

Paloma Castro, eBay Inc.

Reducing barriers to cross-border ecommerce in Europe

Founded in 1995, eBay pioneers communities built on commerce, sustained by trust, and inspired by opportunity. eBay enables ecommerce on a local, national and international basis with an array of websites – including the eBay Marketplaces, PayPal, and Skype – that bring together millions of buyers and sellers every day.

The eBay community in Europe consists of approximately 93 million users. These sellers and buyers trade goods in more than 50,000 different categories at local, national and cross-border levels.

The ability to overcome some of the barriers to cross-border trade is one of the things that makes eBay so appealing. Currently, cross-border trade accounts for between 18 and 20 percent of the goods bought on eBay by European consumers on a monthly basis. Similarly, 15 to 18 percent of the goods sold by European eBay sellers are cross-border transactions.

In fact, eBay has 1.5 million users from European countries without a country-specific site – making these users entirely dependent on cross-border trade in order to buy and sell items via eBay.

Trust is the key driver of our business. Sellers and consumers need to feel safe in the knowledge that they are protected from rogue traders. Our business model is based on fostering this trust.

We therefore invest heavily in innovative technologies like our user Feedback system, cooperation with law enforcement and rights owners, and user education tools in order to maintain a safe, transparent marketplace.

Our own efforts to build and maintain user trust are supported, as the last resort, by existing EU legislation. Our marketplace business, as an ISSP, is regulated by the eCommerce Directive. Our sellers' businesses are regulated by the Distance Selling Directive. However, as is often the case, it is during the application of these rules by Member States that the problems occur.

The review of the Consumer Acquis, and particularly the Distance Selling Directive (DSD), therefore presents an opportunity to modernise existing protections for consumers and suppliers, increase confidence and growth potential particularly in the area of cross-border trade. That's why I'm here today and why eBay is committed to participating fully in the revision debate.

What is the potential for eCommerce (both domestic and cross-border)?

Jupiter Research has projected that Internet spending in Europe will reach €117 billion by 2010, with more than 145 million European Internet buyers. As impressive as those numbers sound, truly unlocking the power of eCommerce will require eliminating many of the current barriers to cross border trade.

eBay believes that Cross Border Trade remains underdeveloped compared to e-commerce as a whole and that the real growth potential for e-commerce lies in opening international markets and providing smoother cross border operations.

Why don't more Europeans trade cross-border?

There are many reasons why individuals trade across borders at a lower rate than domestically. Some of these include cultural, linguistic, and geographic difficulties involved in the transactions themselves. Such difficulties will undoubtedly prove difficult to fix through legislative means. However, there are other areas where fixes to the legislative framework can make a huge difference.

Uncertainty and cost of compliance are the biggest of these barriers. The fact that the existing Consumer Acquis is based on minimum harmonisation has led to a continued fragmentation of the market. Consumer rules continue to differ from Member State to Member State. This is confusing and off-putting for both buyers and sellers.

In 2007, 31.5% of French sellers who don't sell cross-border cited being less protected when they sell products internationally as a reason.

Other traders simply complain about the extra administration involved in shipping cross-border (filing customs forms, insurance, etc), the cost and unreliability of shipping. This is not even

considering cost of complying with different legal systems, which I will discuss later.

How can a revision of the acquis and the application of the ROME convention remedy this?

If we are to benefit from the full potential of ecommerce in Europe then we have to increase traders' and consumers' trust. To do this we must make a concerted effort to remove legal uncertainty and barriers to cross border trade. We must push to break down the barriers that undermine the Internal Market. The best solution to achieve this is by introducing Maximum Harmonisation as the general rule for the Consumer Acquis.

Whilst we understand stakeholders and importantly MEPs concerns, eBay cannot support the application of maximum harmonisation only to a future horizontal instrument and minimum harmonisation to the vertical directives. This would lead to a continuation of the status quo, confusion, and reluctance to trade or buy cross-border.

As you know the Rome I Regulation is currently being discussed in Parliament and Council. The Commission has proposed the principle whereby Business-to-Consumer contracts would be ruled by the consumer's national law provided that the professional has targeted his activities to the consumer's Member State.

I won't spend time underlining that the definition of targeting is not clear, especially in its application to sales concluded online. I would however like to make one observation.

The adoption of the Rome I Regulation in the form of the Commission's Proposal, coupled with vertical consumer protection Directives based on minimum harmonisation, has the potential to create a regulatory environment that is worse than the status quo. Not only would a fragmented set of 27 rules continue to exist, but our traders, which in most cases are SMEs, would be obliged to adapt their contracts to these 27 different rules.

We know this serves as a deterrent to cross border trade. Almost 56% of eBay's largest German sellers currently include a choice of law rule in their terms and conditions which favours their own law. Those without choice of law clauses are more than twice as likely to limit their sales to their own countries or to countries with the same language and similar legal systems like Austria and Switzerland.

Compliance with so many legal systems is also extremely expensive. Our experience in the German market is that it costs a seller between €500 and €700 to hire an experienced lawyer to draw up terms and conditions. This cost, however, is just for the German market. The cost of finding a lawyer capable of drawing up terms and conditions in multiple countries, or the costs associated with locating experienced lawyers in another country, let alone 26 other countries, is considerably higher.

This would be too much of a burden for many of our small sellers and ultimately result in ecommerce being restricted, through the traders own choice, to national markets. Traders and consumers would be denied choice - and importantly - consumers would be denied access to better selection at better prices.

If we in this room wish to use ecommerce, and particularly cross-border online sales, to enhance consumers access to better value goods and in turn for ecommerce to drive economic growth in Europe. If we want to help Commissioner Kuneva's dream of Europe being the global online shopping destination become a reality. Then we must avoid at all costs the continued application of minimum harmonisation and the introduction of a ROME I regime that forces traders to stay within their national boxes.

I doubt that we will settle this crucial argument here this morning, this afternoon, or this year but I look forward to debating these points with you all.

ENDS