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E-commerce Companies Face EU Competition Scrutiny

European Regulatory / UK Regulatory Alert

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On 26 March 2015, the European Commission announced its proposal to launch an inquiry into the EU e-commerce sector, one that could have far-reaching implications for any business with an online presence in Europe.

What is the Commission looking at?

In 2014 one in two European consumers shopped online, yet only one in seven bought something from a country other than the country where they lived. While the Commission wants to create a 'Single Digital Market', this disparity shows that such an achievement is a long way off.

The Commission accepts that language barriers, national laws and public policies all play a part in deterring the online consumer from shopping abroad, but has stated that "often it's the companies themselves that undermine cross-border trade by erecting technical barriers such as geo-blocking." These practices prevent customers from accessing websites on the basis of their residence or credit card details.

Whilst laws are already in place to prevent anti-competitive behaviour, the Commission has taken the view that they are not adequate enough to ensure a competitive, single market in such a fast-paced sector. As such the Commission intends "to put more flesh on the bones" through developing a thorough market knowledge in the e-commerce sector, intending to identify exactly what is preventing competition.

Why should my company be interested?

The Commission's comments suggest that new laws will inevitably be introduced to regulate the e-commerce sector meaning business practices may need to change, or else companies will risk infringing these new laws. Input from market participants could be expected to help shape the new laws and thus the impact on their businesses. Not only this, but should the Commission decide that certain companies' practices or agreements are anti-competitive, those companies and those who deal with them run the risk of being investigated, seeing existing contracts be deemed unenforceable and facing significant sanctions.

How can K&L Gates help?

Our Antitrust, Competition & Trade Regulation team has extensive experience in assisting companies to navigate Commission sector inquiries. Having previously advised clients in relation to numerous similar Commission inquiries, our team can help companies respond to the Commission's requests and investigation, identify areas of risk, defend their business models and, if necessary, proactively advocate to defend their online interests.

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Next steps

With the Commission's stated goal to be gaining thorough market knowledge, companies throughout the e-commerce sector can expect to be approached to provide information to the Commission including details about their distribution contracts. Alternatively, companies not approached by the Commission may choose to comment pro-actively.

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