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**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN
PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL
COMMITTEE AND THE COMMITTEE OF THE REGIONS**

on Cross-Border Business to Consumer e-Commerce in the EU

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INTRODUCTION

1. At a time when households are under financial strain, European consumers are spending more time searching for and comparing offers online in the hope of finding the lowest prices. Cross-border online shopping has two key benefits for consumers: an increased range of products to choose from and the possibility to save money. Consumers living in remote areas will also benefit from being able to access goods cheaply. For businesses too, it opens up new markets and customers and rewards innovative and competitive companies. The potential of the online retail internal market is considerable.
2. However, as a result of remaining internal market barriers, European e-commerce is still largely fragmented along national lines. More often than not, consumers are unable to place an order with an online trader in another EU country. Retailers all too often turn down orders from consumers who wish to shop cross-border. Businesses are sometimes held back from making cross-border sales or from expanding to a pan-EU or multi-country basis.
3. The Commission has analysed cross-border e-commerce in the EU and identified remaining obstacles¹. As a next step, this Communication analyses the impact of the current policy framework affecting the sale of goods through cross-border e-commerce (e-commerce in services is outside the scope of this exercise); it presents further evidence on the extent of the missed opportunities and proposes points for action. Many factors have an impact on consumer trust in the online environment, such as the concern over the protection of personal data, the risk of counterfeit products, or the existence of new types of unfair commercial practices online. These issues are general to the online environment and are not seen as creating specific barriers for consumers or traders to engage in cross border trade. They are therefore not dealt with in this Communication

A FRAGMENTED ONLINE INTERNAL MARKET

4. While e-commerce is taking off at national level, it is still relatively uncommon for consumers to use the internet to purchase goods (or indeed services) from another Member State. The gap between domestic and cross-border e-commerce is widening as a result of barriers to the internal market. From 2006 to 2008, the share of all EU consumers that bought at least one item over the internet in the past year increased from 27% to 33% while cross-border e-commerce remained stable (6% to 7%)².
5. Consumers across Europe recognise that cross-border shopping offers advantages even though they are not yet enjoying them. One third of EU citizens would consider

¹ 'Commission staff working document: report on cross-border e-commerce in the EU' - SEC(2009) 283, 5.3.2009, available at: http://ec.europa.eu/consumers/strategy/facts_en.htm#E-commerce.

² Special Eurobarometer 298: 'Consumer protection in the internal market' (2008).

buying a product or a service online from another Member State because it is cheaper or better³. A similar number are also willing to make a purchase in another language and 59% of retailers are prepared to carry out transactions in more than one language⁴.

6. Cross-border trade gives businesses an incentive to expand their customer base and to tap into new markets, yet few online shops are prepared to serve foreign customers. Although 51% of EU-27 retailers sell online, only 21% conduct cross-border sales. Retailers who do trade cross-border usually only sell to very few Member States: only 4% of those retailers trade with 10 or more Member States and most of them trade with just one or two other Member States⁵.

THE BENEFITS OF AN INTEGRATED ONLINE INTERNAL MARKET

A greater likelihood of finding cheaper offers

7. Cross-border shopping online increases the chance of saving money because of the greater variety of offers for the same products. For the consumer, the range of potential savings opportunities will only come to light during the shopping process, by searching for products and by comparing offers. The result of an EU-wide test of online shops gives some idea of the potential savings that consumers could make on real, cross-border transactions.
8. Testers located in 27 EU Member States were instructed to search for a list of 100 popular products on the internet and to record the total price that they would have paid for the goods. When both domestic and cross-border offers were found, it was possible to compare them, all delivery charges and costs included. Figure 1 shows the considerable potential for such cross-border savings, even when it is assumed that a 10% saving would be needed to encourage consumers to shop across borders⁶.

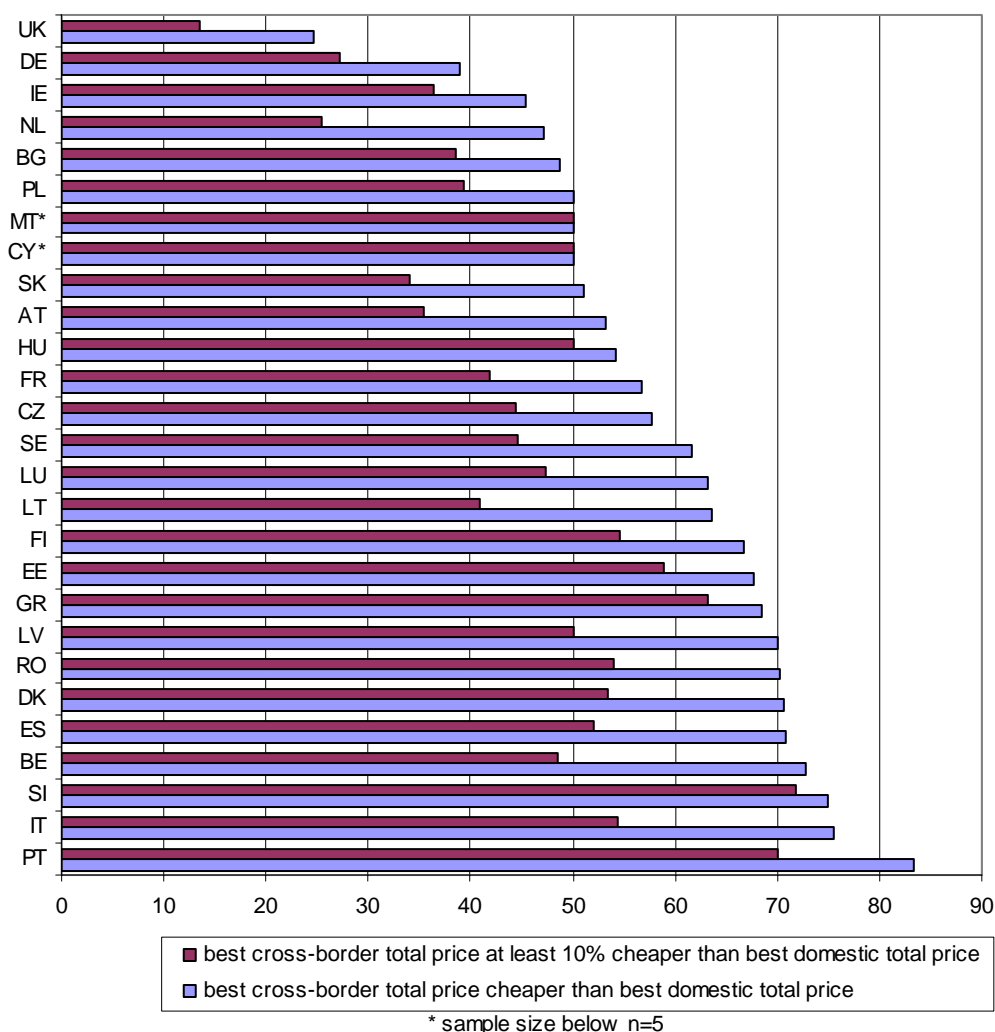
³ Special Eurobarometer 254, 'Internal Market — Opinions and experiences of Citizens in EU-25' (2006).

⁴ Special Eurobarometer 298 (2008) ; Flash Eurobarometer 224: 'Business attitudes towards cross-border sales and consumer protection' (2008).

⁵ Flash Eurobarometer 224 (2008).

⁶ 'Mystery shopping evaluation of cross-border e-commerce in the EU', YouGovPsychonomics, data collected on behalf of the European Commission, 2009.

Figure 1. Percentage of searches where the best cross-border offer was cheaper or at least 10% cheaper than the best domestic offer



Source: YouGovPsychonomics (2009)

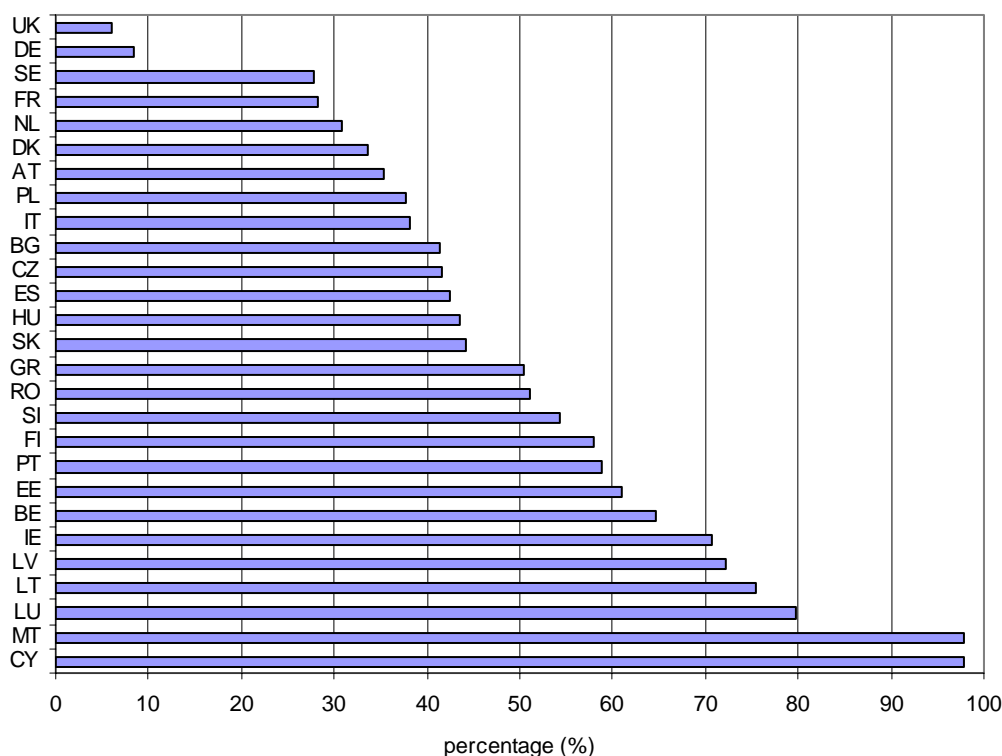
9. In 13 EU Member States out of the 27 (Portugal, Italy, Slovenia, Spain, Denmark, Romania, Latvia, Greece, Estonia, Finland, Hungary, Cyprus, Malta) for at least half of all the product searches, testers were able to find one cross-border offer that was at least 10% cheaper than the best domestic offer. This result confirms that cross-border shopping increases the chances of finding cheaper offers for identical products (all costs included)⁷.

Access to products unavailable domestically

10. Many products cannot be found online in several countries. Cross-border shopping therefore has the inherent advantage of enabling consumers to find products that are not distributed locally online. The internal market therefore has enormous potential to develop a "long tail" of products that it would not be economic to distribute on a national basis, especially in smaller Member States.

⁷ YouGovPsychonomics (2009). For Cyprus and Malta results should be interpreted with caution as there were very few domestic offers to enable a comparison (see figure 1).

Figure 2. Percentage of product searches where only cross-border offers were found



Source: YouGovPsychonomics (2009)

11. The EU-wide test of online shops showed that it is particularly difficult to find online domestic offers for most products in some countries (see Figure 2). This is the case particularly in smaller markets, meaning that a cross-border offer is the only way for shoppers to buy these products, if the retailer is prepared to deliver to them. Testers in Cyprus, Malta, and Luxembourg, but also in Lithuania, Latvia, Ireland, Belgium, Estonia, Portugal and Finland could not find domestic online offers for at least half the products that they searched for⁸.

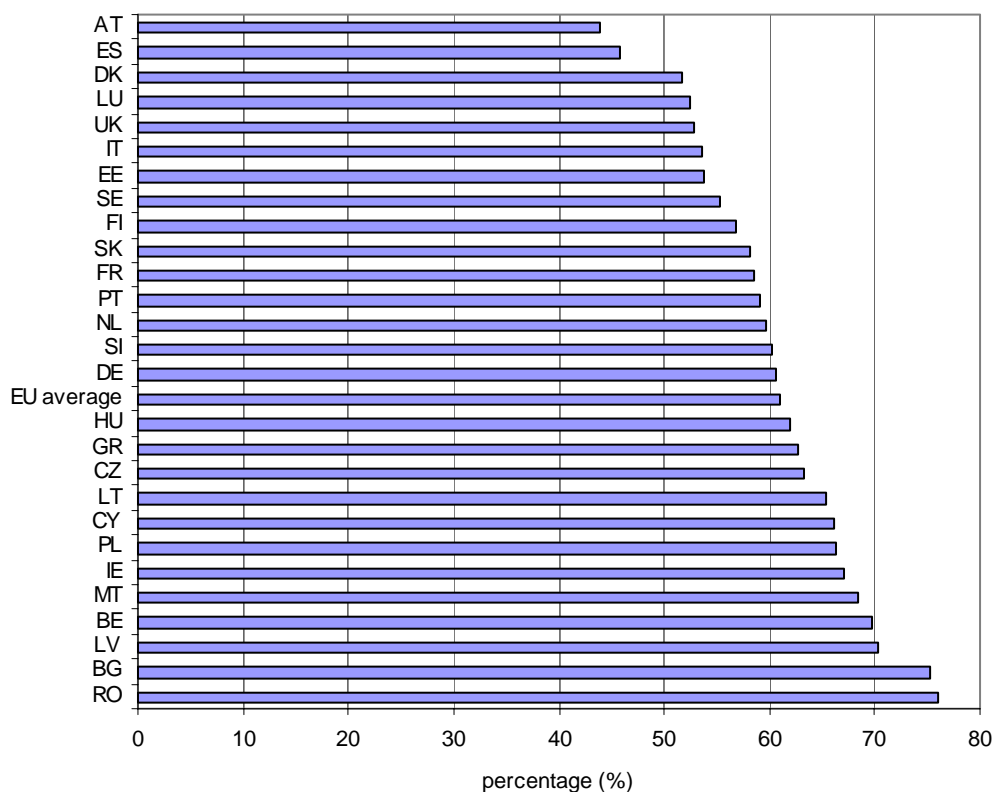
EXTENT OF ONLINE INTERNAL MARKET FRAGMENTATION

12. Unfortunately, contrary to what might be expected given the "borderless" nature of e-commerce, consumers do not have equal access to cross-border offers: for consumers in some countries it is highly unlikely that they will find foreign shops that are prepared to accept an order. While offers are technically accessible to consumers who are searching for them online, at some point during the ordering process, websites will terminate the transaction.
13. The EU-wide test of online shops indicates the magnitude of the problem. In total, 10964 cross-border tests were carried out. On average, in only 39% of cases, was it theoretically possible to place an order with an online shop that was not located in the same country as the consumer. 61% of all orders would have failed either because traders refuse to serve the consumer's country or for other reasons (for

⁸ YouGovPsychonomics (2009).

example because of technical problems or because a particular payment option was not available)⁹.

Figure 3. Cross-border offers technically accessible to consumers for which the ordering process failed



Source: YouGovPsychonomics (2009)

14. Many online shops are not prepared to sell to consumers from every EU country. Shoppers from Belgium, Bulgaria, Latvia, Malta and Romania experience the highest failure rates (see Figure 3). Many shops distinguish between consumers based on where they live. For example, many testers were not able to register on the website in order to continue the transaction, many websites refused to ship to the shopper's country and many payment options were not readily available for cross-border transactions¹⁰.

TACKLING THE REGULATORY BARRIERS TO CROSS-BORDER E-COMMERCE

15. The barriers to cross-border e-commerce have been the subject of regulatory attention at EU level for many years. More needs to be done before an integrated retail internal market is achieved. The Commission's report of March 2009 sets out a comprehensive analysis of the barriers holding back consumers and businesses.¹¹

⁹ YouGovPsychonomics (2009). The possibility of placing an order up to the final confirmation page was tested. No actual purchases were made.

¹⁰ YouGovPsychonomics (2009).

¹¹ 'Commission staff working document: report on cross-border e-commerce in the EU' - SEC(2009) 283, 5.3.2009.

16. For retailers in Europe, the main regulatory barriers to cross-border e-commerce originate in the fragmentation of consumer protection rules and other rules on VAT, recycling fees and levies. The way in which these rules are implemented differs markedly from one Member State to another, giving rise to a business environment that is complex, costly and unpredictable for those businesses considering selling cross-border. The adoption of proposals to tackle these obstacles is therefore central to changing the behaviour of retailers and, as a result, improving opportunities for consumers.
17. Consumers are faced with a number of problems when trying to shop online in another country. More often than not, foreign online traders will refuse to accept orders from consumers living in another country. Consumers are also uncertain about what to do or who to turn to should they experience a problem, especially when it comes to resolving a complaint with a foreign trader.
18. Given the complex and interdependent nature of the problems identified, a multi-stranded strategy is needed. The following section presents points for action by order of priority, based on an analysis of the main challenges remaining. While each is important individually, progress on all is required before the potential of cross-border e-commerce can be unlocked.

Address the fragmentation of consumer protection rules

19. The effect of fragmented consumer protection rules on contracts, in conjunction with rules on the conflict of laws, is to generate significant extra compliance costs for traders wishing to sell in several Member States. The proposal for a Consumer Rights Directive will address this main obstacle to the creation of a retail internal market. The proposal seeks to merge four existing consumer protection directives into a single instrument, thereby simplifying and updating the existing rules, removing internal market barriers¹² and avoiding the application of many different sets of rules.
20. The proposal will therefore create a single fully harmonised set of rules within a targeted area ensuring a high common level of consumer protection across the Community and allowing traders to sell to consumers in the 27 Member States in the same way as their home market, using for example the same standard contract terms and information materials. The proposal will therefore significantly reduce traders' compliance costs while granting consumers a high level of protection.
21. In addition, the adoption of the proposal will strengthen consumer protection and enforcement in cross-border e-commerce contracts and make it easier for mediators to settle disputes out of court. The Commission invites the European Parliament and the Council to give due priority to this proposal.

Ensure effective enforcement of Article 20 of the Services Directive

22. Article 20(2) of the Services Directive seeks to tackle one of the main obstacles to cross-border trade in an innovative way by specifically requiring Member States to put an end to discrimination by traders refusing to sell to or treating differently consumers, on grounds of their nationality or place of residence.¹³

¹² Proposal for a Directive on Consumer Rights - COM(2008) 614.

¹³ Directive 2006/123/EC of 12 December 2006 on services in the internal market.

23. While prohibiting discrimination, it allows traders to apply ‘differences in the conditions of access when those differences are directly justified by objective criteria’, which may in certain cases include regulatory barriers. The elimination of such barriers as set out in this Communication will therefore complement Article 20(2) by reducing possible grounds for traders to invoke these criteria.
24. Given the importance of Article 20(2) for cross-border e-commerce, its full implementation and effective enforcement is a high priority for the Commission. The Commission is therefore providing guidance to Member States to ensure implementation by the end of 2009 and thereafter intends to actively monitor enforcement by national authorities and courts.

Increase the efficiency of cross-border enforcement

25. Consumers will be more confident cross-border shoppers if they know that consumer protection authorities are monitoring traders' business practices. Regular concerted market surveillance actions ('sweeps') between consumer enforcement authorities, in the framework of the Consumer Protection Cooperation Regulation, have enabled national authorities to investigate irregularities and ensure compliance with consumer protection laws¹⁴.
26. The recent enforcement sweep conducted in May 2009 for the online sale of electronic equipment revealed irregularities on 55% of the websites. The most common problems detected concerned misleading, missing or incomplete information about consumer rights, total costs and contact details of the trader, indicating the need for better enforcement of the provisions of the e-commerce Directive as well as consumer protection rules. In the ensuing enforcement phase, the Member States will tackle cross-border irregularities by requesting investigative and enforcement assistance from authorities in other Member States¹⁵.
27. More effective enforcement of the existing rules by the Member States is needed to remove barriers, promote information transparency and foster consumer confidence in the trustworthiness of online offers and traders. The Commission has recently put forward a number of specific recommendations on how to achieve this¹⁶.

Tackle unfair commercial practices

28. The Unfair Commercial Practices Directive (2005/29/EC) lays down a single set of rules on legitimate and prohibited business-to-consumer commercial practices across the EU¹⁷. In order to ensure that online retailers can market and advertise in a simplified and predictable regulatory environment and consumers can trust the online offers they see, it is now important that national enforcers ensure uniform implementation of the Directive.
29. The Commission will therefore publish guidelines by the end of 2009 covering, among other things, the new concepts introduced by the Directive in order to promote uniform interpretation and application. This will make it easier for serious traders to engage in cross-border practices, in particular online. More efficient cross-

¹⁴ Regulation (EC) No 2006/2004 of 27 October 2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws.

¹⁵ See: http://ec.europa.eu/consumers/enforcement/sweep/electronic_goods/index_en.htm

¹⁶ Communication COM(2009) 330, 2.7.2009, on the enforcement of the consumer acquis.

¹⁷ Directive 2005/29/EC of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market.

border enforcement of legislation relating to unfair practices will be of great benefit both to consumer confidence and to bona fide traders by reducing unfair competition from rogue traders.

Promote alternative dispute resolution schemes and the cross-border small claims procedure

30. In addition to ongoing enforcement actions, mechanisms have been put in place at EU level to facilitate effective remedial action: a small claims procedure for cross-border disputes which entered into force in 2009, simplifies, speeds up and reduces the cost of litigation for claims not exceeding €2 000; a directive on certain aspects of mediation in civil and commercial matters reinforces mediation¹⁸.
31. The Commission also facilitates consumer access to non-judicial procedures in online cross-border disputes through the network of European Consumer Centres (ECC-Net) which connects consumers with 400 alternative dispute-resolution bodies in the EU¹⁹. The Commission will further promote these mechanisms through the publication of a citizens' guide to the small claims procedure, the creation of an EU e-justice portal and further efforts to promote the ECC-Net.

Simplify the VAT reporting obligations of distance sellers

32. Currently, online traders must register for VAT in each and every country for which their annual sales exceed a certain threshold with the added complication that thresholds and VAT rates vary from country to country.
33. The Commission has proposed to introduce a one-stop scheme for non-established taxable persons to allow traders to fulfil certain VAT obligations, such as to register and submit VAT declarations, in their own Member State and to simplify the distance selling arrangements by setting a single EU-wide threshold of EUR 150 000²⁰.
34. In addition, distance sellers are currently required to always issue a full VAT invoice even when a domestic supplier selling the same goods to the same customer may not be obliged to do so. The Commission has proposed to introduce a "simplified invoice" for distance sellers under certain circumstances²¹.
35. Both proposals would make it considerably easier for cross-border distance sellers to comply with their VAT obligations. The Commission consequently invites the Council to give due priority to these proposals.

Reduce online businesses' administrative burden concerning waste of electrical and electronic equipment

36. Cross-border sales of electronic goods (one of the categories of goods for which there is the most demand online) are subject to further regulatory barriers. The current lack of harmonisation in national implementation of the rules on waste of electrical and electronic equipment (WEEE Directive) results in various levels of

¹⁸ Regulation (EC) No 861/2007 establishing a European small claims procedure; Directive 2008/52/EC on certain aspects of mediation in civil and commercial matters.

¹⁹ See http://ec.europa.eu/consumers/redress_cons/index_en.htm

²⁰ Proposal for a Council Directive amending Directive 77/388/EEC with a view to simplifying value added tax obligations - COM(2004) 728.

²¹ Proposal amending Directive 2006/112/EC on the common system of the value added tax as regards the rules on invoicing - COM(2009) 21.

fees and thresholds for the registration and reporting of electrical and electronic equipment by online retailers, which can be prohibitive for cross-border traders.

37. In its recent proposal, the Commission has taken major steps to harmonise implementation, clarifying certain provisions of the Directive, including its scope. Article 16 proposes to harmonise registration and reporting by producers in the EU by making the national registers for producers interoperable. This would allow producers to register in one Member State reflecting their activities in the whole of the EU instead of registering in each Member State separately²².
38. The Commission's proposal would significantly contribute to alleviating the practical issues identified under the current scheme. The Commission invites the European Parliament and the Council to give due priority to this proposal.

Practical solutions to the management of copyright levies

39. Stakeholders at national and European level have been negotiating since 2006 solutions to the practical issues involved in the cross-border management of copyright levies on sales of blank media and recording devices. At present, cross-border traders may end up paying and reporting copyright levies in several countries for the same goods.
40. A majority of stakeholders agree that the current system of reporting, paying and refunding the levies is an impediment to cross-border e-commerce. As yet no agreement has been reached on practical solutions that would make the existing national levy systems more workable. Stakeholders should redouble their efforts to seek solutions quickly in order to enable companies to streamline their cross-border logistics.

In the context of vertical restraints, contribute to reducing barriers to online sales

41. Competition rules on vertical restraints have largely contributed to the removal of undue restrictions on e-commerce in distribution agreements by prohibiting anti-competitive restrictions to cross-border internet marketing and sales.²³ The current Block Exemption Regulation will expire on 31 May 2010. The Commission is currently examining the way this Regulation has been applied so far in order to clarify and simplify these rules. The Commission is also reflecting on how the ongoing review can contribute to reducing barriers to sales over the internet and create efficiencies that enhance consumer welfare²⁴.
42. For exclusive distribution, the ongoing review will elaborate further on the criteria used for distinguishing between active and passive sales with the aim of identifying the most common practices to be considered as restrictions on passive sales which are likely to infringe the competition rules. For instance, presumed illegal conduct could include practices such as requiring an exclusive distributor to put on its website some automatic rerouting of customers to the manufacturer's website or other

²² Proposal recast Directive 2002/96/EC on waste electrical and electronic equipment (WEEE) - COM(2008) 810.

²³ Commission Regulation (EC) No 2790/1999 of 22 December 1999 on the application of Article 81(3) of the Treaty to categories of vertical agreements and concerted practices (Block Exemption Regulation); Commission Notice (2000/C 291/01) Guidelines on Vertical Restraints.

²⁴ See 'Online Commerce Roundtable: Opportunities and Barriers to Online Retailing' accessible at: http://ec.europa.eu/competition/consultations/2009_online_commerce/roundtable_report_en.pdf

exclusive distributors' websites. Another example would be terminating a consumer's transaction process over the internet once their credit card data reveal an address not within the targeted exclusive territory.

43. For selective distribution, the current review will explore whether or not the criteria used to select dealers (such as the requirement for the dealer to have a brick and mortar shop) can be justified on grounds of consumer welfare and unduly limit online and cross-border transactions. The vertical review will also explore whether or not within selective distribution networks manufacturers dissuade appointed dealers from use of the internet.
44. Online distribution will be one of the main areas of the ongoing review of competition rules on vertical restraints. In this regard, the Commission will examine closely whether the existing rules need to be adapted to further enable cross-border e-commerce.

Improving payment systems and logistics and tackling technical barriers

45. Payment systems have also been the focus of EU action aimed at increasing interoperability and creating a seamless cross-border market, either through legislation (Directive on payment services) or by supporting industry-led initiatives (the Single Euro Payments Area).²⁵ However, for consumers and traders (in particular SMEs), making and receiving payments cross-border online throughout the EU still remains a challenge and a major deterrent to cross-border trade.
46. The reform of the postal sector was given renewed impetus with the adoption of the third Postal Directive in 2008 committing the Member States to full opening of their postal markets. With full market opening, an internal market will be established and postal operators should be able to set up subsidiaries in other Member States and deliver items through their own network, or should have more choice over which postal operator to use in other Member States with respect to intra-community mail. Consumers and traders will benefit from the resulting improved cross-border logistics.²⁶
47. The Commission will also continue to ensure that unjustified obstacles to the trade of goods in the internal market are eliminated and new ones are not created.

COMPLEMENTARY ACTIONS TO ELIMINATE NON REGULATORY BARRIERS TO CROSS-BORDER E-COMMERCE

Work with industry to promote a pan European online retail market

48. Consumers' perceptions of online opportunities are partially the result of business models that have hitherto regarded the online internal market as a juxtaposition of national markets.
49. The Commission calls on major search engines and online players to enhance consumers' awareness of cross-border opportunities. Online businesses should adopt domain names ending in .eu, the single top-level domain for Europe, in an effort to abolish national perceptions based on country domain names. Furthermore, because any firm registering in the .eu domain has to comply with European rules, looking

²⁵ Directive 2007/64/EC on payment services in the internal market

²⁶ Directive 97/67/EC (amended by Directive 2002/39/EC, and Directive 2008/6/EC) the "Postal Directive"

out for .eu gives some form of basic protection to consumers and European firms with high standards could differentiate themselves by adopting .eu . Traders should create multi-country or pan-EU websites.

50. While finding cross-border offers on the internet is possible, it requires more time and effort than finding domestic offers that are targeted at a national audience. Major search engines and price comparison websites should more systematically offer search rankings or price comparisons that present both cross-border and domestic offers and be available in more than one language.²⁷ Experience in the aviation sector has shown that multilingual transparent websites are the best way to push cross-border online transactions.²⁸ The Commission will continue to discuss with market operators how they can facilitate cross-border e-commerce.

Information for consumers and traders

51. Informed consumers who know their rights and are able to recognise and report infringements are more likely to reap the benefits of cross-border online shopping. To this end, the Commission will expand and update the "eYouGuide to your Rights Online" published in May 2009²⁹ and will continue to support the network of European Consumer Centers, who provides information and advice to cross-border shoppers. The Enterprise Europe Network will be used to inform traders of their obligations and opportunities.

Strengthen market monitoring

52. As part of the Commission's intention to better monitor the retail side of the internal market, continued monitoring of cross-border e-commerce will also be necessary to ensure that policymakers, enforcers and citizens are aware of market developments. In addition to existing surveys from Eurostat, the Commission will continue to work with the European Central Bank and major credit card companies – in full respect of the privacy and data protection legislation – to develop cross-border sales statistics based on credit card transactions.

CONCLUSION

53. This Communication sets out the foundation for a strategy for making cross-border e-commerce work better. Achieving this goal would benefit consumers, businesses and the competitiveness of the EU economy. Progress on all these points will continue to be monitored closely through the Consumer Market Scoreboard.

²⁷ As recommended by the Commission Communication COM(2008)566 "Multilingualism: an asset for Europe and a shared commitment".

²⁸ Notably since the adoption of Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 establishing common rules for the operation of air services in the Community (Recast)

²⁹ See http://ec.europa.eu/information_society/eyouguidenavigation/index_en.htm