

The Digital Single Market, consumers and EU competition policy

*Competition and Consumer Day, Luxembourg Presidency event.
September 21*

Authorities,
Dear colleagues,
Ladies and Gentlemen:

Today's a special day for me. It's the first time I speak in public since the European Commission gave me the privilege to serve as Director General for Competition. I would like to thank the organisers for so kindly inviting me.

In many aspects, this is a *retour aux sources* for me, since it was in competition that I started my Commission career over 16 years ago – a confirmation of the old saying that *on revient toujours à ses premiers amours*.

At the same time, coming back to DG COMP – as we say – is a very fresh, exciting and stimulating experience.

Competition policy and law have moved on. What one could call the "competition community" – so well represented here today – has evolved.

And more than ever, competition practice is relevant to consumers and businesses, to the economy and society.

So, I look forward to contributing to the advancement of competition policy and law to the best of my ability.

It's a worthy task if there ever was one. Extending and deepening the Single Market is at the heart of the Juncker Commission's strategy to boost growth and create jobs in Europe. And under the leadership of Commissioner Vestager competition policy has pride of place in it.

Today I would like to focus on a vital part of this strategy; the concerted efforts to expand the benefits of the internal market in the digital world.

The stakes are high for competition policy as it contributes to the eventual success of this policy drive. In time, when a genuine EU-wide Digital Single Market is in place, it could add over €400 billion to the GDP of the Union. The benefits we can bring to consumers in the meantime are important.

Consumers will enjoy lower prices, a broader choice, and more innovative products when – just to give you an example – it's easier for us all to shop online across the EU's internal borders.

Digital markets change rapidly; new business models emerge; the churning process is fast. This is a challenge for competition enforcers – and for many other policymakers, for that matter.

But we have often proved in the past that EU competition enforcement is resilient and can evolve with the times. We will do our best to stay ahead of the curve this time too.

What can competition policy do for the success of the Digital Single Market strategy? One thing is the sector inquiry into e-commerce Commissioner Vestager launched last May.

The exercise is on a very large scale. Our requests for information are reaching over 2,000 companies in every country of the EU and we've already received hundreds of replies.

Our goal is building a detailed picture of the competitive conditions in the sector, both for goods such as clothes and consumer electronics and for digital content such as films and sports events.

More specifically, the inquiry is designed to identify the barriers that may be erected by agreements between companies.

European consumers are embracing e-commerce with gusto. Last year, about one in two shopped online. However, only 15% of them did so across a border.

And it's not for want of trying. Less than half of all attempts to place cross-border online orders are successful. When the orders are domestic, the success rate is 97%.

Luxembourg is the big exception here.

Last year, 65% of its residents placed orders over the internet from another EU country and 21% domestically. Our inquiry will be followed with interest from the Grand Duchy – I suspect.

So, what we already know is that there are contractual barriers out there. Recently the Commission and National Competition Authorities have been dealing with vertical restraints that make it unnecessarily difficult for Europe's consumers to buy online. What we need to learn is how widespread these barriers are and the impact they have.

A preliminary report will go out for consultation about the middle of next year. Once all stakeholders have had a chance to comment on it, we will produce a final report.

At that point, we'll have the evidence we need to decide how to prioritise our enforcement against possible anti-competitive agreements that could risk fragmenting the Digital Single Market.

The market knowledge from the final report will help us determine our enforcement priorities with a view to giving specific guidance to online businesses all over Europe on what they can and cannot do to stay on the right side of Europe's competition law.

Together with other strands of the Digital Single Market strategy, the inquiry can help us reveal and remove the barriers that hamper the establishment of a genuine, EU-wide Single Market for e-commerce – and let me emphasise this once again, there is a lot at stake.

Almost 2,5 million jobs in Europe are linked to e-commerce one way or another and the industry is growing fast. In 2013, it grew by 17% and reached a total turnover of €352 billion. Between 2009 and 2013 the industry expanded at the same brisk pace – the average annual growth rate was 17.4%.

According to studies, if suppliers' restrictions were removed, cross-border e-commerce would likely increase by 10% and the volume of sales by 6% on average.

That would allow more consumers to look for the best prices and quality; choose the products they want anywhere in the EU; have them delivered to their door – or to their devices, since the sales of digital-content are booming.

Last year, Europeans spent almost €1.5 billion for online TV and video subscriptions. In 2020 that figure is expected to climb to about €5 billion.

Estimates like these give a real sense to the dimension of our work in these markets. But at the end of the day, this is about watching your favourite show on your tablet when you are travelling to another EU country. It is about your choice and opportunity, whether as citizen, employee, or entrepreneur.

And – to move beyond the e-commerce inquiry – this is, for example, about being able to buy pay-tv services from Sky UK outside of the UK or Ireland.

This is just one of several pending cases in the digital industries. Let me mention them briefly to make the point that – apart from the sector inquiry – we continue to pursue the goals of the Digital Single Market through our enforcement work.

Before the summer we sent Sky and six major US film studios a Statement of Objections because of concerns that the contracts they signed may prevent the broadcaster from responding to unsolicited requests within the EU – the so-called passive sales.

Then there are the cases involving Google. In August the company replied to our Statement of Objections, which alleged that it favours its own comparison shopping service in its general search results pages. We are currently assessing the reply before deciding on the next steps.

If our concerns are confirmed, this means that – at present – we may not have the most relevant results when we use Google to look for something to buy online.

We are also looking into Google's conduct in relation to its Android operating system as well as applications and services for smartphones and tablets.

These investigations point to a big shift in the way we access the internet. We used to surf the web using our personal computers, but now one user in two goes online via mobile devices, and this means that keeping competition keen in the mobile space is bringing benefits to more and more people.

Our two Qualcomm cases go to the technical core of our mobile experience; the company is the world's largest supplier of the chipsets that give smartphones and other devices 3G and 4G connectivity.

Let me also mention the formal antitrust proceedings involving the online retailer Amazon. We are concerned that its contracts with e-book publishers may include Most Favoured Nation and similar clauses that harm competition in the markets for e-books, especially by limiting innovation and reducing competition between distribution platforms.

It's not the first time we deal with e-books. Back in 2011 and 2012 the Commission investigated a concerted practice between five major publishers and Apple. Eventually, the companies' commitments removed the concerns and the Commission could drop the case.

Thanks to competition enforcement in these markets, all of us are probably spending less today when we read Goethe or Pessoa in electronic format. We should never forget this side of the work of competition enforcers, because keeping the Single Market open and level is ultimately about empowering consumers as well as entrepreneurs.

This quick overview of our action in digital markets shows that European competition law can deal appropriately with the issues that we find there. But if we are serious about protecting the interests of consumers, the action of enforcers must go hand-in-glove with other policy areas.

Let me give you a couple of examples of this linked to the three main topics that will be debated today. First, geo-blocking.

This is actually an old problem in a new guise. In the 1990's German car manufacturers prohibited their Italian dealers from selling to Austrian customers.

Nowadays manufacturers or copyright right-holders can request their distributors to block or reroute cross-border online orders.

Insofar as these contractual clauses amount to so-called passive sales restrictions – I've mentioned them in relation to the Sky UK case – they lead to absolute territorial protection.

When this results from agreements between companies, it is for competition law to look at. When it is carried out unilaterally by non-dominant companies, legislative initiatives may be required.

The current debate on online platforms is another example. What needs to be kept in mind is that there's no single business model for platforms. Instead, there's a whole range of models from search to app stores, from marketplaces to social-media platforms.

Competition law can deal with specific business practices of online platforms, for example a dominant player that seeks to leverage its market position into adjacent markets. This is our preliminary view in the Google case I mentioned earlier.

Also, competition authorities can look into the use of parity clauses by online marketplaces for their possible impact on prices and innovation.

But other practices are for regulators, such as the possible misuse of private data, infringements of copyright law, or a lack of transparency in a platforms' terms of use.

It is therefore important to identify and categorise potential issues. This is exactly the purpose of the public consultation the Commission is about to launch.

The digital industries are among the most promising growth sectors for the EU. This is why it is so crucial that the implementation of EU competition rules in these markets is robust and effective.

But we know that the impact of our work depends to a large extent on the close cooperation between the European Commission and the competition authorities in each EU country. Since 2004, national authorities have adopted more than 850 decisions while 130 have been taken by the Commission.

The European Competition Network is widely recognised as a model for European governance and a positive force for integration. How can we build on our achievements? How can we make our cooperation even closer and more productive? And why is this so important for the Digital Single Market?

The more the integration of our Single Market progresses, the more we must Europeanise the application of our competition rules. This is one of the goals defined by President Juncker.

Consumers should reap the benefits offered by digital technologies, which know no borders. We therefore need a fair level-playing field, in particular – as we have seen – for companies that offer their goods and services online and in digital form.

Businesses and consumers expect legal certainty, predictability, and a uniform application of the law. Let us not forget that there is only one EU competition law and its application should not vary from one authority to the next.

Therefore, we need to cherish the ECN tradition and its development even more. Within the ECN, we find it important that contentious cases and cases with wider policy implications are signalled and discussed from their early stages.

But before all else, Europe's competition authorities must be well resourced, effective and independent. Enforcement across the whole system suffers if NCAs lack independence, qualified staff, or the tools they need to detect and sanction violations.

Ladies and Gentlemen:

I would like to end with a final consideration. Although the Digital Single Market is far from complete, over the years the European Commission and national competition authorities have striven to keep digital markets open, fair and contestable.

This is what new, dynamic and innovative players – European or foreign – have found when they set up business in the Single Market.

Some of them have become household names in Europe. There is a sense in which they owe part of their success to the work that Europe's enforcers have done in the past.

We will keep to this course. It's what consumers expect of us and what the innovators and disrupters of the future need to generate wealth and create jobs in the EU.

I hope that with this, I have given you a useful overview of the Commission's approach. I wish all of you an interesting and enlightening conference.

Thank you very much for your attention.