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The 1st Annual European E-Commerce Conference

The New E-Commerce Pathway

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Conference Report

Report by



On the 17th and 18th November 2009, Forum Europe launched the inaugural European E-Commerce conference in Brussels. This report of the conference has been kindly written by Cullen International.

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1st Annual European E-Commerce Conference 2009

The New E-Commerce Pathway

November 17-18th 2009, Brussels

The 1st Annual European E-Commerce Conference addressed a number of key issues affecting the policy environment in Europe for electronic commerce to develop to its full extent. It gathered actors from many sectors and managed to draw an accurate picture of the future challenges and needs.

The first session was chaired by **Frédéric Simon, Executive Editor at EurActiv**.

The European Commission has identified a range of issues that will need to be addressed before e-commerce and in particular cross-border e-commerce in Europe is able to meet its full potential. On both the consumer and supplier sides, what should be done to create greater levels of confidence in cross-border trade via the internet and what tools are available to help drive this forward? What role should the EU play and how can industry interact creatively to support its development? How far does consumer preference hinder cross-border e-commerce and can this ever be affected?

Jacqueline Minor, Director of Consumer Affairs, DG SANCO at the European Commission kicked off the conference by presenting the advantages of cross-border

online commerce for consumers, while also denouncing that we are a long way from a true online internal market in the EU. Over 50% of all businesses sell goods on the internet in the EU, she said, but only 1 in 5 companies sell cross border, although 1 in 3 consumers would be happy to purchase cross-border if they thought they could get a better deal.

A recent Commission 'Mystery Shopping' exercise revealed that in 6 out of 10 of the most common types of cross-border purchases, the consumer was unable to complete the operation. This was particularly frequent when trying to purchase goods and services from some of the new Member States, but surprisingly this was also the case when trying to purchase from Belgium. Among the most frequent reasons why it was impossible to complete a purchase, logistics (poor postal and distribution facilities) and payment questions were very frequently pin-pointed.

There are also apparently some important regulatory barriers, including differences in VAT rates, copyright levies and legislation on electronic waste. These compliance difficulties lead traders to give up trying to trade cross-border, despite the fact consumers could



make considerable savings by shopping online cross-border.

A Commission communication published in October 2009 sets out the priorities to be addressed to ease this situation. Working towards a single set of rights for consumers when shopping online is a top priority, as the Commission has proposed in its Consumer Rights Directive.

Jacqueline also mentioned that cross-border comparison websites should be developed to help consumers shop online. She explained that in the energy sector, operators were encouraged to develop comparison websites, with the threat that if they fail to do so, national regulators could step in.

Answering a question on digital content, Jacqueline confirmed that when the Commission proposed the adoption of the Consumer Rights Directive, the Commission did not have a thorough understanding of the available offers and problems, which explained why the proposal does not cover them specifically. A study on digital content will be delivered to the Commission in 2010.

The second intervention, by **Patrick van Eecke, Partner at law firm DLA Piper**, focussed on the main conclusions of a recently finalised study for the European Commission on how to foster a competitive environment for e-commerce by 2020. He showed that much of the EU legislative effort took place between 2000 and 2005, well before Web 2.0. He challenged whether these rules will still be valid and flexible enough for the years to come. He sketched out ten trends in ICT, which are expected to materialise in 2020. For each of these trends, he showed that a number of legal questions and challenges arise, which are not easily solved by the current EU regulatory framework:

1. **Full accessibility, meaning that users will be connected all the time and will receive real time information. This will enable governments to develop new ways of communicating with the population, in case of disaster management, for instance. The legal challenges raised by this phenomenon are net neutrality, the digital divide, liability issues and security and cybercrime.**

- Ubiquitous computing, the internet of things and RFID type applications. This raises liability, data protection and security and cybercrime questions.
- New intermediaries and players are flourishing (eBay, eBid, Mint, Yahoo, Second Life, MSN and so on) and the current EU legislation only covers the liability regime of network, access and hosting service providers, which is problematic because it does not foster legal certainty.



- Cloud computing. No one knows any longer where information is being placed. Patrick explained that Amazon is in fact the largest cloud computing service provider worldwide. Again this trend raises

legal challenges such as data protection, liability, compliance issues, copyright and data portability issues.

- Digital natives, born after 1980, have a different reference model, where the geographical link is no longer relevant and alternative identity management and alternative dispute resolution procedures are being developed. They no longer make a difference between online and offline worlds, which raises the question of whether we still need separate rules for both areas. Values are also changing, which means that perhaps we should also adopt new sanctions, offences and dispute resolution procedures.
- 'iti' is the next trend, meaning 'individual to individual', with the disappearance of the middle man, the intermediary. Among the legal challenges, Patrick mentioned the question of whether frequent sellers on the internet, such as on eBay, should not become traders, with all the legal consequences that this would entail.
- 'Consumerisation of IT' is a trend where the level of communications technologies at home is overtaking that of communications technologies at the office. Instant messaging is becoming a very important communications tool, including at home. This raises interesting legal questions, including whether contracting via instant messaging is legally valid.

- The trend of community models, which are the core of social networks, very much rely on trust models. This raises questions linked to reputation and identity schemes as well as possible democrat deficits.
- Focus on content. Here, Patrick raised the paradox between the fact that we do not want to pay for content, while at the same time, we have come to expect a lot of high quality content all the time. This challenges the whole copyright regime, which may be in need of a total recast.
- The last trend is the increasing convergence between the online and offline worlds.

Patrick concluded that these trends are raising important challenges for Europe and that Europe needs to make sure that we are ready with a robust regulatory framework.

Andrew Cecil, Director of Public Policy Europe at Amazon, highlighted that the most important things for the online customer are selection, convenience and price. On Amazon there is a lot of cross-border shopping and the ambition is to service customers wherever they are. There are some barriers to cross-border trade, many of which have a regulatory nature and should be lifted, Andrew said.





Willemien Bax, Deputy Director General at consumer organisation BEUC, presented data on the difficulties faced by consumers when they purchase goods and services online. She welcomed José Manuel Barroso's new digital agenda and said that many issues are interlinked (proposal for consumer rights legislation, review of data protection legislation, horizontal breach notification, developments in IPR) and that an approach taking these linkages better into account is needed. We need 'very smart legislation' she said. There are many complaints relating to digital content and consumers can do nothing with faulty digital content, as consumer sales legislation does not apply, i.e. they cannot return faulty products nor get their money back. At the least, they should be informed of this. 'We want consumers to have the same rights online and offline and at the moment this is not the case'. BEUC made a number of suggestions, including that when something goes wrong, consumers should have the same remedies as when they purchase goods

off line, they should be clearly informed of how and if music or software will work with their hardware, privacy notices should not be buried in websites and a right of withdrawal should be granted in case of online auctions.

Malcolm Harbour, MEP and Chairman of the Internal Market and Consumer Protection Committee, disagreed with the special pleadings made by Patrick van Eecke. He said that e-commerce is a wonderful development and that the question is about giving consumers their full entitlements to the single market. E-commerce is showing-up the difficulties of the single market, but these difficulties are not specific to online commerce. He agreed with Willemien Bax when she said that we need our traditional consumer legislation to work seamlessly in the offline and online worlds.

Malcolm said that the most important enabler of electronic commerce is the Services Directive, which needs to be implemented in the Member States by the end of 2009. It recognises that recipients of services cannot be made subject to discriminatory requirements based on nationality or place of residence.

The other bulk of the problems with e-commerce are operational problems (i.e. delivery problems and wrong packaging), which are linked to the fact that companies do not have correct processes in place. These are not regulatory or policy questions and 'rocket science' is not needed to solve these problems, he said.

Malcolm is very pleased that the reinforcement of the internal market is at the very top of José Manuel Barroso's agenda for the next Commission. E-commerce is not a specialist area but an all embracing project, so we need to get down to the basics of enabling the internal market to work as it should.

Jean Bergevin, Head of Unit II, Retail and Information Services, DG MARKT at the European Commission and the last panellist of the session, agreed with Malcolm Harbour. He said that special rules have been adopted only because the risks are different online and legislation is therefore needed. Of course, he said there are big problems remaining, including VAT, liability questions and fraud and counterfeiting. Some of the remaining obstacles to online commerce (he cited the fact that some contracts cannot be entered into electronically, such as real estate contracts) cannot be easily lifted because of very powerful lobbies. Jean stated his view that the biggest challenge is to ensure the enforcement of EU and national legislation.

consumer confidence in relation to the use of their personal data while facilitating increased consumer choice and competition, and what role and issues for social networking sites in e-commerce?

Rosa Barcelo, Adviser to the European Data Protection Supervisor (EDPS), chaired the debate on the relationship between consumer privacy and online advertising that increasingly involves profiling the behaviour of users online (so-called 'targeted' or 'behavioural' advertising). This marketing technique allows website owners and ad networks to display content that match the interests of viewers. This technique can take place through the use of cookies or at internet service providers (ISPs) level (the 'Phorm' case).

Stuart Cooke, Senior Director of Industry Associations & Standards at Qualcomm, explained that the goal of the global chip, software and hardware manufacturer was to make sure that all types of content can

Session 2

Online Advertising & Consumer Privacy - Finding the right balance

The collection of personal data by internet companies for use by advertisers has been criticised as being potentially intrusive with the term "behavioural advertising" suggesting an increase in the monitoring of internet users' habits. How can the policy approach reinforce



be made available on all devices and on all networks. Privacy issues are at the forefront of the company's strategy as consumers are key. Another key objective is to maintain the trust and to protect the brand of mobile operators.

From the European legal perspective

The EU legal framework for targeted advertising is contained in article 5(3) of the e-Privacy Directive. In its current wording, this provision states that the use of devices such as spyware or cookies is allowed if the subscriber or the user is given clear and comprehensive information on the purposes of such devices and is offered the right to refuse them. Under the revised directive (adopted in October 2009) the use of such devices is prohibited unless users give their prior consent.

Rosa opened the debate by stating that it's up to industry to develop effective ways through which users will be able to give their prior consent. She pointed out that so far this issue has not been a priority for data protection authorities in Europe, with the exception of the French authority (CNIL) which published a report on the risks of targeted advertising and on the possible ways to address them.

George Rossides, Policy Officer in DG SANCO at the European Commission, confirmed that behavioural marketing is growing fast in the US and in Europe, with 60% of advertisers in Europe are expected to use behavioural advertising in 2009. George raised the fact that as behavioural advertising pays for many free services on the internet, there is a moral and privacy related problem as

it indirectly compels users to 'pay a price' for those services, by giving away their personal information.

In March 2009, the Commission launched a digital roundtable to assess the impact of online data collection, targeting and profiling. Discussions have shown that advertisers and consumers agree on the need to have more transparency and information for users, including readable privacy notices. However, they disagree on the merits and on the risks of behavioural advertising.

From the advertising industry perspective

Stephan Noller, CEO of Nugg.ad, said 'According to surveys, users like to receive relevant ads and product recommendations'. He believes that personalisation will increasingly become a standard feature of the online experience and explained that Nugg.ad runs a platform across 12 Member States that targets people's online behaviour. The information collected allows ad servers and publishers to show more relevant ads to users.

Despite targeting users behaviour, he said, Nugg.ad has been awarded the EuroPriSe Privacy Seal (a European standard of privacy certification for IT products and services) for compliance with EU data protection regulations. On the Nugg.ad network, all traffic is anonymised and the company does not track any IP addresses because, in general, the advertising industry has no interest in personable identifiable data for serving relevant ads.



In Stephan's view, a combination of self-regulation and legislation is the best option to tackle the issue of behavioural advertising. Legislation only does not work).

For **Kimon Zorbas, Vice President of the Interactive Advertising Bureau (IAB)**, random advertising 'no longer works and fails to provide solutions to publishers' and other high quality content creators depending on advertising revenue. He believes that users are much smarter than some policy makers think they are. 'All in all, education is a key factor', he said. The IAB is also following the developments taking place in the US closely, which has been looking into the question of behavioural advertising for a longer time. He also added that the current EU data protection framework does not match the internet revolution which is about innovation and the development of new applications.

Stephan confirmed that compliance with data protection requirements is a competitive advantage and added that there are American companies that do not enter the European market because they would not meet such requirements.

Session 3

Safeguarding E-Commerce - Ensuring a Secure Online Environment

The security of the internet user online has again come into sharp focus with a number of worrying reports highlighting the massive growth in internet fraud and theft of personal information leading to criminal activity. What mechanisms are in place to tackle the issue and are these mechanisms adequate? Where should responsibility lie and how much consumer protection is actually required?

Elena Scaramuzzi, Senior Analyst at Cullen International, chaired the debate on the current and future challenges related to online security.

G rard Galler, Policy Officer in DG Information Society and Media at the European Commission, firstly updated the audience on the Commission policy dedicated to the protection of critical information infrastructures (which is outlined in a Commission Communication on critical information infrastructure protection - COM(2009)149, 30.3.09). Secondly, he spoke about the Commission current initiatives to improve the interoperability of electronic



signatures (which are outlined in an action plan on e-signatures and e-identification - COM(2008)798 of 28.11.08). In particular, he stated that EU Member States have committed to publish the “trusted list” of the service providers issuing qualified signature certificates which are established on their territory; this is a major breakthrough to facilitate the recognition of signatures received from another Member States. He concluded by stressing that the Barroso II Commission sees cybersecurity as a major priority.

According to a Microsoft Security Intelligence Report, threats and attacks on the information networks are continuously increasing, in particular worm infections with a 98% increase last year.

‘Confidentiality, integrity and availability are the three pillars of online security’, said Cornelia Kutterer, Senior EU Policy Manager at Microsoft. Infection and threat rates vary

from one country to another. For example, the infection rate is very low in Japan because there is a high-level of cooperation between ISPs and data protection authorities.

Cornelia also said that private-public partnerships are necessary to fight against cybercrime. The industry operators should combine their own defence and intelligence systems to protect computer users. Software manufacturers have to raise quality to reach ‘software security by design’. However, hardware and people are also important to enable a trusted online environment.

For **Ilias Chantzos, Director EMEA & APJ, Government Relations at Symantec**, risk assessment is the key to security on the internet. Risk managers should first assess the main risks, determine their critical infrastructures and the services to be protected in order to give a very high level of protection to their investments.

Historically, viruses were propagated by e-mails. Now attacks are targeted and web-based.

According to Ilias, broadband deployment is a wonderful opportunity to deploy security but could also be a gate open to massive attacks if people are not educated and infrastructure lacks security. ‘Security is about technology, process and people all together’ he said. From a business standpoint, security should apply to networks, websites and computers but should also cover the information stored in the computer or on the network. Creating a safe environment for a database of consumers is now as important, if not more

important, than for the website itself.

From a legislative perspective, the current discussions will have an impact on 3 areas of the EU policy: cybercrime, data protection and e-commerce.

Ilias also said that data breach notifications should be extended to other sectors of the industry (the data breach notification only applies to telecom operators according to the recently adopted telecom package). Breach notifications can be an incentive for companies to develop effective security systems and could be finally a competitive advantage. For other industry players, although transparency could be necessary for major incidents, too many notifications will scare people and finally kill innovation.

To build a trusted online environment, the current public-private partnerships should be more effective and should gather around the table all the different stakeholders, not only software and hardware manufactures but also telecom operators, banks and so on.

Investing in a secured internet is costly and takes time to be effective. It is also clear that, as in the banking sector, the end-user will pay an important part of the bill.

Vincent Tilman, Senior Adviser, European Affairs at Eurochambre, hailed ENISA's new self assessment tool for small and medium sized companies to help them understand their needs. He agreed with Ilias that companies should identify themselves the information they want to protect. They should establish a clear information security strategy

and an integrated risk management approach. Information security training and awareness programs should also be developed.

Session 4

The Changing Electronic Payments Landscape

The discussions, chaired by **David Doyle, Senior Policy Adviser at Brunswick Group LLP**, focussed on the impact of electronic money and new payment services on consumers and businesses. The debate particularly focussed on the single Euro payments area (SEPA) which is due to be implemented by 2010. David recalled the main priorities for the SEPA roadmap included in the European Commission's communication of September 2009, ‘Completing SEPA: a Roadmap for 2009-2012’, which include fostering migration to SEPA, raising SEPA awareness and promoting SEPA products and innovation while ensuring standardisation, interoperability and security.

Michael Thom, Policy Officer in DG MARKT at the European Commission said that the future of cross-border payments consists of more and better payment systems as well as in increased electronic payments. The role of the Commission, he added, is not to define who should be the losers and the winners, but to create an open and transparent market through a harmonised legal environment for payments subject to proper consumer protection. This has been done through the EU Payment Service Directive and the new

Electronic Money Directive which establishes lighter market access requirements for electronic money institutions, such as lower initial capital requirements.

Peter Møller-Jensen, EU Government Affairs Director at VISA Europe, said that the Payments Services Directive, which had to be implemented by November 1st 2009, opens up access to payment systems to new players. He also said that VISA has amended the eligibility rules for membership in accordance



with the directive, which specifies that Member States must ensure that authorised payment service providers can access payment systems under objective, non-discriminatory and proportionate conditions.

According to Peter, the overall value of the transactions has been stable over the past year but the number of transactions has increased by 24%, which means that transactions had a lower value.

Brendan Reilly, Deutsche Bank Country Product Management Head - Northern Europe, said that he felt that there was much room for optimism and that the slow take-up rate of SCTs should not be seen as indicator for the SDD. There are many reasons why the SDD is transformational in comparison with SCT. The SDD is backed by two pieces of European level legislation being the Payment Services Directive (PSD) and the updated EU Regulation 2560. The latter, in particular, makes a clear stipulation in terms of reach of the Scheme. The number of banks already signed up to provide SDD services from 1st Nov 2009 was already greater than 2,500.

The SDD provides for the first time the ability to make cross border direct debit collections. For many countries it also offers the possibility of a B2B Scheme which they didn't have prior to SDD. In short, the SDD offers a new world of possibilities in terms of centralised cross-border collection services.

Luke Hendrickx, Director of Competitiveness of Enterprises & External Relations at the European Association of SMEs (UAPME) said SMEs require a market-driven approach and not, as is currently the case, a bank-driven approach characterised by lack of competition. It is important that SEPA delivers competitive payment services and that it does



not lead to higher prices. Luke voiced his concerns relating to the SEPA direct debit scheme, as questions remain about pricing, security and interchange fees on domestic direct debit transactions.

James Waterworth, EU Affairs Director at Nokia, hailed money as the next standard feature of mobile phones (allowing, for example for payments using an application that is as simple as SMS). According to estimates, there are 4 billion mobile phones worldwide but only 1 billion people have bank accounts. 'This leaves room for new services and

offering financial services to the 'unbanked', he said, such as Nokia Money that will offer consumers access to basic financial services on mobile phones. It is planned to be rolled out gradually in early 2010.

Session 5

Intellectual property

Chaired by **Jacques Folon, Professor at the French University of Metz**, this session addressed online piracy, the need to develop new business models related to the protection of Intellectual Property Rights (IPRs) and the liability of ISPs as intermediaries between the protected works and the public.

Monique Wadsted, Partner at MAQS Law Firm, presented a detailed insight into the legal proceedings related to the "Pirate Bay" case, in which she represented the interests of some right holders. She recalled that both of the founders of Pirate Bay were sentenced to one year's imprisonment and ordered to pay more than 3 million of damages on April 17th 2009. The ruling was based on the fact that the incriminated website contained a webpage where people could upload and download torrent file-share search engine enabling a search on specific title or work and a tracker (a place where people could exchange files). The prosecutor also proved that both founders had earned at least 100,000 in the sale of advertising space.

Pirate Bay's defence lawyers tried to use the defence of the principle of 'limitation of liability for hosting activities' of the E-Commerce Directive, but the court rejected the argument as the founders of Pirate Bay were proved to have intentionally contributed to the infringement of IPRs.

Following the ruling, Pirate Bay continued illegal activities and civil injunctions had to be launched against several ISPs to require them to stop hosting the website. Monique said that she is confident that this kind of legal approach will dissuade other ISPs in Sweden and in Holland, from where the website was moved to, from providing hosting services and that Pirate Bay will disappear within a year. According to Monique, this illegal website does not look for hosting services outside Sweden or Holland because they have excellent electronic communications infrastructures as well as liberal views on illegal file-sharing.

Francisco Mingorance, Senior Director of Public Policy Europe at the Business Software Alliance (BSA), supported the existing IPR regime and called for the adoption of a community patent. However, on the fight against piracy, 'BSA is torn between the need to ensure an appropriate response to piracy, for instance through a graduated response, and the necessity to protect innovation in the software and internet space' he said.

Related to the famous 'amendment 138' discussed in the context of the review of EU telecom package, BSA was in favour of the initial wording stating that end-users internet access could not be restricted 'without the prior ruling of a judicial authority'. BSA does, however, support the adopted compromise, which provides that internet access can only be cut-off following a 'prior, fair and impartial procedure', which can be administrative or involve a judge, depending on national law.

Innocenzo Genna, Council Officer at the Pan-European Association of European ISPs Associations (EuroISPA) welcomed the Pirate Bay case for the clarity of its legal basis. He also welcomed the fact the Pirate Bay ruling targets the people responsible for the website and not the users.



Innocenzo also supported the compromise text replacing amendment 138 but recalled that ISPs call for legal certainty in this area. In his mind, the new agreed proceedings are merely similar to the initial proposed 'jurisdictional' proceedings. In addition, this provision will potentially create a constraint on Member States in case they want to impose other remedies (limitation of bandwidth, blacklist, blocking and so on), which can affect the way consumers can access the internet.

He was less enthusiastic on the graduated response as a solution to piracy. In his view, this system leads to disproportionate sanctions (such as the disconnection of internet users) and

creates legal uncertainties as ISPs are forced to monitor the internet, which is contradictory to the E-Commerce Directive.

Kostas Rossoglou, Legal Officer at the European Consumers Association (BEUC) focussed on the consumer perspective related to the protection of IPRs. He called for a review of the existing IPR regime to include 'consumers' digital rights. The new regime should strike a fair balance between the protection of rights holders and the right of the public to access content', he said.

Alvydas Stancikas, Head of Unit, Enforcement of Industrial and Intellectual Property Rights, DG MARKT at the European Commission confirmed that the implementation of the IPR Enforcement Directive into national law has been delayed in some Member States. The Commission will present an implementation report on the directive in spring 2010 and his unit is currently in a consultation process.

In the Commission view, legislation in this area is not sufficient. Non-legislative measures are needed to keep pace with an environment where technological changes are very rapid

That is why a European Observatory of counterfeiting and piracy was created in September 2009. The Observatory will gather independent data on counterfeiting and piracy throughout the EU to better understand the reality of these problems. Different discussion platforms will also be put in place in order to discuss some concrete issues, to achieve agreements or code of conducts and finally to find solutions.

Session 6

E-Commerce innovation - What are the barriers for new businesses?

Leading up to the final session on the future of e-commerce, this session focused on the practical barriers encountered by businesses when they want to sell online. Related to cross-border online selling, it appeared from the debate that online operators should also pay attention to legal issues such as privacy policies, the terms and conditions of the contracts and the issue of consumer protection enforceability.



According to **Rachel Marouani, E-Commerce General Manager & Customer Marketing Senior Vice-President at Sephora**, a leading retailer in cosmetics in Europe, the creation of various websites to sell Sephora products in the 27 Member States is not an easy task and

is currently still in process. She is convinced that selling online across the EU will generate important revenues for the company. Indeed, some studies show that online customers seem to spend more than offline consumers. However, the creation of websites ensuring EU cross-border trade encounters various obstacles due to the lack of harmonisation on aspects like VAT, postal addresses, payment methods and currencies.

The small border between having an active and passive website is an important issue because in case of an active sale, Sephora will have to comply with the laws of the country targeted.

Other problems are the high delivery costs in all Member States (the average basket of products bought online is between 50 and 60) and the high investments in human resources since call centres have to be able to interact with consumers in their own languages.

Simon Mottram is Chief Executive at Rapha Racing, a pure online operator selling high quality cycling products. Contrary to Sephora's concerns, Simon explained that the issues he has had to deal with are 'classic business issues such as access to capital, brand building and product development, and not so much distribution or technology issues'. (In four years, he has experienced only 3 cases of credit card fraud out of around 50.000 transactions.)

As the business develops, Simon expects to face new problems which could be linked to electronic commerce regulatory policies. For example, he raised the issue of whether Rapha

Racing should support the cost of duties (they are currently paid by customers), the intrusiveness for customers of card payment security requirements, the fact that there is a double VAT payment for fabrics originated from the EU and manufactured outside the EU and the efficiency of order fulfilment.

'Distance selling represents around 124.8 billion (for 2008) in Europe, of which approximately 50% is made up from e-commerce' said **Alison Mooney, Communications and Marketing Manager at the European E-commerce and Mail Order Trade Association, EMOTA**.

According to Alison, these two different approaches to online business may reflect the two types of distance players identified by EMOTA; on the one hand, the pure players on the internet that may sell cross-border, such as 'Rapha Racing' and on the other hand, the mail order companies who moved into the internet, such as 'La Redoute' or 'Les 3 Suisses'. Brick-and-mortar shops such as Sephora could belong to the second category of players who have moved into e-commerce subsequently.

A pure online operator often targets a specific niche market and typically operates at a national level but could attract cross-border customers. In such cases, the burden of supplementary duties, taxes and return rates would be left to consumers because the online operator has already made some efforts to deliver the product outside its national borders.



Long established companies, such as mail order companies that have large markets and already have a lot of experience in selling from a distance, will first analyse whether delivering products in a new country would be a viable business and whether there is potential in that market. At a second stage, the company will evaluate the potential obstacles and set up a fully fledged company and adapt to the national legislations and delivery methods there.

EMOTA supports the Commission proposed Consumer Rights Directive because the harmonisation of consumer rights will facilitate cross-border business and ultimately encourage the development of cross-border e-commerce.

Session 7

Next steps for E-Commerce

To close the conference, **Michele Ledger, Principal Consultant for Cullen International**, lead a more prospective debate on the tracks that ought to be followed in order to boost the development of e-commerce.

Innovation

'To stay ahead of the game, a company has to be responsive to change' said **Paul Excell, Chief Innovation Officer at BT**. Global innovation is the key to give customers what they want, especially application services that allow them to personalise their world-around operating devices and services.

The internet has become a wider concept than just the public 'world wide web' and is now responsible for a large number of innovations, including the IP based provision of relatively cheap any-to-any connectivity and the ability to support different types of applications and content.

These IP networks are also creating a new 'data ecosystem' for B2B e-business. B2B e-business is more than online transactions taking place after a buyer and seller have located each other on the internet. 'Related to the development of the single market, these IP networks offer a platform for cross-border provision of services between firms in the context of long-term cooperative relationships, or to cross-border transactions within the same firm' said Paul. They significantly enhance the ability of European businesses to compete in the European and market place.

All the interconnected IP networks with their new applications and/or services proved to enable companies to rationalise their production models, their supply chains or even their operational costs and to generate significant benefits, finally gaining competitive advantage. He also stressed the following points:

- *the implementation of revised E-Communications Framework needs proper recognition to the needs of business services;*
- *aside from incumbent operators in their home markets, no provider of business grade services can achieve economies of scale that justify construction of own access networks to widely dispersed customer sites;*
- *"regulatory holidays" designed to promote investment in NGAs will have serious negative impacts on investment and innovation in other parts of the ICT ecosystem – i.e. lesser choice of innovative services;*
- *effective competition can exist only if dominant suppliers of local access provide their links under non-discriminatory terms and conditions;*
- *here prices and technical configurations are not enough as end-users want reliability - delivery and repair times are equally key.*

Online-digital and offline-physical worlds are blurring

According to **Andrew Cecil, Director of Public Policy Europe at Amazon**, 'E-commerce is working pretty well in Europe. We are probably in and actually moving on into a world where the difference between online and offline commerce is no longer relevant, particularly from the customer point of view.'

The customers' retail experience is a complex mix of online and offline purchases which depend on several elements such as time, place and the type of product to buy.

The drivers to shop online are also changing. Online shopping was initially driven by lower prices. Today e-commerce is considered as a very 'customer centric' space with a high quality service. Andrew recalls that this evolution is due to huge investments in e-commerce platforms.

Andrew asked policy makers to abandon the 'artificial' distinction between online and offline and to look at the new retail space holistically. He also explained that the distinction between physical and digital goods is no longer realistic. In the United Kingdom, there is no VAT on physical books, while a VAT of 17.5% applies to digital books.

Although there are fundamental differences between digital and physical products, policy and business makers should make sure that customers get a 'seamless' retail experience and can access all these products and services.

Towards a real digital single market

With the internet, borders are disappearing. When customers think about getting a book or a piece of music, they do not make the difference between physical and digital or domestic and cross-border. However, the 'digital single market does not exist. Much of what happens online stops at our national borders, which is particularly ironic given the internet is borderless' said **James Waterworth, President of the European Digital Media Association (EDiMA)**.

One of the most important reasons to build the digital single market is scale. According to James, while the mobile European regulatory framework has led to a phenomenal European industrial success story all over the world, the current regulatory framework on the internet is just preventing those world-wide scale success stories to happen. No European business can currently rival the success of Google, eBay and Amazon, simply because there is no 'scale domestic market' for these players. 'The European internet landscape only includes small entrepreneurs who have difficulty crossing borders because they cannot afford an army of lawyers to deal with all the barriers linked to cross-border e-commerce' he said.

A recent European Commission DG SANCO report identifies the barriers to cross-border online shopping. Online operators are asking the Commission to tackle these problems as soon as possible.



To build the digital single market, European policy makers should harmonise the consumer protection regimes, develop consistent interpretations of the liability of intermediaries and finally establish an effective copyright management allowing pan-European services.

'Building such a digital single market is critical to Europe', continued James, who asked the European Commission to develop a more horizontal approach on internet policies.

Old versus new market models

In the 20th century, the market processes were mainly controlled by manufacturers. According to **Stefan Krawczyk, Director of EU Public Relations at eBay**, 'E-commerce has disrupted old processes and has created a whole new economy'. The new online retail channel is increasing every day and statistics show that the offline world is also gaining advantages from these technological developments.

eBay started as an auction website. Today eBay mainly operates with an increasing number of large companies that sell via its website. In parallel, these well-established companies develop their own websites. For small and medium companies, eBay provides for interesting opportunity to be online without costly investments.

eBay participates very actively in the debate on the policy related to selective and exclusive distribution agreements. Stefan considers this debate as the 'battleground between the 20th and 21st century markets'. He also thinks that the European regulator has a key role to make a new single market happen.

Selective and exclusive distribution agreements

In June 2009, the European Commission launched a consultation on a draft package to review the current Block exemption Regulation (2790/1999). This regulation allows exclusive and selective supply and

distribution agreements related to goods and services, provided that the combined market share of the supplier does not exceed 30% of the relevant market (i.e. it exempts these agreements 'en block' from the normal application of EC competition rules). Serious restrictions on competition such as price fixing and limits on production continue to be prohibited but some restrictions related to internet reselling are allowed.

Claude Rakovsky, Head of Unit within DG Competition at the European Commission, said that the new regulation aims at establishing a very delicate 'balance between competition and the single market policies and objectives.'

In selective distribution agreements, the suppliers can impose some selection criteria on their distributors (for their business models). However, Claude recalled that suppliers should not hinder the success of their dealers online. According to him, the internet is not 'just another way of distributing goods. The Internet is a way to expand sales and reach consumers that would not be reached without the internet; Internet needs therefore to be protected'. The current debate focuses, for example, on whether online sales should be considered as passive or active. As a matter of principle the European legislation still considers online sales as passive sales if no particular effort has been made to sell the products. However, the advertising techniques could turn it into a more active way of selling.

If you are interested in attending or sponsoring the next event, please contact: **James Wilmott** on +44 (0) 2920 783 022 or james.wilmott@forum-europe.com.



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The 2nd Annual European E-Commerce Conference 2010

November 2010 . Central Brussels

Following on from the success of the inaugural Annual European E-Commerce Conference in 2009, Forum Europe is currently accepting applications from organisations interested in becoming involved at the planning stages for the 2010 conference and places are limited with interest already high.

The conference will once again be held during November in Brussels and will feature key figures in the eCommerce sector. There are a number of packages available and these range from becoming one of the Event Hosts to being an Event Sponsor.

If you would like to discuss how you can become involved in Brussels' leading E-Commerce focussed conference, please contact James Wilmott on:

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