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## E-Commerce in Europe: The Beginning of the End for Geo-blocking?

On May 25, 2016, the European Commission (the Commission) published three legislative proposals designed to boost cross-border e-commerce within the European Union (the EU) that will have an imminent impact on companies doing online business in the EU.

The Commission's initiative follows in the wake of an EU sector inquiry into e-commerce, which found relatively low levels of cross-border EU e-commerce. In the Commission's view, the fragmentation of the EU's Single Market into national territories online is in large part due to "company erected barriers" and the present proposals represent some of the steps the Commission is taking to bring about a true digital single market for goods and services in the EU.

The proposals have three distinct but complementary objectives:

1. Preventing "unjustified" geo-blocking and other forms of discrimination based on nationality, residence, or establishment;
2. Improving price transparency for cross-border parcel delivery services; and
3. Strengthening the enforcement of consumer protection legislation across the EU.

Each of the proposals is examined in more detail below.

### ***Geo-blocking and Other Forms of Discrimination***

The Commission proposed a new Regulation banning "unjustified" geo-blocking and other forms of discrimination based on nationality, place of residence, or establishment. In this context, geo-blocking refers to preventing customers based in certain locations from accessing websites or online offers available outside the jurisdiction in which the customer is ordinarily resident or established.

While most of the measures proposed by the Commission concern business-to-consumer activities, its proposals relating to geo-blocking also cover business-to-business transactions where the purchaser is the end-user of the goods or services.

The key proposals under this heading are:

- > an outright ban on geo-blocking or other forms of discrimination based on nationality, place of residence or establishment for:
  - > sales of products without delivery (*i.e.*, goods collected at the seller's premises);
  - > sales of electronically supplied services (*e.g.*, data warehousing or cloud computing); and
  - > sales of services provided at specific physical locations (*e.g.*, concert tickets, car rental services, etc.).
- > a prohibition on blocking access to websites and automatic re-routing to websites aimed at the jurisdiction in which the customer is located; and
- > a non-discrimination obligation in relation to payment methods. While traders remain free to choose their preferred payment methods, discrimination of customers using an accepted payment method based on the nationality, place of residence, or establishment would be prohibited.

In this context, it is important to note that the proposals do not impose an obligation on traders to sell their products and services across the EU, accept payments in all EU currencies or harmonise their offerings across the EU. Traders remain free to set different prices on websites aimed at different EU Member States. In doing so, they would, however, not be able to mask such differentials by resorting to geo-blocking or automatic re-routing.

It should also be noted that the bulk of the draft Regulation does not apply to transport, retail financial and audio-visual services – the reason being that transport services are already the subject of separate legislation and that the Commission has recently launched separate initiatives in respect of retail financial and audio-visual services.

### ***Transparency of Cross-border Parcel Delivery Charges***

According to the Commission's research, the cost of delivering parcels between EU Member States varies significantly and in a manner that is not always cost-reflective. In many instances, high delivery costs make the provision of cross-border e-commerce unviable.

To address this issue, the Commission proposed a second Regulation aimed at improving price transparency and regulatory oversight for cross-border parcel delivery services by:

- > increasing and clarifying the monitoring powers of postal regulators across the EU;
- > regularly collecting and publishing domestic and cross-border prices for a set of basic parcel delivery services across the EU; and
- > requiring universal postal service providers to offer transparent and non-discriminatory third party access to existing multilateral cross-border agreements (which govern cross-border delivery of parcels between universal providers).

Accordingly, this proposal does not impose additional obligations on business (other than parcel delivery service and universal postal service providers). It is aimed at increasing transparency and oversight in the hope that prices will become more cost-reflective. However, in a statement reminiscent of the debate preceding the introduction of price caps now in force in respect to mobile telephone roaming charges in the EU, the Commission states that while price regulation is a "[...] *tool of last resort, where competition does not bring satisfactory results [it will] take stock of progress made in 2019 and assess if further measures are necessary.*"

### ***Streamlining Enforcement of Consumer Protection Legislation***

The Commission proposes a revision of the existing Consumer Protection Cooperation Regulation. While enforcement of consumer protection legislation would firmly remain with the national authorities of the EU Member States, the amended Regulation does contain a new and potentially important mechanism for infringements that affect a large majority of EU

Member States and EU consumers (defined as a minimum of 75 percent of EU Member States accounting for a minimum of 75 percent of the EU's population).

This new mechanism would enable the Commission to launch a procedure requiring the national consumer protection authorities to coordinate their positions when assessing such infringements and agree on an EU-wide settlement with the company concerned. If this proves impossible, the national authorities would be required to designate which of them is best placed to ensure effective enforcement measures.

In addition, the Regulation provides the national authorities with the power to:

- > check whether websites illegitimately geo-block or discriminate against certain consumers;
- > order immediate take-downs of websites hosting scams; and
- > request information from domain registrars and banks to identify rogue traders.

As is evident from the above, the Commission's proposals under this heading do not impose additional duties on businesses, but the resulting streamlining and strengthening of the enforcement powers will have an indirect impact on companies doing business in the EU.

### **Next steps**

The Commission's proposals will now be sent to the European Parliament and the European Council. If enacted, the Commission expects these measures to take effect in 2017.

Given the Commission's e-commerce agenda, readers should expect further initiatives in the near future in this area, as it continues to be a key focus of the Commission's high-profile Digital Single Market Strategy.

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