

## European Commission Prioritizes Completion of Digital Single Market

### IN SHORT

**The Background:** The European Commission is working towards the completion of the Digital Single Market, which will provide better access to online goods and services across EU Member States for both consumers and businesses.

**The Action:** The Commission has launched a sector inquiry into potential anticompetitive barriers to the growth of e-commerce, and is conducting investigations into whether the online sales practices of select industries unlawfully prevent consumers from purchasing goods across borders at competitive prices.

**Looking Ahead:** Regulations on the cross-border portability of online content services in the EU are expected to go into effect in EU Member States by early 2018.

Since May 2015, the European Commission ("Commission") has identified the completion of the Digital Single Market as one of its top-ten political priorities. The Digital Single Market Strategy ("Strategy") aims at ensuring better access for consumers and businesses to online goods and services across EU Member States. The Strategy includes [both regulatory initiatives and a competition law enforcement dimension](#). This *Commentary* provides an update on the Commission's latest initiatives.

### Investigations into Suspected Anticompetitive E-Commerce Practices

In May 2015, the Commission launched a sector inquiry into e-commerce in the EU, aimed at gathering evidence on potential anticompetitive barriers to the growth of e-commerce. The preliminary results of the Commission's inquiry, [released in September 2016](#), showed widespread contractual restrictions on the online distribution of digital content. Furthermore, the large majority of providers have agreed with right holders to use geo-blocking to restrict access to their online digital content services by users from other Member States. Under certain conditions, such arrangements may harm competition and infringe competition laws. The Commission's concern is that businesses obstruct cross-border online trade and fragment the EU's Single Market along national borders.

The investigations aim at assessing if certain online sales practices prevent, in breach of EU competition law, consumers from enjoying cross-border choice and the ability to purchase consumer electronics, hotel accommodations, and video games at competitive prices.



In February 2017, the Commission launched three separate investigations against consumer electronics manufacturers (including Asus, Denon & Marantz, and Pioneer); the video game industry (distributor Valve Corporation, as well as game publishers Bandai Namco, Capcom, Focus Home, Koch Media, and ZeniMax); and the travel industry (large tour operators Kuoni, REWE, Thomas Cook, TUI, and Meliá Hotels). The investigations aim at assessing if certain online sales practices prevent, in breach of EU competition law, consumers from enjoying cross-border choice and the ability to purchase consumer electronics, hotel accommodations, and video games at competitive prices. The three investigations tackle, in particular, the issues of retail price restrictions, discrimination on the basis of location, and geo-blocking.

Regarding the specific issue of geo-blocking, the Commission is investigating bilateral agreements concluded between Valve Corporation, owner of the game distribution platform, and the five PC video game publishers. The investigation focuses on whether the agreements require the use of "activation keys" for the purpose of geo-blocking. Such keys can be used to grant access to a purchased game only to consumers in a particular EU Member State, and can therefore prevent individuals from purchasing

video games because of their location or country of residence. The Commission believes that this may amount to a breach of EU competition rules, by reducing cross-border competition as a result of restricting parallel trade within the Single Market and preventing consumers from buying cheaper games available in other Member States.

These investigations are the first follow-up to some of the issues identified in the Commission's competition inquiry into e-commerce. In each of the three cases, the Commission will assess whether the practices restrict competition and whether Commission or national competition authority enforcement is required. The assessments will take place in view of the characteristics of the specific product and geographic markets.

## THREE KEY TAKEAWAYS

1. Restricting access to digital content services based on consumers' locations or countries of residence may, under certain circumstances, violate competition laws.
2. Under the proposed rules, service providers of paid online content will be required to allow subscribers to use their services while traveling in other EU Member States.
3. Some license agreements between copyright holders and service providers may need to be renegotiated to comply with the new regulations.

**WANT TO KNOW MORE**  
READ THE FULL VERSION.

## CONTACTS



Serge Clerckx  
Brussels

*Audrey M. Paquet, an associate in the Brussels Office, assisted in the preparation of this Commentary.*

SUBSCRIBE

SUBSCRIBE TO RSS



Jones Day is a legal institution with more than 2,500 lawyers on five continents. We are One Firm Worldwide<sup>SM</sup>.

**Disclaimer:** Jones Day publications should not be construed as legal advice on any specific facts or circumstances. The contents are intended for general information purposes only and may not be quoted or referred to in any other publication or proceeding without the prior written consent of the Firm, to be given or withheld at our discretion. To request reprint permission for any of our publications, please use our "Contact Us" form, which can be found on our website at [www.jonesday.com](http://www.jonesday.com). The mailing of this publication is not intended to create, and receipt of it does not constitute, an attorney-client relationship. The views set forth herein are the personal views of the authors and do not necessarily reflect those of the Firm.

© 2017 Jones Day. All rights reserved. 51 Louisiana Avenue, N.W., Washington D.C. 20001-2113