

# Double-check your online sales contracts: initial results on geo-blocking published

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Companies should brace themselves for the extra attention that their agreements with online distributors, in particular, are likely to get. The European Commission recently published initial findings on geo-blocking as part of its ongoing antitrust sector inquiry into barriers to cross-border e-commerce. Not only are these initial findings likely to lead to case-specific investigations into online sales restrictions in distribution agreements, but they are also likely to provide national competition authorities with more ammunition to deal with these restrictions. Companies are thus well-advised to double-check their distribution agreements and underlying commercial policies for possible online vertical restraints.

The [antitrust sector inquiry into e-commerce](#) was launched in May 2015 and mainly focuses on contractual barriers to cross-border e-commerce in digital content and consumer goods (such as electronics, clothing, shoes and sports equipment). The Commission's [Digital Single Market Strategy](#) seeks to remove barriers to cross-border e-commerce. The sector inquiry's [results](#) may be used to strengthen and harmonise the actions that the Commission and the European national competition authorities take against restrictions of online sales. In addition, the Commission may decide to open specific investigations to ensure compliance with the competition rules. The e-commerce sector inquiry's [initial findings](#) of 18 March 2016 may trigger case-specific investigations.

The sector inquiry's findings, based on the replies of more than 1,400 companies, suggest that geo-blocking is widespread throughout Europe. Geo-blocking refers to commercial practices by retailers and digital content providers to prevent online shoppers from purchasing consumer goods or accessing digital content services because of the shopper's location or country of residence. For consumer goods, geo-blocking mainly takes the form of refusal to deliver abroad by, for instance, refusing to accept payment, re-routing and having website access blocks. For online digital content, geo-blocking generally consists of denying access to the service by way of IP address verification.

Geo-blocking can only be tackled by EU competition law if it either relates to a contractual restriction – and is thus linked to an agreement between a supplier and a distributor – or is based on a unilateral decision by a dominant company. According to the [sector inquiry](#), 38% of the responding retailers selling consumer goods online use geo-blocking. Most of this geo-blocking is based on unilateral business decisions, but 12% of the retailers indicated being bound by contractual cross-border selling restrictions. With regard to online digital content, 59% of the

responding content providers indicated being contractually required by a supplier to geo-block, whereas 68% of the geo-block users are located in other EU Member States.

These percentages may inspire the European Commission and the national competition authorities to engage in more enforcement actions to combat unjustified geo-blocking, particularly regarding consumer goods and digital content. However, this may have the unintended consequence of disturbing a level playing field. For instance, non-dominant vertically integrated companies may get through unscathed: because they have a wholly-owned EU-wide distribution network, any decision not to sell abroad is a unilateral decision falling outside of the scope of antitrust enforcement actions. It is likely that any loopholes for unjustified barriers to cross-border e-commerce will be dealt with within the framework of the Commission's Digital Single Market Strategy by way of legislation to boost e-commerce across Europe. The Commission [intends](#) to propose a [legislative package](#) in May 2016 which is likely to include amendments to the [e-Commerce framework](#) and an assessment of the framework set out by Article 20 of the [Services Directive](#).