Federal Ministry
for Economic Affairs
and Energy

White Paper on Digital Platforms of the Economic Affairs Ministry

1. Where does Germany stand in terms of digitalisation?

The digital transformation is in full swing all round the world. The technological progress is rapid and is changing the way we communicate, work, learn and live. It offers tremendous potential for improving people's quality of life, for doing business more efficiently, and for creating revolutionary business models.

Forecasts indicate the potential dimensions: according to information from the European Commission, a Digital Single Market could contribute 415 billion euros per year to the economic performance of the European Union and create hundreds of thousands of new jobs. For example, the market volume of the Internet of Things is estimated to be some 1.9 billion euros in 2020.

Digitalising industry will open up potential additional cumulative added value of 425 billion euros in Germany alone. Projections put productivity gains at up to 30%, annual efficiency gains at 3.3% and cost reductions at 2.6% annually. Improved cooperation between companies and start-ups in Germany could open up growth potential totalling 100 billion euros up to 2020.

New technologies are helping people to organise their lives, making them more independent, enabling them to live more healthily and to share products such as cars with each other. Every individual can communicate whenever and with whoever he wishes, obtain information quickly and in depth and actively participate in society. As a consumer, the individual has broad choices, tailor-made products and services. As so-called "prosumer" he can assume a role as consumer and producer of services and products at one and the same time.

At the same time, however, digitalisation brings new insecurities: people are worried about the loss of sovereignty over their private data, see the lack of transparency about the truth of news and information as well as the correctness of prices and are increasingly experiencing polarising and extreme public discussions in digital channels. Probably the greatest fear of many people is that digitalisation will make their jobs superfluous.

Industry is also faced with a broad field of new possibilities, with companies having a lot of opportunities to try out new things and to penetrate new growth areas. However, the danger of failing also intensifies as competitors become more flexible, faster and better: digitalisation is not only translated into the challenge of achieving greater efficiency in established markets. It is also becoming increasingly important for businesses to become even faster in developing new digitalised products and business models. Many established providers feel that they are not fighting new competitors on a level playing field because in the new digital economy data wealth and direct access to customers will be more important than a perfect product in future.

After the internet which brings people together, we are increasingly seeing the internet which connects machines. In the Internet of Things, Germany, with its strong industrial sector and industry-related services, has the opportunity to position itself at the forefront of the next phase of digitalisation. Basically, America has the internet, we have the things.

Germany and Europe need to find their own way forward. We need digitalisation "Made in Europe", which makes maximum use of the economic opportunities and potential and overcomes the risks. It follows the strategy that competition requires order: as much digital competition as possible but at the same time (state) support, where necessary, and a regulatory framework to ensure fairness, legal certainty and participation possibilities for all.

2. Why is the Economic Affairs Ministry working on digital platforms?

Germany is an industrialised country. We have core skills in industrial production and industry-related services. The situation in other European countries is similar. However, the development of the economy is increasingly determined by digitalisation. Digital platforms in particular have emerged as driving forces for growth. It is essential to ensure fair competition between these platforms and established market players. In order to do this, we will develop and implement a digital "ordoliberal" policy. The White Paper contains the basic elements of this policy.

The digital transformation is currently most noticeable on consumer-centred markets as shown for example in online trading, in search, music and video services, social media and travel and mobility services. These are almost always platforms which set standards here, determine the speed and therefore dominate the headlines. Platforms with innovative and highly scalable business models are driving growth: they are upending traditional processes, encroaching on exchange processes and service chains, and winning exclusive access to those customers which up to only recently established providers had counted their own.

Platforms are the engine of digitalisation. Platforms are creating new rules for economic activity:

- growth and size are more important than short-term profitability;

- the direct interface to customers and manufacturers provides the new players with considerable market clout and an information lead.

The markets are dominated by American and to a certain extent Asian internet services. They are currently conquering one analogue industry after another or inventing completely new ones and growing into new giants. European platforms do not figure in the global Top Ten.

Platforms have now entered into the business to business sector (B2B) and the world of industry in particular, but in this second phase of digitalisation it still remains to be seen whether they will be just as successful here as on consumer and service markets.

The new industry-based contest is currently very visible in the automotive industry where digital groups outside the industry are attempting to establish a new ecosystem of battery-operated, autonomous vehicles and Big Data applications. The German and European car makers are called upon to present better and higher quality solutions. If they cannot do so, they run the risk of being ousted into second position as pure car suppliers in a growing market of networked mobility.

The aim of traditional companies in Germany and Europe must be to exploit their high industrial competence also in the new digital economy. German and European firms have engineering expertise, knowledge and (leadership) experience to make this quality leap to a platform economy which would then be characterised by the so-called Old Economy.

And they can draw on a large pool of digital talent. Europe has 4.7 million programmers and software developers – the U.S. has only 4.1 million. In the five European leading tech hubs of London, Paris, Berlin, Madrid and Amsterdam there are around 664,000 software experts – more than in the Silicon Valley region (565,000).

We want a European approach to digitalisation. We are pursuing a third way between a digital laissez-faire and a state-driven modernisation programme. The key issues of our digital policy are transformation rather than disruption, innovation and competition, and growth and participation.

3. Why have we presented a White Paper on Digital Platforms?

The digital transformation is demanding change from the whole of society and the economy. Any such adjustment can only succeed if based on wide-spread dialogue. Our aim was to first analyse the necessary steps, particularly in terms of the platforms, in a broad-based process, and then to draw on this to compile a catalogue of necessary measures.

A period of four months was deliberately set for the consultation phase in order to give business representatives, associations and interested parties from all areas of society enough time to contribute their ideas. They had various channels for this.

The response was overwhelming: almost 65,000 visits to the online participation portal de.digital, 263 contributions and 10,464 assessments were received. In addition, 70 extensive opinions were submitted by businesses, industrial associations, trade unions, non-profit organisations, the scientific community and the general public. Finally, we held five workshops on the future shaping of a regulatory framework for digital platforms together with experts from industry, science, the civil society and politics. The White Paper is the result of this consultation process.

4. What aims are we pursuing in the White Paper?

Digitalisation "Made in Europe" is a shaping process. We are focusing on four goals:

- **Transformation instead of disruption:**
  Germany and Europe need a digital transformation process that is backed and moderated by policies. There must not be an uncontrolled development of digitalisation. If we want a successful transformation, we must boost companies' and people's willingness to take risks, whilst also establishing trust in the digital future of the economies of Germany and Europe. We need clear rules for this.

- **Growth dynamism and participation:**
  The growth stimuli must primarily come from industry. The state should exercise an additional, positive, influence on developments. The development of high-speed broadband networks across the country is an important driving force. Despite all the dynamism, the state must at the same time ensure that the rise in the level of prosperity reaches everyone and that the digitalisation process opens up the opportunity of personal advancement for as many people as possible.

- **Security and clear rules for democratic discourse:**
  Germany and Europe need a digital civil society that shares common moral attitudes and values. A secure space must exist away from supply and demand, economic performance and technology-driven business models in which citizens and businesses may act on a basis of trust. It must be possible to prosecute digital crimes and incitement to hatred and bring the perpetrators to justice. We wish to promote this new online discussion culture – without its dark sides. So the state must develop authorised and qualified institutions to monitor the digital spaces, register infringements and above all sanction them.

- **European sovereignty:**
  Germany will profit most if Europe can pull together to use the opportunities presented by digitalisation. It is time to depart from the patchwork of provisions and to develop a cohesive set of rules and regulations. The European response to the global digital markets can only be to act as a digital unit.

5. What measures do we derive from the White Paper?

For **fair competition** the measures include the following:

- **Creation of a "level playing field" in the telecommunication markets.** Messenger services and other services of so-called "over the top players" (OTT), which include WhatsApp and Skype, for example, must be subject to the same rules of consumer protection, data protection and security as the traditional telecommunication companies with which they compete on a market. The regimen of European data protection must also apply without exception to OTT communication services. This therefore means that terms and conditions of use according to which consumers accept the application of non-European law will no longer be admissible in future.

- **Further acceleration of competition procedures.** With this in mind, we plan to make it easier to order injunction measures so that the authorities can eliminate the effect of restrictions to competition (provisionally) before investigation proceedings have been completed. This acceleration is expedient, particularly in cases in which competition restrictions can be eliminated using simple means, such as by suspending specific contractual clauses.

- **Establishment of a dual, proactive competition law.** For this purpose, the applicable elements of the general and rather reactive competition law – as defined by the Act against Barriers to Competition (GWB) – will be combined with a distinctly more active and systematic market supervision and robust intervention powers. The aim is to institutionalise an "early warning system". A well-staffed authority is to be empowered to take a proactive approach in the case of abusive behaviour. Proof of a dominant market position as so far required by the GWB is no longer a prerequisite for intervention. Above all, the authority should also be able to directly sanction infringements of the general law on fairness (protection of competition from distortion by unfair business practices).

We will politically accompany the **creation of a modern data economy** as follows:

- **Establishment of a clear legal framework for the use of data.** At a European level, we will advocate legal certainty in contracts which regulate the rights to use data between parties because this private law path has generally proven successful. Creating a legal framework also means preventing exclusivity rights to data which hamper competition. At the same time, the access to data is to be strengthened by using cartel law and also by way of sector-specific regulations.

- **Advancement of seal and certification solutions for more transparency.** The directly applicable European General Data Protection Regulation which will be enforced from May 2018 creates a good foundation for more data sovereignty and portability as well as providing the right incentives for the anonymisation and pseudonymisation of data. Further innovative elements such as the data protection label and certificates create additional clarity and guidance.

- **Introduction of basic transparency and information duties for digital platforms.** The user is to understand how search results and offers come about, for example. In future, we will be requesting obligatory digital one-pagers from digital platforms which clearly summarise the relevant service and contractual content. The companies must also provide information about the commercial use of personal data so that users are made more aware that seemingly free services are funded by the sale of data.

- **Making of online business transactions and E-government simpler and more secure.** The EU has developed uniform requirements for these so-called trust services with rules for electronic signatures, seals and registered mail. We will pass a Trust Services Act (VDG) on this foundation that makes it easier for the public, businesses and authorities to ensure identities without media compatibility problems.

- **Setting up of experimentation rooms for innovative digital networked business models.** Experimentation rooms – or real laboratories – permit innovations to be tested in interaction with regulatory instruments and under real market conditions in a time-restricted and possibly location-restricted, altered legal framework ("experimentation clauses"). In view of the high digitalisation potential which has not yet been exploited, the health sector is particularly suitable here. We are sounding out possibilities of use with representatives from the industry.

We want to assert the following for the **nationwide expansion of gigabit-capable digital infrastructure**:

- **Advancement of network expansion via the demand side.** A viable way is presented by "gigabit voucher", i.e. vouchers in the form of time-restricted grants for gigabit connections in connection with innovative applications. This approach should be directed at small and medium size enterprises as well as important institutions (schools, doctor's practices, administration etc.) in rural and structurally underdeveloped areas. Any such vouchers open up the opportunity for potentially non-bureaucratic and rapidly available gigabit connections.

- **Securing of government funding at a high level.** We are earmarking funding of some 10 billion euros for the period between 2018 and 2025 to achieve infrastructures in the gigabit area. Part of this funding will be covered by the "Future Investment Fund for Digitalisation" which is still to be set up.

- **Establishment of municipal centres for infrastructure-relevant digitalisation issues.** Local stakeholders in politics and administration are frequently overwhelmed because they have to address the subject for the first time. A digital agency could take the strain off of the municipalities – provide advice in the run-up to broadband expansion planning, research available funding opportunities and framework conditions, ensure standardised and faster processes in dealings with specialised authorities and assume the conducting of market investigation procedures for funding applications.

- **Advancement of a virtual network of fragmented local gigabit infrastructures.** Municipal networks are frequently unattractive for international telecommunication companies both as consumers of network access products and as providers of telecommunication services due to their small size. With a virtual linking of these networks (possibly with the involvement of the federal government) homogenous wholesale services can increasingly be offered in Germany from a centralised point. This will improve capacity utilisation and indirectly the funding of local gigabit networks.

- **Provision of greater investment incentive in sector-specific regulation.** If, for example, several market players join forces in order to advance the expansion of gigabit networks, this should be rewarded by being exempted from all upstream obligations. We support the proposal of the EU Commission. In addition to cooperation models, we will also advocate in other cases that gigabit infrastructures are not subject to regulation under certain conditions.

- **Creation of legal certainty for the spread of WiFi hotspots.** The uncertainty of the extent to which private and commercial WiFi operators can be made responsible for the infringements of the law of the users has hampered the spread of WiFi in Germany. We clarify in the Telemedia Act that WiFi operators are no longer warned for secondary liability, and ensure a legally certain operation of open WiFi.

We pursue this course to **secure a democratic digital culture**:

- **Strengthening of basic rights in the internet.** Infringements of rights of any type must be pursued in the internet just as much as they are in the analogue world. Systematic action must also be taken against criminally relevant behaviour, such as incitement to hate, defamation of confessions, religious communities and ethnic groups or slander and insult in the internet. Providers must not become the long arm of the criminal investigations. The state basically has a protection duty here which it may not pass on to private persons for reasons of cost. We reject a privatised enforcement of law in the case of criminal acts.

- **Elimination of legal vacuums in the internet.** It may be necessary to define new elements constituting crime so as to be better able to counter internet-based violations of the law (e.g. cyberbullying, identity theft in the internet). We also want to eliminate legal loopholes and contradictions in law enforcement so that all violations can be pursued reliably. In the case of false assertions of the facts or unjustified publication of private images or information (so-called infringements of personal rights below the criminality threshold), we advocate that the damaged party is given information by the platform operator on the identity of the damaging party as is already the case with infringements of copyright.

- **Introduction of clear identification procedures must be examined.** The operators of public opinion forums would then be obliged to register their users in advance. In the event of proven unlawful statements, the platform would have to disclose the identity of the user to the authorities. Necessary liability restrictions for platform operators on the one hand and data protection regulations on the other may not hamper the effective prosecution of infringements of the law if it is proven that the line of admissible expression of opinion has been crossed.

- **Requirement that internet platforms must introduce a standard complaints management system throughout Europe.** Users should be able to report unlawful content to these centres. The platform provider would then check for unlawfulness and delete content where applicable. We will advocate an approach of this nature to the European Commission. To implement the plan, we believe it necessary for the Commission to specifically define vague legal terms and also clarify which voluntary measures a platform operator can take without relinquishing its neutral role as intermediary.

In order to **develop digital state competence** and **strengthen the institutional structures**, we believe the following to be necessary amongst other things:

- **Establishment of a digital agency.** It should support the process of digitalisation in the individual areas of policy and application, establish systematic and continuous market observation and therefore facilitate rapid intervention by the competent authority, particularly in the case of infringements of competition or regulation. Existing higher federal authorities can assume the think tank tasks to only a restricted extent and cannot therefore close this competence gap. By way of complement to the task of the Bundesnetzagentur or the Bundeskartellamt, the digital agency can also be entrusted with specific sovereign tasks and effectively and rapidly investigate the infringements of competition law (UWG) amongst others.