

Introduction

1. Barriers to the Single Market from Geo-blocking and other geographically-based restrictions

The Single Market generates huge benefits to more than 500 million citizens and more than 20 million companies of the EU (and the countries of the European Economic Area). Therefore the EU Treaty prohibits discriminations on the basis of residence or nationality and foresees the free movement of goods and services, persons and capital.

To date, efforts to complete the Single Market have mainly focused on ensuring that companies are free to sell products or services cross border to consumers and businesses.

With the rise of online trade and with the development of travel inside the EU, there is increased access to goods and services and market transparency. Eliminating the factors distance and time, the Internet allows for a much wider and easier access to information and for the development of trade. In doing so, it is a major driver of growth and jobs.

Too often, however, barriers still exist and companies impose restrictions or apply different conditions to potential customers on the basis of their nationality or place of residence. While there may be instances in which a different treatment is due to objective and verifiable differences in the customers' situations, unjustified geo-blocking and other forms of discrimination based on nationality or place of residence are clearly contrary to the principles of the EU Treaty. Such measures limit directly or indirectly consumers' access to cross-border offers and can be the source of economic inefficiencies, resulting in higher prices and a reduced variety of products, services and digital content for consumers. They may also undermine consumers' trust in the Single Market.

Available evidence indicates that sellers and providers of services have created new barriers, including:

- blocking any access to websites across borders, thereby denying access to information, comparisons of service or product ranges and prices. Sometimes, this is coupled with the automatic rerouting to 'national' websites, without the possibility to overrule the action.
- allowing access to websites across borders but denying the possibility to complete the order or purchase after obtaining information on the geo-localisation of the user;
- allowing access to websites across borders but denying the possibility to download digital products across borders;
- allowing access to websites across borders but denying the possibility to pick up, deliver or ship the goods across borders
- differentiating prices or other conditions on the basis of nationality, country of residence of customers or the location from which they are accessing the services.

In practice, there are numerous ways in which the abovementioned barriers can be erected. Besides the mentioned re-routing,

- (i) refusing outright access to a website based on the IP-address (or other technical means allowing to determine the geo-location) generated by the device or network of the user;
- (ii) identifying the country of issuance of the payment or credit card and refusing foreign ones;
- (iii) asking the customer to disclose nationality or residence prior to completing the transaction;

- (iv) linking access to or purchase of digital and non-digital goods or services to the postal address of the customers;
- (v) providing the users/customers wanting to buy or access services with a data format for address or phone etc. which is not suited for their 'home' country (i.e. postal code format specific to only one country, scroll-down lists of countries or municipalities limited to one or a few countries).

These new barriers restrict or even nullify the openness of markets and the potential for increased market transparency, more product variety, lower prices to the detriment of users and consumers, and ultimately to the detriment of economic efficiency and growth.

The practices covered in this questionnaire refer only to geo-blocking or other restrictions in so far as they do NOT those related to copyright and licensing practices (such as sport events), which will be addressed by the Commission in separate initiatives. They do cover, however, geoblocking of non-copyrighted content, including political news reporting.

2. The EU's policy response

Preventing unjustified geo-blocking has been identified by the Commission as one of the priorities of the Digital Single Market strategy which it issued on 6th May 2015.

In this Strategy, the Commission announced that it:

"will make legislative proposals in the first half of 2016 to end unjustified geo-blocking. Action could include targeted change to the e-Commerce framework and the framework set out by Article 20 of the Services Directive. The Commission is also launching a Competition Sector Inquiry focusing on the application of competition law in the e-commerce area".

At the June 2015 European Council, Heads of State and government concluded that: *"action must be taken on key components of the Commission communication, notably to: remove the remaining barriers to the free circulation of goods and services sold online and tackle unjustified discrimination on the grounds of geographic location."*

The Commission will follow up on this call also in the forthcoming Internal Market Strategy foreseen for October 2015.

The EU is not starting from scratch to address the mentioned new barriers to the single market. The Services Directive prohibits discrimination based on nationality or place of residence in the provision of services, but is difficult to enforce effectively because of the broad range of possible exceptions.

The e-Commerce Directive lays down the country of origin principle for information society services (I.e. the provider can rely on compliance with the rules applicable in the Member State in which it is based.) with the aim of dismantling barriers to online activities in the Single Market but does not target discrimination against recipients of goods and services.

The Consumer Rights Directive requires companies to inform consumers upfront of any delivery restrictions.

Finally, EU competition law can address some practices, such as agreements preventing retailers from selling cross-border upon unsolicited request by customers ("passive sales"), as well as anticompetitive practices by dominant companies (This consultation does not aim at understanding e-commerce markets and potentially restrictive market practices for the purpose of assessing them under EU competition law as this is the objective of the

competition sector inquiry into e-commerce. See press release under [http://europa.eu/rapid/press-release IP-15-4921 en.htm](http://europa.eu/rapid/press-release_IP-15-4921_en.htm)).