



Geo-blocking and EU competition law

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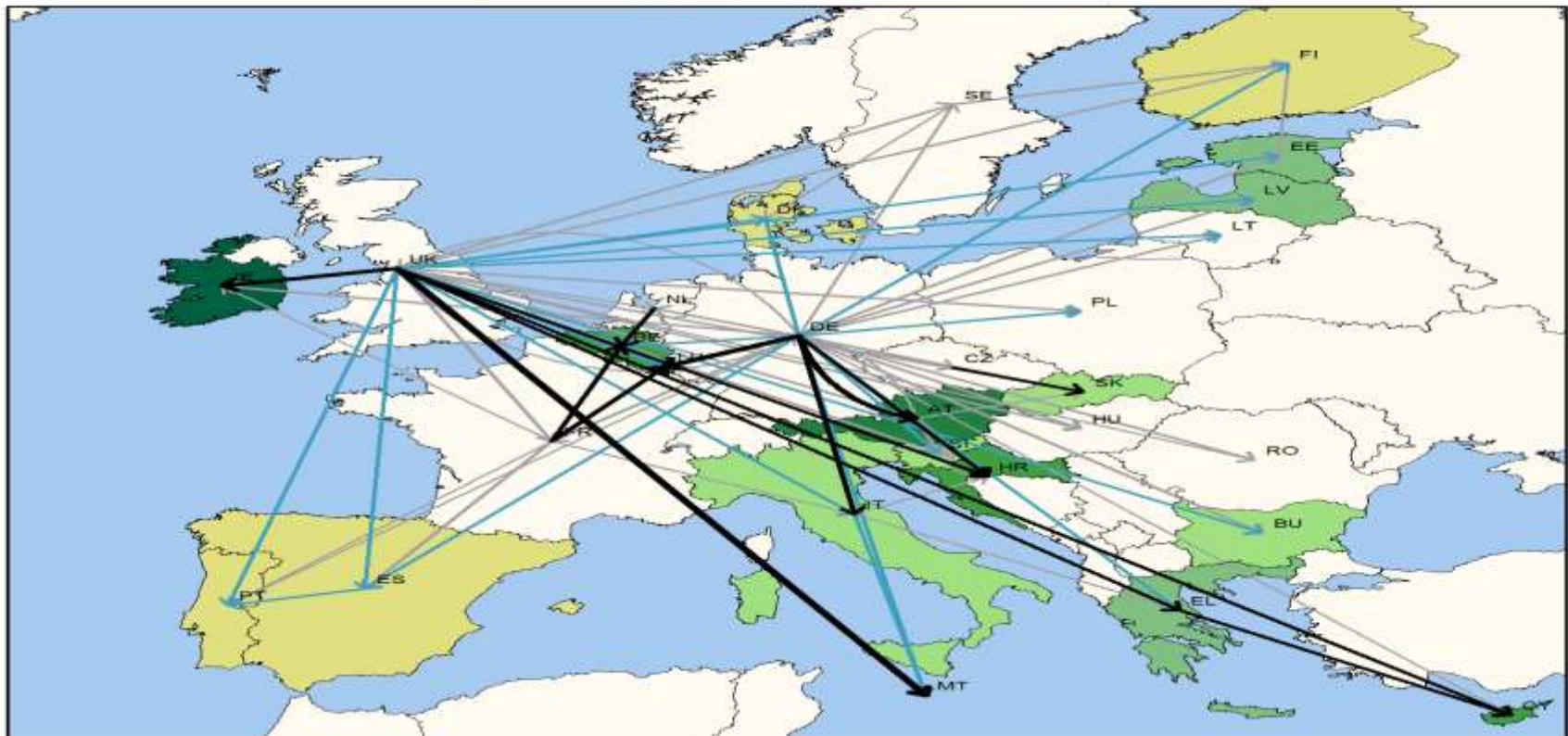
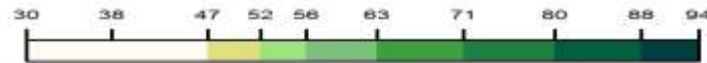
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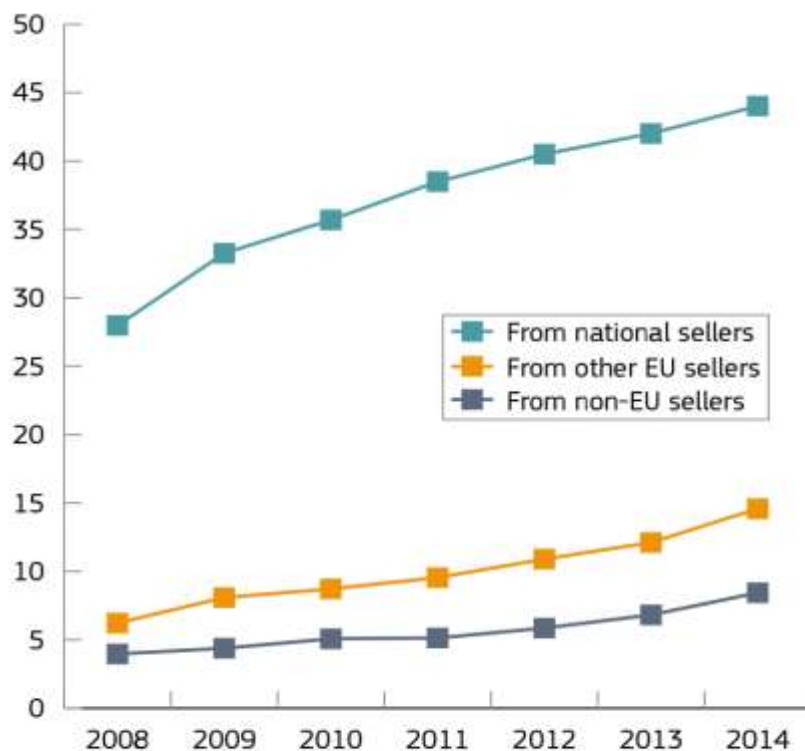
e-Commerce in the EU

Online consumers who purchased tangible goods and offline services abroad (%)



Domestic and cross-border online shopping, EU 28, 2008-2014

(% of population who ordered goods or services over the Internet, domestically and cross-border, in the last 12 months)



Source: Eurostat Community Survey on ICT usage in households and by individuals 2014: From whom did you buy or order goods or services for private purpose over the Internet in the last 12 months? (isoc_ec_ibuy).

Context: Digital Single Market Strategy

- Political priority of the Commission, adopted on 6 May 2015

- Aim: Better access for consumers and businesses to online goods and services across Europe - Remove unjustified barriers

- Actions:
 - Legislative actions → regulatory barriers
 - **Complemented by Sector Inquiry → company erected barriers**

The Single Market Objective

- ECJ, Joined Cases C-403/08 and C-429/08, Murphy, paragraph 139:

"An agreement which might tend to restore the divisions between national markets is liable to frustrate the Treaty's objective of achieving the integration of those markets through the establishment of a single market. Thus, agreements which are aimed at partitioning national markets according to national borders or make the interpenetration of national markets more difficult must be regarded, in principle, as agreements whose object is to restrict competition within the meaning of Article 101(1)."

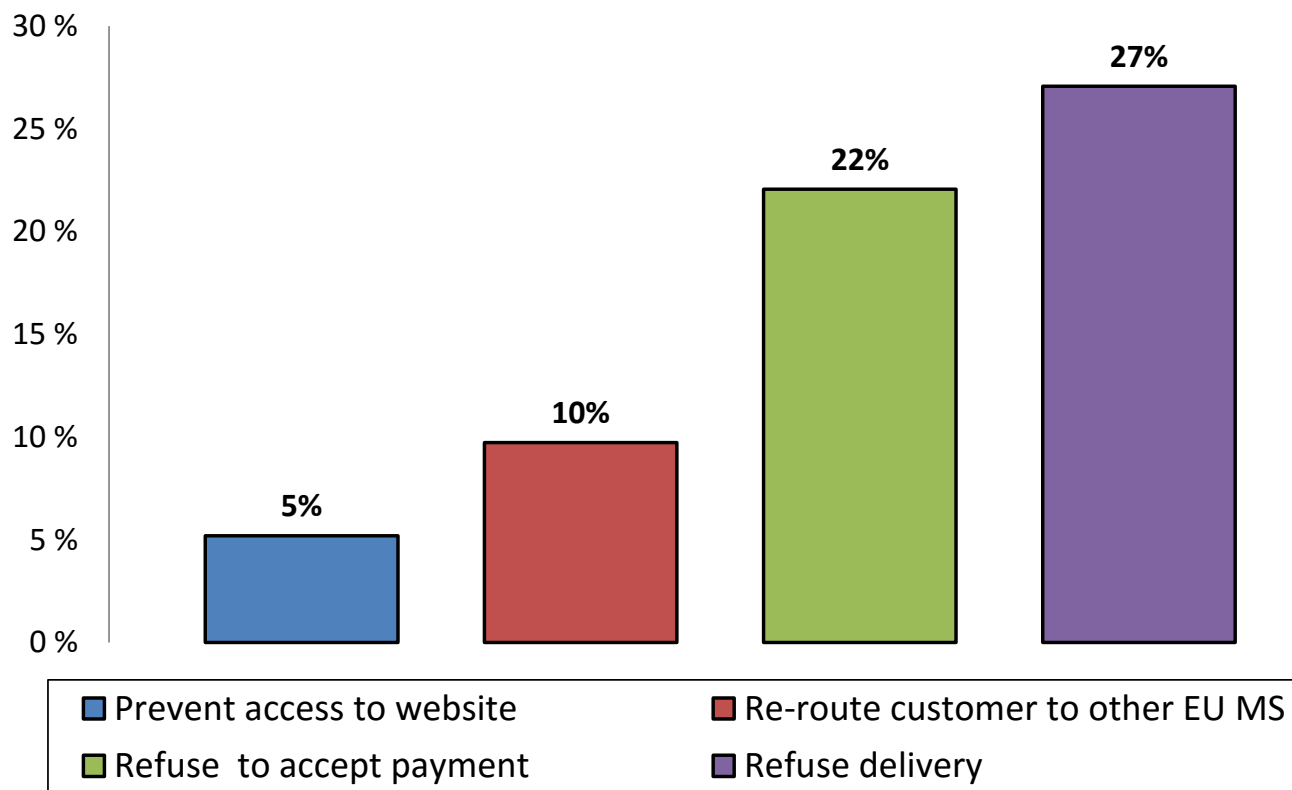
Legal framework on vertical restraints

- Vertical Agreements Block Exemption Regulation (2010)
 - Safe harbour subject to a 30% market share threshold
 - List of hardcore restrictions (Art 4)
 - obligations to set a fixed or minimum sales price
 - restrictions of passive sales into a certain territory ("where")/or customer group ("who")
 - restrictions of active or passive sales to end-users by members of a selective distribution system
- Guidelines on vertical restraints (2010)
 - BER does not cover copyright licensing (para 33 (e))
 - Provides explanations and examples regarding on-line sales restrictions

Geo-blocking

- Geo-blocking prevents users from accessing/purchasing consumer goods/digital content services online based on location/place of residence
- Geo-filtering refers to different terms (in particular prices) depending on the location/place of residence

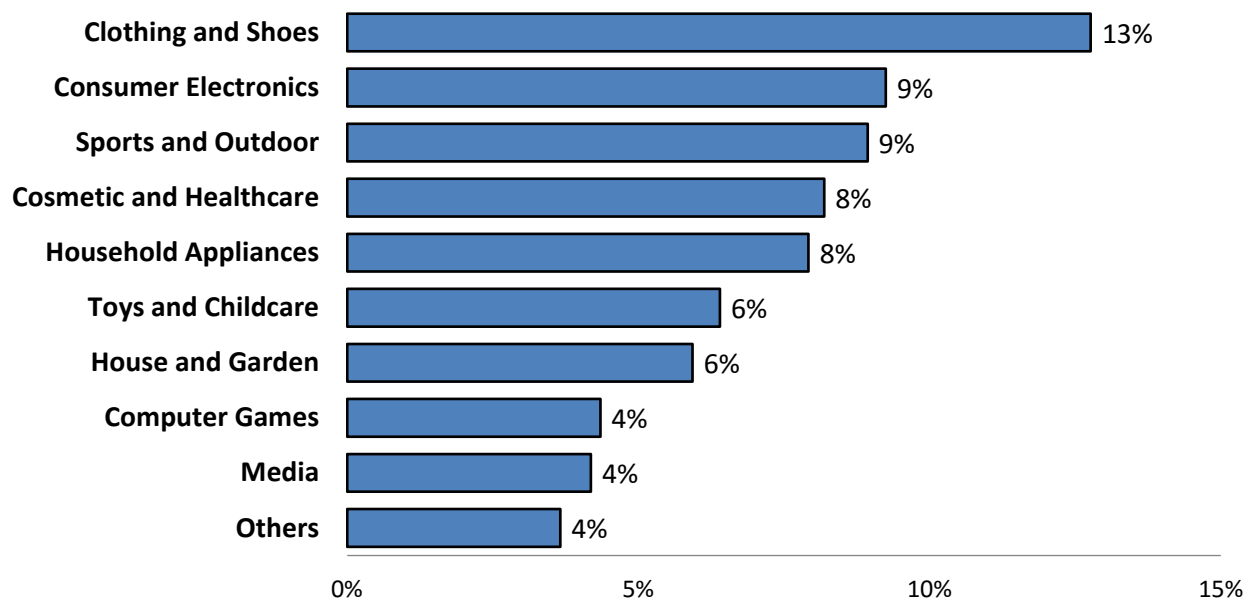
Delivery refusal most common geo-blocking measure



Retailers who gather location information for geo-blocking purposes, EU-28

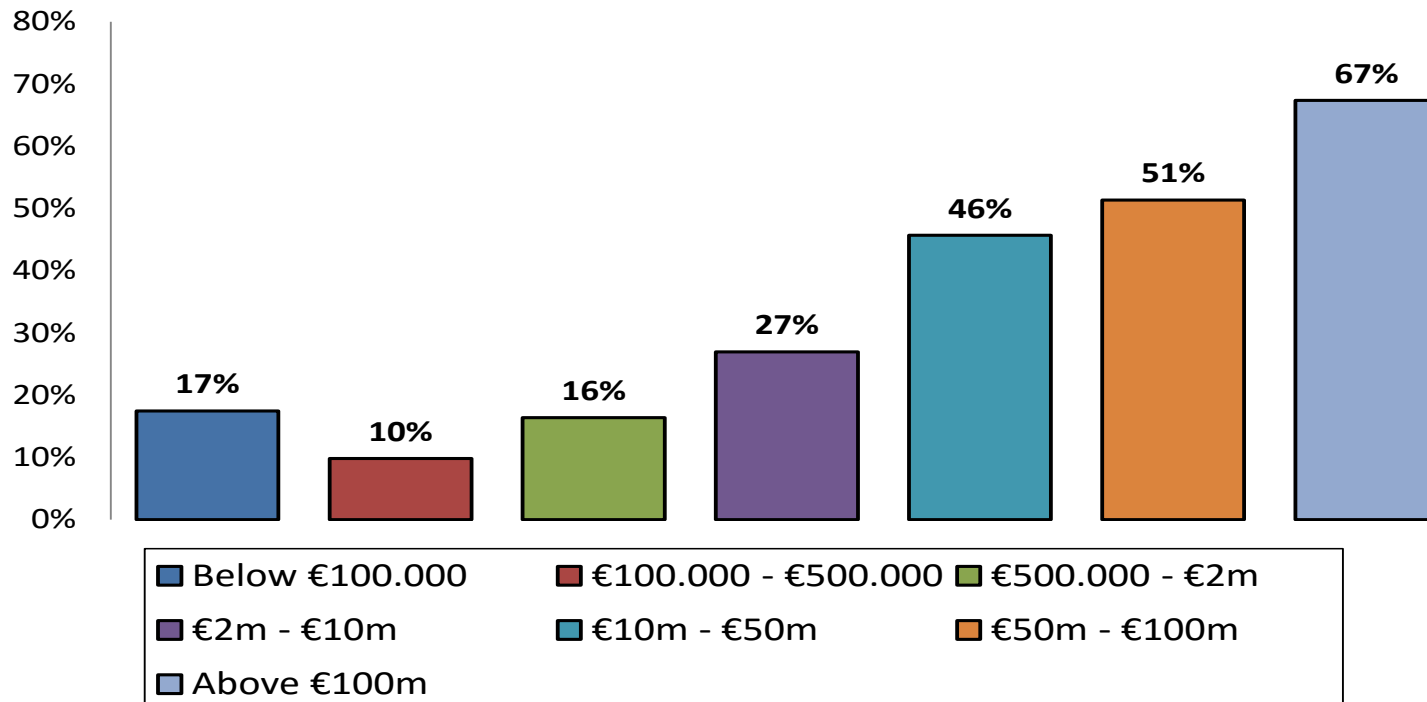
Geo-blocking (Goods)

Respondents that have a contractual restriction to sell cross-border for each product category – EU 28 (Issues paper on geo-blocking)

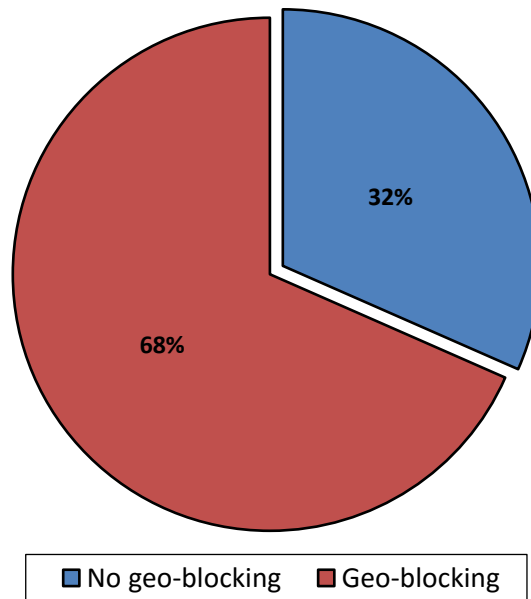


Larger companies geo-block more

Respondents that gather location information for geo-blocking purposes for each 2014 turnover category

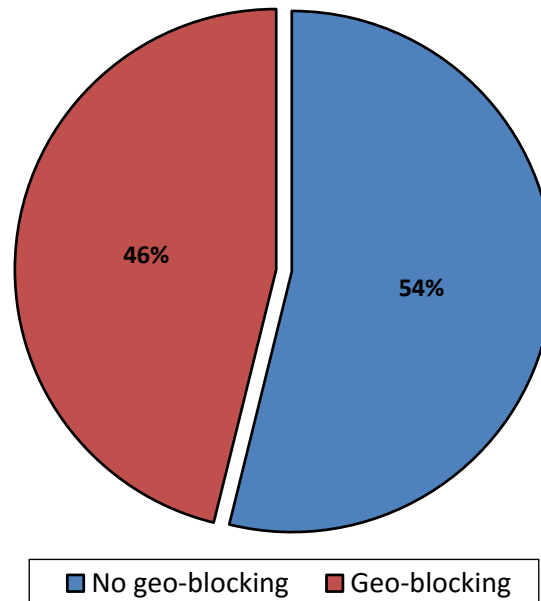


More than two thirds of digital content providers geo-block



Proportion of respondents implementing at least one type of geo-blocking measure, EU-28

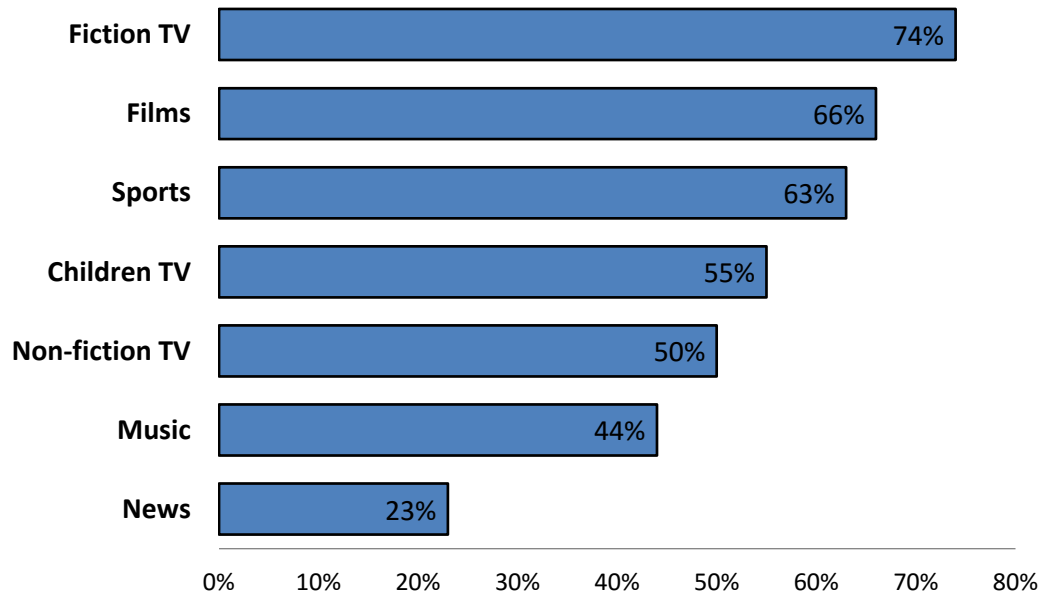
Proportion of respondents implementing at least one type of geo-blocking in Italy



Proportion of respondents implementing at least one type of geo-blocking measure, EU-28

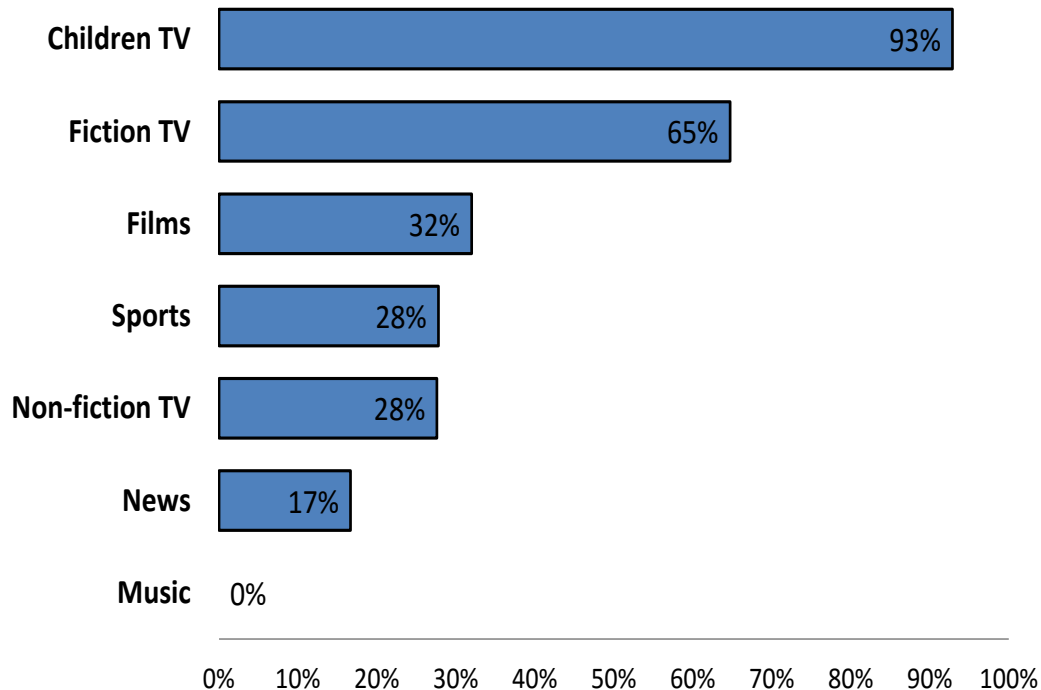
Geo-blocking (Content)

Proportion of agreements requiring providers to geo-block by category – Average for all respondents – EU 28 (Issues paper on geo-blocking)



Geo-blocking (Content)

Proportion of agreements requiring providers to geo-block by category – Spain (Issues paper on geo-blocking)





Absolute territorial protection and IP

- Trade Marks: ECJ, Cases 56 and 58/64, Consten & Grundig
- Plant breeders rights: ECJ, Case 258/78, Nungesser
- Patents: Article 4(2)(b) TTBER
- Copyright: ECJ, Joined Cases C-403/08 and C-429/08, Murphy



Sector Inquiry (Timing)

- First round of requests for information in June 2015
- Issues Paper on geo-blocking in March 2016
- Preliminary Report followed by Public Consultation mid-2016
- Final Report in the 1Q 2017

Examples of possible restrictions

- Restrictions to sell cross-border (passive sales prohibitions, geo-blocking practices)
- Restrictions to sell online
- Restrictions to online advertising
- Platform bans
- Pricing restrictions (dual pricing, RPM, price parity clauses)

Goals of the Sector Inquiry

- Gain a more comprehensive understanding of competition issues, market dynamics and business challenges in cross-border e-commerce
- If appropriate, provide guidance to businesses through subsequent enforcement
- Look at the legal framework on online vertical restraints in the light of current market realities
- Complement legislative initiatives