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CONSULTATION ON GEO-BLOCKING AND OTHER GEOGRAPHICALLY-BASED RESTRICTIONS

The Commission published in September 2015 a public consultation on geo-blocking and other geographically-based restrictions.

The consultation aims at gathering views and opinions on the different restrictions faced by users, consumers and businesses when they access or provide information, shop or sell across the borders in the European Union. It does not cover practices related to copyright and licensing practices.

Confederation of Finnish Industries EK provides the following comments to the consultation.

Introduction

In the Digital Single Market Strategy geo-blocking is referred to as practices used for commercial reasons by online sellers that result in the denial of access to websites based in other Member States. Furthermore, the strategy notes that sometimes consumers are able to access the website, but still cannot purchase products or services from it. The consumer may also be re-routed to a local website of the same company with different prices or a different product or service. In other cases, where the sale is not denied, geo-localising practices are used as a result of which different prices are automatically applied on the basis of geographic location.

In the consultation document the Commission clarifies that there are already pieces of EU legislation that tackle geo-blocking and other geographically-based restrictions:

- the Services Directive that requires that the general conditions of access to a service, which are made available to the public at large by the provider, shall not contain discriminatory provisions relating to the nationality or place of residence of the recipient unless the differences in the conditions of access are directly justified by objective criteria,
- the Consumer Rights Directive that requires traders to inform consumers on their websites at the latest at the beginning of the ordering process of any delivery restrictions and

- the EU competition law that addresses practices such as agreements preventing retailers from selling cross-border upon unsolicited request by customers and anticompetitive practices by dominant companies.

Contractual freedom must be preserved

Based on freedom to run a business, companies have different kinds of business strategies. Different kind of market conditions (e.g. higher or lower demand in different markets, different kinds of consumer expectations) and economic considerations (e.g. additional operational costs of cross-border business) can influence these considerations and many companies' strategy is to build competitive advantage only in the national or local markets.

The companies operating only in their national or local markets or only in some EU member states must not be punished for their choices.

An objective of deepening of the single market should not mean forcing companies to sell cross-border or engage in cross-border business. It should not mean putting excessive burdens on companies e.g. by obliging them to introduce complicated explanations in their website as to why they don't sell to certain countries either.

It is worth to note that what is impractical or more expensive for a large business can be insurmountable for an SME.

Furthermore, it is clear that the fundamental principle of contractual freedom must not deviate into a default obligation to supply.

Tackling geo-blocking means tackling a symptom

As noted both in the Digital Single Market Strategy and in the Single Market Strategy, there are many factors that impede legal cross-border offer of goods and services in the single market – and thus consumers' and businesses' cross-border access to goods and services.

National taxation, in particular VAT, is a clear example of a legal barrier for cross-border offer of goods and services, including electronic services. Another example of a regulatory barrier is the cost of ensuring that consumer customers are not deprived of the protection afforded to them by their national consumer protection rules, including product safety and labelling requirements for products. Barriers can also result for example from member states' different age restrictions and labelling requirements.

Non-regulatory barriers include for example language barriers – although language can also be a legal barrier and a cause of costs if national authorities require that pre-contractual information or instructions have to

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be translated into national language so that the information is comprehensible for consumers.

This means that even in cases where companies are interested in enlarging their business to other markets where conditions make it possible and profitable, they may choose not to take the risk and do it because of these barriers or the transaction costs related to them.

This underlines that targeting geo-blocking and other geographically-based restrictions as an illegal practice per se is incorrect. It seems as tackling a symptom instead of its cause.

In addition, it is important to note that if companies wish to enter new markets in the EU, they may nowadays use e.g. tactical pricing strategies to enter the markets. Initiatives that would make entering new markets and achieving market shares more difficult should be avoided.

The Digital Single Market Strategy's objective of ensuring better access for consumers and businesses to online goods and services across Europe is important. Online access to goods and services can be best improved by ensuring that the single market provides companies a business environment that encourages them to grow and engage in cross-border business.

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.

Furthermore, it is essential to respect the better regulation principles. Before considering any new initiatives, it is important to analyse very carefully whether and in what kind of situations geo-blocking or geographical restrictions create such unjustified discrimination that can't be tackled by clarifying interpretation of the Services Directive or application of the existing consumer protection or competition rules.

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