

DG CONNECT
Réunion avec [REDACTED] de L'Oréal
Bruxelles, 23 avril 2020

BRIEFING NOTE <i>(Commission Internal)</i>

Scene setter/Context of the meeting:

- You are meeting [REDACTED] of L'Oréal.
- [REDACTED] has initially requested to meet you to discuss the use of digital technologies by L'Oréal and their ambition to become a leader in Beauty Tech, relations to partner and/or competing digital platforms and their experience with the internal market.
- Given the current situation, L'Oréal has now requested to dedicate part of the meeting to the Covid19 outbreak and its impact on businesses.
- In the context of the pandemic, L'Oréal has converted its business and is now producing exclusively hand sanitizers. L'Oréal faced some difficulties in such conversion, especially concerning the request of authorisation in different countries.
- L'Oréal has also declared that the company is preserved thanks to:
 - The sale of personal hygiene products;
 - The use of e-commerce: both via online marketplaces, websites of pharmacies and drugstores or their own website.
- The company has also given its SMEs — including hair salons and small perfume shops — some financial relief by freezing payments until businesses get back to normality.
- The L'Oréal Foundation has also announced that it will donate EUR€ 1 million to its partner non-profit organisations to help the most high-risk members of the community follow the recommended safety precautions to curb the spread of the virus. The non-profit organisations will also be supplied with hygiene kits containing shower gel and shampoo, as well as hand sanitiser.

KEY messages

Online platforms:

Covid-10 outbreak and online platforms

- The Commission is closely monitoring the (re)actions of the platforms as regards illegal content and information as well as

disinformation during the COVID-19 outbreak.

- The Commission notes a quick reaction of many large platforms, taking responsibility for tackling illegal goods, content and disinformation on their platforms.
- The announced Digital Services Act intends to ensure that these principles are safeguarded also in the future. It will provide legal certainty to stakeholders on their rights and obligations when it comes to tackling illegal content online, while ensuring that the freedom of expression is protected.

The Digital Services Act Package:

- As announced in our Digital Strategy “Shaping Europe’s Digital Future” of February 2020, the Commission will propose a Digital Services Act package.
- First, the package will include new and revised rules to deepen the Internal Market for Digital Services, by increasing and harmonising the responsibilities of online platforms and information service providers and reinforcing the oversight over platforms’ content policies in the EU.
- At the same time, the Commission has committed to preserve the core principles of a harmonised liability exemption for intermediaries as well as the country-of-origin principle, which submits providers of digital services to only one regulatory oversight when services are provided in several Member States.
- Second, the Commission will further explore ex ante rules to complement competition rules to ensure that markets characterised by large platforms with significant network effects acting as gatekeepers, remain fair and contestable for innovators, businesses, and new market entrants.
- An open public consultation will be launched in the coming weeks. The Commission welcomes L’Oréal’s contribution to the consultation.

Data:

Covid-19 outbreak and data

- With a genuine common data space for health in place, measures to combat the current COVID-19 crisis could have been taken more rapidly and efficiently. The crisis shows the urgent need for a framework.
- The crisis also shows the importance of business to government data sharing arrangements to allow the use of privately held data for public interest purposes, such as public health. We are exploring the possibility of setting up such kind of arrangement with the telecommunications companies.

European strategy for data

- Data is at the centre of the digital revolution and more is to come. Data-driven innovation will bring enormous benefits for citizens, for example, by delivering personalised medicine or helping us become the first climate neutral continent by 2050.
- We have put forward an ambitious European strategy for data that intends to create a genuine single market for data, where businesses have easy access to an almost infinite amount of high quality data.
- The strategy foresees a proposal for a legislative framework for common European data spaces in crucial sectors and domains of public interest such as in health, environment, transport and mobility.

Artificial Intelligence

Covid—10 outbreak and AI

- Artificial Intelligence and robotics can contribute to the fight against the global COVID-19 pandemic. The European

Commission is currently looking into innovative solutions that can be deployed quickly, in the coming weeks or months.

- These solutions include:
 - AI-based diagnosis of SARS-CoV-2 virus and COVID-19 disease from temperature, heart rate or medical image analysis;
 - Researches for vaccines or treatments based on the analysis of databases relating to existing vaccines and antivirals;
 - Integrated intensive care units including communication between all devices, such as electrocardiograms, ventilators, pumps, drug infusers and storage of patient parameters;
 - Robots for disinfection allowing rapid disinfection and sterilization of hospital premises;
 - Robots for handling and transporting objects, to allow staff to concentrate on technical tasks and avoid unnecessary contact with infected equipment or patients;
 - Telepresence robots allowing remote communication and action.
- These existing or developing solutions could have a major impact in solving the complex and multidimensional crisis of COVID-19. The Commission will launch invitations to tender for some of these solutions (for example disinfecting robots, chest scan analyses).
- It is also important to mention the Digital Innovation Hub, DIH-HERO. DIH-HERO explores the medical needs that robotics can meet with existing solutions that can be deployed quickly.

Cosmetics:

COVID-19 outbreak and its impact on L'Oréal

- The Commission welcomes the strong engagement of the cosmetics industry, including L'Oréal, in increasing or converting their production capacity into hydro-alcoholic gels/hand disinfectants to respond to the important increase in demand by hospitals, health professionals and general public.
- The Commission continues to proactively monitor and to take action to try and solve the major problems related to logistics and supply chains which are experienced by companies, including the cosmetics sector, notably shortages of some raw materials and shipments delayed or blocked at some Member State borders.

Risk and science based policy-making – example of endocrine disruptors

- The Commission supports risk and science based policy-making and will continue to promote this approach, which means the adoption of measures relevant for the cosmetics sector, based on the opinion of the Scientific Committee on Consumer Safety (SCCS).

Proportionate regulation – example of microplastics in cosmetics

- The Commission supports proportionate regulation, a key provision of the EU cosmetics regulatory framework, and will continue to take it into account in future measures.

Fragrance allergens labelling

- The Commission services are conducting an impact assessment on the labelling of fragrance allergens in cosmetics with one of the examined options being e-labelling.

Nanomaterials

- The use of nanomaterials in cosmetics is highly regulated. The Commission is reviewing the use of nanomaterials and related provisions. A report should be adopted this year.

Defensives

Digital Services Act:

Given the Covid-19 outbreak and its consequences, will the timeline for the DSA be delayed?

- The Commission continues with its work on the DSA package as recently announced. While there may be some short delays due to the challenging times we are facing, it is also clear, as explained, that we need a clear framework that will allow us to tackle challenges as we are facing today in a coherent manner and with clearly defined rights and obligations of all stakeholders.

Data:

How would this data strategy help businesses in the EU?

- Access to data is crucial to ensure competition and to create new business opportunities for smaller and larger firms. Companies need common standards and clear rules on how data transfers should take place. This also requires investments in new technologies and infrastructures so that data is the basis of future innovative products, services and improved efficiency.
- The new data strategy will enable European companies to benefit from data generated in the EU, for example by making high value public sector datasets available for free and in a standardised format.
- Businesses should also be free to decide to whom and under what conditions access can be granted to their non-personal data. The Commission already started to address this problem with non-binding guidelines on businesses-to-business data sharing, which aimed to create fair and open markets for IoT-generated data.
- The envisaged 'Data Act' would look at different types of data sharing scenarios (both for economic and societal use), and at ways to empower individuals so that they become more involved in the data economy. This will ensure the protection of businesses commercial interests and give them a competitive edge in the world economy.

Will the Commission access personal location data in its project with the electronic communication operators?

- The data sharing agreement with the electronic communication operators will be made in full respect of European data protection rules.
- No personal data will be shared or processed as the project focuses on aggregate mobility insights that will be fully anonymised before they are shared with the European Commission.

Background

Digital Services Act Package:

Digital Services Act:

- The E-Commerce Directive from 2000 is widely regarded as one of the central pieces of Internet Regulation in the EU. It regulates Treaty Freedoms such as the freedom to provide (digital) services in the Internal Market, as well as the freedom of establishment for providers of these services. It also regulates the liability that intermediaries such as ISPs, Cloud service providers, or online platforms have for third party content, which they transmit or host. The established framework guaranteed a balanced framework helping both innovators while also protecting fundamental rights online.
- Today's services are dramatically different from 2000 (e.g. social networks, collaborative economy services, online advertising, etc.), they reach much more deeply into the society than in 2000; and the internal market is refragmenting especially for platforms, e.g. with new online hate speech laws in DE and FR.
- Following these political guidelines, Commission services (under the lead of DG CONNECT) are now carrying out preparatory work, including fact-finding and evidence gathering.

Market power/significant network effect:

- The Platform to Business Regulation was adopted in June 2019 and will be applicable as of July 2020. It was conceived as a first step measure to address certain harmful practices by online platforms and search engines and to ensure a more predictable and transparent trading environment for online business users. It also provides businesses with better redress options in their relationships with online platforms.
- As a second step, the Commission set up the Observatory for the Online Platform Economy to monitor the challenges and new developments in the online platform economy. It is supported by a group of independent experts, established by the Decision of 26 April 2018 to assist the Commission in its work.

- Based on the work of the Observatory, the Commission will reflect on the need to review the current rules and come up (if necessary) with new regulatory measures.
- At the same time, policy reflections are ongoing at international, EU and national level on how to increase and safeguard competition in digital markets and in the wider global digital economy. Several reports pointed to the need to boost the enforcement of competition law and to consider effective ex-ante regulatory measures to complement competition rules in addressing these challenges.
- The need for an ex-ante regulatory framework has most recently also been advocated by some Member States (notably NL, DE, FR).

Data:

Data economy – initiatives during the mandate 2015 -2020

In the last few years, the Commission initiated several horizontal measures relating to data. The GDPR reinforced the protection of personal data. The Regulation on the free flow of non-personal data tackles unjustified data localisation restrictions. The new Directive on open data facilitates the re-use of public sector data. The Regulation on 'Platform to Business' contains transparency obligations of large digital platforms.

European strategy for data

The data strategy would have four pillars:

- A governance framework for data and use:
 - Propose a legislative framework for the governance of common European data spaces, Q4 2020, to support decisions on what data can be used in what situations, facilitate cross-border data use, and prioritise interoperability requirements and standards within and across sectors.
 - Adopt an implementing act on high value data sets, Q1 2021, opening high quality data uniformly across the EU, in machine-readable formats. Its reuse will be for free;
 - Propose a Data Act, 2021 that would support B2B data sharing (addressing issues related to usage rights of co-generated IoT data) and govern the public sector's reuse for the public interest of privately-held data (i.e. B2G data sharing for the public interest);
- Enablers: Investments in data and strengthening Europe's standards, tools and infrastructures for hosting, processing and using data:
 - Invest an amount in the order of € 2 billion in a High Impact Project on European data spaces, encompassing infrastructures, data sharing tools, architectures and governance mechanisms, as well as the European federation of cloud infrastructures and related services, subject to an agreement on the next Multiannual Financial Framework. First implementation phase foreseen for 2022.
- Competences: Investments in general data literacy, addressing lack of skilled labour, up/reskilling of our work forces as well as dedicated capacity building for SMEs.

- Explore enhancing the portability right for individuals under Article 20 GDPR giving them more control over who can access and use machine generated data (possibly as part of the Data Act in 2021).
- The roll-out of common European data spaces in crucial economic sectors: manufacturing, climate/environment, mobility, health, financial, energy, agriculture, public procurement.

Next steps: the Commission is gathering feedback on the data strategy until 31 May 2020. Based on the input received, the Commission is planning to take further action to support the development of a data-agile economy. The data strategy foresees three legal instruments: 1) the governance framework for the common European data spaces (Q4 2020) 2) the implementing Act on High Value Datasets (making public sector data widely available, Q1 2021) and 3) the Data Act (2021).

Expert Group on Business-to-Government Data Sharing for the public interest

The European Commission has also published the Expert Group Report on Business-to-Government (B2G) data sharing. The aim is to encourage private companies to share their data with public sector bodies to tackle particular public interest purposes.

The High-level Expert Group on B2G data sharing for the public interest suggested a set of policy, legal and funding recommendations to make B2G data sharing a scalable, responsible and sustainable practice across the EU. For example, experts suggested exploring the creation of a regulatory framework for B2G data sharing, improving public awareness, participation and digital skills and investing in secure and privacy-preserving technologies, data infrastructures and the development of trusted intermediaries.

Cosmetics:

COVID-19 outbreak and its impact on L'Oréal

In mid-March the L'Oréal group unveiled a Europe-wide solidarity program aimed at supporting the medical, food distribution, beauty and non-profit industries. The French beauty giant is ramping up its production of hydro-alcoholic gels/hand disinfectants in order to bolster supplies for health authorities across France and Europe.

In this context, the Commission issued a specific guidance document on hydro-alcoholic gels/hand disinfectants on 30 March. This document responds to various requests for clarification on the distinction between cosmetic and biocide products received by many cosmetic companies, which are increasing or converting their production capacity for hand cleaners and disinfectants.

In a bid to protect small and medium-sized beauty businesses such as salons and perfume shops from folding under the economic impact of the crisis, L'Oréal has announced it will freeze payments due from its distribution networks until business picks up, and increase the frequency of payments to its suppliers where needed.

Risk and science based policy making – example of endocrine disruptors

The current risk and science-based policy-making process (i.e. the “risk assessment” is performed by the Scientific Committee while the “risk management” is made by the

Commission via regulatory acts) in place for the Cosmetics Regulation takes into account not only the potential hazard of a cosmetic ingredient, but also realistic exposure when assessing risk to human health.

L'Oréal has strong concerns that this risk-based (proportionality) approach is being questioned, in particular in the context of the debate on endocrine disruptors, especially in France, where certain actors support policy measures that are based merely on hazard (i.e. automatic ban) irrespective of whether harmful exposure levels are reached in reality.

L'Oréal stresses the need to keep a risk-based (and not an hazard-based) approach in cosmetics, as a focus only on hazard (thus disproportionate for them) would reduce the availability of ingredients (i.e. by being banned without the possibility of exemption for cosmetics) thereby negatively and unnecessarily affecting innovation/growth without any safety benefits.

Proportionate regulation – example of microplastics in cosmetics

The planned REACH restriction of microplastics intentionally added to products and covering thousands of polymers used in cosmetics, fertilisers, detergents, paints/coatings to name a few, would have disproportionate impacts on the cosmetics industry mainly due to the need to reformulate thousands of products within a relatively short time. The sector has already phased out over 97% of plastic microbeads in wash-off cosmetics between 2015 and 2020, but alternatives are not readily available for most leave-on (i.e. not intended to be removed or washed off) cosmetics and it is unlikely they will be developed by the date of application of the ECHA restriction. The cosmetics sector is advocating longer transitional periods than the current ECHA proposal of 6 years for leave-on cosmetics.

The cosmetics sector supports harmonised EU-level regulation, if it is proportionate and based on risk and scientific evidence with a true benefit to the environment, over national measures that vary in scope, leading to a fragmented internal market.

Fragrance allergens labelling

Following a 2012 opinion of the Scientific Committee on Consumer Safety (SCCS/1459/11), the number of fragrance allergens on which the consumer should be informed increased to approximately 90. Alternative ways to on-pack labelling are being examined in the ongoing impact assessment. One of the options is the e-labelling of fragrance allergens. The impact assessment is expected to be finalised end 2020/early 2021.

Nanomaterials

The use of nanomaterials in cosmetic products is highly regulated and requires pre-notification (6 months before placing the product on the market) and labelling requirements. In addition, in case of health concerns, the Commission can assess the safety of those ingredients via the Scientific Committee on Consumer Safety (SCCS). As laid down in the EU Cosmetics Regulation (Regulation (EU) 1223/2009), the Commission is preparing two documents: a status report on the use of nanomaterials and a Review of the provisions governing nanomaterials in cosmetic products; they are expected to be submitted to the European Parliament and Council by end of 2020.

Attachment



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plan europeen de sol

L'Oréal statement

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