



The e-Commerce Sector Inquiry

Thomas Kramler
DG Competition, European Commission



Context: Digital Single Market Strategy

- Political priority of the Commission, adopted on 6 May 2015

- Aim: Better access for consumers and businesses to online goods and services across Europe - Remove unjustified barriers

- Actions:
 - Legislative actions → public or regulatory barriers
 - **Complemented by Sector Inquiry → private or company erected barriers**

Legal Basis

- Commission Decision of 6 May 2015 initiating an inquiry into the e-commerce sector pursuant to Article 17 of Regulation 1/2003

- Article 17 Regulation 1/2003:

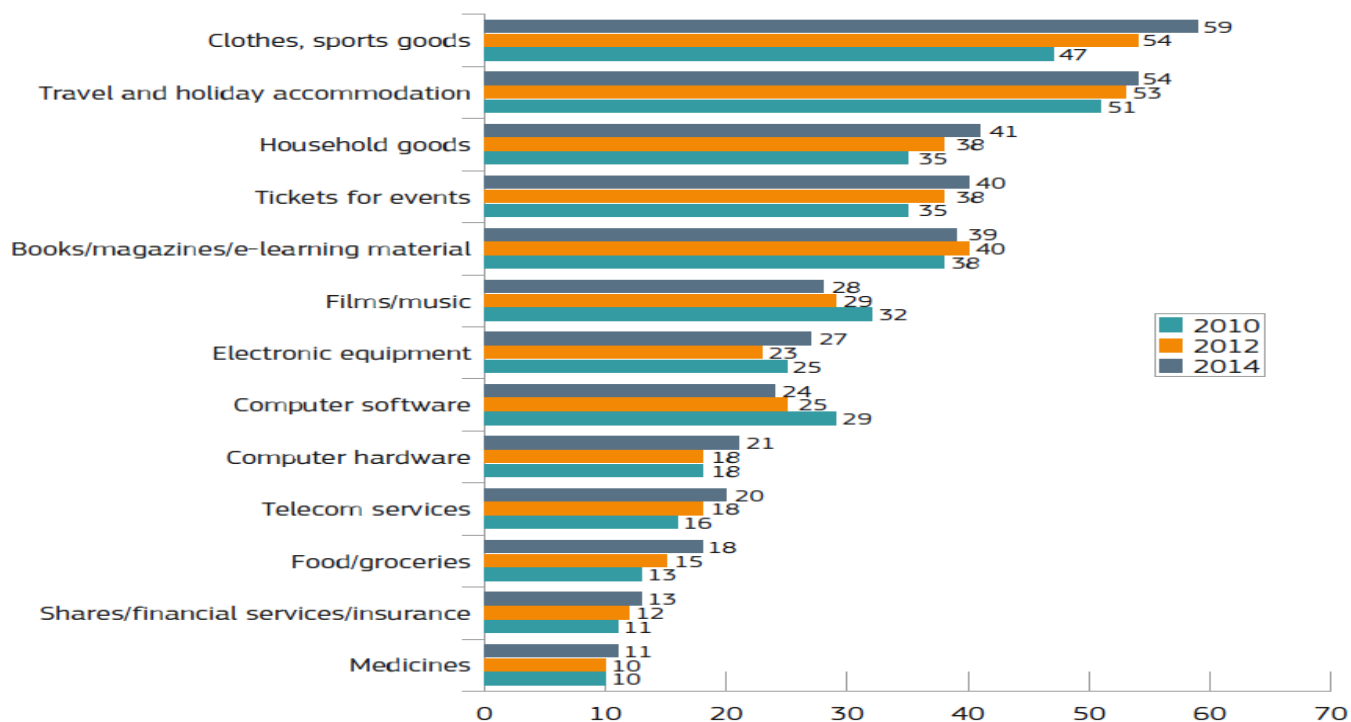
"[...] where the trend of trade between Member States, the rigidity of prices or other circumstances suggest that competition may be restricted or distorted within the internal market, the Commission may decide to conduct an **inquiry into a particular sector of the economy or into a particular type of agreements across various sectors.**"

Indications of company-erected barriers (studies)

- 22% of wholesale and retail trade companies say the fact that their suppliers restrict or forbid them to sell abroad is a problem (FLASH EUROBAROMETER 413, 2015)
- Should the suppliers' restrictions be removed, the likelihood of engaging in cross-border e-commerce would increase by 10% and the volume of sales would increase by 6% on average (Duch-Brown and Martens, 2015)
- 5% of consumers were redirected and a further 6% indicated that foreign sellers refused access (EC, 2015)

Targeted products and services

Figure 53: Most frequent online purchases, EU-28, 2014 (% of online shoppers)



Source: Eurostat Community Survey on ICT usage in households and by individuals: What types of goods or services did you buy or order over the Internet for private use in the last 12 months? (isoc_ec_ibuy).

Targeted undertakings

- Manufacturers and merchants of goods (hybrid, e-tailers)
- Online content service providers (VOD, OTT)
- Online platforms: Marketplaces and Price-comparison tools

➔ Cross-border and pan-European issues across all 28 EU Member States

Types of restrictions (goods)

➤ ECJ, Case C-439/09, Pierre Fabre, paragraph 54:

"A contractual clause such as the one at issue in the main proceedings, **prohibiting *de facto* the internet as a method of marketing**, at the very least has as its object the restriction of passive sales to end users wishing to purchase online and located outside the physical trading area of the relevant member of the selective distribution system"

Goods and Marketplaces

- Questions focus on limitations to cross-border sales:
 - Turnover online/offline
 - Distribution contracts
 - Limitations on online cross-border transactions
 - Collection and use of information on customers location for geo-blocking
 - Proportion of denied/re-routed transactions
 - Marketplace bans
 - Pricing agreements (MFNs, RPM)

Types of restrictions (digital content)

- ECJ, Joined Cases C-403/08 and C-429/08, Murphy, paragraph 139:

"An agreement which might tend to restore the divisions between national markets is liable to frustrate the Treaty's objective of achieving the integration of those markets through the establishment of a single market. Thus, agreements which are aimed at partitioning national markets according to national borders or make the interpenetration of national markets more difficult must be regarded, in principle, as agreements whose object is to restrict competition within the meaning of Article 101(1)"

Digital Content and Hosting

- Questions focus on cross-border availability and contractual agreements:
 - Business model and offer availability across EU
 - Major suppliers, licensed rights and contractual terms
 - Available content by genre: Films; Fiction and Documentaries; Sports; Music; Other
 - Value of online rights and pricing
 - Cross-border restrictions and their origin
 - Type of technical measures limiting cross-border access



Timing

- First round of requests for information in June 2015
- Preliminary Report followed by Public Consultation mid-2016
- Final Report in the 1Q 2017

Goals of the Sector Inquiry

- Gain a more comprehensive understanding of competition issues, market dynamics and business challenges in cross-border e-commerce
- If appropriate, provide guidance to businesses through subsequent enforcement
- Look at the legal framework on online vertical restraints in the light of current market realities
- Complement legislative initiatives