

**Resolution: The Consumer Perspective on addressing e-commerce within the
Transatlantic Trade and Investment Partnership**

Introduction

The Transatlantic Consumer Dialogue (TACD) urges the negotiators of the Transatlantic Trade and Investment Partnership (TTIP) to ensure that the development of online commerce promotes competition, consumer choice and the respect of the non-discrimination principle. The promotion of these objectives should be crucial components of the e-commerce chapter of the TTIP, in order to ensure the development of well functioning and inter-connected markets, where consumer access and consumer welfare stimulate growth and innovation.

The development of online commerce, both at national and cross-border level, has the potential to boost the competitiveness of both the EU and US economies and improve consumer choice and welfare. In order for e-commerce to reach its potential growth, the EU and the US need to demonstrate strong political leadership and undertake concrete actions to respond to unsolved and emerging issues which will help to boost consumers' trust and confidence. Policies that protect consumers as they engage in e-commerce will increase consumers' trust in the online ecosystem and their willingness to use it. This is a win-win situation for business and consumers alike.

Both the EU and US need to proactively develop new consumer protection policies to address the digital consumer market. Policies should increase transparency about businesses' practices so consumers have greater understanding of the impact and implications of e-commerce transactions. There must be meaningful mechanisms for local redress.

Policies that are aimed at preventing online fraud and abuse will provide consumers with a secure online environment increasing their trust in the online ecosystem, while the adoption of measures that bring down barriers to access, expand market choice and eliminate unfair practices are also important. Enforcement of existing legislation, including cross-border cooperation, needs to be improved and consumers' access to effective redress mechanisms, including through judicial collective actions, needs to be guaranteed.

TACD Recommendations

TACD urges the EU and US governments to consider the following recommendations when addressing e-commerce:

1. Ensure coherence in the treatment of unsolicited electronic commercial communications, by including extending current regulations to new types of spamming, such as spamming sent as instant messages, search engines spam and geographically relevant spam sent through Bluetooth on mobiles. Commit to provide regulatory authorities with the financial and technical resources to prevent and prosecute spammers. Develop mechanisms for effective co-ordination among relevant authorities in both sides of the Atlantic.
2. Ensure non-discriminatory consumer protection for all digital products (for e.g., software, audio-visual products, etc), irrespective of the channel of acquisition, whether in physical form or over the Internet; for example, consumers should have the same remedies in relation to faulty products, whether they buy a CD or they download an album in digital format.
3. Take steps to improve consumer protection from misleading advertisement and unfair online practices, focusing on enforcement of existing regulations and the development of international cooperation between regulatory authorities, as well as developing new policies and regulations to protect consumers as necessary.
4. Improve consumer information about their rights and the conditions for exercising them as well as the role and responsibilities of the different actors involved in e-commerce transactions so that there is a robust system for consumers redress.
5. Ensure that consumers are not discriminated against in the provision of services on the basis of their nationality, place of residence or use of particular websites or other online services.
6. Take steps to ensure that consumers will always have a choice between different means of payment online and that any additional charges will be proportionate and cost-reflective. The development of appropriate, efficient, secure and innovative means of payment online needs to be promoted together with a strengthening of payment protection in online transactions.
7. Ensure protection of internet service providers from liability with respect to the transmission, or storage of information. Internet intermediaries should not be held liable either for the removal of illegal content without court order, or for allowing contested content to remain on their servers. Only a court proceeding provides adequate safeguards such as due process and the right to a presumption of innocence. Shifting liability on intermediaries might result in legitimate content being unfairly removed from the internet.

8. Restore and protect net neutrality by enriching in law the right of any person to use a service to access, use, send, post, receive or offer any content, application or service of their choice irrespective of source or target. The deployment of traffic management should be prohibited unless for reasons of compliance with legal requirements, for the security of the network or in case of exceptional traffic congestion.
9. Improve cooperation between regulatory authorities on both sides of the Atlantic to enforce consumer protection legislation in cross-border cases; such cooperation shall include the development of alert systems and information sharing regarding illegal privacy practices.
10. Ensure that companies targeting consumers across the US-EU borders respect in their business models the legal requirements established in the legislation of the concerned countries, in particular regarding consumer rights in overseas sales.
11. Provide for a wide array of tools for effective consumer redress, including judicial collective redress mechanisms. In case of non-compliant traders established in the US, European consumers should be able to join legal actions in the US to enforce their rights and have the judgments enforced in their country of residence. Similarly, US consumers should be able to join legal actions in Europe against non-compliant traders based there and have the judgements enforced in the US. Since consumers depend on having access to information about products through many channels, including the media, no measures agreed to in the TTIP should interfere with development of consumer access to information about the performance of products and services. The provisions of the TTIP should not to infringe on freedom of the press in any way.

Background

Recent years have marked a rapid growth of e-commerce and expansion to new commercial platforms such as mobile commerce, online auctions and social networks. Yet despite the increasing number of online goods and services available, e-commerce has not yet delivered its full potential benefits to consumers. Active response to unsolved and emerging issues is required, especially when it comes to building consumer trust online, expanding market choice, eliminating barriers to access, reducing online fraud and unfair practices, and improving access to information and redress. Protecting consumers' online activities not only benefits them, but increases their trust in the ecosystem, thereby promoting their willingness to engage in e-commerce, and in turn contributing to growth in this sector. This is of substantial benefit to consumers and businesses alike.

In the online environment, in which the buyer and seller are remote and the buyer has limited ability to assess physical quality of products, access to accurate and clear information is essential to guarantee informed purchase. Yet many websites do not provide complete information about the products, prices, the applicable conditions and their own businesses, as documented by the results of a European Commission (EC) investigation into misleading advertising and unfair practices on websites selling consumer electronic goods. Similar studies have had the same results in the US.

The lack of clarity in information disclosure is particularly acute in sales of digital content. Terms and conditions attached to digital content often either omit important details of the transaction, or are unclear about restrictions on usage, software and equipment required, service subscriptions, and interoperability of attached devices and with alternative platforms.

In the online environment, consumers are more vulnerable to unfair commercial practices by traders. Traders in many cases take advantage of the 'limits' and restrictions of the means of communication used to convey pre-contractual information in order to mislead consumers. This problem is particularly relevant for mobile commerce, whereby terms and conditions may not be possible to appear on the small screen of a mobile phone.

While consumer demand for digital goods and products is growing and pushing the online market to expand cross-border, the regulatory framework is lagging and hinders the process. Consumers' access to - and choice of - digital products is severely hampered by outdated copyright rules and business practices that impose discriminatory restrictions on consumers' ability to access and use products in an anti-competitive manner. In addition, consumer rights and obligations in relation to the purchase and servicing of digital products are not clearly established, and consumers lack redress and remedies in relation to faulty or damaged digital goods and services.

Consumers' rights to dispute resolution and redress, especially cross-border, are complicated by many factors such as jurisdiction, costs, accessibility and convenience. Although the EC has initiated actions to improve redress across EU borders, further work is required to strengthen redress mechanisms, especially collective redress, when businesses and consumers are located on opposite sides of the Atlantic. The uncertainty regarding the jurisdiction under which disputes are resolved also contributes to forum shopping by e-retailers, which often results in regulatory arbitrage that may work against the consumer. The rise of hyper-local and mobile products raise issues and the need for policies to ensure that highly directed and personalised e-commerce is regulated with the appropriate local oversight and redress.