

The European Commission launches an inquiry into the e-commerce sector: what to expect

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According to the European Commission (the “Commission”), statistical data indicate that only 15% of EU citizens purchase online from suppliers located in a Member State other than their own country of residence. This does not only apply to the acquisition of goods, but also to that of multimedia content (video, music, games, apps, etc.).

Language barriers, consumer preferences and legislative differences could in part account for this situation, but the findings of previous case investigations conducted by the Commission and national competition authorities suggest that certain companies may be restricting cross-border e-commerce.

All this has resulted in an e-commerce sector inquiry that has been officially launched by the Commission on 6 May 2015. The inquiry will focus on identifying artificial barriers which may hinder cross-border e-commerce, contained for instance in vertical distribution agreements between manufacturers or content holders and online retailers. In particular, the Commission will look into possible (i) limitations to cross-border and/or online sales of goods (e.g. passive sales restrictions or geo-blocking) and (ii) restraints on the commercialization of digital content (such as geo-blocking requirements or absolute territorial protection).

The Commission’s investigation will address geo-blocking, which restricts access to content based on the users’ geographical location using data such as their IP address or their credit-card details. Although geo-blocking practices may sometimes be explained by copyright-based licensing restrictions,

they also might be due to pure commercial strategies with anticompetitive effects.

The sector inquiry on e-commerce will therefore be accompanied by other initiatives at the European level, such as legislative actions.

Possible stakeholders, procedure and timeline

In the coming weeks, the Commission is expected to send requests for information to industry participants and other stakeholders across the 28 EU Member States, including owners of content rights, broadcasters, online retailers and online suppliers of goods and services. As announced by the Commission, the inquiry will focus on **electronics and electrical household appliances, clothing, shoes and accessories, books, healthcare products, digital content and travel services**.

The investigation will not only cover hi-tech multinationals, such as Amazon (e-commerce leader in the EU), eBay, Google or Uber, but also considerably smaller online firms, as well as trade and consumer associations.

Although the Commission has stated that the inquiry will be carried out mainly through information requests (including requests for documentation; e.g. copies of agreements) made to operators, it should be borne in mind that the Commission has also powers to conduct dawn raids at companies’ premises.

The Commission may impose fines for failure to supply information within the required time limit or for supplying incorrect or misleading information.

Therefore, answers to information requests in the framework of this inquiry must be carefully drafted.

The preliminary report on the findings of the investigation should be published by mid-2016, to which stakeholders will be given the opportunity to comment, and the final report is not likely to be ready until the first quarter of 2017.

Sector inquiries may trigger formal investigations of individual companies for infringements of competition law. Companies operating online are strongly advised to start reviewing their standard terms and conditions for cross-border purchasing.

Moreover, it is expected that the conclusions drawn from the investigation will be used in future legislative initiatives to boost e-commerce at the EU level. Although Commission officials confirmed that it is not the intention of the Commission to amend exiting rules on vertical restraints, at the end of the day such amendment may be necessary.

Parallel action

This sector inquiry is intended to complement the Commission's Digital Single Market Strategy,

which aims at removing barriers to cross-border e-commerce.

In addition, this measure arrives along with the following parallel Commission:

- investigation into possible location-based restrictions put in place as regards the sale of online video games for personal computers;
- investigation into licensing terms between five major US film studios and European broadcasters;
- assessment of agreements between major music labels in relation to paid music-streaming services; and
- statement of objections sent to Google in relation to its comparison shopping service. This SO follows the investigations on Google's conduct with regard to other four concerns: (i) the alleged more favourable treatment of other specialized search services; (ii) copying of rivals' web content or 'scraping', (iii) advertising exclusivity and (iv) undue restrictions on advertisers.

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