



E-Commerce and Competition Law

Report from the European Commission of 10 May 2017 on the E-commerce Sector

Background

Two years ago, the European Commission launched a sector inquiry into E-commerce. One of the objectives of the inquiry was to analyse possible competition barriers resulting from the commercial practices of companies, and also to reflect on the measures that could be adopted to ensure better access for consumers and businesses to goods and services. The inquiry sought to address both the consumer goods and digital content markets. The final report sets out a number of interesting ideas concerning the consumer goods market and in turn, concludes that intervening in the digital content market is much more complex.

Price is not everything

E-commerce has entailed an increase in price transparency and the Commission's report highlights the need to intervene in the event of undue barriers to price competition. At the same time, it recognises that competition between brands and sales channels is also structured around very important parameters other than price, such as quality, brand image and innovation.

Given the options offered by e-commerce, those who turn price recommendations into fixed prices are likely to get in trouble; however, the Report highlights the need for a more flexible analysis of other issues. Thus, for example, it reminds us that the price of a product should not vary depending on whether it is sold at a brick and mortar shop or online; however, actions to support sales via one channel are allowed; and price differentiation by

channel may be necessary and acceptable in order to address unfair practices of free-riding.

Online Platforms

One of the burning issues in this regard is whether manufacturers can ban distributors from selling their products via third-party platforms. This would be the case, for example, of cosmetics manufacturers who do not allow their customers (a pharmacy or other establishment) to sell their products on Amazon or similar platforms. The Commission takes a cautious approach, given that a German case referred to the European Court is currently being analysed; however, everything would seem to suggest it favours manufacturers being able to establish such restrictions unless the circumstances of a specific market recommend otherwise.

Geo-blocking

The Commission acknowledges that unilateral geo-blocking measures by non-dominant companies are acceptable; and in this respect it relies on the general principles applicable to distribution agreements in terms of the measures included in agreements between manufacturers and distributors.