



U.S. CHAMBER OF COMMERCE

U.S. Chamber of Commerce Response to Geo-Blocking DSM Consultation

The U.S. Chamber of Commerce is the largest business organization in the United States, representing the interests of more than three million businesses of every size, sector, and state, as well as state and local chambers and industry associations. In addition, we represent many European firms with investments and operations in the United States and have been a steadfast supporter of the economic underpinnings of the Atlantic alliance and their benefits for workers, consumers, and companies in both the United States and the EU.

Broad Importance of Good Regulatory Practice & EU Better Regulation

Agenda

Before offering substantive comments, the Chamber would note that this questionnaire, like many of the other consultations launched to support the Digital Single Market (DSM) initiative, features a number of leading questions that seem to be designed to generate responses that can be translated into mandates for action, rather than a fact-finding exercise to better capture a full picture of what is happening in the market.

The Chamber recognizes that these questionnaires represent only the initial stages of the European Commission's process to develop its plans to support a Digital Single Market, but it is important that the process surrounding the DSM adheres to good regulatory practices and lives up to the standards of the REFIT program and the changes outlined and endorsed in the Timmermans report on Better Regulation. As the Commission's Better Regulation "toolbox" correctly observes, questionnaires are of limited value when a limited range of answers forces respondents to provide similar answers all focused in the same direction.¹

¹ http://ec.europa.eu/smart-regulation/guidelines/docs/br_toolbox_en.pdf pp.332-333

Additionally, while copyright issues have been explicitly excluded from the scope of this consultation, the Chamber would like to express our disappointment with the Commission's decision to move forward with a legislative proposal on the portability of online content and changes to EU copyright rules prior to collecting input from industry and civil society.

Substantive Response to DSM Geo-Blocking Consultation

The Chamber is following the European Commission's Digital Single Market plans closely as our members have great interest in many aspects of the outlined strategy. Done right, the DSM has the potential to make it easier to do business across the EU and globally—for consumers and companies alike. By streamlining and simplifying the rules and regulations governing e-commerce, the DSM could prove to be a galvanizing force for economic growth. However, it is critical that the European Commission does not use this process to disallow legitimate business practices.

We are fully supportive of the DSM's intention to remove regulatory barriers that fragment the EU single market or limit it from reaching its full potential. First, DSM initiatives should focus on measures that increase consumer welfare and reduce complexity for businesses of all sizes. Ideally, this effort will be coupled with an effective Single Market Strategy to remove remaining impediments to commerce—in both goods and services—in the physical economy.

Next, we are hesitant to transfer any “mandate” for a single-market to necessarily translate into a responsibility or duty on private market actors. Therefore, the DSM should *not* force companies to do business in every European jurisdiction regardless of market conditions or their interest, capability, or readiness to enter that market. Companies must also retain their right to price their goods and services as they see fit for each market given varying currencies, levels of economic development, and consumer-driven demand. Similarly, businesses should maintain their right to accept whichever legal means of payment they choose.

Throughout the consultation, the Commission is committed to ending what it terms “unjustified” geoblocking. However, the term “unjustified” is neither defined nor even explained. A clear definition of the term is urgently needed as the

Commission considers whether new regulatory actions are should be implemented needed in this area.

As the DSM consultation rightly recognizes, there is great variability between EU member-states on an array of issues which directly impact market decisions—ranging from economic development (measured in terms of GDP per capita), currency issues, and differing VAT regimes, to cultural and linguistic differences. And of course, regulatory regimes governing different industries and products vary as well.

Given that reality, it is efficient and appropriate for companies to make different decisions when deciding whether—or to what extent—to invest or sell their products across the 28 Member States.

Tailoring goods and services to specific markets, languages, and cultures is a crucial part of many companies’ business models and business development strategies. In fact, keeping national markets separate actually encourages the development of products and services for smaller markets and less commonly-spoken languages, reflecting the cultural diversity of the EU.

Price differentiation is justified when doing businesses in different markets, particularly as a result of varying levels of economic development or the use of different currencies. Otherwise, customers across Europe may face a “race to the top” in terms of pricing. Some customers would simply be priced out of the market. The simple reality is that consumers across Europe have varying levels of purchasing power, leaving aside differences in cultural interest in particular goods or services. Importantly, geoblocking in order to comply with national laws, based on age limitations for certain types of content, or preventing access to gambling websites, for example, should be considered justified.

Conclusions

The Chamber shares the Commission’s desire to achieve non-discrimination in the DSM, but different market conditions, varying VAT rates, payment issues, the implementation of legitimate exclusive distribution arrangements, and divergent

national legislation are justifiable reasons to limit access to websites or digital purchases based on national borders.

Regulating geoblocking would only attempt to solve a few symptoms of larger issues with an incomplete Single Market across Europe for goods and services. The DSM can and should be part of the longer-term solution to these outstanding hindrances, but it cannot be used as a conduit to outlaw legitimate and long-standing business practices.

The Chamber appreciates your consideration of our comments. We look forward to future engagement on any or all of the points we have raised and look forward to working with you as the Digital Single Market project moves forward.