



21 September 2015

### CONSUMER AND COMPETITION DAY, 21 SEPTEMBER 2015, LUXEMBOURG

#### PANEL 1: GEOBLOCKING: A RESULT OF SINGLE MARKET OBSTACLES FOR CONSUMERS OR ENTERPRISES?

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Ladies and gentlemen,

I would like to thank the Luxembourg Presidency for inviting BUSINESSEUROPE today.

#### Introduction

Access to goods and services online across Europe is often rightly addressed as a key issue in relation to the creation of a truly digital single market.

**Geo-blocking** is frequently referred to as a technical measure to block or limit access to a certain service, or to redirect and provide alternative treatment in terms of price or conditions based on the consumers' location.

Consumers and businesses must be confident to buy or sell cross-border in the single market. Article 20 of the Services Directive is an important instrument to make the single market work better. It prohibits discrimination; so different treatment in terms of price or conditions on the basis of nationality or residence of recipients.

Companies fully share with consumers the common interest not to be subject to **unjustified** differential treatment in price or otherwise, or refusal to supply.

- Framing the debate: is the problem offering different conditions? Or is it rerouting – so re-directing users to other websites? Or is it limiting access to certain offers on a geographic basis?
- Targeting geo-blocking as an illegal practice *per se* is incorrect. It is as tackling a symptom instead of its cause. Geo-blocking is in most cases the consequence of something not working properly in the single market.



- While we share the principle of non-discrimination, there are often justifications to trade online in a more targeted manner or limiting cross-border activities. In fact, many businesses would be willing to expand into the single market or online as they do in national markets, where conditions make it possible and profitable.
- As also the Commission rightly states in its 2012 Staff Working Document towards the establishment of Guidelines for the application of Article 20, *“businesses are free to determine the geographic scope to which they target their activities within the EU, even when selling online”*.

## Justified reasons

There are objective and justified reasons for different treatment.

They are the result of remaining barriers in the single market. In many cases the existence of these remaining barriers is not due to companies, but is caused by a lack of harmonisation at EU level, a lack of mutual recognition, diverse national rules or diverse interpretation of EU law by Member States. For example:

- **Diverging legislation** - copyright rules in case of digital content, electronic waste disposal rules, lack of IP protection; seasonal sales regulations; labelling requirements in national languages;
- **Different market conditions**, driven by competitive pressures such as higher or lower demand influenced by seasonality, competitor pricing. They are not necessarily linked to contractual agreements between distributors and suppliers;
- **Economic considerations**, such as additional operational or compliance costs, which would make the provision of the good/service non-viable or the additional costs passed on to consumers, making the offer unattractive.
- **Additional costs due to distance**, linked to delivery or the need to physically go to another Member State to deliver the service purchased online.
- **Different VAT rates**, based on **the** country of residence of the customer.
- **Payment issues**, often linked to costs of different payment methods; or the complication of dealing with different currencies.

Cases where geo-blocking/discrimination does not seem to have an obvious justification are mostly linked to “same service, at the same time in the same place” situations. But even here there could be acceptable reasons for targeted offers – for example linked to national holidays.

There is a specific case for content: **copyright** rules are based on national licensing, making it illegal to offer content in countries not covered by the licensing agreement.



**Let's look at the potential consequences** depending on the objective pursued and the type of initiative that may be chosen:

- **Impact on small/large business.** What is impractical/more expensive for a large business can be insurmountable for an SME, discouraging its cross-border activities (e.g. the case of the SME being forced to comply with a request to deliver a good/service to a country if it is not equipped to do so). For instance, a small company may decide not to deliver in countries where there is a different currency to avoid complications with the payment systems, or not to deal with VAT issues.
- **Approximation of prices:** A number of parameters influence price-setting: purchasing power is also a factor. Forcing open access to the price a company sets for its product in a national market where the average purchasing power is lower, will in the long term push business to increase that price knowing that other “richer” customers will want to buy from that website. This may be good for customers from more economically developed countries but not for others, and may lead to increased economic divergences in Europe... Is this what the EU wants?
- **Strategic business decisions** – aggressive pricing strategies to enter new markets may be more difficult (as coming in with lower prices might be more complicated due to the obligation to grant free access to all), with detrimental effects on competition at national level, as there will be less new market entrants.
- We acknowledge that a different approach could be envisaged in case the access restrictions concern countries where a trader already sells or those where there is no presence - the latter case being more complex for logistical reasons, a new legal environment etcetera.

## **Where do all these considerations lead us?**

- We acknowledge the Commission's intention to end unjustified geo-blocking.
- A real single market has to be created starting from the bottom, the framework conditions, not from the top, regulating the behaviour of market actors if a true single market is not established first.
- Having a single market does not mean forcing companies to sell cross-border at any cost. And it should also not mean putting excessive burdens on companies obliging them to introduce complicated explanations in their website as to why to don't sell to certain countries.
- It is clear that the fundamental principle of contractual freedom must not deviate into a default obligation to supply. Rather, the focus should be on tackling different treatment at the root: remaining barriers that hinder free movement in the single market.



- DG COMP's inquiry into e-commerce will be helpful to try and better understand how things work between suppliers and distributors and if needed look at certain contractual practices.
- But we don't think addressing the surface – simply the offers available to consumers – is the right approach. One should tackle the root of the problem and analyse the precise reasons that lie behind the decision of a company on if and how to sell in certain markets in the EU.
- Targeting geo-blocking as an illegal practice *per se* is incorrect. While we share the principle of non-discrimination, there are often justifications to more targeted online trade as I pointed out.

## Conclusion

- It is crucial to have **case-by-case approach**. It is very difficult to come up with rules and principles that make sense across the board.
- Unjustified differentiated treatment must be addressed on a case-by-case basis and is best tackled by **enforcing existing single market rules**.
- At the same time, **we would like to see the same enthusiasm to be put into taking down the remaining barriers that are at the origin of different treatment, and create a single market where geo-blocking is not a necessity**.

Thank you for your attention.

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