

**Second Contribution to the October 2019-January 2020 Open Consultation of the ITU CWG-Internet**  
24 October 2019  
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## **Summary**

Many of these questions raised in this open consultation are addressed, with evidence-based justifications, in the UNCTAD Digital Economy Report 2019; Value Creation and Capture: Implications for Developing Countries.

A key conclusion that can be drawn from study of this report is that it is not appropriate at this time to lock in the current laissez-faire policies regarding data flows and taxation of the digital economy.

In the body of this contribution we cite some portions of the report which appear to be of particular relevance to this consultation. The report presents quite a bit of data, and analyses various well-known trends. It appears to us that it can be summarized as noting that "Key questions for governments include how to assign ownership and control over data; how to build consumer trust and protect data privacy; how to regulate cross-border data flows (CBDFs); and how to build the appropriate capabilities for harnessing digital data for development."

## **Background and Introduction**

On 20 September 2019, the CWG-Internet decided that Open Consultations would be convened on the following issue:

International internet-related public policy issues on harnessing new and emerging telecommunications/ICT for sustainable development. Questions:

1. How will new and emerging telecommunications/ICTs impact both the internet and sustainable development, including the digital economy?
2. What are the opportunities and challenges for the adoption and growth of the new and emerging telecommunications/ICTs and internet?
3. How can governments and the other stakeholders harness the benefits of new and emerging telecommunications/ICTs?
4. What are the best practices for promoting human skills, institutional capacity, innovation and investment for new and emerging telecommunications/ICTs?

Many of these issues are addressed, with evidence-based justifications, in the UNCTAD Digital Economy Report 2019; Value Creation and Capture: Implications for Developing Countries, available at:

[https://unctad.org/en/PublicationsLibrary/der2019\\_en.pdf](https://unctad.org/en/PublicationsLibrary/der2019_en.pdf)

Press release at:

<https://unctad.org/en/pages/newsdetails.aspx?OriginalVersionID=2175>

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A key conclusion that can be drawn from study of this report regarding the topic of this consultation – harnessing new and emerging telecommunications/ICT for sustainable development – is that it is not appropriate at this time to lock in the current laissez-faire policies regarding data flows and taxation of the digital economy.

We cite below (without the footnotes and internal references) some portions of the report which appear to be particularly relevant to this consultation. The report presents quite a bit of data, and analyses various well-known trends. It appears to us that it can be summarized as noting that "Key questions for governments include how to assign ownership and control over data; how to build consumer trust and protect data privacy; how to regulate cross-border data flows (CBDFs); and how to build the appropriate capabilities for harnessing digital data for development."

### **1. How will new and emerging telecommunications/ICTs impact both the internet and sustainable development, including the digital economy?**

Foreword:

"This first edition of the Digital Economy Report – previously known as the Information Economy Report – examines the implications of the emerging digital economy for developing countries in terms of value creation and capture. It highlights the two main drivers of value creation in the digital era – digital data and platformization – and explores how current trends of wealth concentration could be replaced by trajectories leading to more equitable sharing of the gains from digitalization."

Overview, page xvi:

"The economic geography of the digital economy does not display a traditional North-South divide. It is consistently being led by one developed and one developing country: the United States and China. For example, these two countries account for 75 per cent of all patents related to blockchain technologies, 50 per cent of global spending on IoT, and more than 75 per cent of the world market for public cloud computing. And, perhaps most strikingly, they account for 90 per cent of the market capitalization value of the world's 70 largest digital platforms. Europe's share is 4 per cent and Africa and Latin America's together is only 1 per cent. Seven "super platforms" – Microsoft, followed by Apple, Amazon, Google, Facebook, Tencent and Alibaba – account for two thirds of the total market value. Thus, in many digital technological developments, the rest of the world, and especially Africa and Latin America, are trailing considerably far behind the United States and China. Some of the current trade frictions reflect the quest for global dominance in frontier technology areas."

Page xvii:

"Several factors help explain the rapid rise to dominance of these [Google, Facebook, Amazon, Alibaba, Tencent, etc.] digital giants. The first is related to network effects (i.e. the more users on a platform, second is the platforms' ability to extract, control and analyse data. As with network effects, more users mean more data, and more data mean a stronger ability to outcompete potential rivals and capitalize on first-mover advantages. Thirdly, once a platform begins to gain traction and starts offering different integrated services, the costs to users of switching to an alternative service provider start to increase.

Global digital platforms have taken steps to consolidate their competitive positions, including by acquiring potential competitors and expanding into complementary products or services."

Page xviii:

"The dominance of global digital platforms, their control of data, as well as their capacity to create and capture the ensuing value, tend to further accentuate concentration and consolidation rather than reduce inequalities between and within countries."

...

"Technology is not deterministic. It creates both opportunities and challenges. It is up to governments, in close dialogue with other stakeholders, to shape the digital economy by defining the rules of the game. This in turn requires a reasonable sense of the kind of digital future that is desirable. Policymakers need to make choices that can help reverse current trends towards widening inequalities and power imbalances wrought by the digital economy. This is a huge challenge that will involve the adaptation of existing policies, laws and regulations, and/or the adoption of new ones in many areas."

## **2. What are the opportunities and challenges for the adoption and growth of the new and emerging telecommunications/ICTs and internet?**

Page xix:

"Key policy questions include how to assign ownership and control over data; how to build consumer trust and protect data privacy, how to regulate cross-border data flows, and how to build relevant skills and capabilities for harnessing digital data for development.

Various proposals have been made to ensure a more equitable sharing of the economic gains from digital data. Some focus on remunerating the individuals who are sharing the data with platforms through personal data markets or via data trusts. Others call for the use of collective data ownership and of digital data funds as a basis for a new "digital data commons". It will be necessary to experiment with these and other options, and assess their feasibility and respective pros and cons.

Data privacy and data security require special attention. Various security arrangements are important to protect against deliberate acts of data misuse. Laws and regulations are needed to counter theft of personal data, to set rules for what and how personal data can be collected, used, transferred or removed, and to ensure that data-driven business models generate gains for society as a whole. The European Union's General Data Protection Regulation, which took effect in May 2018, is currently the most comprehensive approach to data protection, with global implications."

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"Given the network effects and the tendency towards market concentration in the digital economy, competition policy will have to play a more important role in the context of creating and capturing value. Existing frameworks need to be adapted to provide for competitive and contestable markets in the digital era. The current dominant approach in antitrust regulations is based on measuring harm to

consumers in the form of higher prices. It should be broadened to consider, for example, consumer privacy, personal data protection, consumer choice, market structure, switching costs and lock-in effects. In addition, an appropriate competition policy should be put in place and enforced within regional or global frameworks."

Page xx:

"Taxation is another key concern for value capture. Countries are rethinking how taxation rights should be allocated to prevent possibilities for under-taxation of major digital platforms in the fast-evolving digital economy. Observers have noted a mismatch between where profits are currently taxed, and where and how value is created."

### **3. How can governments and the other stakeholders harness the benefits of new and emerging telecommunications/ICTs?**

Page 88-89:

"Global digital platforms take their earlier imperatives of expand, extract and enclose beyond national boundaries. As such, they have an interest in lobbying for international rules and regulations that allow and enable them to leverage their business models. Indeed, in the past few years, technology companies have replaced the financial sector as the biggest lobbyists, and major platforms have spent considerable resources in key locations. For example, in 2018 Google, Amazon and Facebook spent record amounts lobbying the Government of the United States."

Page 89:

"Since data generated by the citizens, businesses and organizations of a particular country are a major economic resource in the digital economy, which can be harnessed to create economic value, issues concerning 'data sovereignty' arise. These are related to control, access and rights over the data at the international level, and the appropriation of the value that could be generated from refining them. Under the current regime, the platform that collects the data from the users is the one that controls and monetizes such data. As a result, global digital platforms have an advantage in terms of capturing data-related value.

One issue in this context is the lack of any global agreement for recognizing 'ownership' of community data; once the data leave the home jurisdiction, the notion of ownership becomes largely meaningless. At present, data are primarily, and effectively, subject to the jurisdiction of the territory of residence of the parties that exercise control over their storage and processing, which for now is taking place overwhelmingly in developed countries where most data controllers reside. The only way for developing countries to exercise effective economic "ownership" of and control over the data generated in their territories may be to restrict cross-border flows of important personal and community data."

Page 90:

"A balanced analysis of the implications of cross-border data flows needs to take into account the divergent interests of various agents, individuals, firms and governments, as well as different countries.

Since these interests do not always coincide, dilemmas and trade-offs emerge. Governments may decide to restrict the flow of data for reasons such as privacy of data and protection of their citizens, security, and the need to foster national economic development and market competition. The final outcome depends on policy choices. Different countries apply different regimes, ranging from allowing the free flow of data to data localization practices."

Page 91:

"Proponents of free data flows argue that barriers to accessing data hamper business innovation and economic growth. For instance, it has been argued that privacy rules impose new compliance requirements on firms and increase the costs of doing business, that data localization laws impose new costs on business by forcing them to invest in local infrastructure, and that any restrictions on data flows will result in less efficient and productive businesses.

Nevertheless, many countries are hesitant to relinquish control over their data without getting anything in return. With data becoming an increasingly valuable

resource in the digital economy, there are questions about the wisdom of allowing foreign firms to extract data without restraint. And with the global concentration of platforms, this 'free flow of data' effectively means a 'one-way flow'. Other reasons cited for considering the use of barriers to free flows of data include perceived risks to national security, surveillance by other countries, risks of hacking, and the need for easy access to data for law enforcement purposes."

Page 91-92:

"... while it is important that data be allowed to flow easily in order to harness the benefits of the digital economy, it is equally important to ensure that the associated gains are shared in a fair manner by the actors and countries involved in the value creation process. Moreover, impact assessments need to go beyond economic growth, and consider factors related to power relations, dependence, data privacy and value capture. This may necessitate exploring new, alternative approaches that take into account all relevant aspects. In view of current trends, it is not evident that free flows of data and greater access to data alone will help address global inequalities. Governments, both from developed and developing countries, are increasingly recognizing that the collection and processing of people's data cannot be

left entirely to private corporations. In the emerging global digital economy, it will be necessary to ensure that developing countries have the necessary economic, legal and regulatory space to shape their digital economies in ways that serve the interests of their populations, including by helping them to create and capture value from digital data."

Page 100:

"... notwithstanding potential benefits that may arise for developing countries, what emerges from this chapter is that, under current regulatory settings, the existing trajectory of the data-driven economy suggests that it is unlikely to contribute to the attainment of the sustainable development goals. The increasing dominance of global digital platforms and their control of data, as well as their capacity to

create and capture the ensuing value, is likely to further accentuate increasing inequalities in the global economy, both between and within countries. Breaking the vicious circle will require thinking outside the box to find alternative configurations of the digital economy that could lead to more balanced results and a fairer distribution of the gains from data and digital intelligence. This will be a task for policymakers."

Page 131:

"Key questions for governments include how to assign ownership and control over data; how to build consumer trust and protect data privacy; how to regulate cross-border data flows (CBDFs); and how to build the appropriate capabilities for harnessing digital data for development."

Page 140:

"Some services provided by digital platforms could be considered akin to utilities, such as when they provide infrastructure of a public good nature that communities, consumers and users begin to rely on. In these cases, it may be necessary to consider whether it would be appropriate to regulate certain digital platforms to ensure open and fair access for all businesses so as to create a level playing field. This may be a more effective solution than addressing possible competition problems ex post under competition law. In order to be allowed to operate in a country, digital platforms could be required to adhere to these regulations and pay a licence fee that could be used to fund the regulator."

Page 148:

"Digital technologies have the potential to greatly affect the achievement of the sustainable development goals, by both enabling and hampering progress. The net impact will depend on policy decisions taken at national and international levels. As indicated by this Report, current trajectories are not sustainable. Two countries – the United States and China – have, to date, been the most successful at taking advantage of the digital economy, and they are also leading investments in R&D and innovation related to blockchain technologies, AI and cloud computing. The rapid rise of global digital platform firms from the United States and China illustrates the huge potential for value creation and capture from collecting data and translating those data into digital intelligence. Indeed, in the data-driven economy, the companies controlling the data value chains stand the best chance of becoming the lead firms also in sectoral value chains.

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... characteristics inherent in the business models of digital platforms, coupled with strategic measures taken by those firms, tend to accentuate the already high degree of market concentration over time, raising the barriers to entry for new competitors."

Page 149-150:

"On the one hand, given the highly diverse situation among countries, individual governments will need considerable freedom to regulate the digital economy for legitimate public policy and development objectives. The handling and regulation of digital data are particularly complex challenges, as they involve human rights, trade, economic value creation and capture, law enforcement and national security. Thus, finding suitable policies that can factor in all the various dimensions of digital data and data flows is difficult, but increasingly necessary.

On the other hand, many policy challenges can only be effectively addressed at regional or international levels. For example, the highly fragmented nature of laws and regulations affecting the protection and security of data, and the cross-border flows of such data, is a far from optimal situation, as it causes uncertainty about which rules apply in different situations. Other areas in which regional or global policies may be needed include competition, taxation and trade. Finding suitable solutions in these areas will require effective international collaboration and policy dialogue, with the full involvement of developing countries. Any consensus will have to include sufficient flexibilities to satisfy all countries."

**4. What are the best practices for promoting human skills, institutional capacity, innovation and investment for new and emerging telecommunications/ICTs?**

See above.

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