



EUROPEAN COMMISSION

Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs

Modernisation of the Single Market

Director

Brussels, 11.7.2016

Note for the file **Meeting with EDIMA (EU Industry association of Online Service Platforms)** (11.7.2016)

Present:

DG GROW: J. NUNES DE ALMEIDA (Director E); [REDACTED] (E.1); [REDACTED] (E.3); [REDACTED] (E.4);

EDIMA: Ms. S. EL RAMLY, Director General; Mr. [REDACTED], [REDACTED]; Ms. [REDACTED], Trip Advisor, [REDACTED].

EDIMA is interested in a harmonised legal framework which provides legal certainty and lower operational costs for Service Platforms, in their relations with Business customers and with consumers, in a better integrated Internal Market. In particular on the proposals on Geoblocking¹, Consumer rights in contracts for the supply of digital content² and the future proposals on VAT in cross-border e-commerce and VAT simplification³ and the Communication on the collaborative economy⁴.

EDIMA aims at being consulted as early as possible in order to provide their views on the basis of market realities, to make EU legislation business-friendly.

On Geoblocking, they stressed that trade associations were more in the lead and they were in an observation mode and that some of their members were more concerned than others. They however intend to get more active. They sought reassurances that the scope of the proposal would not be expanded from cross-border sales to cross-border delivery. The main concern focuses on how to differentiate between active and passive sales.

I confirmed that:

- 1) EU Law does not necessarily prohibit selling in different MS at different prices, terms and conditions, but prohibits to make more difficult cross-border shopping, so a vendor in MS A cannot refuse to sell to a consumer resident MS B if he provides a delivery address in MS A;

¹ Proposal for a Regulation on addressing geo-blocking and other forms of discrimination based on customers' nationality, place of residence or place of establishment within the internal market and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC, COM (2016) 289 final of 25.5.2016.

² Proposal for a Directive on certain aspects concerning contracts for the supply of digital content, COM (2015) 634 final of 9.12.2015.

³ The Action Plan on VAT, foresees that by the end of 2016, the Commission will adopt a legislative proposal to modernise and simplify VAT for cross-border e-commerce as part of DSM (including a proposal to ensure that e-publications can benefit from the same reduced rates as physical publications), and in 2017 a VAT simplification package to support the growth of SMEs and to make it easier for them to trade across borders: COM (2016) 148 final of 7.4.2016.

⁴ Communication "A European agenda for the collaborative economy", COM(2016) 356 final, of 2.6.2016.

- 2) the Commission aims at increasing cross-border sales, so consumer may benefit from better prices in other MS; this could cause some price convergence;
- 3) according to ECJ Case Law, the national law of the consumer applies if the vendor targets consumers in a particular MS; however, accepting unsolicited orders (passive sales) does not trigger the applicability of the national law of the consumer;
- 4) the results of the public consultation on the Regulatory environment for Platforms, Online Intermediaries and the Collaborative Economy⁵ will be in 2017 the basis of a Communication which may or may not propose to take legislative action if there is evidence of abuse of power by certain online platforms.

EDIMA found that the divergent anti-trust decisions by National Competition Authorities⁶ or MS regulatory actions could contradict other Commission initiatives.

I confirmed that Directive 2015/1535/EU⁷ mandates the notification by MS of draft legislation on Information Society Services including e-Commerce and that this includes a stand-still period and the possibility for other MS and the Commission to comment.

On platform liability, I confirmed that there is no intention to reopen the e-Commerce Directive. However, it is in the best interest of the platforms to act responsibly and invest in implementing a duty of care. EDIMA seemed to agree with that point of view.

EDIMA enquired about the fact-finding process on B2B practices between platforms and their business users. In their capacity as a network of platforms they offered to engage their members in any information enquiries of the Commission. They also emphasised the importance of having clarity on concrete B2B issues as soon as possible (ideally before spring 2017) so that platforms collectively and proactively could already work towards joint solutions. EDIMA, and TripAdvisor in particular, were concerned about possible legislative initiatives in France regarding practices of online travel agencies. Such fragmented proposals would compromise the Single Market. Finally, EDIMA was looking for a confirmation of the general approach to keep the e-Commerce Directive unchanged in relation to liability questions.

Joaquim NUNES DE ALMEIDA
Director

⁵ Available since 25.5.2016: <https://ec.europa.eu/digital-single-market/en/news/full-report-results-public-consultation-regulatory-environment-platforms-online-intermediaries>

⁶ Several European competition authorities (NCAs) have led national investigations into the price parity clauses of the major hotel booking portals under Commission coordination, on concerns that these clauses imposed by booking portals on hotels may restrict competition among the portals and hinder market entry, against Art 101 TFEU. In 2015, as a result of investigations by FR, IT and SE, NCAs, the two largest booking portals operating in Europe, Booking.com and Expedia, amended their parity clauses EEA-wide to allow hotels to offer differing room prices across different booking portals, as well as offline.

⁷ Directive (EU) 2015/1535 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services.