

European Competition Watchdog Publishes Findings from its Two Year Examination of the e-Commerce Industry

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In May 2015, the European Competition Commission ("Commission") launched an e-commerce sector inquiry as part of the Digital Single Market strategy, based on EU competition rules. On 10 May 2017, the Commission published its [Final Report](#), including its findings regarding competition aspects of the e-commerce sector. The Report separately addresses e-commerce of consumer goods and digital content. The Commission sought information from a variety of participants in the EU e-commerce market, regarding online Sales of consumer goods and distribution of digital content. The Commission gathered evidence from nearly 1,900 companies and analysed around 8,000 distribution contracts.

The Report highlights the following major market trends:

- A large proportion of manufacturers decided over the last decade to sell products directly to consumer through their own online retail shops, thereby increasing competition with their distributors.
- Increased use of selective distribution systems, where the products can only be sold by pre-selected authorised sellers, allows manufacturers to better control their distribution networks, primarily in terms of distribution quality and price.
- Increased use of contractual restrictions to control product distribution. Restrictions take various forms, depending on the business model and strategy, including:
 - Pricing restrictions.
 - Marketplace (platform) bans.
 - Restrictions on the use of price comparison tools.
 - Exclusion of pure online players from distribution networks.

Notable Commission findings include:

- The growth of e-commerce over the last decade had a significant impact on companies' distribution strategies and consumer behaviour. Particularly, increased online price transparency and price competition.
- Some of practices may be justified. For example, to improve the quality of product distribution, others may unduly prevent consumers from benefiting from greater product choice and lower prices in e-commerce.
- For digital content, the availability of licences from content copyright holders is essential for digital content providers. Such licenses are a key factor in determining the market's competition levels.
- Certain licensing practices can cause difficulties for new online business models and services to emerge. However, assessing these licensing practices must consider the characteristics of each relevant industry.

- Almost 60% of digital content providers who participated in the inquiry have contractually agreed with right holders to "geo-block". Geo-blocking prevents consumers from purchasing consumer goods and accessing digital content online from other EU Member States.
- Competition enforcement for geo-blocking must be done on a case-by-case basis, including analysis of potential justifications for restrictions

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