

# European Commission Launches Antitrust Sector Inquiry Into E-Commerce

Skadden

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On May 6, 2015, the European Commission (Commission) launched an antitrust sector inquiry into the e-commerce sector. This sector inquiry is part of the Commission's broader Digital Single Market Strategy, which aims *inter alia* to improve access for consumers and businesses to online goods and services across Europe. Last week, a Commission official reported that no inspections are anticipated, but data-intensive information requests are to be expected, the first of which will be issued in June.

The sector inquiry will focus on potential barriers erected by companies to cross-border online trade in goods and services. In particular, the sector inquiry is expected to investigate so-called geo-blocking, platform bans and price restrictions that impede trade over the Internet by limiting the countries from which purchases can be made, the platforms through which certain products or types of products can be purchased or the price levels that can apply for purchases made over the Internet. The sector inquiry is anticipated to investigate the existence of agreements between competitors, as well as agreements between suppliers and distributors. It also is expected to assess pricing and distribution policies applied in the absence of an agreement.

The Commission last week, through one of its officials, reported that the inquiry will focus on online sales of clothing, electronics, books, health care, digital content and travel services as a priority. Manufacturers and merchants, content providers and platforms all will be subject to the inquiry. Companies are required to cooperate with the sector inquiry. Incorrect, incomplete or misleading information, or failure to provide the information within the required deadline, may result in fines or periodic penalty payments.

The sector inquiry may trigger separate enforcement actions against individual companies, which may include inspections. A Commission official last week spoke about a "renaissance" of investigations into vertical restraints due to new online challenges. In addition, the Commission will make legislative proposals in the first half of 2016 to end "unjustified geo-blocking."

The Commission's concern with restrictions of e-commerce should be situated in the context of several ongoing investigations. The Commission started investigating restrictions in pricing and cross-border trade of consumer electronic products over the Internet in December 2013. In January 2014, the Commission opened a formal investigation involving major U.S. film studios and large European broadcasters to review the impact of contractual clauses in licensing contracts that allegedly prevent existing and new subscribers from accessing television programs online or via satellite while outside the area covered by the program license. Most recently, in March 2015, the Commission announced that it is investigating potential location-based restrictions to video games sold online.

Arguments have been raised that the restrictions of cross-border trade in e-commerce are legitimate based on delivery and language issues, as well as differences in consumer and copyright laws. While the Commission is well advised to thoroughly assess the implications of cross-border restrictions, its inquiry is likely to entail a potentially significant burden and diversion for companies subject to the Commission's query.

The results of the inquiry could have an impact on the existing investigations and may form the basis for new investigations.

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