



E-commerce and the European Commission

Svend ALBÆK

Deputy Chief Economist, DG Competition

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* Disclaimer: the views expressed are those of the presenter and cannot be regarded as stating an official position of the European Commission



The Digital Single Market

New ("Juncker") Commission took office November 2014

"Digital Single Market" one of its 10 priorities

"The internet and digital technologies are transforming our world. But existing barriers online mean citizens miss out on goods and services, internet companies and start-ups have their horizons limited, and businesses and governments cannot fully benefit from digital tools"

Three policy areas or "pillars"

"Better online access to digital goods and services"

"An environment where digital networks and services can prosper"

"Digital as a driver for growth"



The e-commerce sector inquiry

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.**"

A sector inquiry is a competition policy tool

But does not in itself lead to findings of infringement of competition law

This would have to be done on the basis of separate "normal" cases

Our sector inquiries are different from the UK Market Investigations

We focus on possible breaches of competition law; wider scope in the UK

UK authorities can impose remedies as a result of their investigations; we would need to run separate cases subsequently



Previous EU sector inquiries

Energy (2005-2007)

Financial services (2005-2007)

Pharmaceuticals (2008-2009)



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 to legislative initiatives



Legal Framework (EU Competition Law)

2010 Vertical BER:

Article 4 (hardcore restrictions):

(b) restrictions of the territory/customer group

(c) restrictions of active or passive sales to end users by members of a selective distribution system

2010 Vertical Guidelines (paragraph 52):

"In general, where a distributor uses a website to sell products that is considered a form of passive selling, since it is a reasonable way to allow customers to reach the distributor."



Indications of company-erected barriers

Indications of company-erected barriers in e-commerce, primarily aimed at territorial fragmentation and restriction of price competition

Commission's casework

NCA's casework and policy initiatives

Cross-border restrictions focus of the e-commerce sector inquiry

Studies giving indications of company-erected barriers:

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)



Approach

Focus on:

Vertical restraints having an impact on cross-border e-commerce

Sectors:

Goods: electronics, clothing, shoes, books, etc.

Digital content: movies, television, sports, music, etc.

Cooperation with:

NCA's

Main tool:

Requests for information



Timing

First round of requests for information in late June 2015

Preliminary report followed by public consultation mid-2016

Final Report in first quarter of 2017



Recent or ongoing EU cases

Finished:

Ebooks

Hotel Bookings (not EU cases, but Commission involved in co-ordination)

Ongoing:

Amazon MFNs

Cross-border access to pay-TV content

Online electronics retailers

Google Search

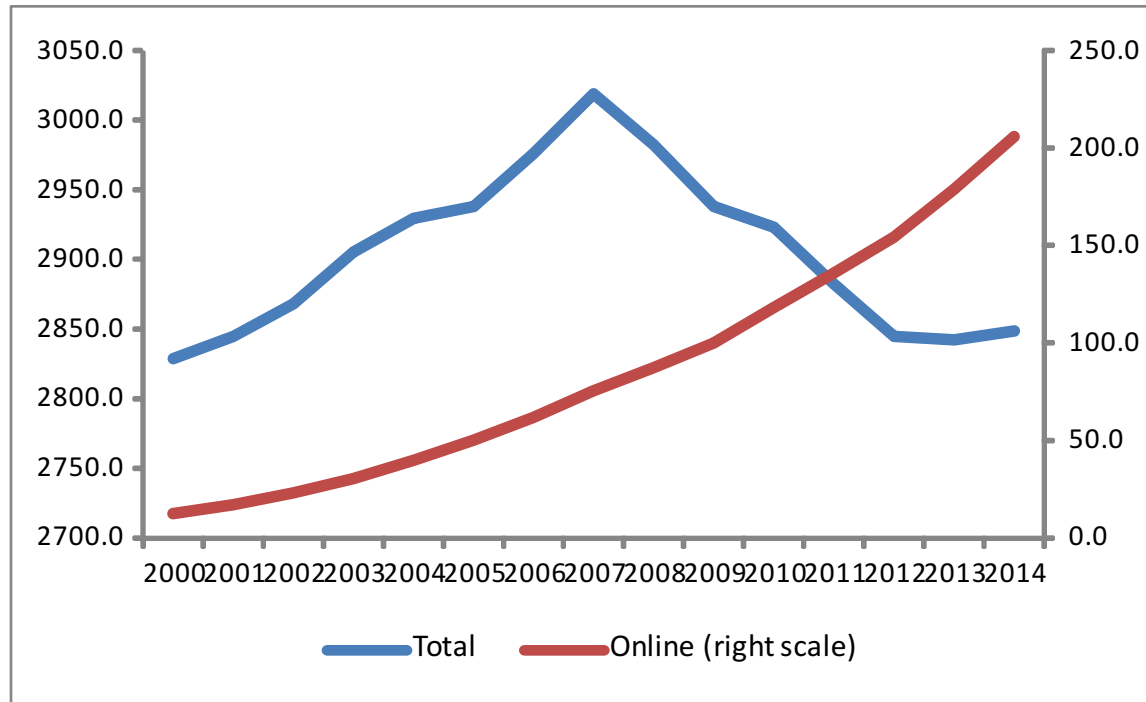
Google Android



Back-Up Slides

e-commerce

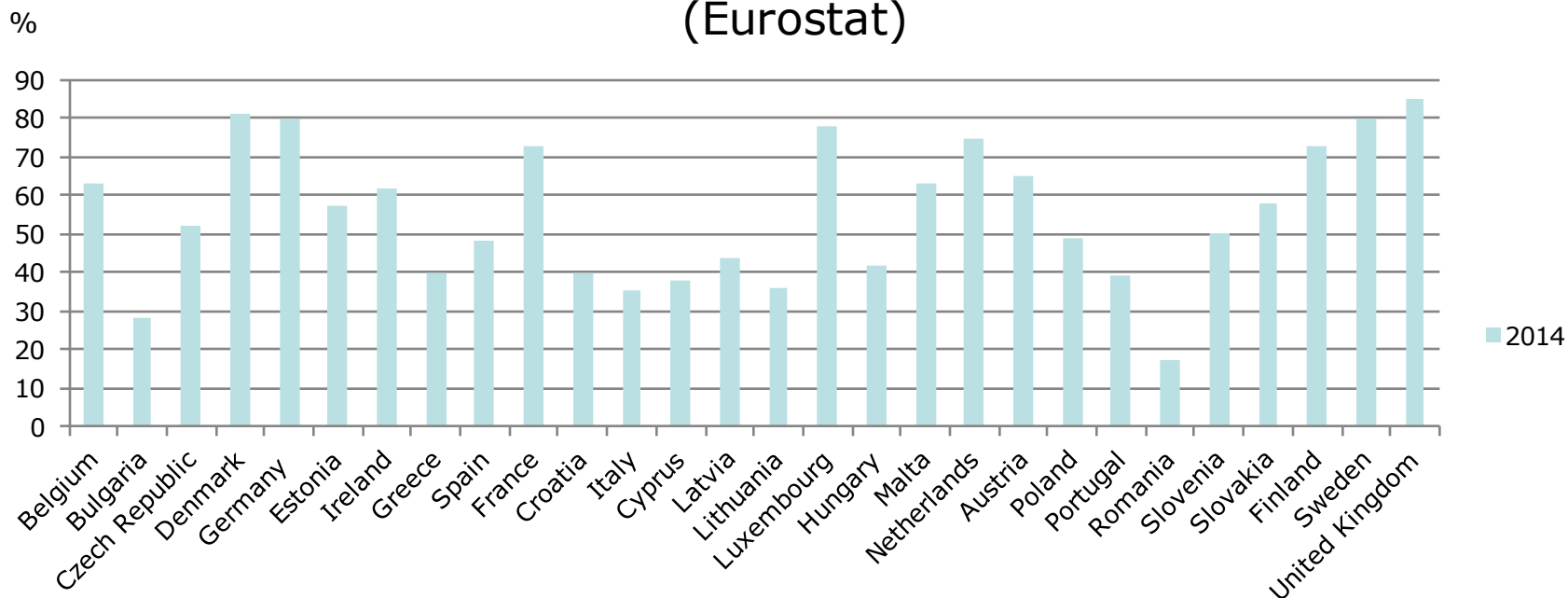
Evolution of total and online retail sales in goods in the EU, 2000 -2014 (EUR billion)



Source: Duch-Brown and Martens (2015)

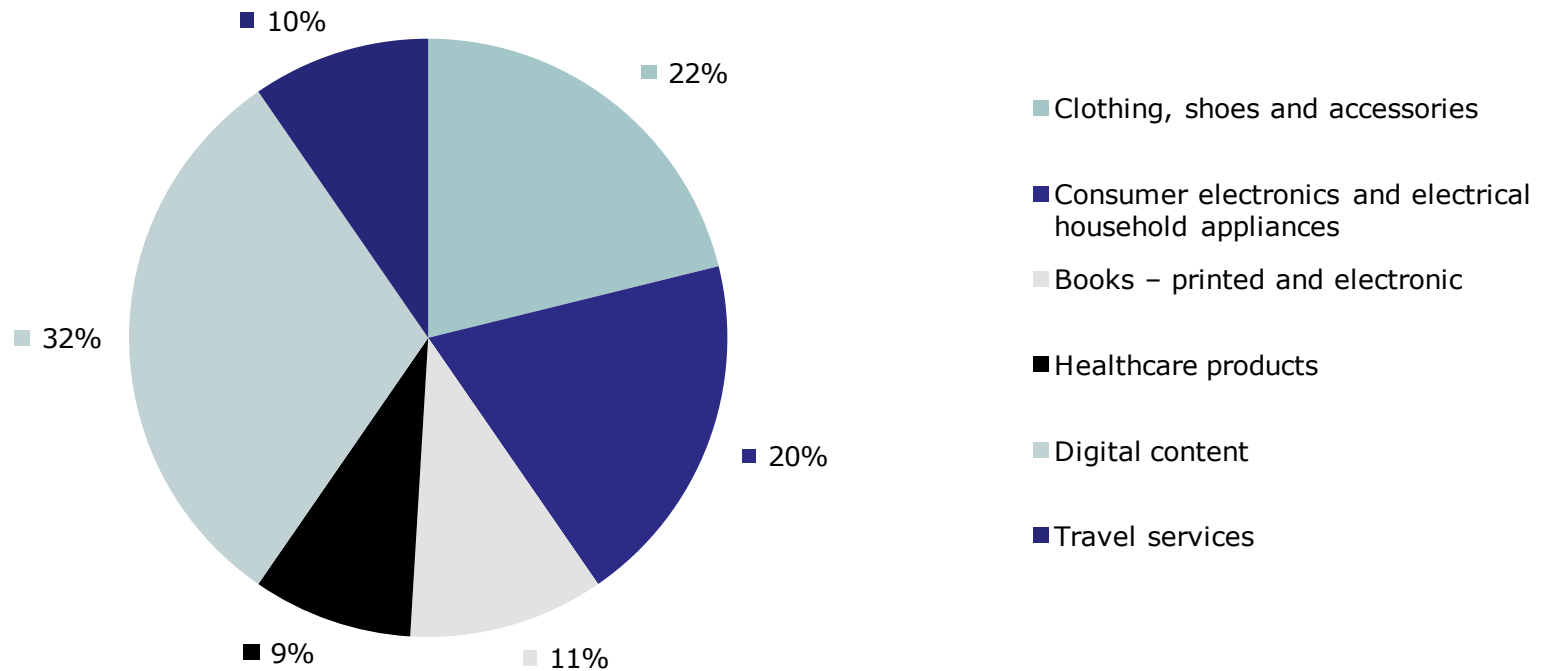
e-Commerce in the EU

Internet purchases by individuals (Eurostat)



Out of those individuals who used the Internet, this is the percentage of those who purchased online

Targeted products and services



Sources: EC, 2015 and Eurostat, 2014
(inaccuracies due to different sources)



Better online access to digital goods and service

" This requires rapidly removing key differences between the online and offline worlds to break down barriers to cross-border online activity"

"Actions:"

Easier e-commerce

Make cross-border commerce easier, especially for small and medium businesses. Today only 15% of consumers shop online from another EU country. Harmonising consumer and contract rules will both encourage more businesses to sell online across borders and give consumers more confidence

Improving parcel delivery

Promote affordable, high-quality cross-border delivery services (...)

Tackling geo-blocking

Geo-blocking leaves many Europeans unable to use the online services available in other EU countries, or redirects them to a local store with different prices. This is often done without any justification. Such discrimination cannot exist in a single market

Modernising copyright law

Modernise copyright and ensure the right balance between creators' and consumers' interests. (...)

Simplifying VAT rules

Make it easier for businesses – especially small businesses – to buy and sell in other EU countries. (...)



An environment where digital networks and services can prosper

"This requires high-speed, secure and trustworthy infrastructure, supported by the right regulatory conditions for investment, fair competition and a level playing field"

"Actions:"

Making telecoms rules fit for purpose

(...)

A media framework for the 21st century

The audiovisual sector is changing – with new technology, new business models, on-demand services, and new ways to watch such as on your smartphone. The Commission will review existing rules in this area

The role of online platforms

Online "platforms" - like search engines, social media, e-commerce platforms, app stores, and price comparison websites - are playing an ever more central role. However, there are issues: such as transparency, use of information, and constraints on moving from one platform to another. The Commission will comprehensively assess these issues, as well as looking at how to best tackle illegal content on the Internet

Strengthening trust in online services

Address Europeans' concerns about their personal data. 72% of European internet users are concerned about how their personal data is used: the new Data Protection Regulation should address these concerns and boost trust; the Commission will also review rules on ePrivacy and act on cybersecurity



Digital as a driver for growth

"This requires investment in ICT infrastructures such as cloud computing and Big Data; research and innovation to boost industrial competitiveness; and an inclusive society, with better public services and better digital skills for citizens"

"Actions:"

Digitalising industry

(...)

Developing standards and interoperability

Support new technologies, encouraging standards and interoperability. Currently standards are defined by industry interest parties, often outside Europe, and this undermines long-term competitiveness. A European push is needed to define standards in areas such as the Internet of Things, cybersecurity, big data and cloud computing.

Making the most of the data economy and cloud computing

Huge amounts of data is created by people or generated mechanically, including in the area of "big data". Such "big data" is a catalyst for growth, innovation and digitisation: but challenges like ownership, data protection and standards need to be addressed. The Commission will launch initiatives on the "free flow of data", and a European Cloud.

Unlocking the benefits of e-services and advancing digital skills

(..)



Types of restrictions

Goods:

- Restrictions to sell cross-border (passive sales, geoblocking)
- Restrictions to sell online (platform bans)
- Pricing restrictions

Digital content:

- Absolute territorial protection
- Supporting contractual provisions
 - Geoblocking requirements
 - Requirements for customers' terms of service
 - Enforcement mechanisms

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"

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)"