

CLIENT ALERT

European Commission Launches E-commerce Sector Inquiry

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On May 6, 2015, the European Commission announced the launch of an inquiry into the e-commerce sector that will seek to identify potential antitrust concerns in European e-commerce markets.

Scope of the Sector Inquiry

The Commission believes there are indications that private undertakings are deliberately erecting barriers—particularly contractual barriers—to cross border e-commerce, *e.g.*, restrictions imposed by suppliers in distribution agreements. The aim of the inquiry will be to determine whether such barriers exist and whether they raise antitrust concerns. The focus will be on goods and services subject to widespread e-commerce, such as electronics, clothing, shoes and online content.

The inquiry is intended to be complementary to the Commission's Digital Single Market strategy, also adopted on May 6, which focuses on removing legislative and regulatory barriers to cross-border e-commerce.

It will sit alongside various existing Commission investigations of restrictions in licensing agreements between major U.S. film studios and European broadcasters, restrictions on online pricing and sales of electronic products, and restrictions on cross-border access to online video games.

Next Steps

In the coming weeks, the Commission will send information requests (RFIs) to industry participants and other stakeholders throughout the EU. Addressees will include owners of content rights, broadcasters, online retailers, and suppliers of goods and services sold online.

In the course of the inquiry, the Commission may issue further requests for documents and data from companies, and in previous sector inquiries it has even carried out dawn raids.

A preliminary report on the findings of the inquiry is expected to be published for consultation mid-2016, giving interested parties the opportunity to comment. Publication of the final report is expected in the first quarter of 2017.

Why Does This Matter?

The European Commission has previously conducted sector inquiries in the energy, food, and pharmaceuticals sectors. Experience has shown that inquiries can have a major impact on the sector under investigation.

In this case, knowledge gained may lead to legislative initiatives to boost cross-border e-commerce. Responses to RFIs and responses to the consultation will help to shape that debate.

Moreover, previous sector inquiries have triggered formal antitrust infringement investigations of individual companies. The Commission has confirmed that if it comes across anti-competitive barriers to the development of online cross border sales, it will not hesitate to take enforcement action. RFI responses will therefore need to be carefully crafted—and now may be a good time to review existing online distribution contracts and sales practices affecting the EU.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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