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## **Key Challenges for Consumer Policy in the Digital Age**

*Check Against Delivery  
Seul le texte prononcé fait foi  
Es gilt das gesprochene Wort*

Roundtable on Digital Issues

**London, 20 June 2008**

Ladies and Gentlemen,

It is my pleasure today to be in London to discuss with you the challenges and opportunities that the new digital world presents for consumer policy.

Since taking office last year, I have been implementing a consumer strategy that aims at healthy markets in which consumers can operate safely and confidently. I am convinced that ensuring well-functioning markets is best consumer policy. I have been advocating consumer choice and empowerment because consumers who can play their full role are essential to bring about the best in markets.

Earlier this year, I launched the Consumer Market Scoreboard. It will help us understand our economies by knowing how the internal market actually delivers to the citizens. It is not enough to look at the regulatory and legal environment of markets. We need to know the outcome down the line; the actual market experience of our citizens.

Information technology and the fast developing digital environment are causing a revolution in the way people interact, including in the way they interact commercially. Consumer policy must rise to the new challenges and help to seize the new opportunities. We need to ensure that the digital environment is one where consumers thrive. Developments are happening fast and the time to get on board is now.

For me, there are three current priorities of EU consumer policy in the digital arena. First, we must break down key regulatory barriers which are holding back the development of an effective internal market over the internet; second, we must clamp down on the next generation of unfair commercial practices rapidly arising online; and third we must ensure that important issues of personal privacy - data collection and profiling practices - do not damage trust in the digital space.

## **1. Opening up the Internal Market through e-commerce**

Internet presents an enormous opportunity for consumers. It expands the size of the market they operate in and therefore gives them access to more providers and more choice. It also makes it possible to compare products, suppliers and prices on an unprecedented scale. Internet has the potential to be one of the most empowering tools consumers have ever had.

Already 150 million EU citizens - a third of our population - shops over the internet. Yet it is striking that so far only 30 million of them shop cross border online in the EU. This avant-garde spends on average € 800 a year on these cross-border purchases, which demonstrates the enormous potential of the internal market if more people were confident to venture beyond their national borders.

Internet use for retail shopping is destined to become pervasive. But we must see to it that the adoption of the internet platform will not be unnecessarily slowed down by our failure to address important trust issues. I am referring to issues of legal uncertainty, enforcement and consumer redress. But beyond these points, I am also referring to bad regulatory practices and questionable business models.

### **Increasing Trust**

This Autumn, I will bring forward a new framework of consumer contract law that covers buying and selling online and off-line in Europe's Internal Market. We have a patchwork of complex laws which have evolved piecemeal over the last 20 years.

The result in practice is a maze of different rights and practices, from cooling off periods to guarantees that are as unclear to consumers as they are confusing for business. A single, simple set of core rights and obligations will make it easier for consumers and business to buy and sell across Europe. It will increase consumer confidence and bring compliance costs down for business. This will be my most important and immediate contribution to the development of European cross border trade. But I will not stop there.

To promote and protect trust, we must also develop our ability to drive fraud and illegal practices out of the internet. I have made the **enforcement** of consumer legislation one of my priorities and this covers the online world. Last year, at the initiative of the European Commission, the Consumer Protection Cooperation network – an EU wide network of national enforcement authorities - carried out the first EU wide sweep to enforce compliance with consumer legislation on the internet.

Under the auspices of the Transatlantic Economic Council, we are currently working on an agreement with the United States to enhance cooperation in the fight against spam and fraudulent behaviour. I believe this is very significant as we have an obvious shared interest in a safe internet.

Equally important, we need to improve **redress** and notably cross border redress. In 2007, European Consumer Centres, which are sponsored by the European Commission to resolve cross border consumer problems, processed more than 10,000 complaints related to cross border e-commerce. Half of these complaints related to delivery problems, and particularly to non delivery. Although these centres do an excellent job in mediating between buyers and sellers, there is little a consumer can do when mediation fails. This issue needs to be addressed.

I will emphasize again that the promotion of a single market that works well and delivers for 500 million consumers is one of my main priorities. And it is clear to me that the single market for consumers will happen online. But to deliver the internal market for consumers, action must be taken in all policy fields to remove unnecessary barriers to cross border trade.

### **Removing unnecessary barriers to the Internal Market online**

Internet as a retail platform is here to stay. Today we are releasing a new Eurobarometer survey that indicates that already 56% of EU citizens that have access to internet use it for shopping. Sixty percent use it to compare prices, compare suppliers and get information about the performance of products. What this means is a tougher world for underperforming suppliers and a world of opportunities for those who provide real value. Business will have to adapt.

We must reflect on the pertinence of restrictions imposed by suppliers to distribution over the internet. I believe that the revision of the regulation on vertical restrictions under EU competition law in the next couple of years is the right time to reconsider the appropriateness of such internet restrictions. I want to signal now that as a Consumer Commissioner I will play an active role in the Commission's discussion on how consumer choice can be reconciled with other imperatives in online commerce.

Another priority issue for consumers is to get rid of the artificial geographical restrictions holding consumers within national borders. It is particularly important for consumers to challenge the acceptability of business models based on geographical discrimination. In the world we live in, we are not obliged to shop in the supermarkets and stores of our postal code. We are not constrained to buy in our municipalities. We should also not be forced to shop within our national borders. Yet we cannot buy computers, train tickets or play-stations freely across the EU.

We are forced to buy domestic. Let me be clear, there is no place in Europe's Single Market for artificial geographical restrictions which hold consumers back within national borders. The new Services Directive clearly eliminates for the first time discrimination based on the consumer place of residence for services. This is just a start. We will need to address in a similar way discrimination in the market for goods.

I believe the time has come to look closely at the legitimacy of market partitioning along national boundaries, notably in online retail. I am in the process of carrying out a study on e-commerce, which I hope will start to launch the debate.

I would also urge business and consumer organisations to develop price comparison sites that compare prices of retailers in different European countries. Increasing awareness of price differentials is a good way to promote online commerce. Electronic consumer goods for instance are some of the main items traded cross border precisely because good bargains can be found online.

I would like to note that the price of many electronic goods is strongly determined by the copyright levies imposed on them. These levies are meant to compensate copyright owners for consumer behaviour that harms their economic interest. But at present, there is no transparency for consumers about what they are paying and what they are paying if for. The fact is that they are paying multiple times for something many will never do, that is make private copies of content on any number of platforms using any number of hardware. Copyright owners are entitled to reasonable compensation. But basic considerations of fairness call for transparency and a link between the actual harm and the amount of the levies. I question if in reality this link currently exists. The level of levies currently varies widely by country and there is little legal clarity for traders as to what levies apply to items purchased or sold cross border. The European Commission is now starting a process to rationalize the system of copyright levies in the EU.

I expect that this process will bring some EU harmonisation so that levies are not an impediment to trade. I expect that the coherence of the system for consumers will also be increased. I will certainly be monitoring the process with a lot of interest.

I have just described to you what I think are necessary actions to promote the internet as the best way to deliver the internal market to our citizens. I want to go back now to discuss the issue of how internet is affecting the way goods and services are actually sold to consumers. Although internet is an overwhelmingly positive experience there are some issues of concern.

## **2. Unfair Commercial Practices Online**

The effects of misleading practices are felt faster and with much bigger proportions in the digital world. Some of these practices are new manifestations of old tricks. The novelty is mostly their sudden pervasiveness online.

This includes the misrepresentation to the customer of the real conditions of the contract. For instance, the customer thinks she buys a ring tone through a one time promotion and actually signs up to a subscription to ring tones that she does not know how to cancel.

Services over mobile phone involve sometimes undisclosed and excessive charges to consumers. Young people seem particularly targeted by this as they are continuously prompted to dial number or send messages that generate considerable surcharges.

The addition of unannounced fees and charges as a customer proceeds with transactions online is a pervasive problem as traders can expand the number of clicks it takes to get to the actual payment. The Office of Fair Trade in the UK estimated in 2007 that these unexpected additional charges cost customers € 76 to 126 million per year in the UK alone.

The above issues will require enforcement. More challenging, are the new emerging practices against which the legislation still needs to be tested.

The use of pre-checked boxes for the purchases of costly options is an example. We are all familiar with the pre-checked insurance boxes while purchasing travel tickets online. Trust me, there is a reason these boxes are pre-checked and it is not customer convenience.

We are also witnessing a worrying trend in the blurring of commercial and non-commercial communication. It is not always clear online when a published item is commercially sponsored. A user might click on a link seemingly indicating user generated beauty advice and land on a page that may or may not be a promotional page and there is no way to tell. Viral ads that spread using individuals' social networks and the nature of communications on social websites pose similar new challenges. These developments are bound to challenge legislation and the self-regulatory systems that mostly control advertisement activities.

I have already coordinated an enforcement sweep in the sector of the sale of airline tickets online. The results of our initial findings were dismal. Customers were regularly denied basic things such as truthful price information. The enforcement is still ongoing and the websites' compliance with the law has already increased. But the exercise showed that the different interpretation of the law in different countries with respect to some practices online severely impeded cross border enforcement.

The Digital User Guide to be issued by the European Commission this year will clarify existing consumer rights in the digital space. But it is unlikely to cover many new practices that are currently in an ambiguous legal situation. To resolve this, I want a further effort to establish common guidelines on how to implement the unfair commercial practices legislation with regard to concrete new practices emerging online.

### **3. Privacy and data collection**

I will want to finalise my presentation of current consumer policy priorities in the digital world by mentioning the issue that is currently so hotly debated in the public domain: privacy and data collection.

E-commerce facilitates specialisation and niche markets. This is partly because it allows efficient niche targeting by advertisers. The data that can be collected about users on the internet is making targeting increasingly easy and effective. If you watch tennis over the internet, you will be targeted with ads for tennis items. If you read about home improvement, chances are that you will receive ads for repair services and new furniture. The profiling of internet users is intended to increase the value of advertising to the advertiser, the publishers and the consumer.

But there are some concerns that the amounts of personal data collected over the internet without the awareness of users, let alone their consent, is getting too large and a bit out of control. The full consequences of profiling are also not yet understood.

Because the reality is that in the case of our browser of home improvement websites, he will not only receive a valuable offer for new furniture; chances are he will also receive an offer for a loan. And the conditions of the loan might be determined by a personal profile he is not aware of having disclosed. So what should we think of market segmentation based on individual tastes and recorded behaviour? Particularly when the parameters of the segmentation are unknown to the consumer and beyond his control?

We must be particularly careful with the ability by suppliers to target certain groups such as children or other groups susceptible to being misled for whatever reason.

The European Data Protection Supervisor has stated that our current legislation requires explicit consent each time personal data is collected. The reality on internet is far removed from these principles.

And if we are to require consent, how should this consent be given? Currently many websites offer to click for 'enhanced services'. Is this an informed consent? How many people actually know that this amounts to consent to having their behaviour tracked, to have that data stored and then used commercially? What would be fair terms in an agreement to allow tracking? Publishers currently have privacy policies that allow the installation of tracking devices that are not themselves covered by their privacy policy. Is this a fair term? I believe that informed consent is the central issue that consumer policy must next address.

There is current legislation being drafted addressing tracking issues both under the telecommunications package and in the RFID communication. New challenges will come, notably in the context of e-health, social web profiles, and biometric technology.

It is therefore extremely important that we address the issues in a cross cutting way and that we do it on time. Retrofitting business models that develop on wrong basis is difficult. So the time is really now. Now is the time to strike a balance that allows us to capture the benefit of commercial use of data whilst addressing the concerns related to tracking and privacy.

Trust is the currency of the on-line world. I want that in the heated debates surrounding privacy, the voice of the consumers is clearly heard. For that reason, I want to step up our work to develop core consumer principles that feed into policy across sectors and technologies delivering a more consistent approach the conditions surrounding tracking and profiling.

#### **4. Conclusions**

I have set out my vision of what needs to be done to unlock an EU wide online market that delivers to consumers and where consumer can confidently reward the best suppliers. Let me summarize. I commit to two important deliverables:

- This Autumn, I will propose new legislation to cut back the current jungle of complex laws. I will table a simplified common set of rules for business to consumer contracts across the EU.
- We will publish this Autumn a Digital User Guide, setting out clearly current consumer rights as they exist in the digital world. It is already clear to me that we need to go further. I will then start to work on implementing guidelines of the Unfair Commercial Practices Directive for the online world to ensure consumers across the EU are protected against novel unfair practices online.

But this is not enough.

- I intend to participate in any debate on distribution over the internet and I intend to put a spotlight on the legitimacy of business models that run against consumer expectations.
- I will monitor the process to harmonize and rationalize copyright levies imposed on electronic goods across the EU as I think this is an issue that fundamentally affects consumers.
- Finally I will invite my fellow Commissioners to work with me on process leading to a consistent framework for issues of data collection and profiling that would be applicable across platforms. In such a process, consumer policy must ensure that consumer choice with respect to privacy options is made in a manner that is informed and undistorted.

We must act now to ensure a world online that effectively serves consumers. We must act now to give our citizens the future market place they deserve.

Thank you.