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Intervention

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Europejska Organizacja Konsumentcka
Ευρωπαϊκή Οργάνωση Καταναλωτών
Den Europæiske Forbrugerorganisation
Den Europeiska Konsumentorganisationen

Introduction

First of all, I would like to thank the chair of the IMCO committee for inviting me to speak at this hearing as a representative of BEUC, the European consumers' organisations. I would also like to thank Mrs Roithova for taking the lead in this debate.

For many consumers, a life without digital technology is hardly conceivable any longer. The digitalisation of information and communication systems allow the development of new forms of products and services, thereby creating a virtual market landscape to the benefit of consumers and users - and also to business and the economy as a whole.

Digital technologies foster access to information and have the capability to bring extraordinary choice of means, places and time content can be accessed. New trends also include the move from passive consumer to consumer-as-producer (so-called consumer-generated content) and social networking. The benefits of innovation and competitive market advantages stemming from the virtual space will also promote creativity, freedom of expression, choice and cultural diversity.

Besides the positive potential however, negative side-effects appear as well, such as the fact that the internet has given rise to many new types of crime, a decrease in informational self-determination, and an increasing tension between commercial business models based on fencing knowledge and content on the one hand, and the non commercial areas of the public sphere on the other. As a result of the convergence that takes place, there is also a growing complexity of the value chain that makes it difficult for consumers to identify the parties involved in a service-package.

Unsurprisingly, it has also become more complex for policy makers to identify the key problems and to take the appropriate measures. But the proliferation of online services makes it a necessity to assess the areas in which the consumers need protection. Consumer protection must now be re-visited and accompanied by conscious policy decisions.

BEUC and its members count on this initiative report to give a clear signal to consumers who want to go digital.

In order to facilitate the overview of the complex topic, one can broadly distinguish between tangible and intangible products and services that are delivered to consumers, or look at different aspects of the converging phenomena, for example networks, types of commerce, or devices that store digital content - and last but not least the converging framework of laws and regulation.

Each issue would merit a session of its own. I would like to concentrate on these recent trends but before I start, I will briefly raise a few points that have been tackled in the briefing papers and earlier discussions.

Electronic commerce

The issue of what is most commonly described as electronic commerce includes nowadays electronic commerce over the Internet, mobile commerce via phones and distance commerce through other channels such as television. In this context, consumer confidence in order to push the take-up of cross-border e-commerce has been discussed for years and many initiatives have been taken to increase consumer trust. However, it seems that the main obstacles that had been identified earlier persist. Language barriers for example remain an obstacle for consumers as well as concerns about security and data protection, a lack of trust and a lack of redress mechanism.

Trustmarks have been often mentioned to increase consumer confidence and BEUC has been involved in drafting requirements for a pan-European trustmark system. The agreement

between UNICE and BEUC has – however - never been implemented. Before such an issue should be further taken on, we recommend therefore looking at some decisive issues. Trustmarks, based on self-regulatory or co-regulatory mechanisms, often do not provide significantly more protection than protection that is required by hard law. Many traders simply do not join trustmark schemes to avoid related costs. Would trustmarks related to specific issues such as Payment, security or privacy be better or could sectoral trustmarks be developed? How can consumers easily identify trustmarks? What are the enforcement mechanisms that are underlying the trustmark scheme? These are important questions that need to be answered.

In this context, it should be mentioned that some consumers increasingly rely on peer review systems such as we know from eBay for example. However, the system may only work if a critical mass is achieved.

Access to justice

[Easy to understand redress mechanisms is also one of the persisting problems. Although initiatives have been undertaken to reinforce consumer access to justice through alternative dispute resolution systems, for example through the merged European Consumer centres and European Extra-Judicial networks, there is still a lack of awareness among consumers.]

In addition to alternative dispute resolutions, it becomes increasingly evident that the lack of availability of representative actions is hindering the enforcement of rights in cases where the damage to the individual consumer is minimal but overall damage considerable. This is in particular relevant in the digital environment where consumers are atomized consumers more than anywhere else.

Geographical discrimination

Increasingly, consumers that do want to purchase products and services cross-border are hindered to do so because traders refuse to deliver into other countries and enforce this refusal online through technical access or protection measures. While some reasons may be perfectly valid to restrict access to products and services, some other motives are highly problematic. Where price discrimination and market segmentation persists, consumers will be frustrated with the internal market experience. The DVD regional encoding is an infamous example. One issue that needs to be looked at in particular is the difficulty of clearing intellectual property rights. The IP territoriality principle becomes a growing bottleneck in delivering cross border services and products.

Intellectual property

The stakes for consumers in intellectual property are generally increasing - while the rights of consumers to enjoy digital works remain unclear. Current trends in intellectual property, digital rights management and technological protection do not adequately acknowledge and protect consumer rights or the wider public interests.

With our campaign on consumer rights in the digital environment in 2005 we have demanded to develop clear rights for consumers.

- *the right of choice, access and cultural diversity;*
- *the right to technical neutrality;*
- *the right to benefit from technological advantages;*
- *the right to interoperability of content;*
- *the right to privacy protection and*
- *the right to non discrimination.*

A key question in this environment is how to translate traditional consumer protection rights to new digital technologies. Let me point to three important conditions:

Security, reliability and data protection

Consumer must have a right to secure, reliable and protective digital services. The consumer must be sure his personal data is protected by the service provider against unauthorised intrusions. This is a shared responsibility for both companies and governments. Privacy and personal autonomy must at any time be respected. User-centric solutions must be developed.

Interoperability

Consumers want to be able to flexibly choose among different services that offer technically protected content, which in turn can be used on different devices. In order to assure optimal use of digital devices and content, interoperability is key. The lack of interoperability of the different devices is a source of frustration amongst consumers and has economic effects: if protection systems and applications are not interoperable, users cannot enjoy competitive and efficient options with regard to components that may be tested, mixed, and matched according to specific purposes. By imposing significant cost on consumers whenever they seek to switch to a new product – for example to an MP3 player on which their music collection is not playable – barriers for new entrants will raise and effectively lower competition.

Access

Access to the internet or digital content should be made easy and affordable and not bound to excessive restrictions or controls. In first instance means should be put in place to guarantee the technical availability of network systems. Secondly, users should be able to acquire access rights under reasonable conditions and thirdly they should be granted a certain amount of flexibility to handle their digitally acquired content. It appears in practice, that the supply and especially the after supply customer service gives rise to many consumer complaints. This is a typical consumer example of a B2C problem with the execution of a contract.

Conclusion

In 2007, we do have the unique opportunity to extend responsive regulation and consumer rights across new markets, goods and services with the revision of the consumer law acquis and the recast of the copyright acquis.

This will allow us to respond with concrete measures to the imbalance of the current situation and I would like to mention a few concrete measures exemplarily:

- the inclusion of technical codes (DRM) in unfair contract directive to enable consumer protection authorities to intervene against unfair terms if the terms are “code-” rather than “contract-based”;
- the producer’s direct liability to facilitate redress in cross-border e-commerce;
- resale right of digitally purchased products;
- unit pricing for services;
- inclusion of software and data in the scope of the consumer sales Directive;
- a clear right to copy legally obtained copyrighted works for private use, in particular for back-up copies and format-shifting;
- an end to regional coding (‘zoning’) of DVDs, electronic games, audio books, music, and other digital material;
- a DRM observatory to monitor and enforce interoperability;

- no criminalization of consumers in the current enforcement directive of IP.

To conclude I again want to welcome IMCO's initiatives to strengthen consumer's rights in the digital environment. A charter with clear rights for consumers should evolve from this initiative report, as recently recommended by the ICT industry. The daily-life consequences of digital developments are still to be seen, but it looks like major changes are and will be taking place in the lives of millions of consumers. It would show great courage and a great sense of living in the time, and give a good signal of EU legislation in particular to younger generations if the European Parliament that represents European citizens would take the lead in providing a regulatory framework for the virtual space in which consumer rights are highly valued.

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