

Executive Summary

- (1) With the draft Data Act, the European Commission placed **data access** high on the agenda for regulating the network economy. Those corporations who have *de facto* control over data collected with smart devices can exclude others from markets and may decide on the success of third parties in competition according to their own profit interests. This takes away consumers' decision-making power in the market economy and leads to less competition and innovation. In this study, potential improvements of the Data Act are identified with the specific aim of **preventing a foreclosure of access to secondary markets** for independent companies.
- (2) The Commission has chosen **the right approach** in the Data Act. In this study, however, 28 recommendations are made, which start at different points in order to improve access to secondary markets for third parties.
- (3) The access right for third parties should be granted with a view to the specific purpose and it should open up **direct access to the data and tools needed** for the provision of services on the secondary market. Only this ensures competition, innovation and customer orientation (recommendations 1-5).
- (4) A simple **consent management system** must be created on a mandatory basis for users. It needs to ensure real choice and grant decision-making power, while at the same time giving third parties a fair chance to enter the competition (recommendations 6-11).
- (5) Access must be provided in a standard format, data transfer must be enabled. Cascades of contracts should be avoided (recommendations 12-15).
- (6) Independent companies must have the opportunity to participate in the emerging business of **predictive maintenance** (recommendation 16).
- (7) Access should not be delayed or made difficult by **excessive consideration and prohibitive conditions**. The consideration obligation vis-à-vis SMEs and the competition clause should be fundamentally reviewed. It may be necessary to impose special obligations on undertakings that have a special power in markets (recommendations 17-21).

- (8) Some problems in accessing secondary markets arise from the **interaction with other areas of law**, in particular data protection, trade secrets or antitrust law. These problems can only be solved to a limited extent in the Data Act. It is important to strive for greater coherence of regulatory objectives and mechanisms (recommendations 22-24).
- (9) **Enforcement** can be made more effective (recommendations 25-27).
- (10) The rules of the Data Act should be aligned with those of the Digital Markets Act (recommendation 28).