

UK Government response to EU public consultation on tackling unjustified Geo- blocking



UK position on Geoblocking

Making sure that consumers fully benefit from the Single Market

The UK strongly welcomes the initiatives to tackle the differential treatment of customers based on their nationality or geographical location, as set out in the Commission's Digital Single Market package in May and in their Single Market strategy published in October. Deepening the Single Market is key to making the EU more competitive and to ensuring that it works to the benefit of consumers and businesses in all 28 Member States.

As set out in our non-paper in July¹, we need to make the Single Market fit for purpose in the 21st century. This includes taking action on unjustified geoblocking/price discrimination based on a consumer's geographic location. Internet Protocol, payment card addresses or other means of geoblocking should not be used to block access to special offers and lower prices where there is no justifiable reason for doing so.

The recent examples of Disneyland Paris and international car rental companies charging consumers higher prices apparently solely based on their location/nationality have reiterated the need for action in this area. Additionally, as highlighted in the Commission's own evidence, 74% of the complaints concerning services which were received by the European Consumer Centres Network related to consumers facing differences in price or service when buying online cross-border².

A fundamental condition for well-functioning markets, and particularly online markets, is consumer trust. According to an Office of Fair Trading (OFT) report³, whilst personalised pricing within a competitive market is often not detrimental to consumer welfare, it is more likely to be detrimental in online markets as consumers may lose trust as a result of concerns about discrimination. This long-term loss in consumer trust may ultimately harm businesses, even where they gain from being able to price discriminate in the short-term.

We firmly believe that effective action to tackle unjustified geoblocking and certain instances of price discrimination will help empower consumers across the whole of the EU; allowing them to make the most of the Single Market and to fully benefit from the best deals and offers online.

¹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/448444/BIS-15-436-deepening-the-single-market-in-goods-and-services.pdf

² European Commission, ECC-Net report, Enhanced Consumer Protection – the Services Directive 2006/123/EC Analysis of Article 20.2 and Article 21 related consumer complaints reported to ECC-Net between 2010 and 2012, 2013

³ Office of Fair Trading, "The economics of online personalised pricing", May 2013

Current state of play – the Services Directive

The Services Directive is not clear about what counts as a justified reason for differential treatment of consumers. The legal text (Article 20) sets out that the recipient of a service should not be made subject to ‘discriminatory requirements based on his nationality or place of residence’ but leaves open the option for ‘differences in the condition of access’ where these differences are ‘directly justified by objective criteria’. However, the Directive fails to define what would count as an ‘objective criteria’. While the recitals (Recital 95) are of some assistance in defining ‘objective criteria’, they take a broad approach by listing a wide range of justifiable reasons for differential treatment of consumers, including ‘different market conditions, such as higher or lower demand’.

We recognise the shortcomings of the Services Directive (Article 20) in this area and acknowledge that changes to the Directive, or the accompanying recitals, might be necessary; such as revising Recital 95 to narrow the definition of what qualifies as an ‘objective criteria’. However, we would nonetheless prefer proposals which achieve these aims but avoid a full-scale re-opening of the Directive if at all possible. We understand that the Commission as well as most Member States share this view.

Tackling geoblocking and unjustified price discrimination

We do not believe that consumers should be prevented from seeing prices offered to consumers in other Member States. Hence, the UK wants to see a ban on the type of geoblocking defined by the Commission as 'being blocked upfront from accessing a specific webpage or content on a webpage'.

We also believe that action on price discrimination, i.e. when the price consumers are charged differs based on the location from which they access a website or the nationality of the consumer, or via various means are blocked from completing a sale at that price, is needed.

We do acknowledge that there are justifiable reasons for price discrimination, particularly in relation to supply-side factors (logistics, security, delivery and regulatory costs, and different tax rates). Certain demand-based factors (e.g. concessions based on a consumer's student status or possession of a loyalty card etc.) also represent justifiable reasons for difference in price.

However, we consider that it is unjustified when businesses prevent a consumer from making an online purchase because their nationality or location is being used as a proxy for their willingness to pay a higher price. This should not *on its own* be used as grounds for charging a different price or preventing an online purchase.

Please also refer to the PowerPoint slides (attached at Annex) which set out several (hypothetical) case studies to illustrate our position on geoblocking/unjustified price discrimination.

What should be out of scope?

Whilst we are against consumers being prevented from seeing prices offered to consumers in other Member States, we do not believe that businesses should be prevented from targeting websites at a particular national audience. That is, we think it is justified if a business operates, for example, a .fr website in French and a .co.uk website in English, and offers different packages and special offers on those websites specific to each audience.

We are similarly not suggesting that businesses advertise or charge one single price across the whole of the EU; the UK recognises that price discrimination can be beneficial to consumers in some cases (Annex A contains a short analytical paper that looks at some of the economic theory behind price discrimination). Any proposals should be focused on promoting choice and empowering consumers who wish to seek out the best deal.

Neither should we look at imposing an obligation on businesses (in particular SMEs) to ship to any location in the EU – just as we would not want to force a UK business to sell across the whole of the UK, we believe that European businesses should not be forced to sell across the whole of the EU. Our view is that, as the wider obstacles to the functioning of the Single Market are taken down (including those addressed by the wider DSM set of proposals), businesses will find it in their interest to operate across more EU markets and will increasingly trade cross-border without any need for legislation. We do not want to see any unnecessary burdens being imposed on businesses (e.g. compulsory transparency requirements), in particular SMEs.

The Commission has stated that copyright material is not in scope as it is being considered separately through the copyright package. Copyright content has its own particular characteristics and there is a significant volume of work on copyright taking place elsewhere as part of the Digital Single Market strategy. We have therefore responded to this current consultation on the basis that copyright content is excluded, whilst being mindful that digital and copyright content are overlapping categories.

In particular, it should be recognised that any action on geoblocking should not undermine the ability of copyright owners to prevent people accessing content on the internet which they have not paid for. Whatever action is taken as a result of this consultation this possibility must remain - it is vital to the continuing success of European creativity that creators and rightsholders are paid for use of their copyright works.

Copyright content is licensed on a territorial basis and lack of appropriate rights to distribute in a particular territory is one reason why a distributor may not make a sale across borders. This matter is rightly not covered by this consultation as it has been covered elsewhere – for example, the UK Government recently responded to the Commission's Consultation on the review of the Satellite and Cable Directive, which considers the ease of licensing copyright content in the EU.

Better enforcement

The Commission plays a crucial role in monitoring and facilitating enforcement of Single Market rules. The Commission should play an important role in monitoring and facilitating effective enforcement of any new proposals brought forward in this area, and national enforcers should also be a key player in the monitoring and enforcement of such provisions. Monitoring and facilitating enforcement by both the Commission and national enforcers, together with an effective cross-border cooperation mechanism, would be our preferred implementation option for any new proposals put forward in this area. Such an approach based on Commission and national enforcement must pay due regard to avoiding duplication of effort for businesses.

We are against introducing compulsory transparency requirements for businesses that require them to explain (upfront or on request) why they charge a different price or do not deliver to a certain market, which we believe would impose a disproportionate burden on businesses, in particular SMEs. Transparency is important, and we believe a voluntary approach will better deliver the need to ensure

transparency while considering burden on businesses. We therefore believe the Commission should investigate establishing a voluntary transparency mechanism for businesses.

Our view is that forcing businesses to explain their pricing policies to customers is not necessary. We believe that with consumers able to see the prices on offer across different Member States, pressure from consumer groups (particularly on the big brands) will put pressure on companies to be more transparent about their pricing policies and end unjustified price differences across border. In accordance with the proposals brought forward in their Single Market strategy, the Commission are looking into developing a Market Information Tool enabling them to collect information from selected market players. We will have to look at this proposal separately once it is developed in more detail to analyse how effective it will be in practice and to ensure it does not impose a disproportionate burden on business.

Appraising the impact of any new legislation

We urge the Commission to make sure that any proposals brought forward are grounded in a strong evidence base and a detailed understanding of their potential impact on both consumers and businesses. This includes an accompanying impact assessment, in line with the Commission's own better regulation principles. The UK urges the Commission to evaluate the impact of previous investigations in this area (namely the car rental and Disneyland Paris examples) to add to the evidence base, as well as similar policy initiatives, such as the ban on gender discrimination in insurance markets.

In particular, in designing and implementing its proposals, we urge the Commission to consider their potential impacts on firm behaviour. We would not want, as an unintended consequence, to see firms opting out of certain national markets that they had supplied previously. That would be counter to the objectives of the single market and there is a risk that some may do so if the proposals are too burdensome.

HMG response to the Commission's geoblocking consultation

1. As a general principle, consumers and businesses should be able to purchase and access services from everywhere in the EU.

Strongly agree.

Additional comments

The UK strongly supports the principle of open access to goods and services across the EU and the Commission's efforts to remove existing barriers that prevent this from becoming a reality. There remain too many obstacles to the complete operation of the single market, of which geoblocking and unjustified price discrimination are one.

However, we do not think that it would be proportionate to mandate that all businesses must ship to any location in the EU, nor that this principle should cut across freedom of contract between businesses (which must also be compatible with existing competition legislation). Our view is that, as the wider obstacles to the functioning of the single market are taken down (including those addressed by the wider DSM set of proposals), businesses will find it in their interest to operate across more EU markets and will increasingly trade cross-border without any need for legislation. Some businesses, notably some SMEs, may still choose not to do so, but they should not be forced into serving particular markets. Our interest remains one of preventing businesses imposing unjustified restrictions on EU consumers **based solely on their nationality or place of residence**.

We would also not want any measures adopted in the pursuit of this principle to lead to additional burdensome requirements (e.g. transparency requirements) for businesses, in particular SMEs, as set out in later sections in this consultation response.

2. Which forms of geoblocking and other geographically- based restrictions do you consider as creating significant obstacles to the single market?

[Strongly agree, agree, neither agree nor disagree, disagree, strongly disagree]

Obstacle	Answer	Additional comments
Blocking any access to websites across borders, thereby denying access to information, comparisons of service or product ranges and prices), with or without rerouting to 'national' websites	Strongly agree	While we are on principle against the automatic rerouting of users/customers to another website, we think it is acceptable to have passive consent, i.e. automatic re-routing with a message that allows the user to say if they want to go back to the original website. We recognise that automatic re-routing may be done for reasons of convenience for most consumers who are genuinely looking for the national website.
Allowing access to websites and offers across borders but denying the possibility to complete the order or purchase after obtaining information on the geo-location or residence of the user	Strongly agree	We do however accept that there are genuine supply-side reasons that could either prevent or make it difficult for a company to complete a sale, including: <ul style="list-style-type: none"> • Legal restrictions • Cost of delivery (including where applicable additional costs such as those of providing guarantees) • Security or fraud related concerns • Different tax rates
Allowing access to websites across borders but denying the possibility to download digital products across borders		The UK Government notes the consultation excludes copyright content but digital content will very often be covered by copyright. The question of whether or not consumers are able to access copyright content will depend on the specific circumstances, and because of this it is right for the Commission to consider the cross-border use of copyright content separately to this consultation. For example, we are engaging with the Commission on their recently published proposals to allow portability of copyright content, which will mean that consumers who have purchased content in their home country will be able to access it when they travel in the EU.

Obstacle	Answer	Additional comments
<p>Allowing access to websites and offers across borders but denying the possibility to pick up, deliver or ship the goods across borders</p>	<p>Neither agree nor disagree</p>	<p>We strongly agree that preventing consumers from picking up goods directly, where they are willing to do so and where it does not pose additional burdens for the firm, would form a barrier to the single market. This includes cases where a consumer is willing to have a good delivered to an address in the same country of the seller and organise onward delivery via a third party from there.</p> <p>However, as highlighted in our broader narrative, we do not believe that it is proportionate to require businesses to ship anywhere in the EU and so we would strongly disagree that denying the possibility to deliver or ship goods forms a barrier to the single market in this regard.</p>
<p>Differentiating prices or other conditions on the basis of the nationality of the customer</p>	<p>Strongly agree</p>	<p>As set out in our narrative, we consider that it is unjustified when businesses prevent a consumer from making an online purchase because their nationality or location only is being used as a proxy for their willingness to pay a higher price. This should not be used as grounds for charging a different price or preventing an online purchase.</p> <p>Additionally, we note Article 18 of the Treaty on the Functioning of the European Union which prohibits all discrimination on grounds of nationality within the scope of the Treaties.</p>
<p>Differentiating prices or other conditions on the basis of the country of residence of the customers or the location from which they are ordering or accessing the services</p>	<p>Strongly agree</p>	<p>As set out in our narrative, we consider that it is unjustified when businesses prevent a consumer from making an online purchase because their nationality or location only is being used as a proxy for their willingness to pay a higher price. This should not be used as grounds for charging a different price or preventing an online purchase. Supply-side factors (e.g. delivery costs) are however justifiable reasons for differentiating by residence or location.</p> <p>However, we believe that it is justified if a business operates, for example, a .fr website in French and a .co.uk website in English, and offers different packages and special offers on those websites specific to each audience. We are similarly not suggesting that businesses charge one single price across the whole of the EU.</p>

Obstacle	Answer	Additional comments
Denying access to additional services on the basis of the country of residence of the customers or the location from which they are ordering or accessing the services (e.g. loyalty cards, discounts, reduction vouchers)	Strongly agree	
Denying access to after-sales services on the basis of the country of residence of the customers or the location from which they are ordering or accessing the services (e.g. maintenance and repair of the product, customer support)	Agree	We agree that this forms a barrier to the single market; however, we do not support requiring firms to offer an after-sales service in the same location as the customer (which would effectively involve requiring them to establish a national presence) or the same language as the customer. We believe that this would impose a disproportionate burden on business.
Other forms of geo-blocking	Strongly agree	

Comments

We have approached this question by looking at the obstacles that should be addressed, not simply what we think is an economic obstacle (e.g. language barriers). We generally agree that blocking any access to websites across borders (with or without rerouting to national websites) constitutes a significant obstacle to the single market. We agree that the same applies to allowing customers to access a website but then preventing them from completing an order or purchase based on their geographic location or residence, where there is no justifiable reason for doing so.

However, we do recognise that there are certain genuine supply-side reasons which prevent a company from completing a sale or charging the same price (e.g. legal restrictions, cost of delivery, security concerns). Generally, we are against any proposals which would impose additional burdensome requirements on businesses; e.g. we do not believe it proportionate to require businesses to ship anywhere in the EU or to require firms to offer an after-sales service in the same language or location as the customer. As set out in question 1, our view is that, as the remaining barriers

to the single market are removed, businesses will find it in their interest to operate across more EU markets and will increasingly trade cross-border without any need for legislation.

We would also like to reiterate the importance of noting that copyright issues are out of scope of this consultation as they are being considered separately. We have therefore approached this question on the basis that none of the listed obstacles are affected by copyright issues.

3. There are different ways in which geo-blocking and other geographically based restrictions can take place. How would you classify the following barriers?

[Very important, important, neutral, not important, I don't know]

Barrier	Answer	Additional comments
Re-routing to a website targeting the home country of the visitor without the possibility to overrule	Very important	While we are on principle against the automatic rerouting of users/customers to another website, we think it is acceptable to have passive consent, i.e. automatic re-routing with a message that allows the user to say if they want to go back to the original website. We recognise that automatic re-routing may be done for reasons of convenience for most consumers who are genuinely looking for the national website.
Refusing access to a website or an offer based on IP-address (or other technical means allowing to determine the geo-location of the user)	Very important	
Refusing access to a website or an offer based on customers' disclosure of their nationality	Very important	Unless there are clear and justifiable legal or security based reasons, we would question why businesses are requiring customers to disclose their nationality as part of normal business practice.
Refusing access to a website or an offer based on customers' disclosure of their residence	Very important	Whilst we agree that this is a very important barrier, we would not support measures that prevent national governments from pursuing legitimate public policy goals. For example, national government should be free to require websites to put country-specific age limits on accessing certain online content.

Barrier	Answer	Additional comments
Terminating the transaction based on customers' disclosure of their residence	Very important	See comment above.
Refusing foreign credit cards or other foreign means of payment	Very important	Whilst we agree that this is a very important barrier, there may be legitimate security or fraud concerns associated with some foreign credit cards / means of payment. Where applicable, businesses should have the freedom to block these means of payment. Any concerns in this area should be looked at separately to geoblocking.
Linking access to, purchase or download of digital goods or services to the postal address of the customers		Please see our earlier comments on the relationship between copyright and digital content.
Application of disproportionately higher shipping costs based on the location of the customer	Very important	Whilst we agree that this is a very important barrier, we would like to emphasise that this does not include parcels policy which is considered under a separate set of proposals.
Providing a format for address, postal codes or phone etc. which is specific to certain countries	Very important	
Other ways of geo-blocking	Very important	We support the Commission's initiative to ban different types of unjustified geoblocking.

Please specify

All of these barriers are very important to HMG and, subject to the specific points raised above, we support the Commission's initiative to ban different types of unjustified geoblocking. We urge the Commission to ensure that all initiatives in this area are based on a firm evidence base.

4. Have you experienced geo-blocking or other geographically-based restrictions when shopping in another EU country? Please specify the restriction, the type of goods or services as well as the economic sector

5. Have you experienced geo-blocking or other geographically-based restrictions in your business (B2B)?

6. Have you applied geo-blocking or other geographically-based restrictions in your business (B2B and B2C)? If yes, to achieve which aim.

7. Have you ever asked traders why they refused to sell or charged higher prices based on where you live?

8. If you apply restrictions or different conditions to customers located in different EU countries, in which circumstances do you provide them with an explanation?

The UK supports the on-going Commission enquiries in this area and urges the Commission to ensure that all policy in this area is based on a firm evidence base.

On B2B elements of geoblocking and price discrimination

Where suppliers are imposing geographical sales restrictions on sellers, such as contract provisions preventing them from fulfilling cross-border passive sales (as highlighted in the Commission's Analysis & Evidence paper in May), the UK's view is that existing competition legislation – and existing case law - already provides a framework for these issues to be considered. For example, the Court of Justice's judgment in Joined Cases C-403/08 and C-429/08 Football Association Premier League Ltd v QC Leisure and Murphy v Media Protection Services Ltd which, among other things, considered the export from one Member State to another of satellite decoder cards and whether contractual arrangements preventing "passive sales" of satellite decoder cards complied with EU competition law.

There are also a number of ongoing competition enquiries in the area of cross-border sales, including enquiries into the pay-TV sector and video games. We support the rapid conclusion of these enquiries and as far as possible the publication of relevant evidence.

For B2B interactions more broadly, Article 20 as set out applies to businesses as well as consumers and so applies to a range of B2B transactions⁴. Outside of cases where businesses are buying directly from shops/online and acting as a price taker (in a similar way to consumers), the UK remains cautious of expanding the law in a

⁴ 'Recipient' is defined in Art 4(3) of the SD and includes 'any legal person as referred to in Article 48 of the Treaty'. Article 48 confirms companies and firms as being 'legal persons'.

way that impacts on the ability of firms to freely contract with one another. In general, the position of businesses and consumers in the market may be very different (for example, the former may be expected to have more power and information in the market) and there are not the same issues around consumer protection and empowerment that justify firm action on the blocking of B2C cross-border sales.

In the context of SMEs, HMG recently announced that it will be consulting on whether further consumer-style protections are needed for the smallest businesses in non-regulated sectors⁵. The outcome of this work will help inform our position on this going forward.

If there were proposals to extend these rules in B2B geo-blocking situations, we would first want to see a robust evidence base which demonstrated that a problem existed and which could not be remedied under the current regulatory framework.

9. In your opinion, what - beyond legal constraints - might be considered other objective factors justifying geoblocking or, more generally, different treatment of users and customers based on their residence or geo-location?

Please refer to the first section of this document, which sets out our broader narrative, for a detailed response to this question.

10. In your opinion, in which circumstances should geo-blocking, refusing a transaction or, more generally, different treatment of users and customers based on their residence or geo-location not be justified?

[Not justified, neither justified nor unjustified, justified, I don't know]

Barrier	Answer	Additional comments
<p>Cross border delivery is easily accessible and the customer is prepared to pay additional shipping costs</p>	<p>Different treatment is justified</p>	<p>Based on the current state of play, i.e. given that there remain many practical barriers to cross-border delivery, we believe this is justified.</p> <p>Our view is that, as the wider obstacles to the functioning of the single market are taken down (including those addressed by the wider DSM set of proposals), businesses will find it in their interest to operate across more EU markets and will increasingly trade cross-border without any need for legislation.</p>

⁵ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/480797/a_better_deal_for_families_and_firms_print.pdf

Barrier	Answer	Additional comments
<p>The customer is prepared to organise the delivery</p>	<p>Different treatment is justified</p>	<p>We strongly agree that preventing consumers from picking up goods directly, where they are willing to do so and where it does not impose additional burdens for the business, would form a barrier to the single market. This includes cases where a consumer is willing to have a good delivered to an address in the same country of the seller and organise onward delivery via a third party from there.</p> <p>However, as highlighted in question 1, we do not believe that it is proportionate to require businesses to ship anywhere in the EU and so we would strongly disagree that denying the possibility to deliver or ship goods forms a barrier to the single market in this regard.</p>
<p>There is no additional cost linked to delivery or other administrative burden (for example: simple downloading of digital content, the customer will use the service/good in the country of the trader or of its supplier)</p>	<p>Different treatment is not justified</p>	
<p>Customers are prepared to take the risk of concluding a transaction in the language of the trader</p>	<p>Different treatment is not justified</p>	
<p>The means of payment used by the customer is internationally valid and accepted in the traders' country</p>	<p>Different treatment is justified</p>	<p>We do not believe that it is proportional to require that businesses accept a range of different international or national means of payment (e.g. American Express, or the Dutch iDEAL system⁶).</p> <p>The UK is also mindful that fraud remains a valid concern for many businesses when making cross-border sales and that this can be a justifiable reason for blocking purchases in some instances. For example, businesses in the UK can check names and addresses against the electoral register, which they cannot do outside the UK.</p>

⁶ <https://en.wikipedia.org/wiki/IDEAL>

Barrier	Answer	Additional comments
The brand of the physical store (franchisee or subsidiary) also exists in the customer's country	Different treatment is not justified	
The trader advertises its products or services also in the customer's country	Different treatment is not justified	
The trader has a website targeting specifically the country of the customer	Different treatment is not justified	As set out in our broader narrative document we consider that it is unjustified when businesses prevent a consumer from making an online purchase solely because their nationality or location is being used as a proxy for their willingness to pay a higher price. This should not be used as grounds for charging a different price or preventing an online purchase. However, we are not looking at preventing businesses from targeting websites at a particular national audience – for example operate a .fr website in French and a .co.uk website in English, and offer different packages and special offers on those websites.
The customer is moving to the seller's country but is not registered yet	Different treatment is not justified	
Nationality can never be a justification	Different treatment is not justified	
Residence or location of the customer can never be a justification		As set out above, there are circumstances where geoblocking based on residence or location can be justified. We do however support the efforts of the Commission to restrict what is currently allowed by tightening the range of conditions that count as 'justified'.
Other circumstances		

Please explain

We believe differential treatment of customers based on their geographical location or residence is justified whilst many practical barriers to cross-border delivery in the

single market still exist. Our view is that, as the wider obstacles to the functioning of the single market are taken down (including those addressed by the wider DSM set of proposals), businesses will find it in their interest to operate across more EU markets and will increasingly trade cross-border without any need for legislation. We also believe it is justified for businesses not to accept a range of different international or national payment means as this would impose a disproportionate burden on them. Neither do we think it is proportionate to require a business to ship anywhere in the EU.

Generally, we consider it unjustified when businesses prevent a consumer from making an online purchase solely because their nationality or location is being used as a proxy for their willingness to pay a higher price. This should not be used as grounds for charging a different price or preventing an online purchase. However, we do not believe that businesses should be prevented from targeting websites at a particular national audience. We also appreciate that there are legitimate reasons for differential treatment of consumers, in particular on the supply-side, such as logistics, security and different tax rates.

Please also refer to our discussion in the narrative and responses to questions 2 and 3.

11. What should constitute elements of a policy response at the EU level on unjustified geo-blocking and other geographically based restrictions?

[I strongly agree, I agree, Neither agree nor disagree, I disagree, I strongly disagree]

Response	Answer	Additional comments
<p>More transparency: companies should have the obligation to make clear before the (trans)action the detailed, objective and verifiable reasons why they treat customers differently based on their residence or nationality</p>	<p>Disagree</p>	<p>Whilst we agree that more transparency is important we are against introducing compulsory transparency requirements for businesses. We believe that this would impose a disproportionate burden on businesses, in particular SMEs. Instead, we would prefer to focus on voluntary action. We would therefore suggest that the Commission look into establishing a voluntary transparency mechanism for businesses.</p> <p>Our view is that, with consumers able to see the prices on offer across different Member States, pressure from consumer groups (particularly on the big brands) will put pressure on companies to be more transparent about their pricing policies and end unjustified price differences across borders.</p>

Response	Answer	Additional comments
More transparency: companies should have the obligation to explain upon request the detailed, objective and verifiable reasons why they treat customers differently based on their residence or nationality	Disagree	As set out above, we are against the introduction of any kind of compulsory transparency requirements. Instead, we would prefer if the Commission look into introducing transparency requirements on a voluntary basis.
Rules including a list of reasons that may never justify treating domestic and foreign users differently	Agree	On principle we are supportive of a list of reasons. However, any such list needs to be carefully thought through, based on a sound evidence base, and developed in further consultation with Member States. Any list must strike a balance between ruling out unjustified practices and not being too burdensome on businesses.
Rules including a closed list of objective and verifiable reasons that may justify treating domestic and foreign users differently	Agree	We have interpreted 'closed' to mean that it can only ever be justified to treat domestic and foreign users differently on the basis of one of the reasons in this list. Based on this interpretation we agree that this should be part of a policy response at EU level to stop unjustified geoblocking. As set out above, any list of reasons needs to be carefully thought through, based on evidence, and developed in further consultation with Member States.
Rules banning ways and means of discriminatory geo-blocking and other restrictions according to your ranking in question 3 above	Strongly agree	See discussion above.
Banning the discriminatory blocking of access to websites across borders	Strongly agree	See discussion above.

Response	Answer	Additional comments
Rules imposing on traders to obtain consent of users/customers prior to automatic rerouting to another website (including another language version of the same website)	Strongly agree	While we are on principle against the automatic rerouting of users/customers to another website, we think it is acceptable to have passive consent, i.e. automatic re-routing with a message that allows the user to say if they want to go back to the original website. We recognise that automatic re-routing may be done for reasons of convenience for most consumers who are genuinely looking for the national website.
Rules requiring traders to accept cross-border transactions from users/customers from throughout the EU under the same conditions as those applied to users/consumers of the 'home' country of the provider	Neither agree nor disagree	It is not clear to us what is meant by 'the same conditions', e.g. whether this would include after-sales services. As noted elsewhere in our response, businesses shouldn't be forced to sell in all EU markets; nor should they be forced to offer after-sales service in all locations and all languages.
Rules requiring traders to accept cross-border transactions from users/customers from throughout the EU under conditions reflecting the additional administrative costs or burdens resulting from the cross-border transaction	Disagree	We believe that this cuts across the right not to trade and therefore do not think that this should be an element of an EU-level policy response to ban unjustified geoblocking. As set out before, we believe that businesses should not be forced to sell across the whole of the single market.

Response	Answer	Additional comments
Rules requiring traders to accept cross-border transactions from users/consumers from throughout the EU and to provide delivery cross-border if the users/customers are willing to organise themselves the delivery and cover the additional shipping costs	Disagree	We believe that such rules could potentially be very burdensome to businesses. Without fully understanding the potential impact we do not agree that this should be part of a policy response at EU level to stop unjustified geoblocking.
Rules prohibiting traders to refuse the cross-border download of digital products (such as software or video games)		We note that software will often be protected by copyright and refer to our comments for copyright protected content.
Rules applicable only to online transactions	Disagree	As a general principle, we are of the view that rules should be consistent across online and offline transactions, to minimise the placing of unnecessary burdens on businesses and consumers and ensure fair treatment both online and offline.
Rules applicable only to physical purchases and orders	Disagree	As a general principle, we are of the view that rules should be consistent across online and offline transactions, to minimise placing unnecessary burdens on businesses and consumers and ensure fair treatment both online and offline.
Other elements of policy response		

Please specify

We are against introducing compulsory transparency requirements for businesses that requires them to explain (upfront or on request) why they charge a different price or do not deliver to a certain market, which we believe would impose a disproportionate burden on businesses, in particular SMEs. Transparency is important, and we believe a voluntary approach will better deliver the need to ensure transparency while considering burden on businesses. We therefore believe the Commission should investigate establishing a voluntary transparency mechanism for

businesses. We understand that, in accordance with the proposals brought forward in their Single Market strategy, the Commission are looking into developing market information tools enabling them to collect information from selected market players. We will have to look at these proposals separately once they are developed in more detail.

Generally, we would not want to see the introduction of any rules which impose disproportionate burdens on businesses (in particular SMEs) or cut across the right not to trade, as set out in our broader narrative, just as we would not want to force British businesses to sell across the whole of the UK we would not want European businesses to be forced to sell across the whole of the EU. We also believe that any rules introduced should be consistent across online and offline transactions to minimise placing unnecessary burdens on businesses and consumers and ensure fair treatment both online and offline.

12. In your view should SMEs, particularly micro enterprises, be exempted from regulatory measures in this context? If yes, under which circumstances?

We take the view that SMEs, and in particular microbusinesses, should be exempted from any regulations which may impose disproportionate burdens on them, particularly as small businesses may be expected to be less likely to engage in outright geoblocking. This is part of better regulation principles. This includes any associated transparency regulations as well as obligations to accept a range of different international means of payment. However, this does not mean that SMEs should be exempted from the general principle of preventing a consumer from making an online purchase because their nationality or location is being used as a proxy for their willingness to pay a higher price.

13. In your view what would be the best policy instrument (or combination thereof) to intervene in this context at EU level?

In terms of enforcement, the UK takes the view that the Commission has an important role in monitoring and facilitating enforcement. Monitoring and enforcement by national enforcers in combination with an effective cross-border cooperation mechanism are of great importance as well. We therefore believe that a combination of these three elements (Commission monitoring/facilitating, monitoring and enforcement by national enforcers, and an effective cross-border cooperation mechanism) would be the best policy instrument to ensure effective intervention at EU level. Such an approach based on Commission and national enforcement must pay due regard to avoiding duplication of effort for businesses.

As set out in our broader narrative at the beginning of this document, we believe that the Services Directive (Article 20), as it currently stands, is not an adequate instrument of ensuring effective enforcement in this area. We therefore acknowledge that changes to the Directive, or the accompanying recitals, might be necessary (such as narrowing the definition of what qualifies as an 'objective criteria' to justify

differences in the condition of access). However, we would nonetheless prefer proposals which achieve these aims but avoid a full-scale re-opening of the Directive if at all possible. We understand that the Commission as well as most Member States share this view.

Annex: Illustrative Case Studies

Summary

This annex sets out some (hypothetical) case studies that illustrate the main principles of our approach and how it differs from what is currently allowed under Article 20 of the Services Directive. They don't intend to cover every possible situation and are deliberately stylized.

They focus on our policy around B2C situations and do not touch on B2B, offline or copyright elements (copyright is in any case explicitly excluded from the Commission's consultation). More information on our proposals for these elements (and our proposed enforcement mechanisms) can be found in our consultation response and narrative.

We will continue to work to develop our thinking on more detailed elements of the policy and will engage with the Commission in the run up to detailed proposals being announced.

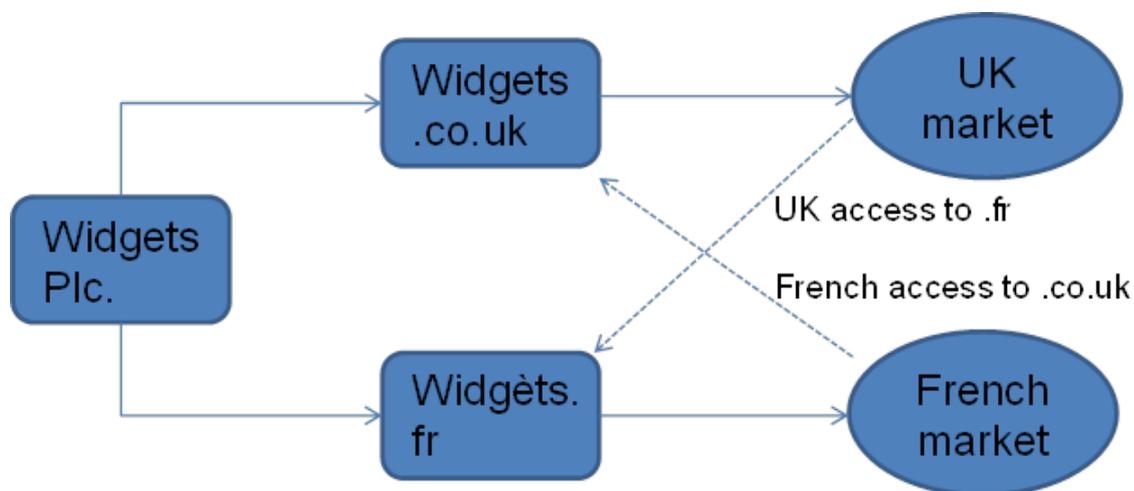
Background: Article 20

Article 20 of the Services Directive sets out that the general conditions of access to a service should not contain provisions that discriminate based on the nationality or place of residence of the recipient, except where justified by 'objective criteria'. The recitals define these objective criteria as *'objective reasons that can vary from country to country, such as additional costs incurred because of the distance involved or the technical characteristics of the provision of the service, or different market conditions, such as higher or lower demand influenced by seasonality, different vacation periods in the Member States and pricing by different competitors, or extra risks linked to rules differing from those of the Member State of establishment'*.

Our view is that these objective criteria are too broad and ambiguous and may not rule out some types of discriminatory behaviour, as the Disneyland Paris and car rental examples illustrate. We want the Commission to clarify what is and isn't allowed. In particular, we believe it is *unjustified* when businesses prevent a consumer from making an online purchase solely because their nationality or location is being used as a proxy for their willingness to pay a higher price.

The following pages set out some high level case studies that illustrate what we think should and shouldn't be permitted in different situations. Where we say here that something is currently permitted, we mean we think that businesses can potentially justify it under the current definition of objective criteria (it does *not* constitute a definitive legal view). That is, we think there are risks that it may be difficult to enforce against this behaviour, even in cases where it is against the spirit of Article 20.

Key principles of our approach (B2C)



1. Businesses shouldn't be able to stop consumers from seeing what is on offer in other member states. UK consumers should be able to go to the .fr site.
2. They also shouldn't prevent consumers buying cross-border simply because they want them to pay the higher national price. If a UK consumer is willing to accept .fr T&C's, they should not be prevented from making a purchase solely because they are a UK resident.
3. However, businesses (i) shouldn't be forced to sell at a single price across the EU (i.e. they should be free to have different offers on .co.uk and .fr) and they (ii) shouldn't be forced to supply across the whole of the EU.

Case study 1 – blocking on IP address

Business X has separate websites targeting the UK and France. It geoblocks consumers in the UK from seeing the .fr website and therefore the .fr price by automatically re-routing them back to the .co.uk website on the basis of their IP address. It justifies this on the basis that it is segmenting markets based on local market conditions.

Currently: this practice is (effectively) permitted.

Under our proposals: this practice will be *banned*, on the basis that it harms transparency and consumer choice. Banning this practice will also allow British consumers living in or visiting France to access their preferred .co.uk website back home.

Caveat: we are fine with passive consent, i.e. automatic re-routing with the opportunity for the consumer to override and go back to the .fr website if they wish.

Case study 2 – targeting national markets

Business X has separate websites targeting the UK and France. It offers different packages and special offers on those websites specific to each market that reflect local market conditions.

Currently: this practice is permitted.

Under our proposals: this practice is permitted. We are not proposing that businesses charge one single price across the EU. Businesses should be free to respond to local market conditions in national markets as part of normal business practice.

Caveat: what matters to us are the conditions under which UK consumers can see *and purchase from* the .fr website price and special offers.

Case study 3 – cost-based justifications

Business X has separate websites targeting the UK and France. It offers different packages and special offers on those websites specific to each market that reflect local market conditions. It allows UK consumers to see and purchase from the French website, providing they pay an appropriate delivery charge.

Currently: this practice is permitted.

Under our proposals: this practice is permitted. Differentiating price or terms of access for genuine supply-side based reasons (e.g. cost differences, VAT, legal restrictions) is justified.

Caveat: what matters to us are the conditions under which UK consumers can see *and purchase from* the .fr website price and special offers.

Case study 4 – justified treatment

Business X has separate websites targeting the UK and France. It offers different packages and special offers on those websites specific to each market. It won't deliver to the UK from France because it has separate logistics operations in each country, making it highly disruptive to ship cross-border. However, it is willing to let a UK consumer specify a French address and either pick it up directly or organise onward shipment to the UK via a third party (with the consumer bearing any associated costs).

Currently: this practice is permitted.

Under our proposals: this practice is permitted. Differentiating price or terms of access for genuine supply-side based reasons (e.g. cost differences, VAT, legal restrictions) is justified.

Caveat: what matters to us are the conditions under which UK consumers can see and purchase from the .fr website price and special offers. The firm is not discriminating against UK consumers because it allows them to buy under the same T&Cs as a French consumer.

Case study 5 – unjustified treatment

Business X has separate websites targeting the UK and France. It offers different packages and special offers on those websites specific to each market. It won't allow a UK consumer to complete a purchase from the .fr website (however this is enforced) purely because it wants the UK consumer to pay the higher .co.uk price.

Currently: this practice is (effectively) permitted.

Under our proposals: this practice is *unjustified*. It is *unjustified* when businesses prevent a consumer from making an online purchase because their nationality or location is being used as a proxy for their willingness to pay a higher price. If the UK consumer is willing to accept the same T&Cs as the French consumer (and organise delivery to a French address if cross-border delivery is not offered), they should not be blocked from doing so. This undermines consumer trust in the Single Market.

Case study 6 – unjustified treatment (2)

Business X has separate websites targeting the UK and France. It offers different packages and special offers on those websites specific to each market. It allows UK consumers to access and purchase from the French website, providing they pay the higher price on the .co.uk website, which reflects UK consumers' higher willingness to pay.

Currently: this practice is (effectively) permitted.

Under our proposals: this practice is *unjustified*. It is *unjustified* when businesses prevent a consumer from making an online purchase because their nationality or location is being used as a proxy for their willingness to pay a higher price. If the UK consumer is willing to accept the same T&Cs as the French consumer (and organise delivery to a French address if cross-border delivery is not offered), they should not be blocked from doing so. This undermines consumer trust in the Single Market.

Case study 7 – freedom to contract

Business X operates a .co.uk website and sells only to the UK. A French consumer accesses the site, but the business blocks a sale on the basis that it is not set-up to sell cross-border and doing so would impose excessive strains on it.

Currently: this practice is permitted.

Under our proposals: this practice is permitted. We don't want to impose an obligation on businesses (in particular SMEs) to ship to any location in the EU – just

as we would not want to force a UK business to sell across the whole of the UK, we believe that European businesses should not be forced to sell across the whole of the EU.

Case study 8 – identical service (e.g. tourism)

Business X has separate websites targeting the UK and France. The service being offered is the same for both groups of consumers (e.g. access to Disneyland Paris or non-copyright protected downloadable content). It offers different packages and special offers on those websites specific to each market. The business geoblocks UK consumers so that they can't access the cheaper .fr price.

Currently: this practice is (effectively) permitted, although the Commission has taken high profile action against it.

Under our proposals: this practice is *unjustified*. We are not proposing that businesses charge one single price across the EU and so the business should be free to charge different prices on .co.uk and .fr.

However, as there is no justifiable reason for denying access, it should allow UK consumers to access *and buy from* the .fr website if they wish.



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