users only see the health benefits. But once again, they have encountered the myth of “everything for free”.

Applications of the aforementioned sort are provided by firms such as Nest, a Google subsidiary specialized in smart software for the home. For commercial purposes, these companies collect and process data about how identifiable persons actually use a connected device. The application costs nothing in comparison with the vast potential profits that users of the connected device generate.

All this raises several questions:

- Are the “profits” shared fairly in proportion to each party’s contribution? The obvious answer is “no”.
- Are customers aware that their data can be resold to third-party advertisers? Regardless of any clause that might figure in the terms of service, the usual answer is “no”.
- Are users aware that their actions, measurable and measured, depend on them alone and that certain monopolistic giants would not exist if not for these actions? The probable answer is “no”.
- Should a responsible DSM help make users aware of their extraordinary collective contribution to the development of the Internet giants? I think that the answer should be “yes”.

A section in a responsible DSM policy should deal with users and with making them aware of how they personally contribute to the digital economy. Accordingly, discussions about the DSM should dwell on the possibility of creating a European status of “digital entrepreneur” for everyone, so that users obtain a counterpart from whoever uses their data. Would this not be an egalitarian means for creating wealth independently of the citizen-contributor’s socioeconomic status? Every European would thus have a recognized status that would provide a fair financial return for his/her contribution.

Firms’ and customers’ expectations about the DSM

Customers very much want to use the new Internet-related technology. It facilitates everyday life by improving services when making on-line purchases and by saving time, which can then be devoted to other, more valuable activities. For this reason, customers are ready to communicate and share their data on condition that the data are properly processed so as to provide them, in return, with certain advantages.

The key factors in the DSM are confidence and permission (or authorization). Consumer authorization is an asset for a firm. A firm might proudly claim that it has a customer data base, but it is even more important for it to consolidate this base thanks to the permission obtained from customers. For the DSM, the questions is: how long should this authorization last?

- The DSM should provide more protection and guarantees to consumers. Consumers must be reassured that strong sanctions will be used against firms that do not abide by the rules about the proper use of collected personal data. Creating a label of quality or a European standard seems indispensable for protecting those firms whose practices are proof of their good conduct.
- The DSM’s should provide for procedures allowing customers to withdraw, in full or in part, from relations with on-line partners. Since relations might be partially severed, the DSM must make a break with the dichotomy that leads to seeing the customer as either “in” or “out” of the relation. Nowadays, the digital means for identifying customers and for managing or sharing data allow for variable degrees of withdrawal from a relationship. The more consumers are convinced that it is easy to withdraw, the less they will make use of this possibility. Proof of this

is the low number of cancelled e-mail subscriptions to newsletters that make cancellation user-friendly.

● The DSM should oversee the territorial bounds for transferring data, bounds defined as the border around Europe. Countless data bases have been illegally transmitted to operators outside Europe, to countries with slack legislation, where customers risk seeing their data appearing on spammers' listings. It is impossible to physically prevent the fraudulent transfer of data from one country to another, but strong measures should be adopted. For instance (leaving aside the question of the intention behind the adoption of such a measure), Russia requires that data-processors (whether juristic or natural persons) stock their data on servers physically installed on Russian soil.

● The DSM must undertake preventive actions with consumers to make them aware of the issues inherent in the use of personal data. Improving consumers' knowledge and education in this regard will enable them to exercise a form of self-control so as to foil the malevolent acts fomented by third parties. A control exercised by citizens would thus reinforce the control foreseen by the DSM.

● Finally, the DSM should take the lead in restoring a balance between, on the one hand, the monopolies that operate on big data and, on the other, the European citizens who accept to communicate their personal data. What would be conducive to this restoration would be the adoption of a specific legal framework such that every individual be considered to be an entrepreneur entitled to a return as a counterpart to his/her communication of personal information, as measured by a neutral third party.

I would like to end by pointing out that consumers, though not fully aware of the issues, do have quite real expectations about the DSM. The shift toward an ethical DSM is inevitably taking place. The DSM should not add complicated requirements that impede the agility of new e-businesses. On the contrary, it must implement targeted arrangements with incentives for firms to adopt good business practices and, too, with very heavy sanctions for the others.

Finally, the DSM should be proactive rather than reactive. It will gain legitimacy and acceptance by standing in the front ranks of the combat for harmoniously developing relations between consumers and firms.

Bibliography

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