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**Internal Market and
Consumer Protection**

8th Meeting of the IMCO Working Group on the Digital Single Market

Study for the IMCO Committee



DIRECTORATE GENERAL FOR INTERNAL POLICIES
POLICY DEPARTMENT A: ECONOMIC AND SCIENTIFIC POLICY

Digital Single Market: boosting e-commerce and combatting consumer discrimination in the EU

8th Meeting of the IMCO Working Group on the Digital Single Market

STUDY

Abstract

This report summarizes the discussion during the 8th Meeting of the IMCO Working Group on the Digital Single Market. It explains an exchange of views between MEPs, the European Commission and experts on the topic of boosting e-commerce and combatting consumer discrimination in the Digital Single Market.

The proceedings were prepared by Policy Department A for the Internal Market and Consumer Protection Committee.

This document was prepared for the European Parliament's Committee on Internal Market and Consumer Protection.

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LIST OF ABBREVIATIONS

BEUC	Bureau Européen des Unions de Consommateurs
DEEP Centre	Centre for Digital Entrepreneurship and Economic Performance
DG Competition	Directorate General for Competition
DG Connect	Directorate General for Communications Networks, Content & Technology
DSM	Digital Single Market
EC	European Commission
ECCG	European Consumer Consultative Group
EIF	European Investment Fund
EPP	European People's Party
EU	European Union
GDP	Gross Domestic Product
IMCO Committee	Internal Market and Consumer Protection Committee
IoT	Internet of Things
MEP	Member of the European Parliament
S&D Group	Socialists & Democrats
SMEs	Small and medium-sized enterprises
UK	United Kingdom
ULC	Union Luxembourgeoise des Consommateurs
VAT	Value Added Tax
VCs	Venture Capitalists
VR	Virtual Reality

EXECUTIVE SUMMARY

Background

On **20 June 2016** IMCO held the eight meeting during this term of its **Working Group on the Digital Single Market**, under the leadership of the **Chair of the Working Group, Ms. Róza Gräfin von Thun und Hohenstein, Member of the EPP Group**.

Speakers:

Anthony Williams: Mr. Williams is co-founder and president of the Centre for Digital Entrepreneurship and Economic Performance (DEEP Centre) and co-author (with Don Tapscott) of the groundbreaking bestseller *Wikinomics* and its follow-up *Macrowikinomics: New Solutions for a Connected Planet*. Anthony is an expert advisor to the Markle Foundation's *Initiative for America's Economic Future*, a senior fellow for innovation with the Lisbon Council in Brussels and chief advisor to Brazil's Free Education Project, a national strategy to equip 2 million young Brazilians with the skills required for a 21st Century workforce. His work on technology and innovation has been featured in publications such as the Huffington Post, Harvard Business Review and the Globe and Mail.



Felice Simonelli: Dr Simonelli is a Research Fellow at the Centre for European Policy Studies (CEPS), where he works on better regulation and analysis of EU public policies. With regard to copyright and the digital single market, in 2015 he was the coordinator of CEPS' research team responsible for carrying out a European Implementation Assessment of the EU copyright framework for the European Parliament and in 2013 he was part of the research team drafting CEPS' Task Force Report on Copyright in the EU Digital Single Market. Dr Simonelli was a Research Fellow at the Italian Space Agency and a Visiting Researcher at Tel Aviv University and Berkeley Law; he published several papers on refereed journals. He holds a Ph.D. in Law and Economics from LUISS University (Rome).



Bob Schmitz: Mr. Schmitz is Managing Director at Cabinet Bob Schmitz and Counsel of Union Luxembourgeoise des Consommateurs (ULC) and permanent delegate to the EU in Brussels. Substitute European Consumer Consultative Group (ECCG)/ EU Commission. He has a French Law degree and post-graduate EU law diploma from College of Europe. Active in EU public & regulatory affairs in Brussels since 1976, he acted as Legal counsel of BEUC and before as Manager regulatory affairs Coopers & Lybrand European Office. Specialist in consumer affairs, environmental/packaging policy, air transport. He is also member of different Commission's Expert Group on consumer law and environmental issues.

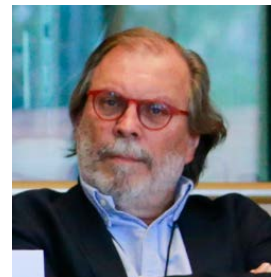


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<http://audiovisual.europarl.europa.eu/SearchAllResults.aspx?pid=46232&mediatype=P&type=N>

1. OPENING STATEMENT

Ms. Róza Gräfin von Thun und Hohenstein (MEP) opened the eight Digital Single Market Working Group on Boosting e-commerce and Combatting consumer discrimination in the Digital Single Market and welcomed the Members of the European Parliament, the members of the European Commission and the experts by underlining the context in which the meeting took place. While the United Kingdom is expected to vote for the referendum whether the U K should stay in the European Union or not, the work of the Working Group needs to continue as the topic are numerous and of a high importance for European citizens. **Ms. Thun (MEP)** reminded the audience that the work done in this Committee is a collective work involving the European Commission and the Council.



The aim of this eighth meeting of the Working Group was to focus on four proposals of regulations prepared by the Commission: geo-blocking and other forms of discrimination, cross-border parcel delivery, consumer protection cooperation and cross-border portability of online services. On those proposals, the DSM Working Group wanted to know if the policy options proposed by the European Commission are going in the right direction concerning two issues: boosting the digital single market and combatting consumer protection in the EU.

In order to do this assessment, **Ms. Thun (MEP)** introduced to the audience the three experts invited by the IMCO Committee to share their expertise.



2. KEYNOTE SPEECHES: CHALLENGES FOR LAWMAKERS

2.1. Anthony Williams, Boosting e-commerce in Europe

Mr. Williams introduced his subject by reminding that for the first time in history, millions of people use digital technologies to participate in the economy and to create value and co-innovate with companies. This leads to a very different approach to innovation and to the way that companies build and disseminate products on a global basis.

Mr. Williams outlined the need to keep in mind that even if the Digital Single Market evolves to its fullest potential, European entrepreneurs compete in a global digital market place with 3 billion internet consumers and where India and China are the fastest growing market at the moment (52% of the global market for smartphones is located in Asia).

European Single Market provides a better environment for entrepreneurs to reach scale before they launch into the international market. European entrepreneurs who wish to reach the size of companies such as Google or Facebook have, in the end, to aspire to be global players, not just European players.

Mr. Williams highlighted the fact that we are facing a difficult economic environment in the years ahead. Global economic growth has been slowing recently: in 6 of the 8 past years, the growth rate was below the 20 last year average. Also, the distribution of the growth has shifted from Japan, the United States of America and Europe to Asia and more specifically to China which accounts for 63% of global GDP growth. Moreover, the population is globally aging which tends to weaken the global labour force participation.

Nevertheless, the global economic environment creates opportunities for digital companies that innovate, increase efficiency, lower prices and invent entirely new products and services, as AirBnB or Uber prove. It also impacts every sector of economy: agriculture, industry and services. E-commerce, in particular, is still growing and provides ample opportunity for innovation. In 2000, e-commerce retailing was below 2% of total sales. Today, it represents a little bit more than 10% and still has potential to grow thanks to new innovations.



At the same time, e-commerce should be viewed as just one domain in a larger opportunity space that also includes social networking/sharing economy; big data and machine learning; robotics; the Internet of Things (IoT); and Virtual Reality (VR). The Digital Single Market Strategy should therefore take all of these technological opportunities into consideration.

Building a better environment for digital entrepreneurs is crucial for European business. A ranking of the top 20 Global Internet Market leaders (based on market valuation) shows that none of the listed companies are

European. It is therefore essential that the Digital Single Market Strategy is implemented rapidly and addresses the most relevant issues and obstacles facing European companies and entrepreneurs.

Mr. Williams evaluated the strengths and potential weaknesses of the DSM strategy. Among its strengths, the ideal of the Single Market achieved through rules harmonization, fewer barriers and common tax structures is very compelling. However, **Mr. Williams** underlined the fact that, in practice, we observe a high fragmentation within the European market related to different legislation and different business practices across the European Union. It is a problem because, in the United States, India or China, companies can quickly scale up as they have access to a large body of consumers without facing those obstacles. **Mr. Williams** recommended that the Digital Single Market Strategy should pay a closer attention to building entrepreneurial capacity. Indeed, **Mr. Williams** mentioned the fact that regulatory issues are not the most challenging obstacles for entrepreneurs. Their biggest challenges are obtaining access to capital and management talent, especially executive management with the capacity to build sophisticated global technology businesses. **Mr. Williams** also indicated at the need for Europe to focus more on areas of technology where it has comparative advantages, including clusters where Europe could build world-class technologies that would be commercialized on a global basis.



After those recommendations, **Mr. Williams** presented the potential weaknesses of the strategy for a Digital Single Market. The expert emphasized the risk of inertia due to the need to review and implement reforms that can take many years. The Digital Market is growing very fast, companies are investing every day and bring new products and practices to the market very rapidly. Given the extent of the work that is needed, the risk is that the reforms may take too much time to be adopted and therefore might lack of relevancy to frame the evolving digital market. Also, **Mr. Williams** estimated that the DSM Strategy focuses too much on e-commerce and doesn't take enough into account other emerging technological innovations: bionics, robotics, artificial intelligence, virtual reality... These are innovations in which major global companies are investing now as they probably constitute the next break through in economy.

Moreover, **Mr. Williams** insisted on focusing on ensuring that European entrepreneurs have access to the resources and competencies they require to take advantage of a larger market. He outlined specific recommendations such as developing scale-up programs to direct capital and expertise to a smaller number of maturing/proven digital companies and providing the resources required to build global technology champions. **Mr. Williams** recommended also to increase access to sophisticated management talent with specialized work visas, temporary matching grants for executive salaries and European business mentorship networks. Moreover, the support for the European Investment Fund's (EIF) investments into business angels should be pursued: VCs and mezzanine growth funds will provide funds required to scale-up digital companies.

Facilitate greater corporate engagement through partnerships that offer large companies access to talent and innovation and give startups access to capital, expertise, anchor customers and global value chains. In addition, increasing investments in digital government to streamline access would provide valuable business support services, enable inter-jurisdictional collaboration, unlock procurement opportunities for SMEs and create an efficient business environment that attracts inward investment. In order to make European digital firms significantly more innovative, productive and globally engaged, **Mr. Williams** suggested developing digitally focused export strategies. Finally, he highly recommended intensifying effort to track, disseminate and adopt global best practices. Faster pivots and a higher economic metabolism will help allocate talent and capital to winning firms, institutions and ideas.

2.2. Felice Simonelli, Combatting consumer discrimination on the Digital Single Market

Dr. Simonelli started his presentation by outlining the fact that it is a topical moment for the Digital Single Market since the European Parliament and the Council are currently working on crucial files which are shaping the way the Digital Single Market will function in the coming years. The expert divided his presentation in three parts: first, he explained how the Digital Single Market should look like, then he presented what has been done to prevent unjustified geo-blocking and finally he explained how to prevent unjustified geo-blocking and what should be done to prevent justified geo-blocking.



Dr. Simonelli underlined that the Digital Single Market is a place where the free movement of goods, services, capital and persons should be ensured. The Digital Single Market should be a place where citizens, as well as companies, should have access to online activities irrespective their nationalities, place of residence or place of establishment. Finally, the Digital Single Market can be identified through this motto: “One territory, one market”. **Dr. Simonelli** outlined that it is still not the case in practice because of justifications for geo-blocking, which are keeping the market fragmented. A number of reasons could explain this fragmentation: the freedom of business, which implies the freedom for a company to stay small and refuse to go beyond the borders; copyright rules, which allow companies to fragment the market along national

borders; other national rules (e.g. rules on protection of minors and rules on advertising). Policy makers seem to accept that there are some cases that can be justified to keep fragmentation of the market. **Dr. Simonelli** warned that this approach might constitute a “slippery slope” which would prevent the implementation of an efficient Digital Single Market. He recalled that the article 20 of Services Directive did not work because it allowed “objective” justifications for discrimination according to nationality or place of residence or place of establishment.

Dr. Simonelli explained how to prevent unjustified geo-blocking. Unjustified geo-blocking implies that no objective justifications can explain a geo-blocking obstacle. It depends therefore on purely commercial reasons. To tackle this problem, European Commission (EC) adopted several proposals. The most interesting one is the recent proposal on addressing geo-blocking and other forms of discrimination. This proposal touches upon re-routing and geo-blocking and how to ensure consumers’ freedom of access to any website of a certain company. The proposal tries therefore to avoid discrimination based on nationality, place of residence or establishment. However, this provision will be applied in three cases only, which will limit the scope of the proposal. It leaves therefore some unsettled issues presented by **Dr. Simonelli**. Firstly, the re-rooting is apparently possible with the consent of the consumers. A consumer can accept to be redirected to another website. This situation may lead to a discrimination based on the language as consumers may choose to stay on a website they can understand. Secondly, the proposal is only applied to goods when the trader is not (directly or indirectly) involved in parcel delivery. So there is a place to discrimination on the basis of the place of residence or establishment. Thirdly, the provision on supply electronic services has a limited scope of application as several electronic services are based on a software, and software as a digital copyright content out of the scope of the geo-blocking. In fact, the proposal is not covering audio-visual media services giving access to copyright

content as well as other copyrighted content (e.g. music, images, and software). In this case geo-blocking seems to be justified on the basis of copyright obligation.

Then, **Dr. Simonelli** moved to justified geo-blocking, which is partially tackled by the proposal on portability and an antitrust case by DG Competition. By means of the proposal on portability, the European Commission attempts to allow portability of digital copyrighted content across Member States. However, there are still some issues that remain unsolved: mainly the definition of temporary presence abroad that is related to the definition of the country of residence. **Dr. Simonelli** recommended that the European Parliament should address this issue. The important point is also the way to verify how a person temporarily stays abroad. **Dr. Simonelli** identified two scenarios: the first scenario occurs where there is a strict application of the regulation (e.g. by monitoring the IP address). This would benefit people who stay temporarily abroad, e. g. for less than one year (1 to 5 million Europeans). With a looser application (e.g. by verifying their billing address or their bank account location), the proposal could benefit additional 14 million Europeans (long-term migrants). The second scenario would consist of applying competition law to build the Digital Single Market. For this scenario, **Dr. Simonelli** was referring to the current investigation DG Competition started against SkyUK and 6 major American film studios. This case tests the potential to create a Digital Single Market by applying competition law and banning contractual limitations to cross-border passive sales. However, this might not be enough because it leaves the bigger problem of copyright law unsolved.

In conclusion, **Dr. Simonelli** reminded the economic importance of the Digital Single Market. It has been estimated that the Digital Single Market would create 415 billion euros of benefits each year. Agreeing with **Mr. Williams**, **Dr. Simonelli** confirmed the need to act quickly, Referring to the cost of slow Europe¹, **Dr. Simonelli** underlined the risk of postponing the implementation of a Digital Single Market as it would imply generating costs in terms of foregone revenues for Europe. Finally, **Dr. Simonelli** concluded by saying that even if geo-blocking proposal and portability proposals are an important step forward, they might have a limited impact and therefore cannot on their own create the Digital Single Market. Actions must be undertaken on copyright issues, which seem to be the major cause of fragmentation of the European Digital Single Market.

2.3. Bob Schmitz, “The perspective of the consumers in the upcoming legislative proposals”.

Mr. Schmitz started his presentation by specifying that trying to give a general perspective of European consumers would be pointless as there are too many different types of consumers. He rather opted to give a point of view from the Luxembourgish consumers. Luxembourg is an interesting example to take into consideration when it comes to debating about geo-blocking. As the Luxembourg market is a small one compared to France, Germany, etc... 88% of internet sales are concluded with websites situated in another Member State than Luxembourg. Therefore, Luxembourg market constitutes an interesting laboratory to

¹ [http://www.europarl.europa.eu/RegData/etudes/STUD/2016/578966/IPOL_STU\(2016\)578966_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2016/578966/IPOL_STU(2016)578966_EN.pdf)

test cross-border trades and geo-blocking issues. Such example is not isolated and the Luxembourg case could be compared with Greece, Malta and Cyprus.

Among the problems encountered in Luxembourg, geo-blocking appears to be the most important concern as it represents 32% of the problems encountered by consumers. Geo-blocking framework is therefore of particular interest for Luxembourg and for small markets in general as there is not always a national online website. Further, consumers are not always targeted by websites from other countries. This situation leads consumers to find out by themselves what is available in France, Germany or Belgium. This makes them enter in the category of *active consumers*. National laws do not protect those consumers because of partial harmonization. In consequence, they have to face differences between legislations. For those reasons, a harmonization of current national legislation is needed in a larger extent.

Mr. Schmitz stated that the remedies presented in the Commission's proposal on geo-blocking would not help Luxembourg to overcome geo-blocking obstacles. Many companies complained about an infringement of their freedom. However, the freedom of business, the freedom of contract, the freedom of prices and the freedom on payment methods remain. Agreeing with **Dr. Simonelli**, **Mr. Schmitz** outlined the fact that there is no obligation for companies to sell. If a company does not wish to sell a product to a consumer, it does not have to do so. It is a fundamental freedom that is still preserved in the current proposal.

Mr. Schmitz judged the proposal to be a very modest remedy. Business opposition is nonetheless understandable as the proposal tries to guarantee the access to online interfaces and so prevent re-routing. However, if a consumer wants to buy something but cannot buy it e.g. in Germany (because there is no obligation) then the consumer is redirected to another, e.g. Belgium website. This means that the Belgium website is prepared to sell to the consumer. Therefore, to **Mr. Schmitz**, the question of the consent of the consumer to be redirected is peculiar. **Mr. Schmitz** claimed that consumers should have the right to stay connected on the first website and see what is on it. The fact is that consumers are redirected and this redirection constitutes a service given to the consumer. Therefore, they should be allowed to go back on the original website. Consumer should be able to see what is on the website even if you can't buy on it.



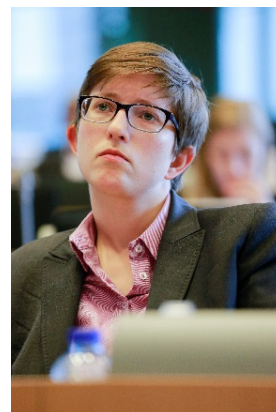
Concerning the payment methods, **Mr. Schmitz** recalled that consumers cannot always use their national credit card. E-payment raises a problem of segmentation, as many different methods of e-payment exist (PayPal...). Furthermore, it is the trader who is able to choose which payment method is applied. **Mr. Schmitz** raised therefore the question of knowing if imposing a payment method could be considered as an unfair contract terms?

Further, **Mr. Schmitz** raised the issue coming from the revision of the regulation on the consumer protection cooperation network. To **Mr. Schmitz**, this proposal is very ambitious and interfering with existing national judicial and administrative cultures. It is a very radical reform to some judicial system as, if it works, it would be a change of paradigm in many Member States. The proposal asks to all national authorities (enforcement authorities) in charge of consumer rights to have at least 17 specific methods of investigation, remedies and sanctions. The functioning proposed is very similar to the way competition authorities work. Nevertheless, **Mr. Schmitz** recalled that competition authorities have a different mind-set and work differently. This being said, the countries, which try to bring together the enforcement authorities for competition and consumer law (Italy for instance) are merging those authorities in a very efficient way.

According to **Mr. Schmitz**, the proposal contains many good points but it may push too many institutional reforms, which may be difficult to achieve. The European Parliament should have a profound discussion on how it works and get swift solutions as quickly as possible.

3. REPRESENTATIVES OF POLITICAL GROUPS IN THE EUROPEAN PARLIAMENT

After the interventions of all speakers, the floor was given to the Members of the European Parliament. The first was **Julia Reda (MEP)**, Member of the Greens and also Member of the IMCO Committee. In MEP's opinion, **Dr. Simonelli** pointed out very well at the strengths and the weaknesses of the geo-blocking regulation. Under art. 20(2) of the Services Directive are specified cases of justified and unjustified geo-blocking, excluding the copyright. **Ms. Reda (MEP)** asked to the experts, in particular to **Mr Schmitz** and **Dr. Simonelli**, if the Commission's approach could create frustration for consumers. Under the Commission's proposal, it is forbidden to redirect online content but would be allowed to block them. This situation is very frustrating for the consumers who want to subscribe web-streaming content.



Mr. Schmitz agreed with **Ms. Reda (MEP)**. He touched upon the issue of e-books. The proposal of the Commission excludes the audio-visual contents, but apparently the e-books are included. The expert asked a clarification to the Commission on this point and he underlined also the problem of differences in the price between the purchase of physical books and online books.

In **Dr. Simonelli's** opinion, the proposal of regulation presented by the Commission does not apply to the e-books, because they are considered as online services and not as tangible goods. Probably they could be included later after the revision. Given this, the provision on different prices for the books currently affects only the physical books and not the e-books.

Mr. De Graaf (DG CONNECT) specified that the approach of the Commission is to proceed step by step. Actually there are many issues, such as the parcel delivery, the fragmentation of the applicable law on VAT, etc., and at the moment, it is impossible to adopt a more

aggressive approach, because it could be considered as disproportionate. A balanced approach between 28 different national laws is necessary. The European Union must be more active in the Digital Single Market from the perspective of the businesses. One set of rules is necessary to realize the objective of the Single Market. The Commission is preparing a proposal for the audio-visual content that includes the copyright modernisation. The proposal is not ready yet because of complications with impact assessment.

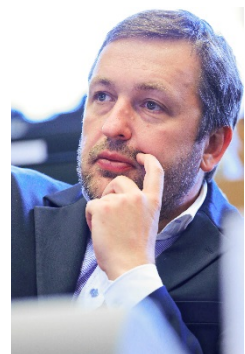
After the intervention of the Commission, **the Chair, Ms. Thun (MEP)** took the floors underlining the difficulties and challenges arising from fragmentation of the Single Market in the European Union.



Mr. Coelho (MEP), Member of the EPP Group, underlined the different approach of the EU from the U.S. and the Canada. Everybody agrees with the motto "One territory, one Market" and, as mentioned by **Dr. Simonelli**, the European Union bears the costs of the fragmentation of the market and also the costs of the "slow Europe". The complete realization of the Digital Single Market is a great opportunity both for the citizens and for the companies. At the same time, the Europeans don't want to lose the idea and the values of the protection of the consumer rights. After these considerations, **Mr. Coelho** asked to Mr. Schmitz for his opinion on the cooperation between the competition national authorities and if the approach in this field could be reinforced by giving more competences to the national authorities.

Mr. Schmitz indicated that at the European level it is important to have the highest level of harmonisation possible. The proposal of the Commission focused only on public enforcement and in many cases there are positive examples. The expert mentioned the Italian "Autorita' Garante della Concorrenza e del Mercato" in which the public enforcement is closely linked to the competition law and investigations are really efficient. The main issue is that in Europe there are 17 different types of measures for what concern the public enforcement. **Mr. Schmitz** considers the proposal of the Commission as very ambitious from a legal point of view and not easy to implement. It is important to create a real European enforcement.

Mr. Antanas Guoga (MEP), Member of the Group of the Alliance of Liberals and Democrats for Europe focused on the problem of the discrimination of the consumers and the possible strategy adopted by the big European countries to realize protectionist measures that prevent the realization of the Single Market. The action of the European institutions is in the right direction with the reinforcement of the consumers' protection and the cross border parcel delivery proposal. The goal of the European Union is to create the Single Market. In theory the Single Market is already done, but in the practice it doesn't exist because of the discrimination of consumers. Furthermore, **Mr. Guoga** asked to the Commission for their reaction on the discussion concerning the geo-blocking.



Ms. Thun (MEP) took the floors indicating that full achievement of the Digital Single Market is a very political issue. The DSM represents the most tangible result of the creation of the European Union. European institutions have to act not only reinforcing existing regulations but also with new proposals. Fragmentation of the market is a known issue and it is not acceptable. **Ms. Thun (MEP)** compared the European situation with the U.S. and Canadian dimension. It is perfectly understandable that European consumers are frustrated. In U.S. and Canada, the situation is easier than in Europe because there is less fragmentation.

After the references to the U.S. and Canada, **Mr. Williams** explained his opinion on this point. The problem of the frustrated consumers' is more articulated and deeper. The expert took the example of Spotify. It is a Swedish company offering music streaming, podcast, and video service, that provides digital rights management–protected content from record labels and media companies. The European company decided to transfer its headquarter in the U.S. because it would be easier to create a successful business. Spotify was able to operate without particular constrains in the entire U.S. territory. After building a strong business, now Spotify came back even stronger to Europe. Spotify is only an example of how many European businesses decided to scale up in U.S. because of the fragmentation of the European Single Market. Europe has to be more active for inspiring confidence for the European entrepreneurs.

Mr. Schmitz answered back with the European vision. In the European Union there are 28 Member States, each one with own culture, language, food habits. The Europeans have to be proud of these diversities. He dealt also with the theme of the circular economy. The circular economy is the subject of a deep debate in the European Parliament. It consists of an environmental, social and economic sphere. The European Union can't forget the principles of the circular economy because of the Digital Single Market. They are both essential for the European framework.

Mr. De Graaf, Director (DG CONNECT), took the floor for precisising the point of view of the Commission. The key point is a Single Market with a single set of rules. The harmonisation of the rules is actually a critical point, but it is also the right tool for the realization of the Digital Single Market. If the EU is able to create a genuine DSM, 75% of the companies will be interested in investing in the European market. Today, many companies, especially SMEs, limit themselves in the European market because very often it's complicated to interact with different set of rules, different VAT rates and different administrative frameworks in each Member State. The Commission is giving its contribution with new proposals. Actually the approach of the Commission is to act step by step to avoid disproportionate situations. The main goal is to reduce the fragmentation of the market progressively. The Digital Single Market is based on the harmonization and the mutual recognition. The lack of harmonization represents for the companies an extra-cost. In the Digital Single Market Strategy the Commission put a lot of emphasis on the strengths of the Europe. It has a strong manufacturing, a strong technology, microelectronic, cloud services and drones. There are many opportunities in Europe. The task of the European Institutions is to give these opportunities to the companies in order to allow doing business easier than now.

The Chair, Ms. Thun (MEP) repeated that Europe has to be proud of its culture and its differences. However, administrative differences have to be reduced, because SMEs have limited possibilities to do business across the Europe due to complications and expenses

involved in dealing with the different national sets of rules. This situation is completely against any logic of development.

Ms. Evelynne Gebhardt (MEP), Member of the S&D Group, explained her point of view. On the issue of fragmentation of the market and how to solve it, she underlined crucial role of not only the politicians but also of big companies. Entrepreneurs are able to use this fragmentation for obtaining advantages, as it happened with the roaming. Big companies operate without problems in a restricted environment. They profit from fragmentation of the market at the expense of consumers and SMEs. **Ms. Gebhardt (MEP)** pointed that it is impossible to oblige trade suppliers to sell their goods and services across the borders. **Ms. Gebhardt (MEP)** suggested for the parcel delivery the same approach used with roaming. Furthermore, her intervention focused on the geo-blocking. A clear definition is necessary since there are geo-blocking for goods, for services and audio-visual content and very often these concepts are confused.

Mr. Schmitz agreed with **Ms. Gebhardt (MEP)**. In the next proposal the Commission will deal with the problem of refusing to sell across the borders. The refusal of selling is banned by the consumer code in France, but this kind of behaviour are not put into the practise. The refusal to sell is not a crime from the point of view of the economic law, even if there are justified protests. The right approach is to be ambitious, to move through the globalization, but it's necessary also the respect choices of sellers and consumers.

Mr. Williams pointed that many large companies derive advantages from fragmentation of the market. This situation is absolutely a disadvantage for small companies. SMEs want to grow and be successful. More harmonisation is a good tool to increase the investments and to encourage SMEs to grow.



Dr Simonelli asked the Commission for more details on geo-blocking. The expert made an example of a large company that sells goods online through different websites in different languages with different prices depending on the country. The expert asked if it is possible to put in practise this type of

behaviour legitimized by discrimination based on the knowledge of a specific language.

The Commission responded that it's **not legal to refuse to sell a tangible goods in a shop on the basis that the consumer comes from a different country**. The same principle is applicable also for the online products. The nationality cannot be used as a criterion of discrimination for the sale. The fragmentation of the Single Market is a huge cost for the companies that want to sell in another Member State. The high costs, especially for SMEs, of access to the market of another Member State is a huge obstacle. As mentioned in the previous intervention by **Mr. Williams**, big companies often play the game and they can derive advantages from this fragmentation.

For the question about the different prices on online website in other languages it's necessary to consider that prices could vary, because there are different standards and different economic situations. For this reason it's absolutely normal having different prices in different countries for the same good. In this context, there is nothing wrong in this practice also because the proposal of the Commission provides that it could not to be denied the possibility of buying on a website of another country. This is an extra opportunity for the consumer. The only problem is the language and for this reason normally the consumer is redirected to the website of the own country. Actually, it is impossible to use a unique price for all Member States because of the different levels of harmonisation. The goal of this proposal is to increase the level of harmonisation in the Member States.

Concerning the issue of geo-blocking, the Commission underlined that there are no grounds for refusing to sell goods to another Member States. This principle is included in the Services Directive that continues to be applicable. Actually the Commission in its proposal identified five situations in which the geo-blocking and the geo-discrimination are unjustified. The upcoming steps of the Commission will be to broaden these cases. The EC is trying to adopt a balanced approach.

The goal is to protect the most vulnerable consumers and improve regulation step by step in the future.



The Chair, Ms. Thun (MEP), closed the debate thanking the experts and the MEPs, who participated to the discussion.

4. PRESENTATIONS

4.1. Anthony Williams presentation





Centre for Digital Entrepreneurship
+ Economic Performance




Prepared for IMCO Committee in
cooperation with European Parliament's
Policy Department A and IMCO Secretariat

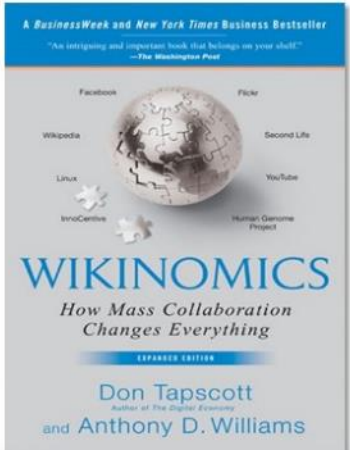
Digital Single Market:
A Foundation for
Long-Term Growth and
Competitiveness in Europe

Anthony D. Williams
President and Co-founder
DEEP Centre Inc.
awilliams@deepcentre.com

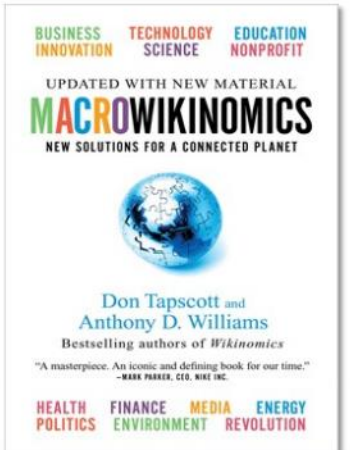
Digital Single Market 2016



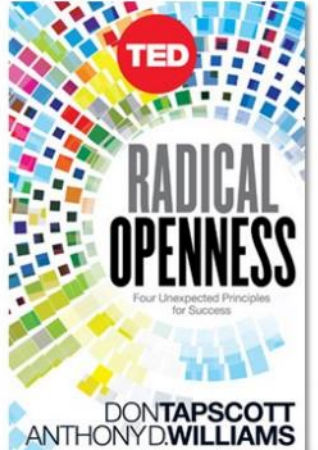
Defining a New Business Paradigm



WIKINOMICS
*How Mass Collaboration
Changes Everything*
Expanded Edition
Don Tapscott
and Anthony D. Williams



MACROWIKINOMICS
NEW SOLUTIONS FOR A CONNECTED PLANET
Don Tapscott and
Anthony D. Williams
Bestselling authors of *Wikinomics*
"A masterpiece. An iconic and defining book for our time."
—MARK PAPER, CEO, NIKE INC.



TED
RADICAL OPENNESS
Four Unexpected Principles
for Success
DON TAPSCOTT
ANTHONY D. WILLIAMS

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The DEEP Centre: An Entrepreneurial Think Tank



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Industry Canada
 Industrie Canada



BDC
 Entrepreneurs first



EDC



Ontario



GLOBAL SOLUTION NETWORKS



CANADIAN digital media NETWORK



Foreign Affairs, Trade and Development Canada



National Research Council Canada



MARKLE
 Accelerating Growth & Future

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Champion for European Innovation and Growth



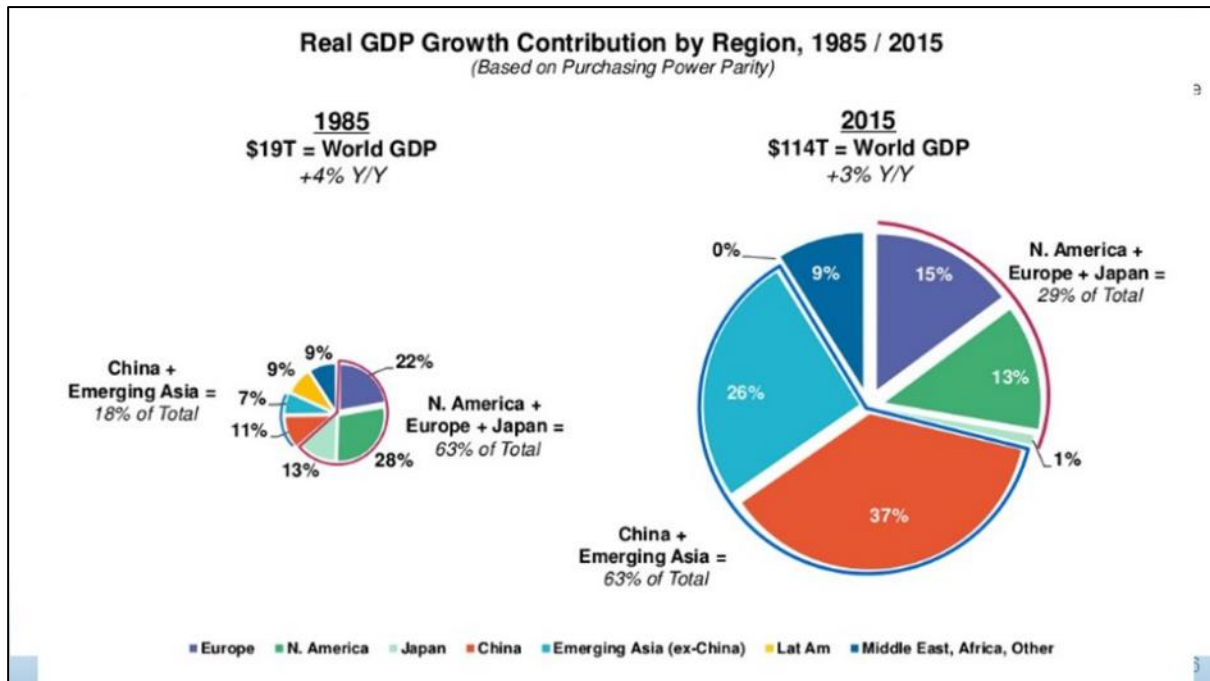
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Digital Entrepreneurship and Micro-Multinationals



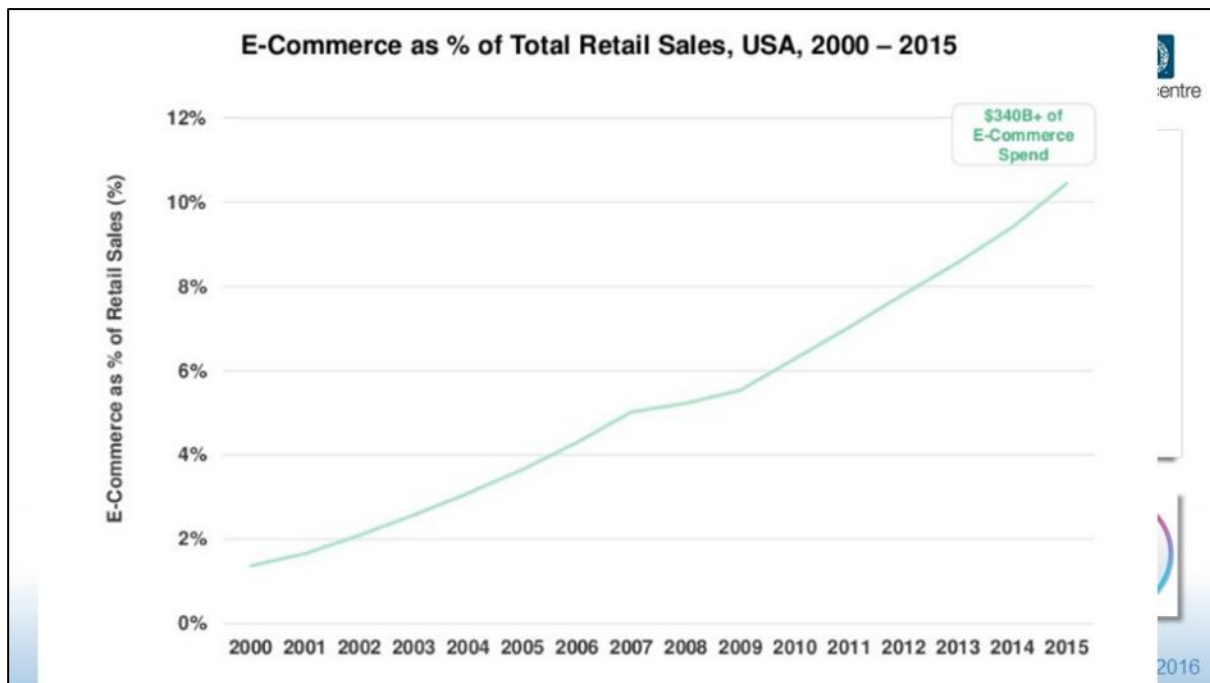
LOCUS OF ECONOMIC OPPORTUNITY SHIFTING TO DIGITAL

- Major opportunity space for digital companies that innovate, increase efficiency, lower prices and invent entirely new products and services.
- Possibilities for disruption across all sectors, from agriculture and automotive to education and health care.

DEEP CHANGES IN THE ARCHITECTURE OF THE CORPORATION

- Not the monolithic multinationals of the past. Global orientation and reach from day one.
- Technology-intensive, but necessarily technology-focused.
- Collaborative DNA – business ecosystems are often 10-100x their fixed assets and full-time workforces.
- Lean and agile – emphasizing rapid prototyping and continuous innovation.

Digital Single Market 2016



But ... E-Commerce Just a Part of a Larger Opportunity Space



Social Networking/Sharing Economy



Big Data & Machine Learning



Robotics and Mechatronics



The Internet of Things



Regenerative Medicine and Bionics



Digital Content/Virtual Reality



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Top 20 Global Internet Market Leaders By Market Valuation



Rank	Company	Region	Current Market Value (\$B)	Q1:16 Cash (\$B)	2015 Revenue (\$B)
1	Apple	USA	\$547	\$233	\$235
2	Google / Alphabet	USA	510	79	75
3	Amazon	USA	341	16	107
4	Facebook	USA	340	21	18
5	Tencent	China	206	14	16
6	Alibaba	China	205	18	15
7	Priceline	USA	63	11	9
8	Uber	USA	63	--	--
9	Baidu	China	62	11	10
10	Ant Financial	China	60	--	--
11	Salesforce.com	USA	57	4	7
12	Xiaomi	China	46	--	--
13	Paypal	USA	46	6	9
14	Netflix	USA	44	2	7
15	Yahoo!	USA	36	10	5
16	JD.com	China	34	5	28
17	eBay	USA	28	11	9
18	Airbnb	USA	26	--	--
19	Yahoo! Japan	Japan	26	5	5
20	Didi Kuaidi	China	25	--	--
Total			\$2,752	\$447*	\$554*

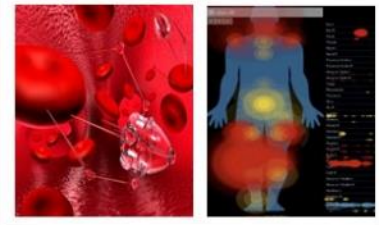
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Europe's Digital Single Market: Strengths and Opportunities



STRENGTHS

- **A single market**, with harmonized rules, tax structures and fewer barriers will reduce costs and increase opportunities for European entrepreneurs, enabling firms to reach scale within Europe's borders.
- **Seamless access to content, services and commerce** will increase choice for European consumers and create larger markets for digital entrepreneurs.



OPPORTUNITIES

- **Greater attention to building entrepreneurial capacity.** Market fragmentation is a problem, but arguably not the biggest hurdle digital entrepreneurs face in building viable growth companies.
- **Consider Europe's comparative advantages in digital innovation.** By definition, this means broadening the mandate beyond e-commerce and investing in clusters that can generate world-changing technologies and companies.



Digital Single Market 2016

Digital Single Market: Weaknesses and Threats



WEAKNESSES

- **Crowded and complex agenda**, covering everything from open science to telecom to copyright and digital skills. Can the EU work together to achieve these disparate goals in a reasonable timeframe?
- **National vs. European vs. global rules**. Rulemaking for data protection, privacy, copyright, etc. could shift to multi-stakeholder venues such as the Internet Governance Forum.



THREATS

- **Regulatory uncertainty**. Heavy regulatory focus will generate prolonged periods of uncertainty given the commitments to undertake lengthy regulatory reviews with no set end dates.
- **Digital speed vs. institutional inertia**. Digital innovation is accelerating. Competition is increasing. Learning curves are getting steeper. The EU must proceed with greater urgency.



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What Else Do Europe's Digital Entrepreneurs Need to Succeed?

What Are Other Jurisdictions Doing to Promote Digital Innovation and Growth?

Digital Single Market 2016

1. Focused Support for High Potential Firms and Scaling Up



PROBLEM

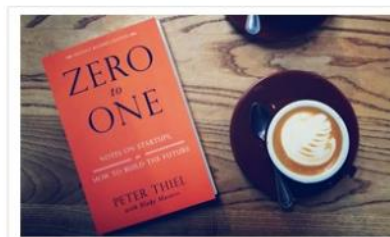
- Europe is over-performing in the creation of startups; underperforming in the creation viable growth firms, with too many resources directed to under-performing institutions and firms.

SOLUTIONS

- Scale-up programs to direct capital and expertise to a smaller number of maturing/proven digital companies, providing the resources required to build global champions.

DIGITAL SINGLE MARKET IMPLICATION

- Opportunity to promote coordinated supports, improved collaboration and a capacity among public, private and non-profit startup assistance organizations across the EU to focus resources on Europe's most promising companies.



Digital Single Market 2016

2. Bolster Europe's 'Go-to-Market' Talent Pool



PROBLEM

- Dearth of deep market knowledge on how to build viable growth companies and a lack of sophisticated "go-to-market" talent to complement Europe's large pool of promising technical founders.

SOLUTIONS

- Increase access to sophisticated management talent with a) specialized work visas, b) temporary matching grants for executive salaries and c) European business mentorship networks.

DIGITAL SINGLE MARKET IMPLICATION

- Eliminating barriers to cross-border e-commerce will only help in so far as European entrepreneurs have access to the management talent required build companies of a scale that can serve a larger market.



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3. Improve Access to Risk and Growth Capital



PROBLEM

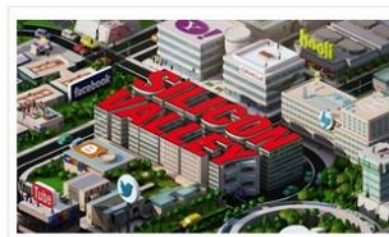
- Insufficient access to risk capital created by institutional risk aversion, an immature angel investor scene and regional disparities in access to financing.

SOLUTION

- Formalized investor engagement model to boost investment from VCs and angel investors and professional networks (e.g., EBAN) to build capacity and share best practices.

DIGITAL SINGLE MARKET IMPLICATION

- Investment in early stage companies is key to growth. Continued support for the European Investment Fund's investments into business angels, VCs and mezzanine growth funds will provide funds required to scale-up digital companies.



Digital Single Market 2016

4. Promote Engagement with European Corporate Leaders



PROBLEM

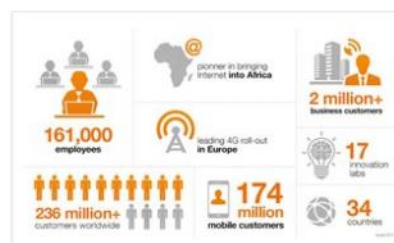
- Large European firms less engaged in the domestic startup ecosystem than their US counterparts, which in turn limits access to anchor customers, capital and expertise.

SOLUTION

- Facilitate greater corporate engagement through partnerships that offer large companies access to talent and innovation and give startups access to capital, expertise, anchor customers and global value chains.

DIGITAL SINGLE MARKET IMPLICATION

- Corporate-SME partnerships key to addressing sub-optimal digital adoption in sectors such as education, energy, health care, transportation and manufacturing.



Digital Single Market 2016

5. Streamline Access to World-Class E-Government Services



PROBLEM

- Most areas of public service delivery are lagging standards of quality and innovation set by leading digital companies.

SOLUTION

- Investments in digital government can streamline access to valuable business support services, enable inter-jurisdictional collaboration, unlock procurement opportunities for SMEs and create an efficient business environment that attracts inward investment.

DIGITAL SINGLE MARKET IMPLICATION

- An effective single market requires a modern, digital approach to governance and service delivery that traverses national borders.



Digital Single Market 2016

6. Build a 21st Century Export Strategy for Digital Companies



PROBLEM

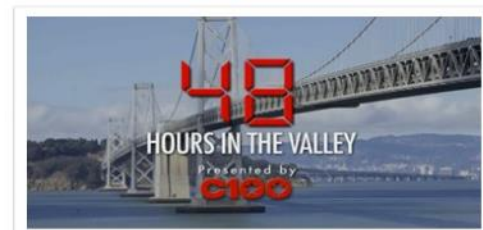
- Novel opportunities for digital services export growth, but only a small number of European digital firms are taking advantage of global opportunities.

SOLUTION

- Invest in making European digital firms significantly more innovative, productive and globally-engaged:
 - Management skills, particularly global acumen
 - Service localization efforts
 - Legal and regulatory support in export markets
 - Market intelligence and data clearinghouses
 - Business acceleration and soft-landing programs

DIGITAL SINGLE MARKET IMPLICATION

- DSM is necessary but not sufficient. Genuine growth companies must look beyond Europe's borders for opportunities to scale.



Digital Single Market 2016

7. Boost the Metabolism of the European Start-up Ecosystem



PROBLEM

- Lack of agility. Europe is too slow to abandon bad ideas, institutions and firms, which traps talent and capital in inefficient vessels for value creation.

SOLUTIONS

- More aggressive tracking, dissemination and adoption of global best practices. Faster pivots and a higher metabolism that allocates talent and capital to winning firms, institutions and ideas.

DIGITAL SINGLE MARKET IMPLICATION

- Broad consensus that Europe's ecosystem is strengthening and clear evidence of world-class innovation in many leading clusters. Focus must shift to execution and scaling internationally.



Digital Single Market 2016

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Centre for Digital Entrepreneurship
+ Economic Performance



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President & Co-founder
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Digital Single Market 2016

4.2. Mr. Felice Simonelli presentation



Combatting consumer discrimination in the Digital Single Market: Preventing (un)justified geo-blocking

IMCO Working Group on the Digital Single Market
European Parliament, Brussels, 20 June 2016

Prepared for IMCO Committee in cooperation with European Parliament's Policy Department A and IMCO Secretariat

2

Presentation outline

- A Digital Single Market for Europe
- Preventing unjustified geo-blocking
- Preventing (justified) geo-blocking

20 June 2016

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A Digital Single Market for Europe

4

Digital Single Market One territory, one market

*“A **Digital Single Market** is one in which the **free movement of goods, persons, services and capital** is ensured and where individuals and businesses can **seamlessly access and exercise online activities [...], irrespective of their nationality or place of residence.**”*

(DSM strategy, 2015)



20 June 2016

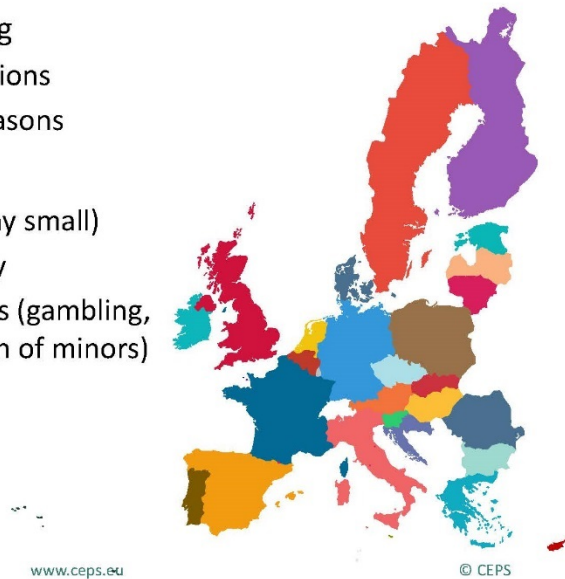
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5

Digital Single Market Justified restrictions: a slippery slope?

- **Unjustified** geo-blocking
 - No objective justifications
 - Purely commercial reasons
- **Justified** geo-blocking
 - Business freedom (stay small)
 - Copyright territoriality
 - Other legal obligations (gambling, advertising, protection of minors)



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Preventing unjustified geo-blocking

7

Regulation on addressing geo-blocking Better access to goods and services

- Access to online interfaces (geo-blocking)
 - **Blocking of access to websites and re-routing**
- Access to goods and services (geo-discrimination, **3 specific cases**)
 - **Different general conditions of access** for reasons related to nationality, place of residence or place of establishment
- Non-circumventing measures
 - Non-discriminatory rules in the context of **electronic payments**
 - Contractual restriction to **passive sales** automatically void

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Regulation on addressing geo-blocking Unsettled issues?

- Re-routing with consent
 - Is **discrimination based on language** still possible?
- When the trader is involved in cross-border delivery
 - Can **different general conditions of access** be applied?
- Provision of electronically supplied services
 - **Obligation to sell** cross-border?
 - **Software** as online service giving access to copyrighted content?

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Regulation on addressing geo-blocking

Justified geo-blocking

- **Audio-visual media services** and online **services giving access to copyrighted content**
 - Copyright territoriality: geo-blocking to prevent infringement
 - A borderless market

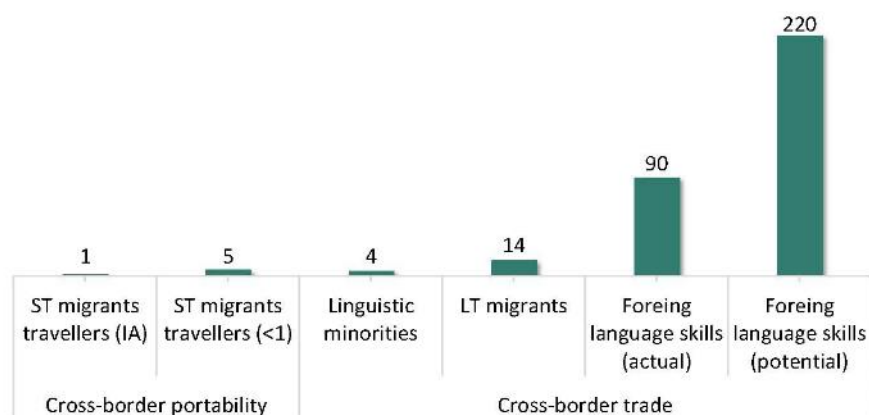


10

Digital Single Market for copyrighted content

Who is affected by market fragmentation?

500mln Europeans: access confined to their 'national' offer



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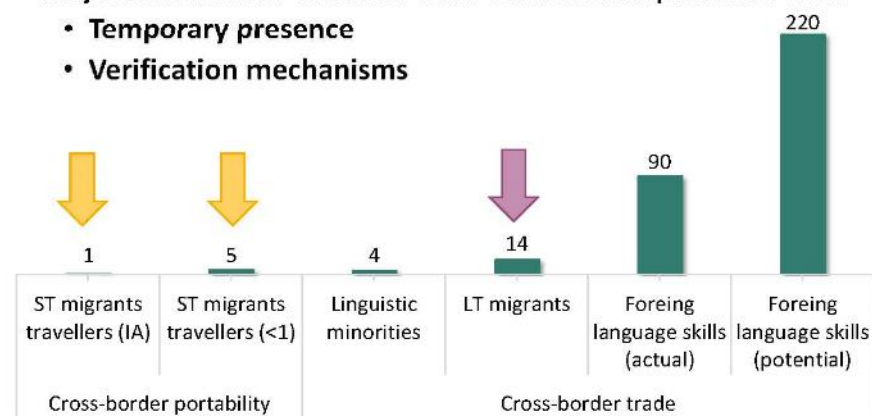
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Preventing (justified) geo-blocking

12

Regulation on portability Unsettled issues

- Enable consumers having lawful access to online content services in their country of residence to use the same services also **when they are in another Member State for a limited period of time**
 - **Temporary presence**
 - **Verification mechanisms**



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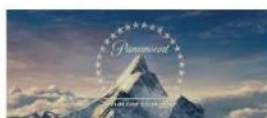
13

The European Commission as antitrust authority Interplay between competition and copyright

- **Formal antitrust investigation**
- **Statement of Objections** to Sky UK and six major US film studios
 - Contractual limitations to passive sales and absolute territorial exclusivity

CANAL+**SKY****SONY
PICTURES****Disney**
Media Distribution

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Conclusions

Digital Single Market The 'cost of slow Europe'

- Proposals so far
 - Important steps forward
 - **Unsettled issues**
 - Limited impact
- **Digital Single Market for copyrighted content:**
the elephant in the room



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Thank you for your attention.

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4.3. Bob Schmitz presentation

4.3.1. Revision Regulation CPC 2006/2004 – first assessment

Bob Schmitz – Union Luxembourgeoise des Consommateurs

1. SCOPE : The cooperation between enforcement authorities shall no longer apply solely to cross-border infringements where the trader and affected collective consumer interests are based in different Member States. It shall operate also when unlawful acts occur concurrently in minimum two Member States. Coordinated action may be taken too as a result of concerted investigations of consumer markets (sweeps). The proposal thus draws lessons from past well-publicised cases (car rentals, in-app purchases, APPLE legal/commercial guarantees...) - in the first two cases the action coordinated by the Commission led to voluntary commitments by the concerned companies. This extension of the scope responds to the challenges posed by the digital market place (online platforms) and is most welcome.

2. ENFORCEMENT POWERS: Reinforcing public enforcement of EU law which protects consumers' economic interests, is necessary. Is the EU able though to force Member States to review their enforcement cultures by interfering substantially in national administrative/judicial functioning and procedural rules (including use of evidence) while granting on top the Commission delegated power to set out more detailed conditions ? Some countries rely on private enforcement (Germany,...), others insist on strict judicial control of public administrations on constitutional grounds (Luxembourg...). According to the proposal the competent national authorities shall be entitled to take at least 17 specific measures compared to the

7 measures under the existing Regulation. As consumer association, we support this ambition but is it realistic and will it work out in all Member States ? Consumer directives leave it normally to Member States to « take all necessary measures...Penalties must be effective, proportionate and dissuasive ». The revised Regulation is much more intrusive. If it works out, it will be a great achievement – but public powers existing on paper must still be used in practice.

The new functioning of the CPC network is rather similar to powers of competition authorities and their way of cooperation within the European Competition Network (ECN). For countries which have put together competition and consumer enforcement (Italy, UK, Netherlands,...), the proposals may look familiar and lend further support. The Italian Autorità Garante della Concorrenza e del Mercato is a successful model –cf. their leadership role in the APPLE case. Synergies between competition and consumer enforcement should be encouraged considering the number of Member States which have opted recently for this approach.

Union consumers should be protected from rogue traders based in third countries which is particularly needed in the digital era. The Commission proposes that « international agreements should be negotiated at Union level to ensure optimum protection of Union consumers and smooth cooperation with third countries ». To be effective in our view, competent authorities in third countries should act effectively vis-à-vis traders established in their countries to stop acts which are unlawful under Union law or equivalent national laws.

3. ROLE OF CONSUMER ASSOCIATIONS : According to the proposal, « consumer associations may be delegated enforcement tasks under this Regulation » and competent authorities should « consult consumers, consumer organisations, designated bodies and other persons concerned about the effectiveness of the proposed commitments in ceasing the infringement and removing the harm caused by it ». This sounds very promising but how will it be used in practice at national and Union level ? Today the CPC network is hardly accessible nor transparent vis-à-vis consumer associations or even the European Consumer Consultative

Group (ECCG). Too much focus is given to own initiative enforcement investigations and actions by the competent authorities including the Commission while most of EU consumer law infringements are reported by complaints from consumers, their organisations, European Consumer Centres or competitors who feel harmed by unlawful practices from other traders – cf. as illustration the 2015 Annual Report of the Italian Authority (p. 203-204).

4. SIMULTANEOUS INFRINGEMENT IN SEVERAL COUNTRIES : Would the APPLE case have been handled more swiftly under the new CPC rules ? The company Apple operates e.g. national websites in a large number of Member States using the same terms & conditions for its commercial guarantees. The EU case started thanks to a complaint launched by Comitato Difesa Consumatori before the Italian Authority which investigated the case and condemned the company for breaching the Unfair Commercial Practices Directive (UCPD). Other consumer organisations including the Luxembourg Consumer Union, picked up the formal decision by the Italian Authority (confirmed later on appeal by the Italian courts)

to lodge injunction requests in their own courts against their own Apple websites. Concurrently the Commission was informed, wrote itself to the Apple headquarter and alerted the CPC network. In practice, the quickest and most effective modifications of Apple's terms & conditions were achieved in those countries where consumer associations took themselves court action which prompted the Irish Apple headquarter to agree modifying its terms in those countries (not EU-wide !) to stop court action.

Under the new CPC rules, the Italian Authority should have notified the authorities in the other Member States as soon as it had a « reasonable suspicion » that Apple's policy was causing a widespread infringement. It should then have been decided to « designate the competent authority to take up the coordination role » and one may have agreed to « designate one competent authority to take enforcement measures on behalf of the other competent authorities in order to bring about the cessation or to prohibit the widespread infringement, to ensure compensation of consumers or to impose penalties.. taking into consideration the location of the trader concerned ». Logically, the Irish competent authority should have taken up the case as Apple Distribution International was based in the Republic of Ireland. It is questionable whether this formal cooperation and case allocation would have been more effective than awaiting the precedent set by the Italian authority.

This practical case should not be understood as criticising per se the new cooperation proposals because an early exchange of information within the CPC network but equally between consumer associations should raise awareness of the existence of EU-wide infringements and foster a swift coordinated action, especially to seek voluntary commitments from multinational companies applicable throughout the EU.

4.3.2. Geo-blocking proposal - first assessment

Bob Schmitz – Union Luxembourgeoise des Consommateurs

1. Geo-blocking and smaller markets

Luxembourg remains the 'laboratory' for B2C cross-border trade and is well placed to plead the case of smaller markets in the EU which are mostly not targeted by traders (e.g. no own national online platforms). As a small country open to its neighbours, our consumers are eager to buy online from other Member States

(88% of all internet sales) and remain often frustrated due to various geo-blocking measures (32% of online complaints as n°1 issue). Complaint statistics may be lower elsewhere (3% EU average) partly because frustrated consumers just give up the ordering process on foreign websites mostly unaware of their rights. Negative perceptions about the Single Market's false promises shared with relatives, friends, colleagues,... fuel the widespread euro-scepticism.

The following is a symptomatic case : A Luxembourg consumer wished to buy two jeans and one T-shirt on the Belgian Levi's online shop as there exists no Luxembourg website. Impossible though to register 'Luxembourg' as delivery address as the country of destination is pre-stamped. On request, the consumer received from the Levi's Online Shop Team (based in Dortmund, Germany) the response that « Unfortunately we do not ship to Luxembourg... ».

When checking then the German website, the consumer discovered that the same jean cost 48,90 € on the German and 58,90 € on the Belgian website. She placed, therefore, an order on the German website and was confident to get the goods as she was prepared to pick them up in Germany via a Luxembourg intermediary named PackUp Import. Alas, once more she encountered a refusal, this time because she did not pay via Paypal.

This case illustrates perfectly that:

(a) E-commerce shops often only supply to consumers in the country for which they offer a national website (cf. APPLE). Consumers in smaller countries/ markets are therefore at a particular disadvantage. Additionally, if their orders are accepted, the contracts are normally governed by the laws in place in the Member State of establishment of the supplier as our consumers act as 'active' consumers, not as 'passive' (targeted) consumers. Fragmentation of basic consumer rights and obligations is, therefore, a particular risk for them.

(b) Refusals for logistics reasons are frequent. It is hard for consumers to believe in the Single Market when they are told that they have to pick up the goods in the country of origin of the seller or use intermediaries. For Luxembourg, at least two such service providers exist. Apart from supplementary costs for this transport service, liability risks arise because the passing of the risk to the consumer occurs before the goods actually reach him/her. Exercising rights of return and after-sales services may also be more difficult or costly.

(c) Refusals to supply because the consumer does not use payment means of the supplier's country (i.e. credit cards from the consumer's home country) or, as in the Levi's case, a specific payment means imposed by the website, are common.

2. Remedies proposed by the Commission

(a) Contract Freedom for Traders : Contrary to widespread claims, the proposal does not interfere in the basic contract freedom by not imposing an « obligation for the trader to engage in commercial transactions with customers » and not « precluding traders from directing their activities at different Member States or certain groups of customers with targeted offers and

differing terms and conditions, including through the setting-up of country-specific online interfaces ». Traders are not hampered, therefore, e.g. as to their pricing freedom, choice of payment methods or delivery policy inside and outside their country of establishment.

(b) Access to online interfaces : Traders shall not block or limit customers' access to their online interface (i), shall not redirect customers unless the customer gives his or her prior explicit consent (ii) and in any event the original version of the online face shall remain easily accessible (iii). This provision meets in particular strong objections from business. Concerning (i), it should guarantee transparency and allow consumers to find out in the site's product information, general terms & conditions and/or Q&A whether the goods and services are delivered to his/her country of residence. If access is blocked from the start, the consumer knows immediately that he/she cannot buy on that website but he/she will not be able to find out why nor learn about the products (e.g. prices) on that site. Concerning (ii),

redirection is of practical help as the consumer is immediately put in contact with the site which will accept the order. The consumer should though be given the technical possibility to express his/her wish to buy on the first site under the same conditions than nationals targeted by that site (cf. Art. 4.1.a). Concerning (iii), it should allow easy product comparisons, especially prices, between the sites concerned. Is there a need to impose new technical devices for this or is it enough that the consumer has access to the sites to compare if he/she wishes ?

(c) Access to goods and services for active (non targeted) consumers :

Art.4.1(a) of the proposal takes up the problem often encountered by Luxembourg consumers when online shops in neighbouring countries such as France and Germany accept only to deliver the goods to a place closest to the borders with Luxembourg. Our consumers must pick up the goods themselves or with the help of service providers. This right to equal treatment with the nationals should be a minimum within the Single Market with the parcel delivery initiative hopefully facilitating cross-border delivery by SMEs.

Art.4.1(b) is of particular importance for tourism (hotel offers, car rentals,...)and cultural events in other countries, especially for prior online bookings. A practical case: an Italian hotel may still promote special deals, for instance, for Bavarian consumers during school holidays in that Land. If other German consumers or from Austria and Luxembourg (all fluent in German language advertisements) click on this promotional offer, the hotel must accept these without discrimination unless the promotional quota of rooms is finished. What counts for the hotel is the fullest possible occupation. The proposal will not unduly force it to sell numbers of rooms at conditions which it does not wish to offer, especially as it can turn down any bulk purchases by professional intermediaries.

(d) Payment means as a purchase obstacle: « Under Union law, traders are in principle free to decide which means of payment they wish to accept, including payment brands. However, once this choice has been made, there are no reasons for traders to discriminate customers within the Union... » (recital 24). Consequently, terms & conditions which require, for instance, that the credit card is issued in the trader's country, not in the one of the consumer, become illegal under the forthcoming Regulation. The Levi's Paypal case encountered by our Luxembourg member will continue to be an impediment unless the consumer has a Paypal account. As an increasing number of e-payment systems start competing including «Pay with Amazon » or Apple Pay, the free choice of the payment means by the trader is likely to still segment markets. Some national laws such as § 312a BGB (Germany) void as an unfair term an agreement obliging the consumer to pay a commission for a given payment means, if the consumer is not offered a usual cost-free payment means (« ...wenn für den Verbraucher keine gängige und zumutbare unentgeltliche Zahlungsmöglichkeit besteht »).

(e) Passive sales under competition law : Vertical distribution agreements preventing traders (retailers) from accepting orders by active customers resident in another Member State than the one allocated to the trader by the agreement, shall be automatically void (Art.6). This prohibition is in line with long-established competition law (cf. car sales in the early eighties, ECJ FORD case etc). But it will mostly be impossible for customers to prove that the refusal to sell was due to such contract clauses. Example : the Luxembourg Consumer Union wished to buy a tent produced in Italy from a French e-commerce website. It prompted an online chat in which my colleague was told 'we are not allowed to sell to you' (this prima facie evidence disappeared once the access to the site was closed), please refer to the website of the general importer for Benelux based in the Netherlands. He referred back our organisation to a seller in Luxembourg. Conclusion : business as in the good old days prior to cross-border e-commerce opportunities.

(f) E-books and audio-visual services : Sales of books fall under the proposal but traders may apply « different prices to customers in certain territories in so far as they are required to do so under the laws of Member States in accordance with Union law » (Art.4.3). To what extent will this exception continue to impede cross-border purchases of e-books, for instance, via Amazon ? As for audio-visual services including sports events provided on the basis of exclusive territorial licences, they are excluded. Major public expectations to overcome digital barriers within the Single Market will, therefore, not be met by this Regulation.

DIRECTORATE-GENERAL FOR INTERNAL POLICIES

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