



**COMMISSION FOR THE  
PROTECTION OF COMPETITION**

# **DIGITAL AGENDA FOR EUROPE AND CYPRUS**

## **TELECOMMUNICATIONS CONFERENCE PWC**

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**NICOSIA, 12 February, 2016**

# DIGITAL AGENDA FOR EUROPE



## PILLAR I: *DIGITAL SINGLE MARKET*

*JEAN CLAUDE JUNCKER\**: “I believe that we must make much better use of the great opportunities offered by digital technologies, which know no borders. To do so, we will need to have the courage to break down national silos in telecoms regulation, in copyright and data protection legislation, in the management of radio waves and *in the application of competition law.*”

*\*Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee for the Regions – 6.05.2015:*

*A DIGITAL SINGLE MARKET STRATEGY FOR EUROPE: (Extract from the Political Guidelines for the next European Commission – A New Start for Europe: My Agenda for Jobs, Growth, Fairness and Democratic Change (15 July 2014))*



# THE DIGITAL SINGLE MARKET



The Digital Single Market Strategy will be built on three pillars:

- **Better access for consumers and businesses to online goods and services across Europe**
  - rapid removal of key differences between the online and offline worlds
  - break down barriers to cross-border online activity.
- **Creating the right conditions for digital networks and services to flourish**
  - high-speed, secure and trustworthy infrastructures and content services,
  - right regulatory conditions for innovation and investment
  - fair competition and a level playing field
- **Creating the right conditions for digital networks and services to flourish**
  - investment in Information and Communication Technology (ICT) infrastructures and technologies such as Cloud computing and Big Data
  - research and innovation to boost industrial competitiveness as well as better public services, inclusiveness and skills



# Better online access for consumers and businesses across Europe



The Digital Single Market will provide businesses with new opportunities to scale up across Europe and is about:

- defining an appropriate **e-commerce framework**
- preventing **unfair discrimination against consumers and businesses** when they try to access content or buy goods and services online within the EU

Discrimination can come in the form of:

**nationality**

**residence or**

**geographical location**

restrictions which run counter to the basic principles of the EU



# Preventing unjustified geo-blocking



**Geo-blocking** refers to practices used for commercial reasons by online sellers:

- denial of access to websites based in other Member States
- consumers are able to access the website, but still cannot purchase products or services from it
- the consumer may also be re-routed to a local website of the same company with different prices or a different product or service
- where the sale is not denied, geo - localising practices are used as a result of which different prices are automatically applied on the basis of geographic location

Geo-blocking practices may be the result of a **unilateral decision** by market players, of **agreements among competitors to share the market**, or of **vertical agreements (for distribution rights on a territory)**



# A fit for purpose regulatory environment for platforms and intermediaries



**Online platforms** (e.g. search engines, social media, e-commerce platforms, app stores, price comparison websites) are playing an ever more central role in social and economic life: they enable consumers to find online information and businesses to exploit the advantages of e-commerce

Concerns over the growing market power of some platforms because:

- can control access to online markets
- can exercise significant influence over how various players in the market are remunerated
- lack of transparency as to how they use the information they acquire
- strong bargaining power compared to that of their clients, which may be reflected in their terms and conditions (particularly for SMEs)
- promotion of their own services to the disadvantage of competitors
- non-transparent pricing policies, or restrictions on pricing and sale conditions



# E-Commerce Sector Inquiry



**European Commission Press Release, 06 May 2015**

Margrethe Vestager, European Commissioner in charge of competition policy:

*"European citizens face too many barriers to accessing goods and services online across borders. Some of these barriers are put in place by companies themselves. With this sector inquiry my aim is to determine how widespread these barriers are and what effects they have on competition and consumers. If they are anti-competitive we will not hesitate to take enforcement action under EU antitrust rules."*

It complements actions launched within the framework of the [Digital Single Market Strategy](#)



# E-Commerce Sector Inquiry



The sector inquiry will focus particularly on **potential barriers erected by companies to cross-border** online trade in goods and services where e-commerce is most widespread, such as:

electronics

clothing and shoes

digital content

Knowledge gained through the sector inquiry will contribute to better enforcement of competition law in the e-commerce sector and could open case investigations to ensure compliance with EU rules on restrictive business practices and abuse of dominant market positions (Articles 101 and 102 of the Treaty on the Functioning of the European Union - TFEU)

Preliminary report in mid-2016

Public consultation on the preliminary report

Final report in the first quarter of 2017



# ANTITRUST CASES INVOLVING E-COMMERCE AND ON-LINE PLATFORMS



**Regulation 1/2003 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty, provides for:**

- The decentralization of the application of competition rules by empowering the NCAs to apply Articles 101(ex- Article 81) and 102 (ex-Articles 82) of the TFEU along with national competition law, in cases where trade between Member States may be affected by the alleged infringement
- The uniform and effective application of competition rules
- The Commission and the NCAs forming together a network of public authorities applying competition rules in close co-operation
- Cases to be dealt with by the most appropriate authorities thus a NCA is relieved of its competence if the Commission initiates its own proceedings
- The Advisory Committee on Restrictive Practices and Dominant Positions is composed of representatives of the competition authorities of the Member States



# Competition rules applying to undertakings (Treaty on the Functioning of the European Union)



## Article 101

(ex Article 81 TEC)

1. The following shall be prohibited as incompatible with the internal market: all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the internal market, and in particular those which:

- (a) directly or indirectly fix purchase or selling prices or any other trading conditions;
- (b) limit or control production, markets, technical development, or investment;
- (c) share markets or sources of supply;
- (d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
- (e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.



# Competition rules applying to undertakings (Treaty on the Functioning of the European Union)



## Article 102

(ex Article 82 TEC)

Any abuse by one or more undertakings of a dominant position within the internal market or in a substantial part of it shall be prohibited as incompatible with the internal market in so far as it may affect trade between Member States.

Such abuse may, in particular, consist in:

- (a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;
- (b) limiting production, markets or technical development to the prejudice of consumers;
- (c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
- (d) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts



# Amazon's e-book distribution arrangements



On 11 June 2015, the European Commission opened a formal antitrust investigation into certain business practices by Amazon in the distribution of electronic books ("e-books").

The Commission has concerns that certain clauses included in Amazon's contracts with publishers concerning such e-books could constitute a breach of EU antitrust rules that prohibit the abuse of a dominant market position and restrictive business practices.

In particular, the investigation is focused on clauses which seem to shield Amazon from competition from other e-book distributors, such as clauses granting it:

- the right to be informed of more favourable or alternative terms offered to its competitors; and/or
- the right to terms and conditions at least as good as those offered to its competitors

The Commission will investigate further whether such clauses may hinder the level playing field and potentially decrease competition between different e-book distributors to the detriment of consumers.



# Cross-border provision of pay-TV services available in UK and Ireland



On 23 July 2015, the European Commission has sent a Statement of Objections to Sky UK and six major US film studios: Disney, NBCUniversal, Paramount Pictures, Sony, Twentieth Century Fox and Warner Bros. The Commission took the preliminary view that each of the six studios and Sky UK have bilaterally agreed to put in place contractual restrictions that prevent Sky UK from allowing EU consumers located elsewhere to access, via satellite or online, pay-TV services available in the UK and Ireland. Without these restrictions, Sky UK would be free to decide on commercial grounds whether to sell its pay-TV services to such consumers requesting access to its services, taking into account the regulatory framework including, as regards online pay-TV services, the relevant national copyright laws.

US film studios typically license audio-visual content, such as films, to a single pay-TV broadcaster in each Member State (or combined for a few Member States with a common language). The Commission's [investigation, which was opened in January 2014](#), identified clauses in licensing agreements between the six film studios and Sky UK which require Sky UK to block access to films through its online pay-TV services (so-called "geo-blocking") or through its satellite pay-TV services to consumers outside its licensed territory (UK and Ireland).



# Google - comparison shopping (1)



Since 2002, Google has also been active in providing comparison shopping services, which allow consumers to search for products on online shopping websites and compare prices between different vendors. The first product it offered, "Froogle", was replaced by "Google Product Search", which in turn was replaced by its current product "Google Shopping".

Google has a dominant position in providing general online search services throughout the EEA, with market shares above 90% in most EEA countries.

On 15 April 2015, the European Commission [sent a Statement of Objections to Google](#) outlining the Commission's preliminary view that the company is abusing a dominant position, in breach of EU antitrust rules, by systematically favouring its own comparison shopping product in its general search results pages in the European Economic Area (EEA).



# Google - comparison shopping (2)



The preliminary conclusion of the Commission's investigation [opened in November 2010](#) is that **Google gives systematic favourable treatment to its comparison shopping product** (currently called 'Google Shopping') in its general search results pages, e.g. by showing Google Shopping more prominently on the screen.

It may therefore **artificially divert traffic from rival comparison shopping services and hinder their ability to compete on the market.**

The Commission is concerned that users do not necessarily see the most relevant results in response to queries - this is to the detriment of consumers and stifles innovation.

The Commission's preliminary view is that to remedy such conduct, Google should treat its own comparison shopping service and those of rivals in the same way.



# Online hotel booking (1)



The European Commission on **15 December 2014** announced the launch of market tests in antitrust investigations by the **French, Swedish and Italian** competition authorities in the online hotel booking sector.

The three national competition authorities had concerns that so-called “**parity clauses**” (also called “**best price**” clauses) in contracts between online travel agent **Booking.com** and hotels may have anti-competitive effects, in breach of EU and national antitrust rules.

Booking.com proposed commitments to remedy these concerns, which - if the market tests confirm their adequacy - the national competition authorities can make legally binding on Booking.com.

**The Commission was coordinating the national investigations but had not opened its own investigation.**



# Online hotel booking (2)



## THE COMMITMENTS

To solve the identified competition concerns, Booking.com offered a first version of commitments that were market tested and subsequently improved.

The adopted commitments:

- Booking.com cannot require from hotels to offer better or equal room prices via Booking.com than they do via competing OTAs
- Booking.com cannot prevent hotels from offering discounted room prices provided that these are not marketed or made available to the general public online
- Discounted prices can be offered online to members of a hotel's loyalty scheme and/or via offline channels (e.g. direct emails, telephone and walk-in bookings)

The French Competition Authority (FCA), the Italian Competition Authority (ICA) and the Swedish Competition Authority (SCA) on **21 April 2015**, adopted parallel decisions accepting identical commitments from the market-leading OTA Booking.com and making them binding in their respective jurisdictions.



# Online hotel booking (3)



## Competition and Markets Authority (UK)

The investigation was launched by the Competition and Markets Authority's (CMA) predecessor, the Office of Fair Trading (OFT). It focused on restrictions in agreements between **InterContinental Hotels Group and Hotel Inter-Continental London Limited (IHG) and each of Booking.com and Expedia**, which prevented the online travel agents from discounting the price of room-only hotel accommodation ('discounting restrictions').

The OFT issued a provisional decision in July 2012 and accepted formal commitments from IHG, Booking.com and Expedia in January 2014. The Competition Appeal Tribunal (CAT) remitted the case back to the CMA for reconsideration in September 2014 following an appeal in respect of the commitments decision by Skyscanner.

The CMA announced on 16 September 2015 that it had closed an investigation into suspected breaches of competition law in the hotel online booking sector but will monitor closely the market.



# Prohibition of “best price” clauses of Booking (4)



## German Competition Authority

On 23 December 2015 the Bundeskartellamt prohibited Booking (**Booking.com Deutschland GmbH, Berlin, and Booking.com B.V., Amsterdam**) from continuing to apply its 'best price' clauses and ordered the hotel booking portal to completely delete the clauses from its contracts and general terms and conditions by 31 January 2016 as far as they affect hotels in Germany.



# ECJ preliminary ruling: Online Sellers –Case: C-74/14



Lithuania's Supreme Administrative Court filed a preliminary reference to the Court of Justice, asking it to confirm whether a message sent by a system administrator to operators on a common online booking system could raise the presumption of a concerted practice.

The European Court of Justice (Fifth Chamber) on the **21 January 2016** held that Sellers who operate on a shared online booking system may be liable for participating in a concerted practice if they do not publicly distance themselves from uniform discounts proposed by a website administrator.

The Court (Fifth Chamber) ruled:

***“Article 101(1) TFEU must be interpreted as meaning that, where the administrator of an information system, intended to enable travel agencies to sell travel packages on their websites using a uniform booking method, sends to those economic operators, via a personal electronic mailbox, a message informing them that the discounts on products sold through that system will henceforth be capped and, following the dissemination of that message, the system in question undergoes the technical modifications necessary to implement that measure, those economic operators may — if they were aware of that message — be presumed to have participated in a concerted practice within the meaning of that provision, unless they publicly distanced themselves from that practice, reported it to the administrative authorities or adduce other evidence to rebut that presumption, such as evidence of the systematic application of a discount exceeding the cap in question.”***



# CPC: Antitrust Decisions



The Cypriot Competition Authority has since the year 2000, examined the following telecommunications markets in more than 40 cases investigated – only in 14 cases was an infringement decision issued:

- Fixed telephony (national and international tariffs)
- Mobile telephony (national and international tariffs and monthly subscription)
- VoIP telephony (international call tariffs)
- Retail sale of mobile phones and accessories
- International lease lines
- Right of Use of international capacity in submarine cable systems
- Retail and wholesale access to internet (broadband - dial up)
- National roaming prices
- Access to local loop
- Access to premium SMS services (Mobile Origination and Mobile termination)
- Premium calls (900)
- Pricing of four-digit numbers
- Mobile telephony (agreements)
- DSL access (i-choice) and Pay TV (miVision / Cytavision) Services
- Wholesale supply of pay TV premium channels - exclusivity agreements
- Retail market for Pay TV and TV Rights
- Retail distribution of electronic communication services





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