

Ms Despina Spanou
Director
DG SANCO – Directorate B
European Commission

B – 1049 Brussels

The Consumer Voice in Europe

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Dear Despina,

Please find enclosed a summary note prepared by the BEUC digital team in the context of the ECCG discussions of this 20 November 2014 on digital issues. The reflections and proposals contained in this document often overlap with the national feedback that was received, but I still found it useful to provide you with this synthesis.

I hope the document matches your expectations. Please do not hesitate to contact us for any further development or information.

With best wishes,



Monique Goyens
Director General

BEUC contribution to the ECCG thematic discussion on digital issues 20 November 2014

Copyright

- Despite the increasing relevance of copyright in their daily lives, the notion of consumers' right is absent from the current copyright framework. A number of permitted uses is only allowed as exceptions to right holders' exclusive rights, let alone that they are not absolute and they can be overridden through contractual terms.
- Consumers are never sure what they can and cannot do with copyright material. Copyright law makes everyday activities of consumers, such as the making of back-up copies and the uploading of home-made videos on video sharing platforms illegal. In addition, what is legal in one country may be illegal in another; the Copyright Directive has failed to harmonise national copyright legislation, thus increasing legal uncertainty for consumers.
- Consumers are regularly confronted with access restrictions from certain services depending on the geographic location of their IP- address. Consumers seeking to buy copyright protected content online are often only allowed access to online stores directed to their country of residence. Such barriers lead to a significant reduction of choice for consumers, particularly for consumers from those Member States where there is a less abundant service offer. In addition, territoriality of copyright may lead to price discrimination to the detriment of consumers. In fact, right holders tend to define markets along national borders and set different prices and conditions for identical products and services in each Member State.
- Consumers are not able to resell digital content. The principle of exhaustion only applies to physical products. From the consumers' point of views, it does not make a difference whether it is about a physical book or an e-book. The same rules should apply.
- Consumers are often the target of disproportionate IPR enforcement measures failing to distinguish between individuals downloading a song for their personal use and commercial criminal entities. The threat of court proceedings has been used to force innocent consumers into settling cases, even for amounts that are disproportionate to the damage that might have been caused by the infringement or pleaded guilty to the wrong charges.

Sharing economy

The sharing economy is the latest example of the internet's value to consumers. The main worry is regulatory uncertainty, mainly for consumers. There are issues related to whether the consumer is equally protected in case of abusive practices, fraud and even in terms of safety. However, the fact that consumer rules may need to be updated, this does not mean that disruptive competition should be halted.

Consumer rights when purchasing digital content products

- The current legal framework for consumer guarantee rights (1999 Consumer Sales Directive) applies only to tangible goods. With the growing distribution of on-line content within the EU, consumers needs clearer and solid rights (not based on optional law) in case the digital content turns to be defective.

Unfair contract terms in digital services

T&C for digital services offered to consumers often include unfair terms that are related to different policy areas e.g. data protection, copyright, consumer protection and contract law. Consumer associations across Europe have challenged those terms before national courts (e.g. in France UFC-Que Choisir has taken action against Google, Facebook and Twitter, and in Germany, vzbv against Apple's iTunes and Facebook). However, a pan-European response to these infringements is needed as these services are offered to consumers across the EU under the same or very similar contractual conditions.

Information gatekeepers

Whilst being offered a broader choice, consumers are also faced with an information overload, which often complicates decision making. Consumers therefore look for "shortcuts" to help them compare various offers and find the best deal.

Comparison tools have a clear potential for empowering consumers. They can help save time and money and find deals that are best suited to each consumer's individual needs. They can also play a key role in enabling consumers to discover offers beyond their country of residence, facilitating cross-border purchases and allowing consumers to fully enjoy the benefits of the EU Single Market.

Nevertheless, the rapid proliferation of CTs and the influence they can have on consumers' decisions have also given rise to concerns about their trustworthiness. If the transparency and reliability of CTs is not guaranteed, they can become a source of consumer detriment and risk undermining consumers' trust in the market as a whole.

Consumers use search engines on a daily basis to source the information most relevant to them and to access content of their choice. They should be able to trust search results to be impartial and based solely on relevance to their query, without manipulation of the order or results. Consumers should have such a right to impartial results the ranking of which will be decided on the merits, not on financial resources, and not be subject to manipulation according to company's commercial interests.

Privacy

We are living in an 'information age' where use of data is extensive. Consumers have a limited awareness of the extent that their personal data is collected, analysed and used by organizations.

Consumers have become the product; they are being productised and sold to anyone. Big Data techniques hold promise for breakthroughs ranging from better health care, a cleaner environment, safer cities, and more effective marketing. Yet, the same advances raise significant risks in terms of fundamental rights and freedoms, creating new flows of data between government, business and individuals, and might lead to abuse, discrimination etc.

Kitchens ordering food, washing machines turning on when energy demand on the grid is lowest, cars calling emergency services after an accident - all that could be part of an "Internet of Things". The risks to consumers' privacy are significant. Unless properly addressed, consumers' trust in the Internet of Things will remain low.

Telecoms

- The construction of a Single Market for telecommunications services is far from being a reality. For consumers to benefit from a fully integrated Single Market, they need to be able to comfortably use telecom services regardless of what is their location in the EU or who they are reaching out to. For this to happen, roaming surcharges need to be completely abolished for end-users, and so should transnational services within the EU. From a Single Market perspective, it simply doesn't make sense that a call from France to Latvia is six times more expensive than from France to the United States.

- In European telecom markets, prices have gone down and quality has gone up as a consequence of increasing levels of competition in many markets, thanks do a pro-competitive regulatory framework. This approach must continue to be the norm, so the level of competition should not only never decrease, but it should continue to increase where market failures (dominance, duopolies, no platform competition, etc.) still exist.
- In an era where an ever increasing part of consumers' lives is carried out online, it is paramount that the Internet continues to be a platform rich in innovative ideas and services, where consumers can enjoy unparalleled ways to manifest their freedoms of expression and to access information. This is only achieved if the Internet continues to be based on an ambitious understanding and enforcement of the principle of Net Neutrality. An increasing number of market practices defy this principle and put the Internet at a severe risk of falling under the control of big telecom and content players that will increasingly act as gatekeepers, shepherding consumers to an ever-decreasing selection of options online.
- On average, only a small percentage of Europeans have access to high-speed networks nowadays, either because of a lack of infrastructure deployment or because of prohibitive prices. In both cases, the solution must be more and healthier competition. European consumers cannot rely on the wishes and priorities of only a handful of big operators. In addition, access to basic broadband must be secured for all consumers as a Universal Service Obligation.

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