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**COMMISSION STAFF WORKING DOCUMENT**

**Report on cross-border e-commerce in the EU**

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### Report on cross-border e-commerce in the EU February 2009

#### EXECUTIVE SUMMARY

The report identifies e-commerce trends and potential cross-border obstacles in order to analyse the direction that cross-border e-commerce is taking in the EU. The report is a follow-up to the first edition of the Consumer Markets Scoreboard, adopted on 29 January 2008, as part of the Commission's broader market monitoring initiative.<sup>1</sup> In the context of the Single Market Review, the Commission is currently undertaking an in-depth market monitoring of the retail sector.<sup>2</sup> The evidence set out in this report is a contribution to that exercise, providing a factual basis for the e-commerce strand of the wider exercise. As announced in the Commission's Legislative and Work Programme for 2009, the Commission will present a Communication on the outcome of the retail market monitoring in autumn 2009, which will include an analysis of cross-border e-commerce.

While e-commerce is taking off at national level, it is still relatively uncommon for consumers to use the internet to purchase goods or services in another Member State. The gap between domestic and cross-border e-commerce is widening as a result of cross-border barriers to online trade. From 2006 to 2008, the share of all EU consumers that have bought at least one item over the internet increased from 27% to 33% while cross-border e-commerce remained stable (6% to 7%). One third of EU citizens indicate that they would consider buying a product or a service from another Member State via the internet because it is cheaper or better.

Some of the barriers to cross-border online trade relate to language, demographics, individual preferences, technical specifications or standards, internet penetration or the efficiency of the postal or payment system. 33% of EU consumers say they are willing to purchase goods and services in another language, while 59% of retailers are prepared to carry out transactions in more than one language.

Other problems are the inability of consumers to access commercial offers in another Member State because of mechanisms that prevent them from placing orders. 8% of consumers who had made a cross-border purchase in the past year have been prevented from purchasing cross-border because they lived in a country other than where the trader was located (on average for all retail channels), and 33% of consumers agree that sellers/providers often refuse to sell or deliver goods or services because they are not resident in their country (on average for all retail channels).

Consumers also lack information on cross-border offers because it is difficult to make cross-border comparisons and because cross-border advertising is relatively uncommon. 39% of online buyers of ICT products thought that it was easy to compare prices cross-border compared to 77% who thought it was easy to compare prices in their own country. 3 in 5

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<sup>1</sup> Commission Communication: 'Monitoring consumer outcomes in the single market: the Consumer Markets Scoreboard', COM(2008) 31 final, and accompanying Staff Working Document SEC(2008) 87 final.

<sup>2</sup> See Commission Staff Working Document: 'Market Monitoring: State of Play and Envisaged Follow-Up', (SEC(2008) 3074 final)

Europeans who have internet access at home have compared prices online — for example by visiting price comparison websites. In addition, some of the barriers preventing consumers from shopping online are the result of regulatory obstacles faced by traders and the perceived difficulty to obtain effective redress when something goes wrong. These obstacles have created a fragmented e-commerce internal market.

The problems affecting consumers are mirrored by those affecting businesses, and supply-side barriers and constraints are thus equally important. The internet has created heightened expectations on the part of consumers regarding the availability of goods and services, which are not always met by businesses. It is also a problem for consumers when some traders do not explicitly state where they are prepared to deliver in the EU. 51% of EU27 retailers sell via the internet, but only 21% are currently conducting cross-border transactions.

In addition, traders may be at present unwilling or unable to expand to other EU markets in the face of a number of practical and economic obstacles, some of which have regulatory underpinnings. Regulatory barriers result in significant compliance costs for businesses, which considerably diminish the appeal or feasibility of cross-border expansion. Although measures have been taken to foster harmonisation, regulatory barriers continue to affect a number of areas, including consumer law but also VAT, the territorial management of copyright necessary to offer legitimate online services, or the national transposition of the European legislation on electronic waste disposal, for example. It is crucial to address these potential market barriers in order that future growth is not stymied and in order to unlock the potential of cross-border e-commerce. As a result of these barriers, traders may refuse to serve new markets or may develop online business models that fragment the internal market along national lines.

Solutions to these problems may consist in streamlining regulatory hurdles that increasingly appear unfair and unjustifiable to consumers and businesses on a national and European level. Promoting the transparency and comparability of information on the internet will also have spill-over effects on retail markets in general. In addition, it will be necessary to promote online trust by strengthening online and cross-border enforcement, putting in place efficient and speedy dispute resolution, and by enhanced market monitoring, information and awareness-raising.

## 1. INTRODUCTION

This report is a follow-up to the first edition of the Consumer Markets Scoreboard, adopted on 29 January 2008.<sup>3</sup> This instrument was developed to monitor markets from a consumer perspective in two phases: a screening phase and an analysis phase. This should enable the Commission to identify sectors with the greatest risk of malfunctioning in terms of economic and social outcomes for consumers. These sectors are then to be analysed further through in-depth market studies.<sup>4</sup>

Based on the application of the screening stage of the market monitoring methodology at EU level, the Commission is currently undertaking an in-depth monitoring of the retail sector, which will start by examining the regulatory framework and recurrent business practices so as to identify the existence of market malfunctioning and its causes at the downstream end of the various supply chains. The evidence presented in this report is a contribution to this exercise, providing a factual basis for the e-commerce strand of this work in order to help identify possible Single Market barriers, including problems of geographic segmentation. The recently adopted Commission Staff Working Document: 'Market Monitoring: State of Play and Envisaged Follow-Up', (SEC(2008) 3074 final), describes the Commission's market monitoring initiative and the progress that has been made in 2008. As announced in the Commission's Legislative and Work Programme for 2009, the Commission will present a Communication on the outcome of the retail market monitoring in autumn 2009, which will include an analysis of cross-border e-commerce.

The identification of e-commerce as a sector for further study was made for three main reasons. As pointed out in the first edition of the Consumer Markets Scoreboard, internet shopping 'has further stimulated the process of cross-border shopping, allowing fast, less costly communication as well as access to a wider variety of goods and services'. Internet retailing holds the promise of making the retail internal market a reality for consumers hitherto confined within national borders. Furthermore, because of its interdependence with in-store shopping, internet retailing has implications for retail services in general and the broader economy. Finally, from an EU perspective, preliminary evidence indicates that there are still a number of structural barriers to a fully functioning online internal market. This is a pity at a time when consumers are celebrating the borderless nature of the internet. For this reason, this report emphasises the cross-border aspects of internet retailing.

The purpose of this report is to identify e-commerce trends and potential cross-border obstacles in order to analyse the direction that cross-border e-commerce is taking in the EU. The following sections attempt to present a panorama of e-commerce in the EU, looking in turn at the drivers, constraints and problems affecting consumer confidence and the supply-side problems affecting business attitudes to online and cross-border trade. The report covers the business-to-consumer (B2C) aspects of e-commerce.

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<sup>3</sup> Commission Communication: 'Monitoring consumer outcomes in the single market: the Consumer Markets Scoreboard', COM(2008) 31 final, and accompanying Staff Working Document SEC(2008) 87 final.

<sup>4</sup> The initiative to monitor how the internal market is performing for consumers results from the Single Market Review (COM(2007) 724 final), which called for reconnection with EU citizens, for policies to take better account of citizens' concerns, and for policy-making to be more evidence-based and driven by a better understanding of real outcomes for consumers.

## 2. ONLINE SHOPPING IN THE EU

### 2.1. Number of online shoppers in the EU

Between 2004 and 2008, the percentage of individuals who had ordered goods or services over the internet for private use in the past year in the EU25 rose significantly, from 22% to 34%. In 2008, 32% of individuals in the EU27 had ordered online in the last year.<sup>5</sup>

There is significant variation in the levels of e-commerce across EU Member States (see Annex 1, Figure 1). In the UK in 2008, 57% of individuals had ordered goods or services over the internet for private use in the last year. In Denmark, Germany and the Netherlands the corresponding figure was also over 50%. In the two newest Member States, Bulgaria and Romania, however, the figure was respectively 3% and 4%. Estonia, Cyprus, Greece, Italy and Portugal saw around 10% of individuals purchasing online for private use in 2008.<sup>6</sup> According to the *Fédération du e-commerce et de la vente à distance* (FEVAD), 66% of internet users in France have made a purchase online.<sup>7</sup> In Germany in 2007, 58.3% of individuals who had used the internet in the previous three months shopped online occasionally or frequently.<sup>8</sup> In the Nordic countries (Denmark, Sweden, Norway, Finland and Iceland), 91% of internet users had traded over the internet in the previous six months<sup>9</sup>

According to a study by the *Association de l'économie numérique* (ACSEL), based on the number of online purchasers, e-commerce markets in the EU could be categorised as follows:

- A mature market in Northern Europe, including the United Kingdom, Germany, and the Nordic countries, where between 60% and 80% of internet users are online purchasers.
- A growth market in France, Italy and Spain, where the number of online purchasers is lower compared to the numbers of internet users, but where the number of new online purchasers is growing fast, signalling a strong potential for growth in the short and medium term.
- An emerging market in Eastern Europe, but for which statistical data are lacking.<sup>10</sup>

### 2.2. What are online shoppers buying? Who buys what?

According to some estimates, the European e-commerce market was worth 106 billion euros in 2006 (an order of magnitude comparable to the size of the US e-commerce market) and 70% of turnover is concentrated in 3 key markets (the United Kingdom, Germany, and France).<sup>11</sup>

The three product categories most purchased online are: 'travel and holiday accommodation', which ranks first in terms of the percentage of individuals shopping online (42%), followed closely by 'clothes, sports goods' (41%) and 'books/magazines/e-learning material' (39%). Then come household goods (e.g. furniture, toys, etc; 35%), tickets for events (33%), films/music (29%), electronic equipment (25%), and computer software including video games (21%). It is interesting to note that half the individuals who ordered films/music,

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<sup>5</sup> Eurostat: Information society statistics (2009). Data extracted on 3 February 2009.

<sup>6</sup> Eurostat: Information society statistics (2009).

<sup>7</sup> FEVAD, 'Chiffres Clés vente à distance et e-commerce', 2008.

<sup>8</sup> Bvh, 'Entwicklung des E-commerce in Deutschland (BtC)', October 2007.

<sup>9</sup> Nordic e-trade index, May 2008.

<sup>10</sup> ACSEL: 'Europe, An opportunity for e-Commerce' (2008).

<sup>11</sup> Source: eMarketer (2007), quoted in ACSEL (2008).

books/magazines/e-learning material or computer software (including video games) received their order online. See Figure 2 (Annex 1).

Figure 3 (Annex 1) shows the evolution of online retail sales for the review period 2002-2007 across the main product categories. The top three product categories in 2007 were: media products (13.2 billion euros), clothing and footwear (7.3 billion euros), and consumer electronics (6.8 billion euros). Most sectors display impressive growth rates: except for a few categories, expenditure tripled between 2002 and 2007.<sup>12</sup>

Surveys of consumer attitudes to online shopping in the EU reveal that men, younger respondents (and hence students) and those who stayed the longest in full-time education tend to make far greater use of the internet to purchase goods or services. It is a lot less common for citizens in new Member States to make purchases via the internet than it is for residents of the other countries.<sup>13</sup>

### **2.3. E-commerce compared to other retail channels**

E-commerce is the second most commonly used retail channel. In the EU27 in 2008, 51% of retailers made sales via e-commerce. Only direct retail sales were more common, used by 79% of retailers. Thus e-commerce is more popular than mail order (30%), sales through representatives visiting consumers in their homes (21%), and telesales (17%).<sup>14</sup> It is important to note, however, that these figures relate to the percentage of retailers using a certain retail channel regardless of how much they do so. These percentages thus may not reflect the actual percentages of sales per channel.

Figure 4 (Annex 1) shows the year-on-year growth rates of retail sales over the review period (2002-2007) across the different retailing channels: internet retailing was evidently by far the fastest developing channel, growing by 45% between 2002 and 2003, though slowing in the following years to about 25%, still an impressive pace. The reason for this relative slump in recent years may be attributed to the fact that e-commerce sales started from very low levels, so the initial remarkable growth rates may be due to catch-up effects. However, e-commerce growth rates remain in sharp contrast with the performance of other retail channels. The performance of other retailing channels has been more or less stable over the same period, with growth rates generally below 3%.

## **3. CROSS-BORDER E-COMMERCE: GROWING OR NOT?**

### **3.1. To what extent do consumers buy online in another country?**

While e-commerce is taking off at national level (in some countries), it is still relatively uncommon for consumers to use the internet to purchase goods or services in another Member State. As a result, the gap between domestic and cross-border e-commerce is widening: from 2006 to 2008, the share of all EU consumers that have bought at least one item over the internet increased from 27% to 33% while cross border e-commerce remained stable (6% to 7%). The pattern is similar for those with internet access at home: 56% of consumers with the internet at home have made a purchase (in any country including their own) by e-commerce,

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<sup>12</sup> Euromonitor International (2008), based on an aggregation of country statistics. Product coverage and classification differs from other sources.

<sup>13</sup> Eurobarometer 298: 'Consumer protection in the internal market', October 2008.

<sup>14</sup> Flash Eurobarometer 224, 'Cross-border sales and consumer protection' (2008).

compared to 50% in 2006, while only 13% (of those with internet access at home) have made a cross-border e-commerce purchase, compared to 12% in 2006.<sup>15</sup>

However, this picture is more nuanced at country level, as shown in Table 1 (Annex 1). The percentages of consumers having bought goods or services from a seller located in another EU country vary from 38% in Luxembourg to 2% in Portugal, for example. Small countries (Luxembourg, Cyprus, Malta, Denmark, and Ireland, for example) are much more open to cross-border online shopping. Countries where online shopping is already well developed (the UK, the Nordic countries, the Netherlands, for example) have correspondingly higher rates of cross-border online shopping.<sup>16</sup>

### **3.2. To what extent do businesses sell to another country?**

Among retailers, the cross-border potential of e-commerce also seems not to be exploited: 51% of EU27 retailers sell via the internet, but only 21% are currently conducting cross-border transactions, down from 29% in 2006 (in the EU25). The same proportion (21%) advertises cross-border.<sup>17</sup>

Conversely, three quarters of EU retailers only sell domestically. One in five EU retailers (21%) sell cross-border, via distance sales methods, to at least one other EU country. Retailers who conduct cross-border trade usually only sell to very few Member States: only 4% of those retailers trade with 10 or more Member States, most trade with one or two other Member States. This may also reflect the tendency of some large online retailers to establish in several Member States. Businesses most likely to be involved in cross-border retailing are medium and medium-large retail enterprises, with a limited number of outlets in other Member States and with existing language capabilities.<sup>18</sup> SME retailers appear to have been particularly reluctant to embrace the opportunities of e-commerce to sell cross-border.

Advertising in another country and cross-border sales are closely interconnected: about two thirds of cross-border advertisers report having cross-border (distance) sales activity as well (64%), while 65% of those who sell cross-border using distance methods indicate that they advertise in at least one other country. Therefore it is relatively unsurprising that only 21% of EU retailers advertise to at least one other EU country (this figure was 24% in 2006 and 22% in 2008 among EU25 retailers).<sup>19</sup>

However, this has implications for consumer awareness of commercial opportunities in other Member States: a majority of Europeans (55%) have never come across advertisements or offers from sellers/providers located in other EU countries. The likelihood of making cross-border purchases is related to exposure to advertisements from another country. Over half of those who have come across advertisements from other EU countries have also made a cross-border purchase.<sup>20</sup>

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<sup>15</sup> Special Eurobarometer 298, 'Consumer protection in the internal market' (2008). Similar cross-border purchasing behaviour can be observed from ESTAT ICT statistics (2009), available at <http://epp.eurostat.ec.europa.eu>. Differences between the two datasets may be the result of differences in sample sizes, interview techniques or the timing of the data collection.

<sup>16</sup> Idem. See Figure 5 in Annex 1.

<sup>17</sup> Flash Eurobarometer 224: 'Business attitudes towards cross-border sales and consumer protection' (2008).

<sup>18</sup> Idem.

<sup>19</sup> Flash Eurobarometer 224 (2008).

<sup>20</sup> Special Eurobarometer 298 (2008).

### **3.3. Is there an untapped potential for cross-border e-commerce?**

Growth expectations vary depending on market maturity and the characteristics of the country. For example, e-commerce is now a widespread phenomenon in the UK, Germany, France and the Nordic countries, which also enjoy higher levels of cross-border e-commerce than average. This suggests an underlying potential for cross-border e-commerce as other economies catch up.

Looking at cross-border shopping in general in 2008, 12% of European citizens said that they intended to make cross-border purchases worth more than those they made in the previous 12 months (a situation that has remained stable since 2006, at 13%). However, a majority of European citizens (57%) are not interested in making cross-border purchases in the coming year. 33% of European citizens are interested in doing so, which is similar to the level recorded two years earlier.<sup>21</sup>

Here again, significant country differences can be observed. Respondents in countries where cross-border shopping is relatively widespread are most likely to say that they will spend more; socio-economic factors and internet connectivity also come into play.<sup>22</sup> Furthermore, these figures include all modes of cross-border shopping (while on a holiday or a business trip, on a shopping trip, via the internet, by post, or by phone). Most cross-border shopping occurs on a holiday or business trip, so these figures may not be the best way to evaluate the potential for cross-border e-commerce.<sup>23</sup> Given the convenience of online shopping, with the absence of travel costs, cross-border e-commerce may have a higher potential for growth than cross-border purchasing via shopping trips.

When looking at cross-border e-commerce in relation to domestic e-commerce, it is apparent that cross-border e-commerce has been developing in parallel with domestic e-commerce. This correlation is shown in Figure 5 (Annex 1), which shows, for each country, the relation between the percentage of consumers who have made an online cross-border purchase and those who have made an online purchase in their own country. In mature e-commerce markets, cross-border levels are relatively high (albeit lower than domestic levels). Countries where domestic e-commerce is less developed have lower levels of cross-border e-commerce. As e-commerce develops in the EU and as growth markets mature, it is reasonable to expect that cross-border e-commerce will do the same. In smaller and/or insular countries that are naturally much more open to cross-border trade, cross-border e-commerce has outpaced domestic e-commerce. For these countries, which may have fewer home-grown internet retailers, cross-border e-commerce represents an important alternative to domestic retailers.<sup>24</sup>

## **4. AN INTEGRATED INTERNAL MARKET FOR E-COMMERCE: WHAT DO CONSUMERS STAND TO GAIN FROM SHOPPING ONLINE AND CROSS-BORDER?**

Compared to in-store shopping, online retailing may provide consumers with cheaper alternatives, depending on the sector and product. The success of the internet as a trading

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<sup>21</sup> Special Eurobarometer 298 (2008).

<sup>22</sup> Respondents who have an internet connection at home are slightly more likely to say that they will spend more on cross-border shopping in the coming year. They also express a higher interest in cross-border purchases than the average European.

<sup>23</sup> Among those who have made a cross-border purchase in the last 12 months, 70% did so while on a holiday or business trip, 36% on a shopping trip and 30% on the internet. See Special Eurobarometer 298 (2008).

<sup>24</sup> Analysis based on Special Eurobarometer 298 (2008).



platform for certain types of goods and services may be due in large part to the perception by consumers that this sales channel offers cheaper prices compared to traditional brick-and-mortar shops. The widespread commercialisation of certain types of goods and services on the internet may already have resulted in significant competitive pressure on prices between in-store and online sales channels. However, a systematic survey of online and in-store prices is necessary to ascertain the magnitude of online price savings and whether these assumptions can be generalised to the internal market.

It is striking to consider that, for a third of EU consumers, the attractiveness of price savings would prompt them to purchase products online in another country. While the majority of consumers reject the option of buying goods or services via the internet from another Member State (44%), one third of EU citizens indicate that they would consider buying a product or a service from another Member State via the internet because it is cheaper or better.<sup>25</sup> Opportunities for online price savings may be more relevant for some categories of products. According to a satisfaction survey conducted on behalf of the European Commission, 27.4% of online buyers of ICT goods thought it is worthwhile buying ICT products directly from another Member State (24.5% thought it was not worthwhile) and 25.7% said they would consider a retailer based in another EU country when making a purchase in the next two years (34.8% said they wouldn't).<sup>26</sup>

Internet retailing has dramatically widened consumer choice and awareness of commercial opportunities. Cross-border e-commerce has the potential to enable consumers to obtain products or services not available in their own country. Another feature of cross-border e-commerce is the ability to arrange for goods or services to be provided in another country. This is increasingly commonplace for travel services, for example. Some retailers of goods have also recognised this opportunity and have set up gifting schemes whereby consumers in one country can arrange for payment and delivery to consumers residing in another country.

In addition to increasing consumer welfare, cross-border e-commerce has the potential to increase the competitive pressure on traditional retailers. The internet plays an increasing role in how consumers approach their shopping decisions, as consumers have come to realise that the internet offers a convenient alternative to window-shopping. 3 in 5 Europeans who have internet access at home have compared prices online — for example by visiting price comparison websites (36% of Europeans have made such comparisons online; 17% subsequently purchased the product on the internet, 10% in a shop and 13% did not eventually make the purchase).<sup>27</sup> Both price and quality comparisons (both domestic and cross-border) are thought to be easier by internet buyers.<sup>28</sup> Therefore, promoting transparency and comparability of information on the internet will have spill-over effects on retail markets in general, whether consumers decide to purchase online or not.

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<sup>25</sup> Special Eurobarometer 254, 'Internal Market — Opinions and experiences of Citizens in EU-25' (2006).

<sup>26</sup> IPSOS Belgium: 'Retail satisfaction survey' (Aug-Oct 2008). See section on consumer satisfaction below

<sup>27</sup> Special Eurobarometer 298 (2008).

<sup>28</sup> IPSOS Belgium: 'Retail satisfaction survey' (Aug-Oct 2008). See section on consumer satisfaction below.

## **5. UNDERSTANDING CONSUMER BEHAVIOUR: DRIVERS, CONSTRAINTS AND PROBLEMS**

### **5.1. Understanding consumer satisfaction: why consumers buy online**

A recent survey of consumer satisfaction with various retail channels, commissioned by the European Commission, shows that for particular groups of products, consumer satisfaction with the internet is on average higher than for other channels. Data on the internet channel is available for two categories of products: entertainment and leisure goods, and information and communication technology (ICT) products, allowing for a comparison with traditional retail channels. As these two categories are together the most frequently traded online, they provide a valuable proxy for assessing consumer satisfaction with the internet as a retail channel. The results are presented in Figures 6 to 19 (Annex 1).<sup>29</sup>

Consumers who purchased these products from an online retailer are more satisfied than the average. For example, 85.9% of consumers who bought entertainment and leisure goods on the internet were satisfied with their retailer, compared to 75.8% of consumers on average for all sales channels. Consumers are more satisfied with the quality and price of products on the internet than with retail channels on average: 80% of consumers who bought entertainment and leisure goods on the internet thought that overall their retailer's prices offered reasonable value for money, compared to 67.3% on average for all retail channels.

The role of the internet in allowing consumers to compare prices, the wider range of offers, the affordability of products and the choice of alternative suppliers are among the main reasons why they are satisfied with this sales channel. However, consumers are less enthusiastic about aspects such as product information, advertising, the protection of privacy, the trustworthiness of the staff and the possibility to return goods during the cooling-off period.

Internet buyers are also more likely to think that it is worthwhile to shop cross-border than the users of other channels. Internet buyers are also more likely to consider that cross-border comparisons are easy compared to other retail channels. For example, 34,5% of internet buyers of entertainment and leisure goods think it is easy to compare prices cross-border, compared to 22,6% of consumers on average for all channels. However, overall, a majority of internet buyers does not think that it is easier to make cross-border comparisons.

### **5.2. Understanding consumer confidence: why consumers don't shop online**

There are a number of factors that restrain consumers from shopping online. A first category of constraints involves consumer preferences. In 2006, 58% of individuals who had not shopped online in more than a year, or who never did, prefer to shop in person, because they like to see the product first, due to loyalty to shops or due to force of habit. 48% who had not shopped online in more than a year, or who never did, had not done so because they had no need.<sup>30</sup> This state of affairs will only evolve with time and demographic change, or general

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<sup>29</sup> IPSOS Belgium: 'Retail satisfaction survey' (Aug-Oct 2008). The survey tested the following retail channels: super- and hyper-markets, discount stores, department stores, retail chain stores, small shops/stores, internet, mail and phone order, sales at home. Entertainment and leisure goods are defined as Books, Stationery, Toys and Games (including consoles such as PlayStation, Nintendo, etc.), Flat-screen TV, Ordinary/other TV set, Video projector, Radio/hi-fi system, DVD player/recorder, Home cinema equipment, MP3 player, Digital camera and Digital camcorder. ICT products are defined as PC/Desktop, Laptop/Notebook, Hardware, Printer, Scanner, Fax, Fixed telephone set, Mobile phone and Mobile phone accessories. 10% of respondents to this survey had bought ICT products mostly online and 9% of respondents had bought entertainment and leisure goods mostly online

<sup>30</sup> Eurostat — Information society statistics

awareness of electronic commerce (for example, in 2008, 47% of individuals between 25 and 34 years old have ordered goods or services online in the last year, whereas the corresponding figure for individuals between 55 and 64 years old is 20%).<sup>31</sup>

A second constraint is due to access to the sales medium itself, i.e. to the internet. The internet penetration rate plays a considerable role here. 56% of those who have an internet connection made at least one purchase via the internet in the last 12 months (compared to 33% on average), while this figure is marginal for those who do not have internet access at home (8%).<sup>32</sup> Denmark, Finland, the Netherlands and Sweden are world leaders in broadband deployment with penetration rates of over 30% at the end of 2007.<sup>33</sup> The UK, Belgium, Luxembourg, Germany and France also had high broadband penetration rates. It is no surprise that online shopping is more developed in these countries. Conversely, countries where high-speed internet penetration is low have fewer online shoppers.

Finally, a third category of constraints has to do with trust in online businesses. A major inhibiting factor is the fear of giving credit card or personal details over the internet: in 2006, 38% of individuals who had not shopped online in more than a year, or who never did, said this was a concern.<sup>34</sup> Next in line are worries relating to receiving or returning goods, complaints and redress (21%), the lack of a payment card (15%), the lack of the necessary skills (14%), and delivery times being too long or delivery at home problematic (8%).<sup>35</sup>

### **5.3. Why consumers don't shop cross-border**

When asked about their confidence in making cross-border purchases online, 37% of respondents said that they would be more confident making online purchases from sellers/providers located in their own country, which could prove to be a significant barrier to cross-border e-commerce. However, 34% said they were equally confident making purchases online from sellers in their own country or in another EU country. 6% said that they would be more confident buying online from sellers/providers in another EU country. Consumers in countries where e-commerce is developed were wary of shopping in another country. For example, consumers in Sweden, Finland and Denmark are most confident shopping online in their own country. The least confident are Romanian and Bulgarian consumers.<sup>36</sup>

A detailed account of the obstacles to cross-border online shopping, from the standpoint of consumers, is given in Annex 3. There is a degree of overlap with the reasons for not shopping online (for example, as far as consumer preferences and access to the internet are concerned), but some factors are specific to the cross-border dimension. In addition, online traders may enforce restrictions on where they wish to sell in the EU, leaving consumers in some countries unable to access goods and services in other Member States.

Firstly, as far as the practical aspects affecting consumer confidence are concerned, the reluctance linked to issues of payments, delivery and after-sales support (returning goods or obtaining repairs, for example) are frequently mentioned by respondents as major inhibiting factors irrespective of whether they shop in their own country or not. However, respondents seem to think that these issues are aggravated by the fact that a transaction is taking place

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<sup>31</sup> Eurostat — Information society statistics

<sup>32</sup> Special Eurobarometer 228 (2008)

<sup>33</sup> European Commission: '13th Report on the Implementation of the Telecommunications Regulatory Package — 2007', COM(2008)153, (2008).

<sup>34</sup> Eurostat — Information society statistics.

<sup>35</sup> Eurostat — Information society statistics.

<sup>36</sup> Special Eurobarometer 298 (2008).

across borders. In particular, cross-border delivery, returns and payments are often perceived as significantly more cumbersome, expensive or even impossible. Respondents cite problems in relation to the use of after-sales services, complications with regard to delivery, the application of guarantees/requests for refunds, and complaint-handling problems.

The complicating factor in relation to these problems is of course the issue of language and cultural barriers. Understandably, consumers will be reluctant to shop with a trader in a foreign language; in addition, communication will be impaired during the provision of after-sales services, or in the event of problems complaint handling will be more difficult. However, one should be careful not to overstate the impact of language barriers. In an increasingly multicultural and diverse Europe, language barriers may be losing their relevance (for example, younger people and students tend to look much more favourably at the idea of purchasing goods and services in another EU language). 33% of EU consumers say they are willing to purchase goods and services in another language, while 59% of retailers are prepared to carry out transactions in more than one language (on average for all retail channels).<sup>37</sup> When asked about the main reason for not wanting to buy via the internet a product or service that is cheaper or better in another Member State, 31% replied that they were unwilling to disclose card details on the internet, slightly more than those who replied that language barriers were an issue (27%).<sup>38</sup>

Secondly, it is relatively difficult for consumers to establish whether a trader in a foreign country is trustworthy or not. E-traders may enjoy a strong reputation at home, but may be largely unknown outside their domestic market. Brand recognition and loyalty, or the presence of a national certification scheme, influence consumer choice — in particular considering that fraud and unfair commercial practices are endemic in this sector.

Thirdly, cross-border enforcement and redress is perceived as a major inhibiting factor. 71% of consumers think that it is harder to resolve problems such as complaints, returns, price reductions, or guarantees when purchasing from providers located in other EU countries.<sup>39</sup> The general perception is that it is not worthwhile to follow up on complaints with a seller located in another country. Consumers also do not know who to turn to in order to find information about cross-border shopping. Only 37% of European citizens who had made at least one cross-border purchase declared that they knew where to get information and advice about cross-border shopping, compared with 21% in the European Union as a whole. The same is true for 28% of respondents who have an internet connection at home.<sup>40</sup>

There is a regulatory dimension to some of these cross-border issues. Even though after-sales service, delivery complications, the application of guarantees/requests for refunds, and complaint-handling problems are perceived by consumers as being of a practical nature, they all have a regulatory dimension that is relevant under EU consumer protection rules and their application in national law.<sup>41</sup> The fact that the national provisions regulating these aspects have been interpreted differently in the Member States, apart from being a source of confusion for consumers, makes it more difficult for mediators to settle a dispute out of court.

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<sup>37</sup> Special Eurobarometer 298 (2008) and Flash Eurobarometer 224 (2008).

<sup>38</sup> Special Eurobarometer 254 (2006).

<sup>39</sup> Special Eurobarometer 252 (2006).

<sup>40</sup> Special Eurobarometer 298 (2008).

<sup>41</sup> European Commission: 'Impact Assessment Report accompanying the proposal for a directive on consumer rights' (2008). For example, the lack of an EU-wide definition of delivery and diverging national rules on the passing of risk (in the event of loss or deterioration of goods during transport) may affect consumer confidence.

The uneven level of consumer protection across the EU also makes it difficult to conduct pan-European information campaigns on consumer rights. These problems are tackled by the Commission's recent proposal for a Directive on Consumer Rights.<sup>42</sup>

#### **5.4. Problems and complaints reported by online shoppers**

While it appears that in 2006 the vast majority of online shoppers who had ordered goods or services over the internet for private use in the previous year encountered no problems, certain problems were relatively common. 8% of people reported that the speed of delivery was longer than indicated, for example. Other, less common problems included difficulties in making complaints and obtaining redress, or a lack of satisfactory response after a complaint. While, according to Eurostat, 38% of non-online shoppers cite their fear of giving card details online as a reason not to shop online, only 1% of online shoppers say they have had problems in this area, which suggests that giving card details online is safer than perceived (however, this may not be the case for cross-border transactions).<sup>43</sup> Fear of communicating card details may also be linked to the fear of paying for goods in advance and not receiving them.

The complaints handled by the network of European Consumer Centres (hereafter ECC-Net) show that most cross-border e-commerce complaints concern delivery (50% of cases handled in 2007, of which 88% concerned non-delivery).<sup>44</sup> Non-delivery may of course reflect fraud as well as the efficiency of the delivery system. 25% of cases handled by ECC-Net concerned issues with the actual product or service (defective products, products not in conformity, or other issues). 11% of cases concerned problems with the terms of the sales contract (such as the cooling-off period, unfair contract terms, etc). 6% of cases concerned prices and payments (the imposition of supplementary charges, incorrect prices, or price differentials for example).

### **6. UNDERSTANDING BUSINESS ATTITUDES: SUPPLY-SIDE CONSTRAINTS**

#### **6.1. Geographical restrictions on consumer choice**

In addition to the constraints that affect consumer confidence and the willingness to shop cross-border, online traders may choose not to sell to some countries in the EU, leaving consumers in some countries unable to physically access goods and services in other Member States. For example, a consumer's transaction over the internet may be terminated once their credit card data reveals an address that is outside the targeted market. In other instances, consumers are prevented from viewing websites that target offers to other EU citizens. The result is fragmentation of the online internal market along national lines.

Most traders now have a website that is visible to consumers everywhere, which means that they are likely to receive orders from customers in countries where they are not actively marketing their products. Considering that most traders serve a very limited number of countries on average (see section 3), this provides a clear indication of the scale of the problem. 33% of consumers agree that sellers/providers often refuse to sell or deliver goods or services because they are not resident in their country (on average for all retail channels, in

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<sup>42</sup> Proposal for a Directive on Consumer Rights (COM(2008) 614 final) of 8 October 2008

<sup>43</sup> Eurostat, Information society statistics (2008)

<sup>44</sup> The European Consumer Centre's Network (ECC-Net): 'The European Online Marketplace: Consumer Complaints 2007' (2008). The European Consumer Centres Network (ECC-Net) is an EU-wide network designed to promote consumer confidence by advising citizens on their rights as consumers and providing easy access to redress, particularly in cases where the consumer has made a cross-border purchase. Their responsibilities include giving advice to consumers and providing assistance with complaints and the resolution of disputes with traders. See [http://ec.europa.eu/consumers/redress\\_cons/](http://ec.europa.eu/consumers/redress_cons/)

2006).<sup>45</sup> On average for all sales channels, in 2008, 8% of consumers who had made a cross-border purchase in the last year were prevented from purchasing cross-border because they lived in a country other than where the trader was located.<sup>46</sup> The inability or reluctance of distributors to serve unsolicited customers from another country (so-called ‘passive selling’) appears to be one of the factors holding back cross-border e-commerce.

ECC-Net reports ‘numerous reported instances of apparent discrimination based on the country of residence of the consumer. This can relate to the refusal to sell products to consumers based in a particular country, or the trader offering the same product for sale in different Member States at different prices’.<sup>47</sup> Cases of refusal to sell, where the internet is the selling method, represent between 1% and 2% of cross-border complaints cases handled by the European Consumer Centres. Most of them concern the passenger air transport sector (see summary of the replies of the ECCs in Annex 3 and Figures 20 to 23 in Annex 1).<sup>48</sup>

However, this problem may be largely unreported in terms of official consumer complaints, for two reasons: either consumers do not lodge complaints in such instances and simply shop elsewhere or such concerns might not be registered as complaints because the trader is not acting illegally. In such instances, consumers can only be encouraged to enquire with the trader as to the reasons for refusing to sell. As a result, official consumer statistics might understate the problem and other market research tools might be needed to explore the magnitude of geographic segmentation (for example, testing online stores through mystery shopping).

Problems faced by consumers who are discriminated against on grounds of their nationality or place of residence when seeking to make a purchase on the internet are specifically tackled by Directive 123/2006/EC on Services in the Internal Market (the Services Directive), which will have to be implemented by end of 2009. In particular, Article 20(2) of the Services Directive requires Member States to put an end to such discriminations while clarifying at the same time that traders will be entitled to provide for ‘*differences in the conditions of access when those differences are directly justified by objective criteria*’ (as this would not amount to discrimination). The Commission is already providing guidance to Member States to ensure the correct and full implementation of this provision.

There are a number of reasons that may prevent consumers from purchasing goods and services from another Member State or that may translate into price differences. More often than not, this is the result of complex business decisions, which are underpinned by factors of an economic and regulatory nature (see next section). For example, given the business constraints and obstacles to cross-border online trading in the EU, most businesses may be reluctant or unable to sell to consumers located in another country. This may be the sign that an environment that is more conducive to cross-border selling is needed.

## **6.2. Obstacles to cross-border trade: why businesses don’t sell cross-border**

E-commerce has in recent years enjoyed double-digit growth in the most ‘advanced’ online economies, so for European players the pressure to expand beyond their original borders may not have been felt until recently. The Commission has conducted a series of fact-finding

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<sup>45</sup> Special Eurobarometer 252 (2006)

<sup>46</sup> Special Eurobarometer 298 (2008)

<sup>47</sup> The European Consumer Centre’s Network (ECC-Net): ‘The European Online Marketplace: Consumer Complaints 2007’ (2008), p. 23

<sup>48</sup> Complaints are defined as formal complaints lodged with a third party (in this instance, a European Consumer Centre)

interviews with business stakeholders and trade associations on the cross-border obstacles to online shopping. This section is based on the main findings of this exercise.<sup>49</sup> Generally, business interviewees were of the view that, as online markets mature in these countries, e-traders will seek to maintain revenue growth by venturing into the rest of the EU. However, businesses may be constrained in their ability to do so.

There are many reasons why e-traders may be reluctant or unable to expand their operations to other parts of the EU. In a recent survey of business attitudes towards cross-border sales and consumer protection, managers of retail enterprises rated the following practical obstacles to business-to-consumer cross-border trade as very important and fairly important (in descending order):

- Potentially higher costs due to the risk of fraud and non-payments in cross-border sales compared to domestic sales (63%);
- Additional costs of compliance with different national fiscal regulations (62%);
- Additional cost of compliance with different national laws regulating consumer transactions (60%);
- Potentially higher cost involved in resolving complaints and conflicts cross-border compared to domestically (59%);
- Higher costs of cross-border delivery compared to domestic delivery (57%);
- Potentially higher costs in ensuring an efficient cross-border after-sales service compared to domestic after-sales service (55%);
- Additional costs arising from language differences (45%).<sup>50</sup>

The results correspond to some of the findings of the interviews conducted with business stakeholders. As shown in Table 2 (Annex 1), some obstacles, such as language barriers, have practical implications that may increase the cost of doing business significantly. Furthermore, the cross-border problems and the economics of parcel delivery may mean that in some instances, it simply may not be profitable to do business.

However, it is important to note that several problems of a practical nature listed above have regulatory underpinnings. For example, where consumer contracts are concerned, the laws regulating such aspects as conflict of law rules, the rules on cancellation rights, returns, and guarantees (to name but a few) are implemented differently by Member States. The resulting fragmentation of the EU consumer regulatory framework is a significant source of compliance costs for traders wishing to trade in several Member States. Retailers would be much more willing to engage in cross-border selling if the risks of failing to comply with various national regulations could be eliminated by establishing EU-level rules. The cost of fragmentation is a heavy burden on business: the estimated administrative costs imposed by EU consumer law on distance sellers trading domestically (only in their own country) is 5526 euros. This cost increases to 9276 euros for distance sellers wishing to trade in one or two other EU countries. The estimated administrative cost for a business wanting to sell in all 27 Member States is 70 526 euros.<sup>51</sup> The Commission's recent proposal for a Directive on Consumer Rights is

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<sup>49</sup> The findings are summarised in Table 2 (Annex 1). A full account is included in Annex 3.

<sup>50</sup> Flash Eurobarometer 224 (2008)

<sup>51</sup> European Commission: 'Impact Assessment Report accompanying the proposal for a directive on consumer rights' (2008)

designed to tackle the cost of regulatory fragmentation as far as the EU consumer regulatory framework is concerned.<sup>52</sup>

Other regulatory aspects that were identified as potential barriers to cross-border trade by business stakeholders were: national technical regulations (for example on electrical plugs and sockets), the territorial management of copyright necessary to offer legitimate online services, the fragmentation of national rules on the disposal of electronic and electrical waste, VAT rules, selective distribution law, labelling rules, sector-specific rules on the sale of certain products (for example, rules limiting the sale of pharmaceuticals on the internet, or rules on book pricing that ban the discounting of books in some Member States). Without calling into question the legitimacy of these rules, some examination of the national differences between them and the manner in which they are applied relative to cross-border offers, and in light of the Internal Market principles of the EC Treaty, is needed, in order to prevent them from having unintended consequences that may limit cross-border trade and/or result in market fragmentation in a disproportionate and unjustifiable manner. These issues will be considered in the forthcoming Communication on retail monitoring. As far as competition law is concerned, the Commission is currently conducting a Review of vertical restraints with a view to assessing the way the existing legislation is implemented and whether such legislation should be amended.

There are also specific issues involved in online sales of music tracks, videos or featured films. These works are usually protected by intellectual property rights. Intellectual property is widely accepted as a necessary means to stimulate and reward further creation and as a means to protect often significant investments against free-riding. Nevertheless, the administration of intellectual property rights, especially in the musical sector, is often organised on a territorial basis. This has sometimes stifled the Europe-wide introduction of popular online services. Territorial rights management leads to an increase in transaction costs as the relevant rights in the music must be cleared in several countries before a European-wide service can be introduced. The Commission is aware that the issue of territorial rights management of intellectual property rights causes additional management costs. The relevant stakeholders are equally aware that a system of multi-territorial licensing will need to be developed in order to overcome the issue of territorial rights management and its inherent cost.

### **6.3. Online models and emerging business practices**

Respondents to the questionnaire on ‘consumers and online shopping: obstacles to cross-border e-commerce’ were asked whether the identified causes of cross-border obstacles were more prevalent on the internet as opposed to traditional forms of retailing. Their answers provide insights into market dynamics and emerging trends, which are also apparent from the economic and business literature on e-commerce (see bibliography in Annex 2). Two trends emerge in particular:

- the relationship between online and in-store retailing;
- the role of information transparency.

Paradoxically, while business stakeholders acknowledged that some issues are specific to e-commerce and therefore irrelevant to traditional bricks-and-mortar retailers, they did not seem to draw a distinction between online and offline channels. In fact, they highlighted the interdependence of both online and in-store retailing, which is evolving as consumers

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<sup>52</sup> Proposal for a Directive on Consumer Rights (COM(2008) 614 final) of 8 October 2008.



increasingly use the internet to inform their purchasing decisions and as retailers deploy multichannel ‘bricks-and-clicks’ strategies.<sup>53</sup> Particularly successful retailers have been able to combine offline and online channels. Furthermore, online trade has increased competition in some product groups or markets as customers use the internet for window shopping, before conducting an actual purchase in a physical store. This interdependence may have implications for the way that regulators approach retailing in general.

Both business and consumer stakeholders seem to agree that, compared to other sales channels, the internet has made both the breadth of commercial opportunities and the potential market barriers more visible: consumer choice and price visibility on the internet are vast compared to a local store. This creates a heightened sense of frustration when consumers are not able to purchase goods or services and makes these concerns more noticeable. In addition, the technological advances associated with internet retailing may make such barriers easier to monitor and maintain.

This highlights the challenges posed by the internet in terms of information transparency. There is more than a semantic distinction between the ‘visibility’ and ‘transparency’ of commercial offers on the internet. Consumers seem to think that the internet offers the best range of choice and prices, as well as the best way to promote price transparency (see section on consumer satisfaction above). However, they are less enthusiastic when it comes to the possibility to compare quality, product information, advertising and the protection of privacy. Internet buyers are also sceptical about the possibility to compare quality and prices between retailers in their country and in other EU countries — a finding that could be explained by the fact that few search engines seem to offer this possibility (default settings on most search engines are geared towards domestic offers/search rankings) despite the fact that information requirements have been harmonised at EU level through the E-commerce Directive.<sup>54</sup> For example, 39.1% of online buyers of ICT products thought that it was easy to compare prices cross-border (and 23.2% disagreed), compared to 76.5% who thought it was easy to compare prices in their own country.<sup>55</sup>

#### **6.4. Potential implications for consumers**

There may be several potential implications for consumers linked to information transparency and privacy issues.

First, as consumers are faced with a greater range of products and more complex choice parameters, information intermediaries will play a central role in their purchasing decisions. The pecuniary relationship between search and information intermediaries and online retailers may have implications for the presentation/choice of information linked to commercial offerings. In this respect, it is interesting to note the efforts made by some trade associations to set up codes of conduct for price comparison websites on the information that can be

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<sup>53</sup> Several models of internet retailing are possible, as pointed out in OFT (2007). In the ‘pure play’ model, businesses sell purely online and have a limited number of physical sites. ‘Bricks-and-clicks’ multichannel strategies have implications for high street retailers: they may use the strength of their brand reputation to attract customers online and arrange for customers to collect their purchases in their network of stores. Finally, sales via a third-party platform (online auctions or electronic marketplaces) may enable small businesses to operate online with low entry costs.

<sup>54</sup> Directive 2000/31/EC of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce)

<sup>55</sup> IPSOS Belgium (2008). However, online buyers were overall more positive than average about the possibility to make cross-border comparisons.

displayed to consumers.<sup>56</sup> Unfair commercial practice rules also apply to these websites and enforcement action by the competent national consumer protection authorities based on the UCP Directive may be needed.<sup>57</sup>

Second, internet technology facilitates the collection and analysis of information on consumers by firms. This may affect the relationship between firms and their customers, their marketing strategies and how certain offers are displayed to certain customers. In addition to data privacy issues, there may be distributional issues, as some consumers win and others lose out: 'as firms have access to more information about their customers, price discrimination and product customisation are likely to increase. Some consumers will benefit, others will not.'<sup>58</sup> The issues of data collection, targeting and profiling will be the subject of further research by the Commission.

## 7. CONCLUSION

While e-commerce is taking off at national level, the trade statistics presented in this report show that it is still relatively uncommon for consumers to use the internet to purchase goods or services in another Member State. The gap between domestic and cross-border e-commerce is widening as the potential and interest that appears to exist among consumers and businesses is being stymied.

However, as more and more consumers have access to the internet to conduct their day-to-day operations, the cross-border obstacles they face will be more and more difficult to justify in the face of mounting frustration at being unable to access the goods and services of their choice. Consumers also lack comparable information in order to make cross-border comparisons and to identify cross-border offers: few cross-border comparison websites exist, default settings may skew search results in favour of domestic offers, and there is little cross-border advertising. It is also difficult for consumers to identify which traders are reputable, as many well-known brands are unknown outside their home market. Despite the existence of national trust-marks, it has not been possible to achieve a sustainable EC-wide trust-mark.

At the same time, most traders now have a website that is visible to consumers everywhere, which means that they are likely to receive orders from customers in countries where they are not actively marketing their products. This creates heightened expectations on the part of consumers. As a result, internet retailing seems to have given a new dimension to the notion of 'passive sales' by fostering a borderless, increased visibility of commercial offers. How companies address this issue and whether they seek to limit or to engage with this phenomenon will be instrumental in setting the course for a more integrated online market.

Cross-border e-commerce has the potential to enable consumers to shop around for better deals and can therefore increase the competitive pressure on prices across borders and in offline retailing. Just as important is the potential for increased quality and choice, as consumers are able to obtain products or services not available in their own country. In

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<sup>56</sup> See FEVAD: 'Charte des sites internet comparateurs' (2008) accessible at: [www.fevad.com](http://www.fevad.com). Price comparison websites allow consumers to compare product information and the prices of products sold by multiple providers on the same webpage. They list the webpages of online retailers but do not handle transactions. Consumers are redirected to the webpage of the retailer to make a purchase.

<sup>57</sup> Directive 2005/29/EC on Unfair Commercial Practices of 11 May 2005

<sup>58</sup> OFT: 'Consultation on emerging trends' (2008), p. 28. The relationships between price discrimination, price dispersion and search costs on the internet, and how they may impact the strategies of firms, have been explored by a number of commentators. See bibliography.

particular, consumers in smaller countries or in remote areas may come to rely on the internet increasingly as an alternative or as a means of accessing products and services not available nationally. In order for the internet to act as a force for social cohesion and market integration, it is important that traders have the incentive to continue to serve certain markets and that certain communities are not left behind.

The Commission's services actively investigate State measures and regulatory proposals which create or are likely to create obstacles to trade in information society services and also opens infringement proceedings when it identifies restrictions which it considers to be incompatible with Article 49 of the EC Treaty.<sup>59</sup> In addition, the implementation and enforcement of the non-discrimination rule contained in Article 20(2) of the Services Directive is expected to substantially ease the problems faced by consumers being discriminated on a geographical basis when seeking to buy goods and services on the internet.

In addition to tackling the problems of the comparability and choice of offers, measures designed to strengthen consumer confidence in online shopping are needed. When it comes to fostering trust in online transactions, consumers must be reassured that the practical hurdles they face can be solved, and that mediation and redress mechanisms are easily accessible to them if necessary. Consumers' reluctance to put up with delivery and payment complications is greatly compounded by the fear of not being able to obtain redress or compensation in the event of a problem. Measures designed to assuage this fear and to provide speedy and efficient cross-border redress are needed (for example, promoting the use of alternative dispute resolution mechanisms and procedures for cross-border small claims).<sup>60</sup> In order to raise awareness of their rights, the Commission is also currently designing a Guide on rights online (eYouGuide) for consumers.

The problems affecting consumers are mirrored by those affecting businesses, in particular SMEs. Supply-side barriers and constraints are thus equally important in addressing this problem. The problems at issue are complex, interdependent, and sometimes mutually reinforcing. Some barriers may be, to a degree, structural and second-order. They are related to demographics, individual preferences, internet penetration or the efficiency of the postal or payment system.<sup>61</sup>

Traders may not have the capacity or infrastructure in place to fulfil these orders or may be wary of entering into a sales contract with a customer based in a country for which they have insufficient market knowledge. It is frustrating for consumers to discover in the course of the ordering process that traders are not prepared to deliver to their country. Promoting the

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<sup>59</sup> All new national rules relating to information society services fall under the notification procedure under Directive 98/34/EC to prevent regulatory hurdles from arising at the draft stage before a measure enters into force. Regarding technical barriers that apply to the trade of goods, under articles 28 to 30 of the EC Treaty, the Commission may investigate State measures maintaining obstacles to the free movement of goods in areas that have not been harmonised at Community level. In the case of public undertakings or undertakings to which Member States grant special or exclusive rights, the Commission can act against Member States enacting or maintaining in force any measure contrary to Article 86 EC in combination with Articles 81 or 82 EC.

<sup>60</sup> See Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European small claims procedure.

<sup>61</sup> However, readers should note that, as far as internet penetration, the postal system and payment systems are concerned, considerable progress has already been achieved, or is being pursued, in fostering EU-wide integration. For example, concerning payment systems, the Commission has acted to improve the functioning of the internal market for payment services by promoting the creation of the Single Euro Payments Area (SEPA). See Regulation 2560/2001 and Directive 2007/64/EC on Payment Services.

comparability of information on the internet should have positive spill-over effects on competition in retail markets in general, irrespective of whether consumers decide to purchase online and cross-border.

In addition, businesses may be constrained in their ability to expand to other EU markets by a number of practical and economic obstacles, some of which might have regulatory underpinnings. Subject to deepened analysis, regulatory barriers could be one of the areas where reform is most needed. Regulatory barriers could result in significant compliance costs for businesses, which would considerably diminish the appeal or feasibility of cross-border expansion. It is crucial to address these potential market barriers in order that future growth is not stymied and in order to unlock the potential of cross-border trade (these barriers may be present not only in consumer law but also in areas such as VAT, the territorial management of certain copyright necessary for the offer of legitimate online services, the national transposition of the European legislation on electronic waste disposal, etc). More needs to be done by market operators to integrate postal and payments systems throughout the EU as these are significant barriers, especially for small firms. As a result of these barriers, traders may refuse to serve new markets, enforce online business models that segment the internal market along national lines, and thus refuse to accept passive sales.

Business attitudes may also be the result of perceptions rather than of actual problems, which suggests that there is more potential for an integrated online internal market than commonly thought. Eurobarometer surveys show that retailers with no direct experience of cross-border trade are much more concerned about the possible obstacles to the development of such sales.<sup>62</sup> If the internal market is to develop, SMEs as well as national market leaders need to be encouraged to expand abroad.

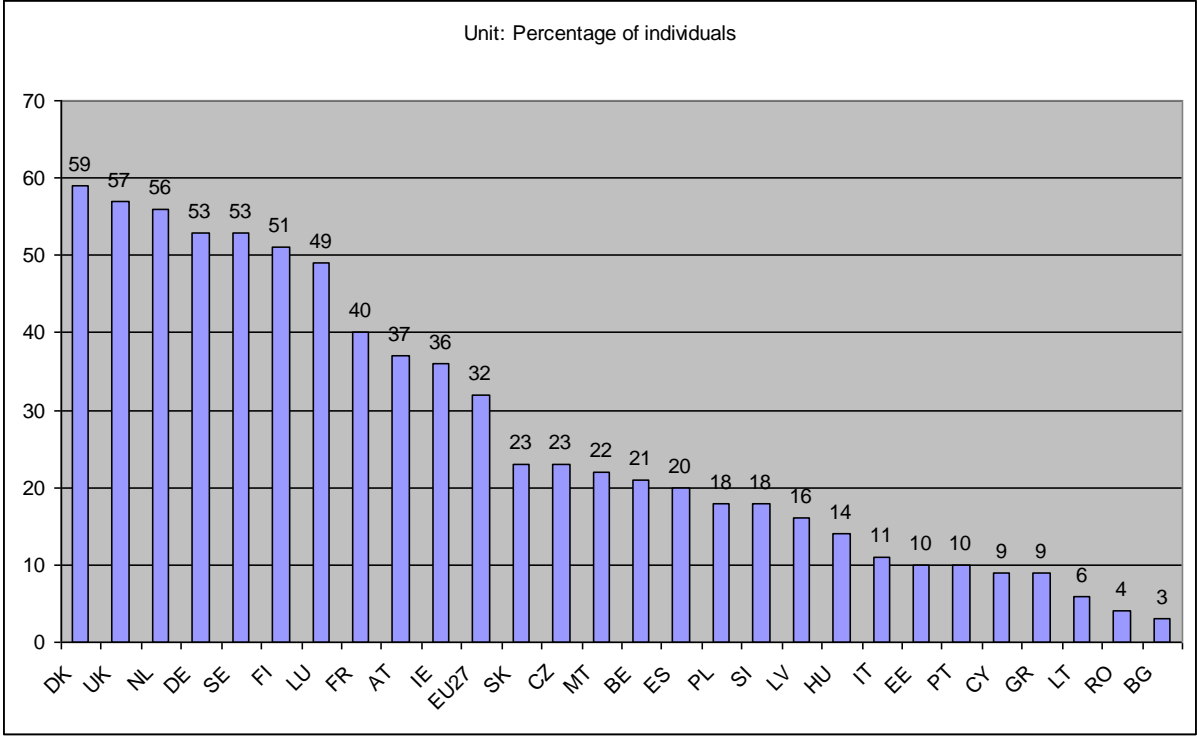
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<sup>62</sup> Flash Eurobarometer 224 (2008).

**ANNEXE 1**

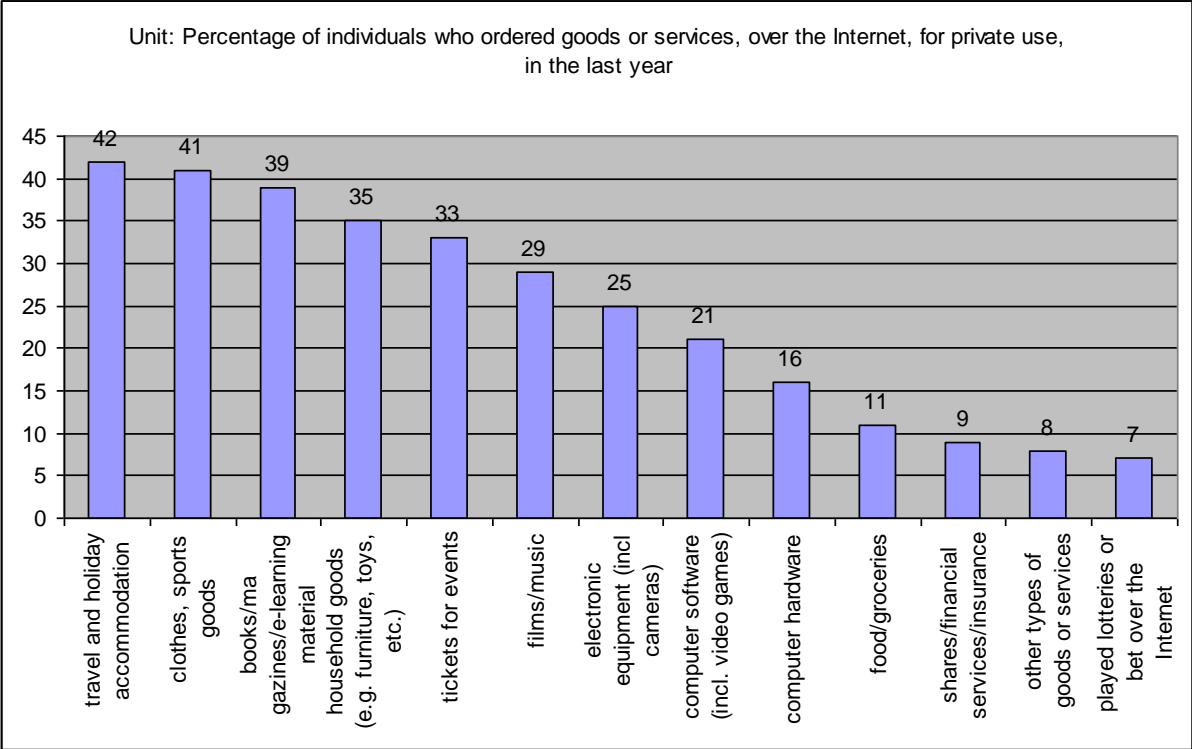
**TABLES**

**Figure 1 - Percentage of individuals who ordered goods or services over the Internet for private use in the last year (2008)**



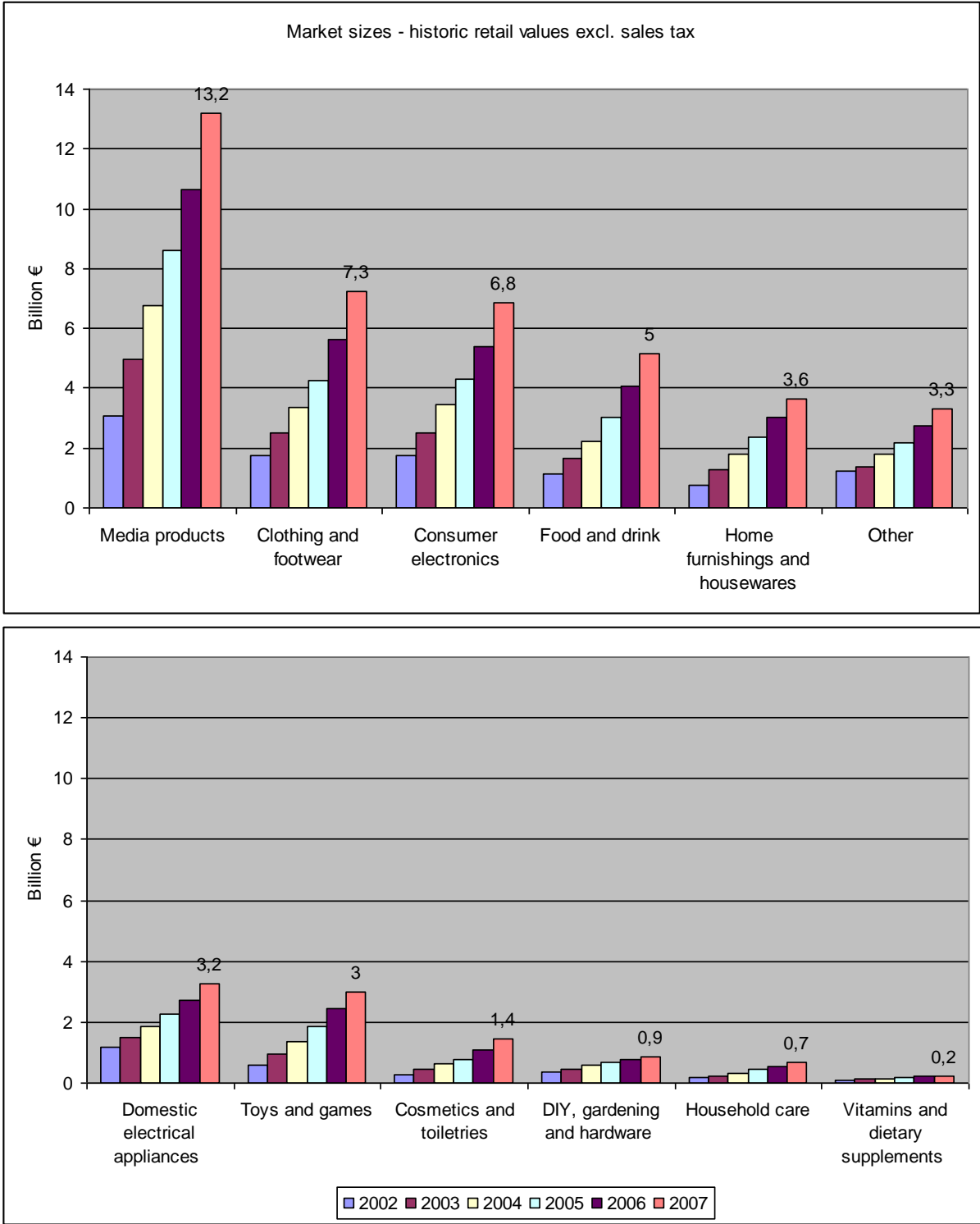
Source: Eurostat, Information society statistics (2009). Data extracted on 3 February 2009.

**Figure 2 - Goods and services ordered over the Internet, for private use, in the last year (2008)**



Source: Eurostat, Information society statistics (2009). Data extracted on 3 February 2009.

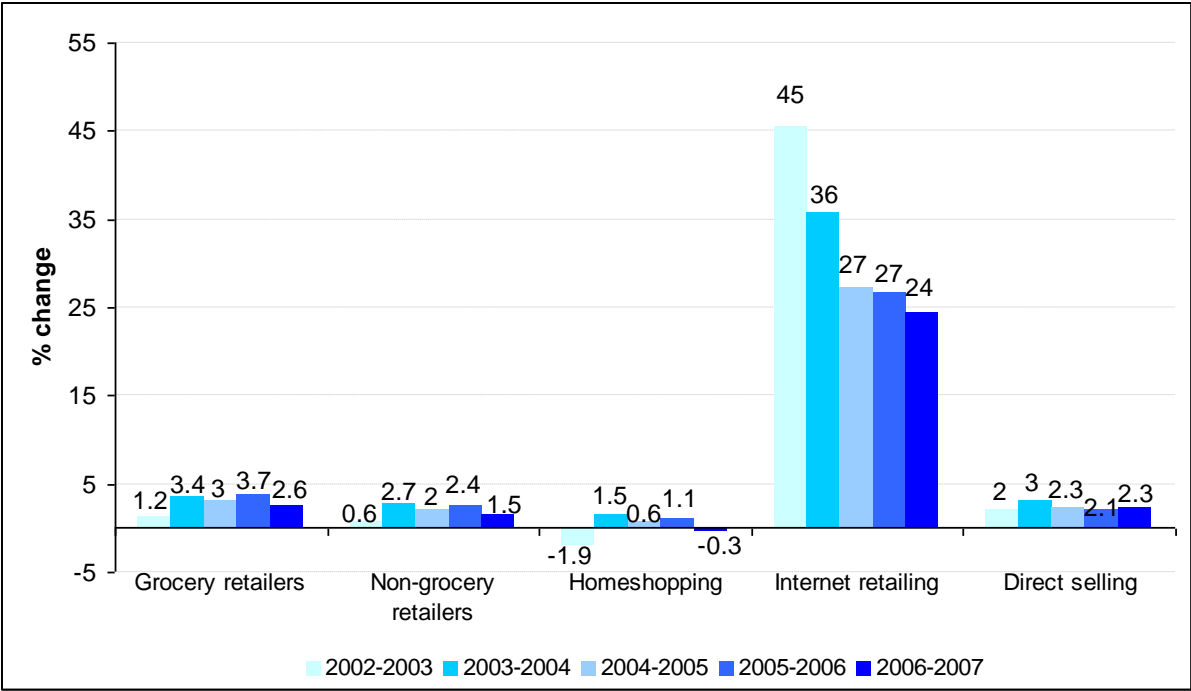
**Figure 3 - Online retail sales by product category in the EU, 2002-2007**



Source: Euromonitor International (2008). Based on an aggregation of country statistics, where available.

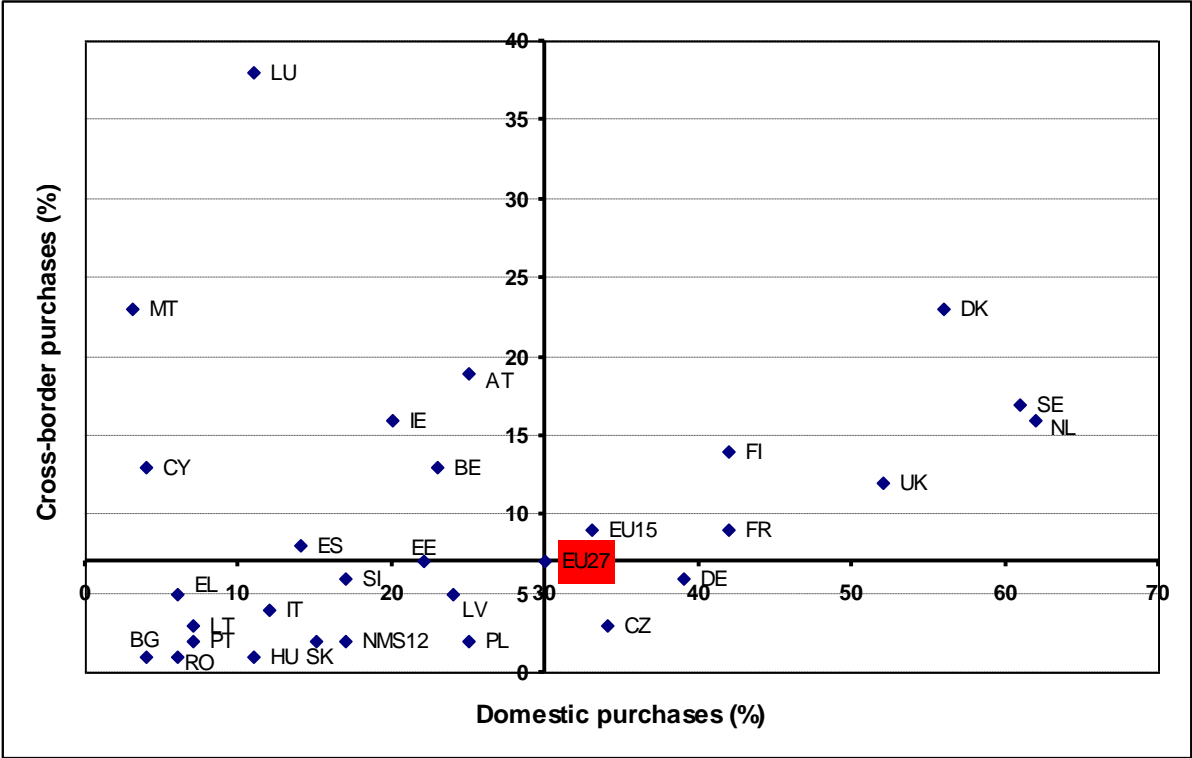


**Figure 4 - Year-on-year growth rates of retail sales by channel**



Source: Euromonitor International (2008). Based on an aggregation of country statistics, where available.

**Figure 5 - Percentages of consumers having bought goods or services on the Internet from sellers in another EU country (cross-border purchases) vs. in their own country (domestic purchases)**



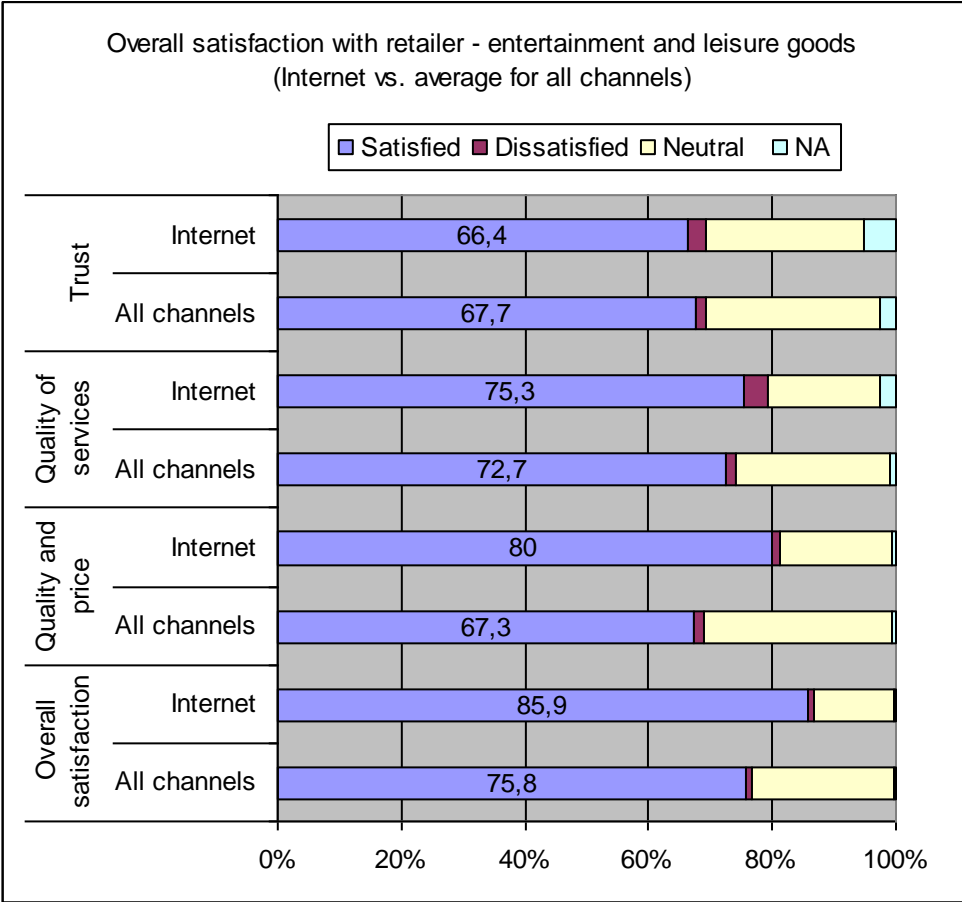
Source: Special Eurobarometer 298 (2008). See source data in table below. The axes of the figure are centred on the EU average.

**Table 1 - Question: Please tell me if you have purchased any goods or services in the last 12 months in your country or elsewhere via the Internet (multiple answers possible)**

	Yes, in own country	Yes, from a seller in another EU country
<b>EU27</b>	30	7
<b>EU15</b>	33	9
<b>NMS12</b>	17	2
NL	62	16
SE	61	17
DK	56	23
UK	52	12
FI	42	14
FR	42	9
LU	11	38
DE	39	6
CZ	34	3
AT	25	19
IE	20	16
BE	23	13
MT	3	23
LV	24	5
EE	22	7
PL	25	2
SI	17	6
ES	14	8
CY	4	13
IT	12	4
SK	15	2
HU	11	1
EL	6	5
LT	7	3
PT	7	2
RO	6	1
BG	4	1

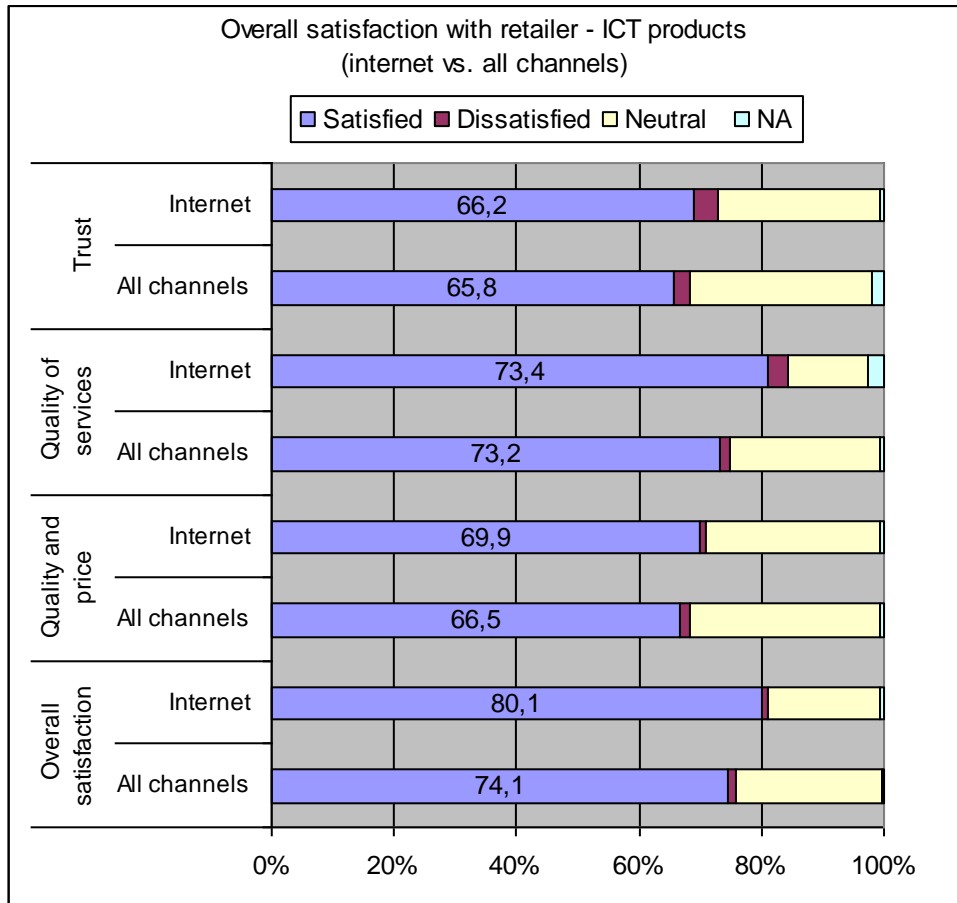
Source: Special Eurobarometer 298 (2008).

**Figure 6 - Overall satisfaction with retailer - entertainment and leisure goods**



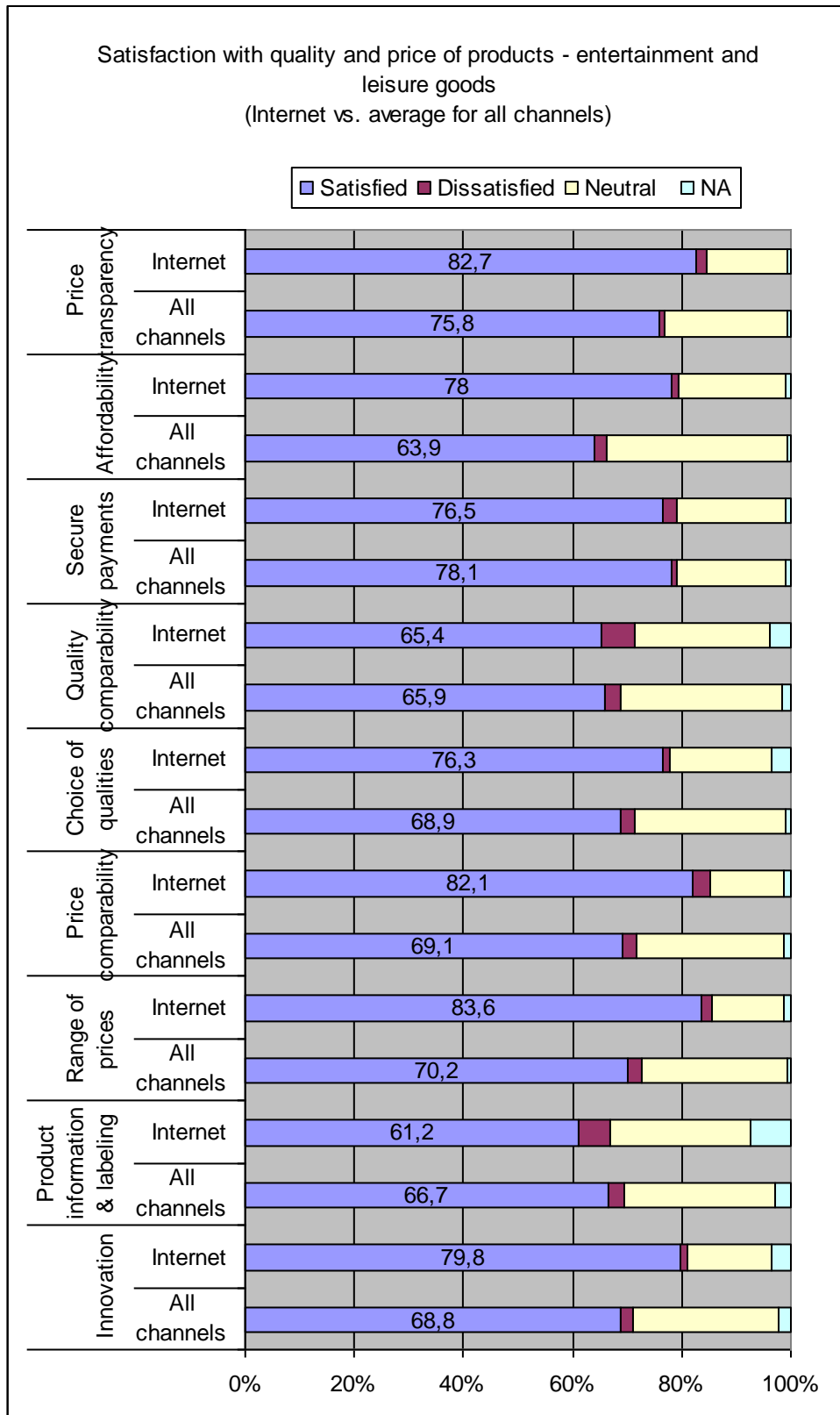
Source: IPSOS Belgium, for DG Health and Consumers (2008)

**Figure 7 - Overall satisfaction with retailer - ICT products**



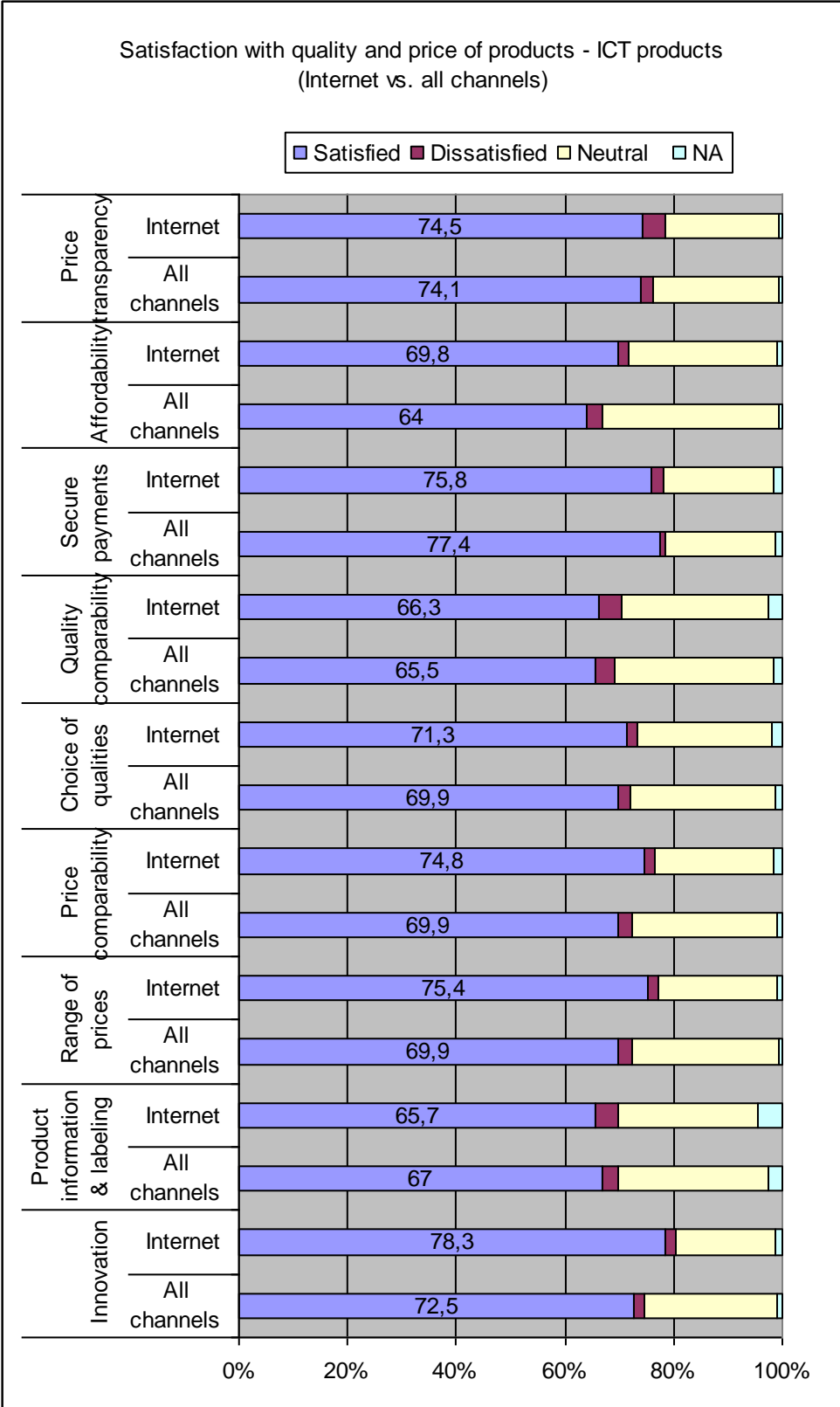
Source: IPSOS Belgium (2008)

**Figure 8 - Satisfaction with quality and price of products - entertainment and leisure goods**



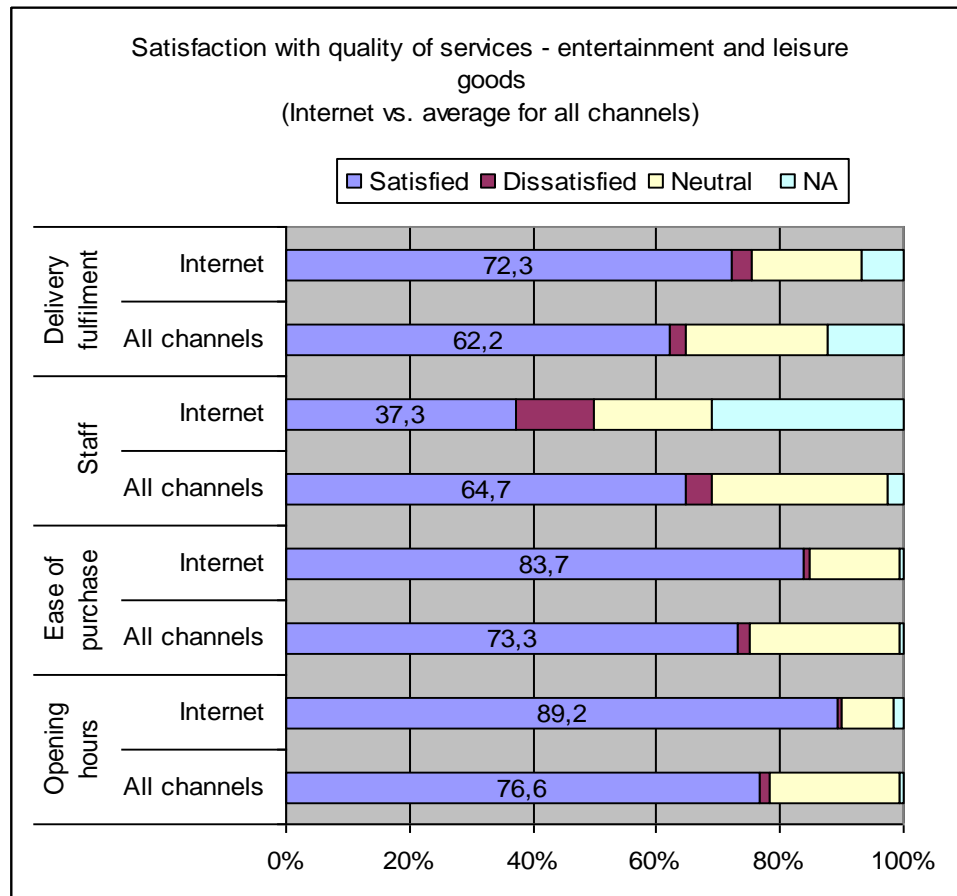
Source: IPSOS Belgium (2008)

**Figure 9 - Satisfaction with quality and price of products - ICT products**



Source: IPSOS Belgium (2008)

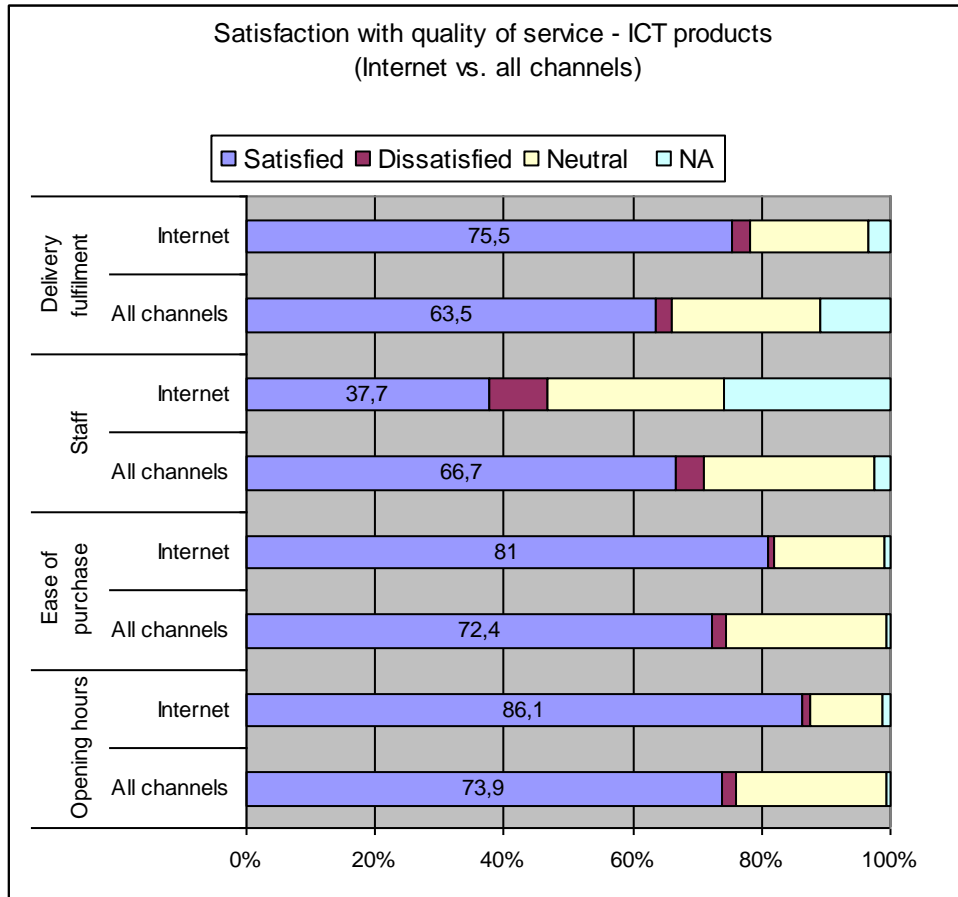
**Figure 10 - Satisfaction with quality of services - entertainment and leisure goods**



Source: IPSOS Belgium (2008)

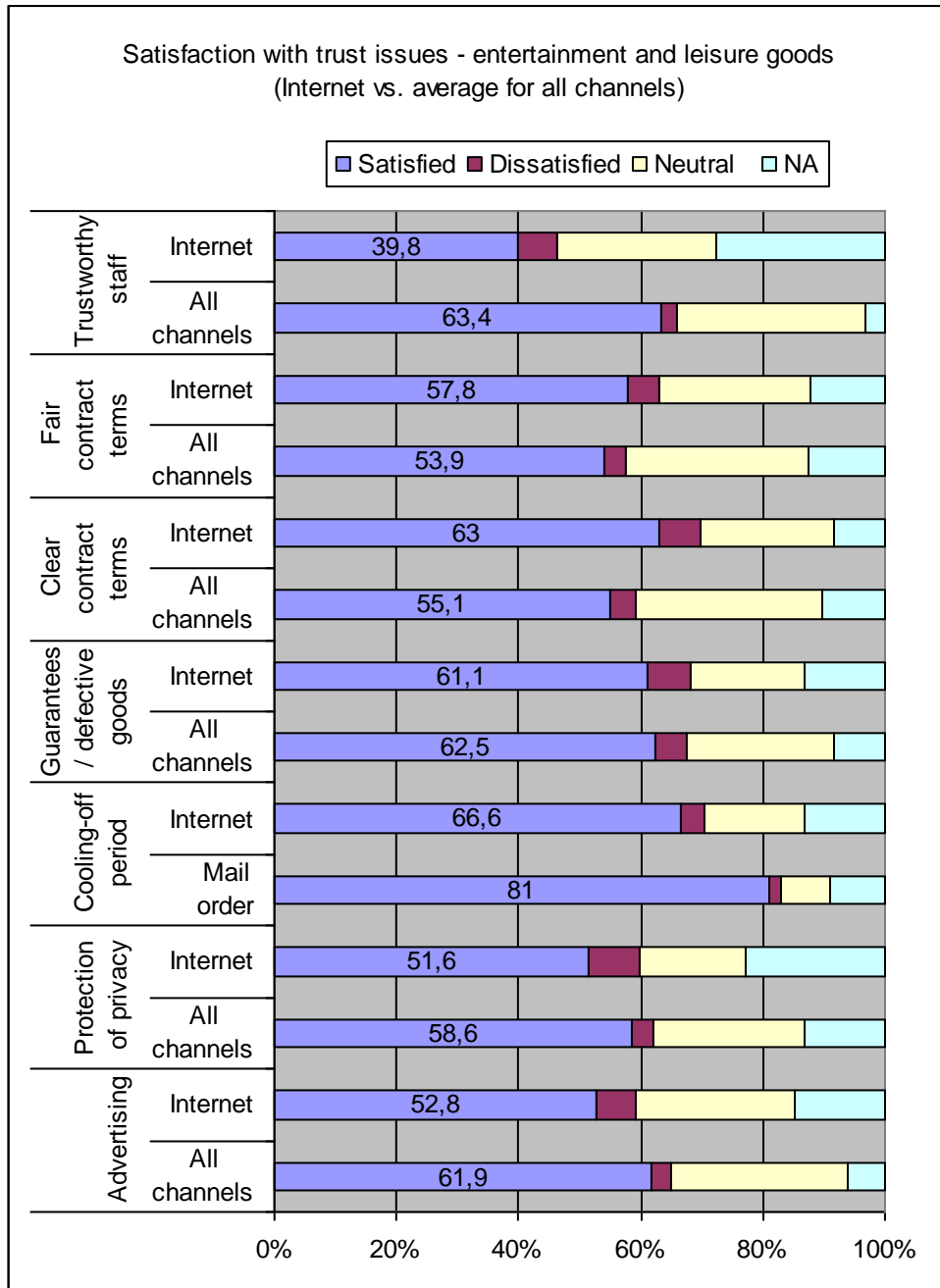


**Figure 11 - Satisfaction with quality of service - ICT products**



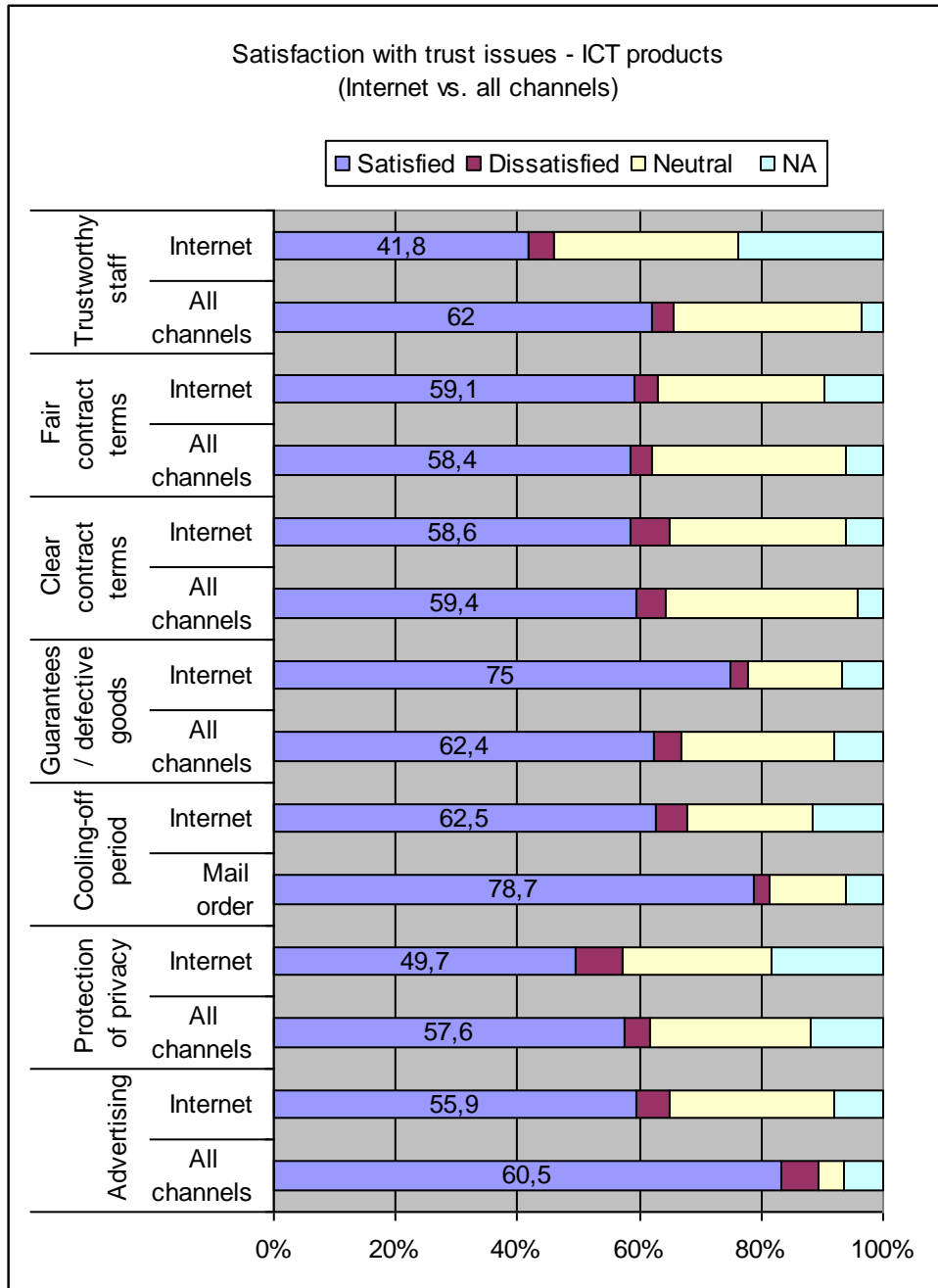
Source: IPSOS Belgium (2008)

**Figure 12 - Satisfaction with trust issues - entertainment and leisure goods**



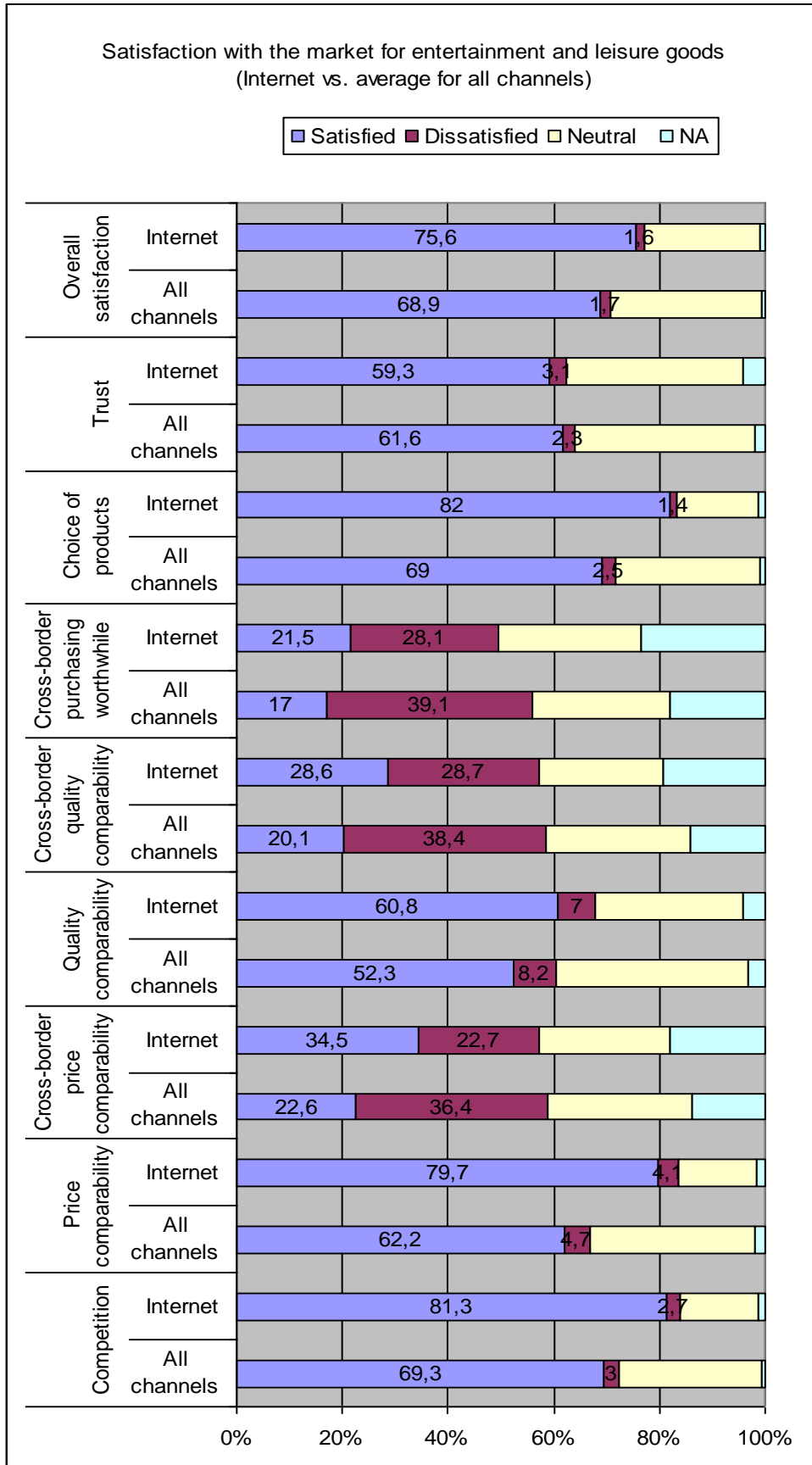
Source: IPSOS Belgium (2008)

**Figure 13 - Satisfaction with trust issues - ICT products**



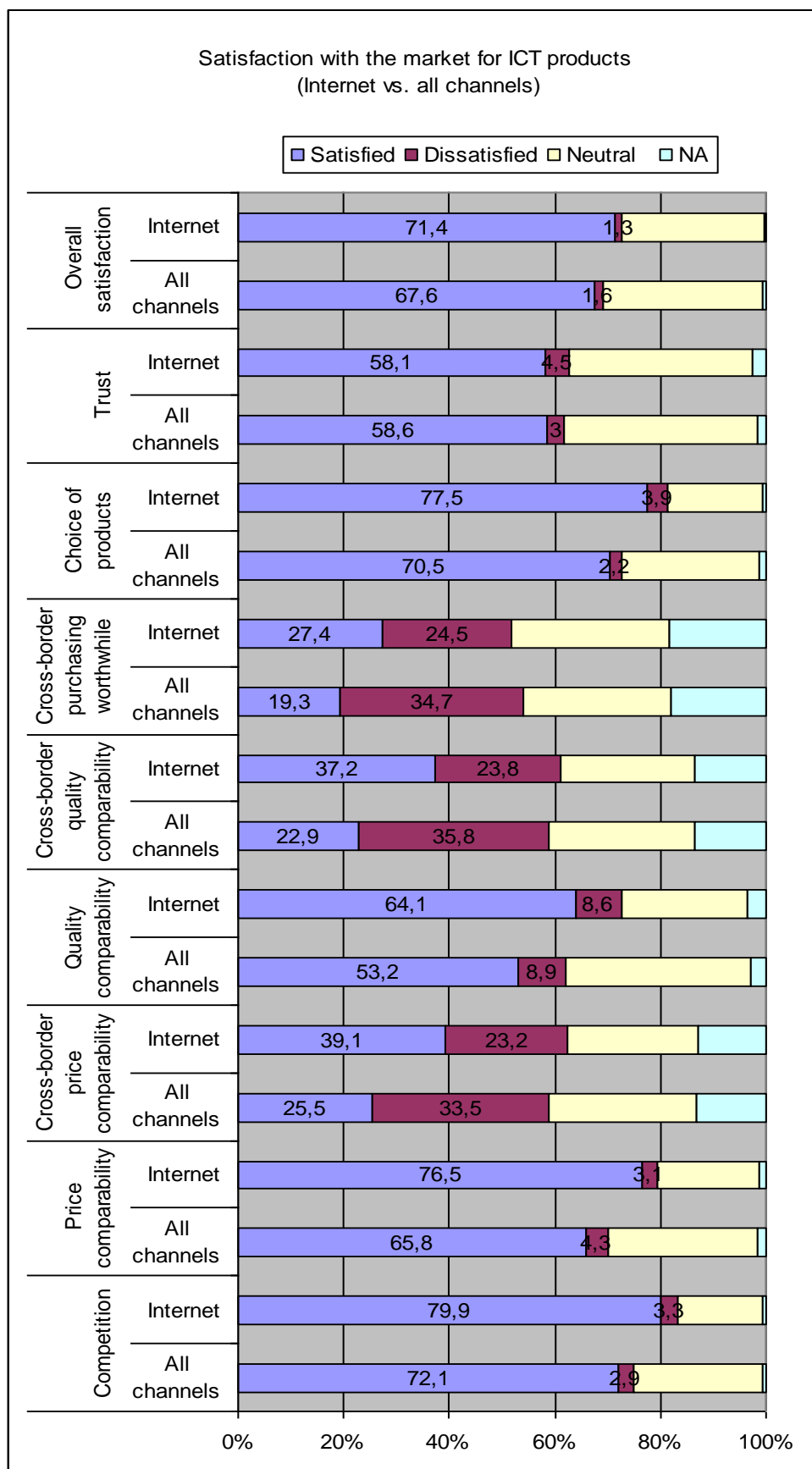
Source: IPSOS Belgium (2008)

**Figure 14 - Satisfaction with the market for entertainment and leisure goods**



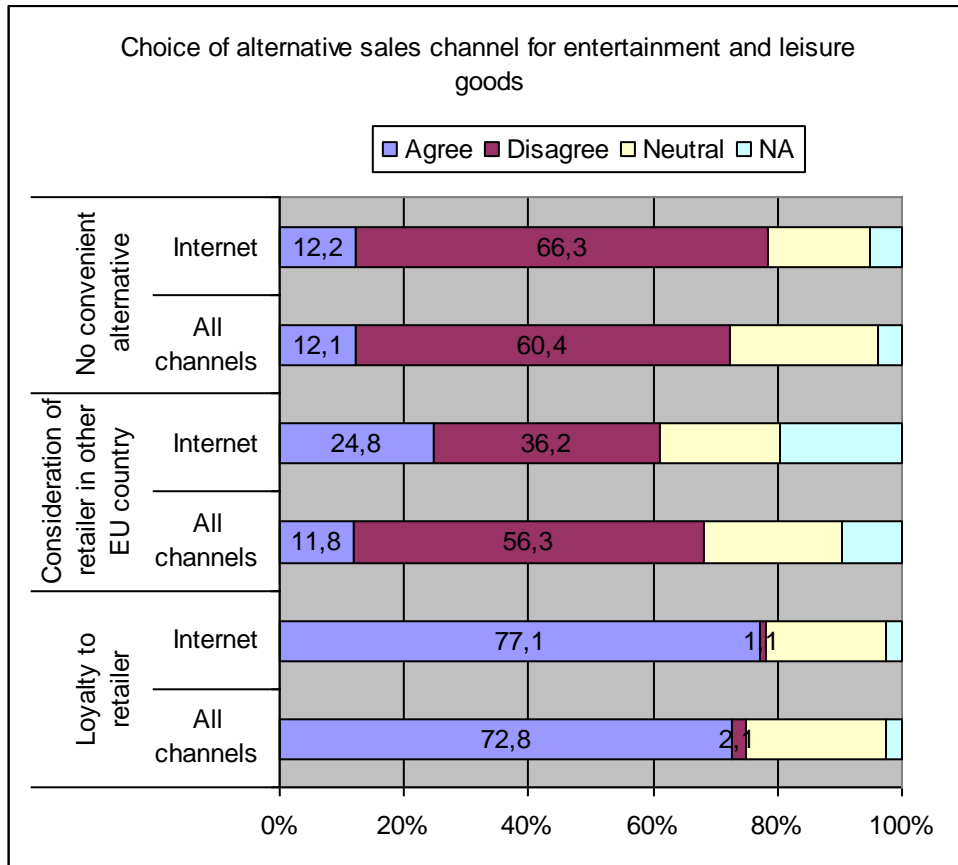
Source: IPSOS Belgium (2008)

**Figure 15 - Satisfaction with the market for ICT products**



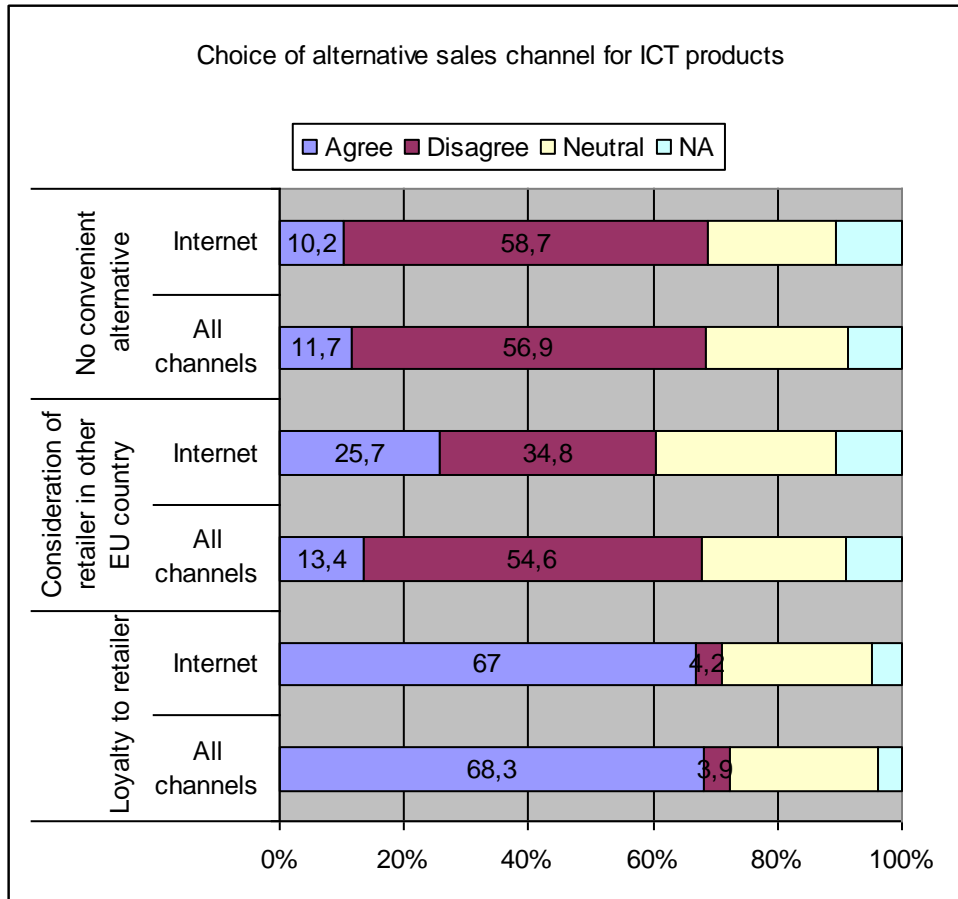
Source: IPSOS Belgium (2008)

**Figure 16 - Choice of alternative retail channel - entertainment and leisure goods**



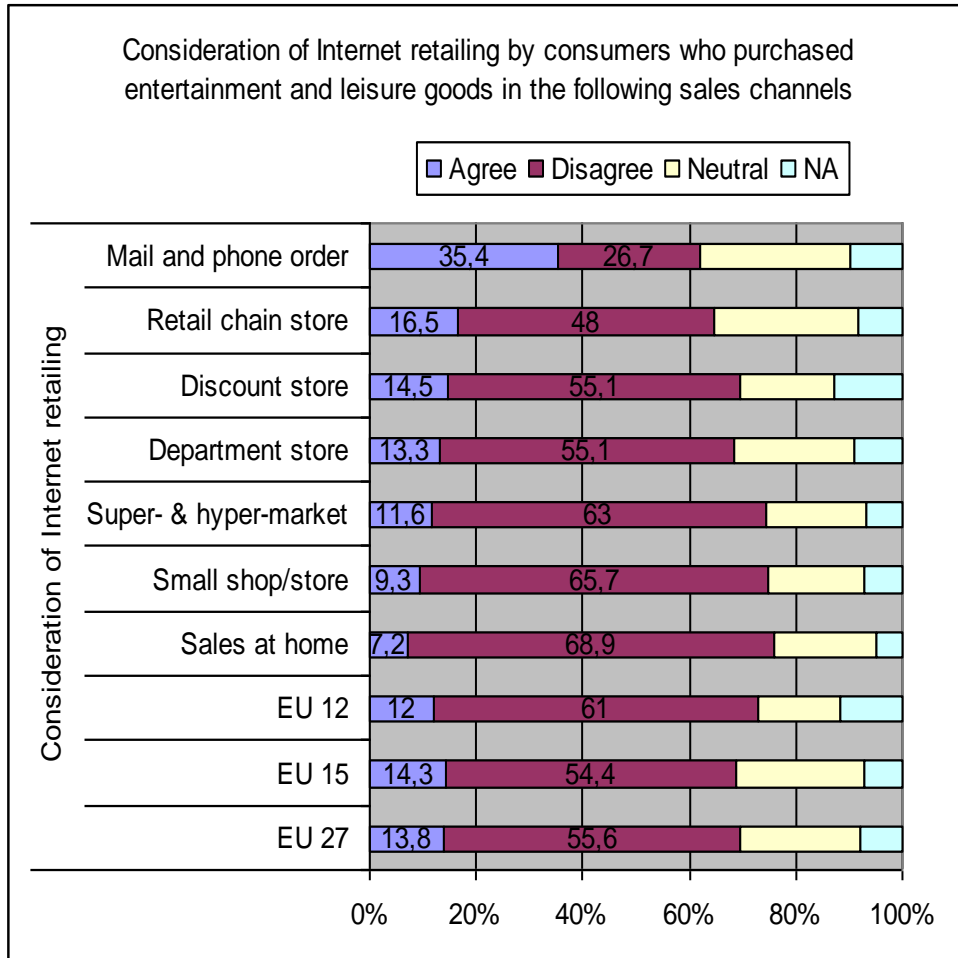
Source: IPSOS Belgium (2008)

**Figure 17 - Choice of alternative retail channel - ICT products**



Source: IPSOS Belgium (2008)

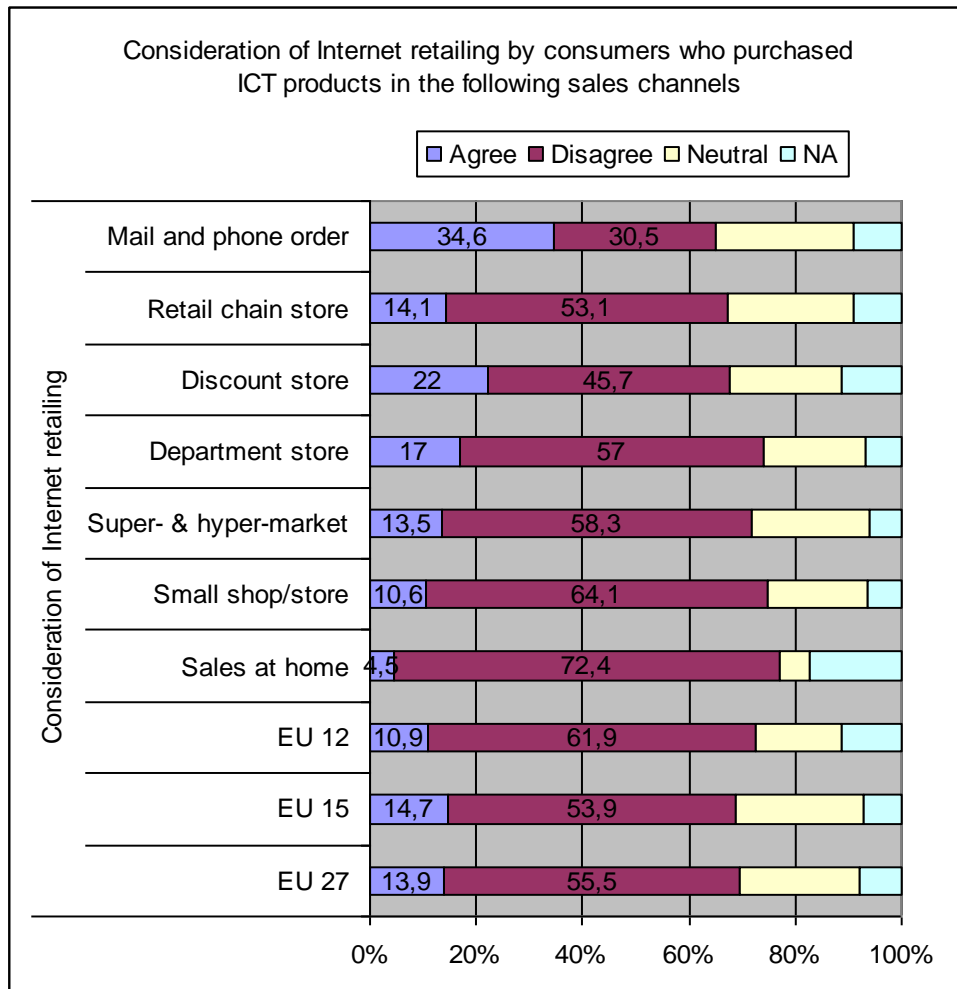
**Figure 18 - Consideration of Internet retailing - entertainment and leisure goods**



Source: IPSOS Belgium (2008)

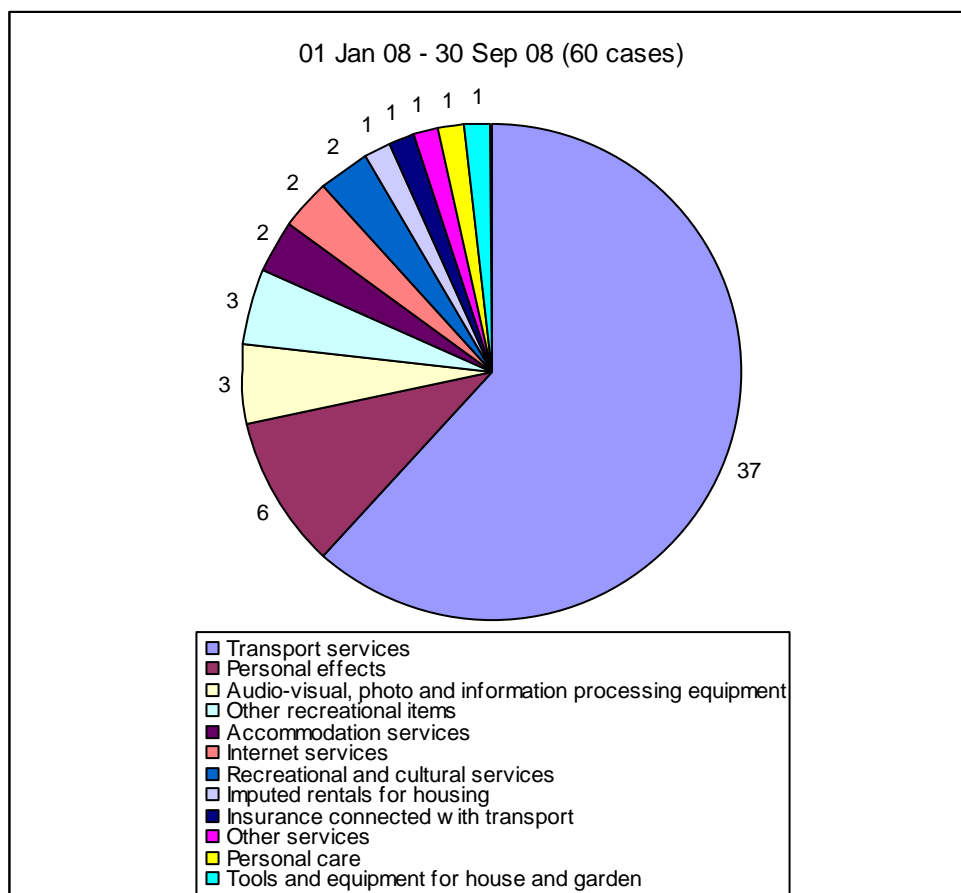


**Figure 19 - Consideration of Internet retailing - ICT products**



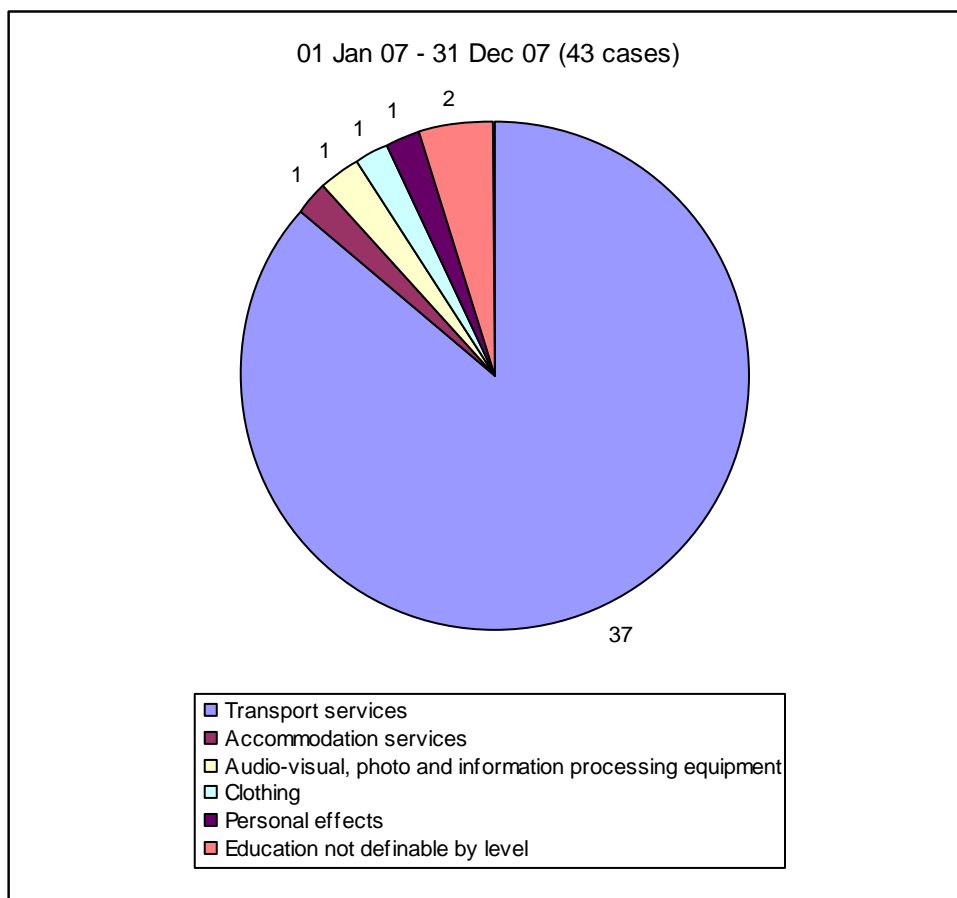
Source: IPSOS Belgium (2008)

**Figure 20 - Normal complaints and disputes handled by ECCs concerning refusal to sell and involving the Internet as the selling method, by COICOP category**



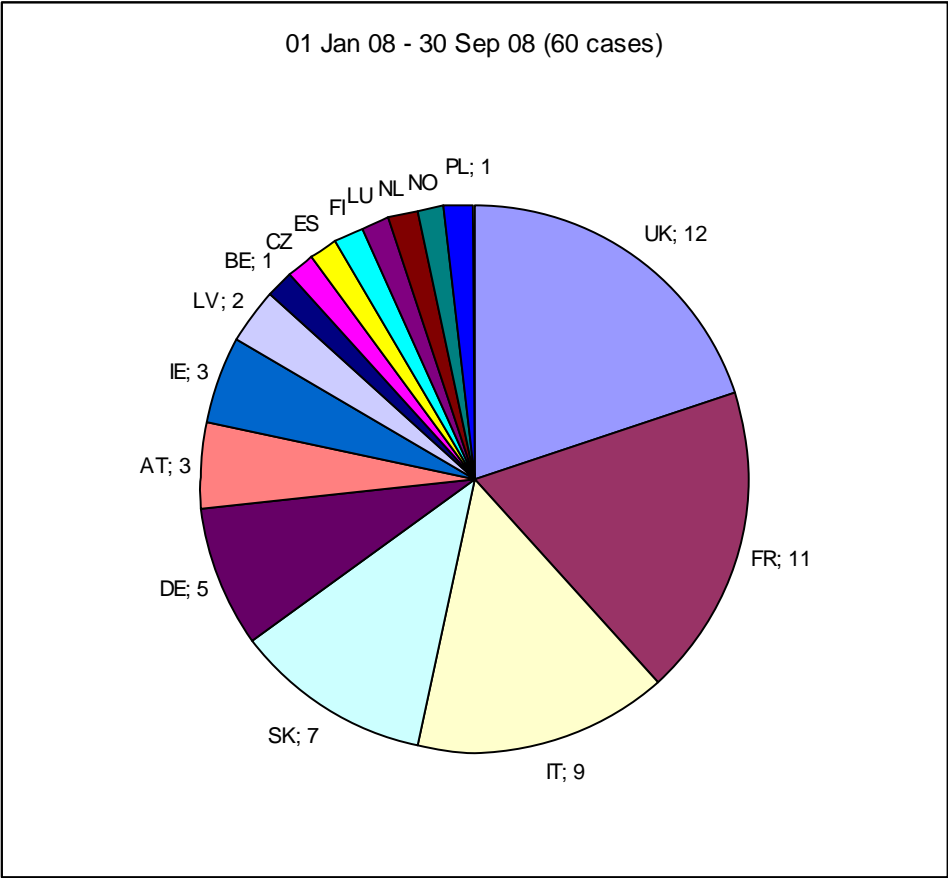
Source: ECC IT Tool

**Figure 21 - Normal complaints and disputes handled by ECCs concerning refusal to sell and involving the Internet as the selling method, by COICOP category**



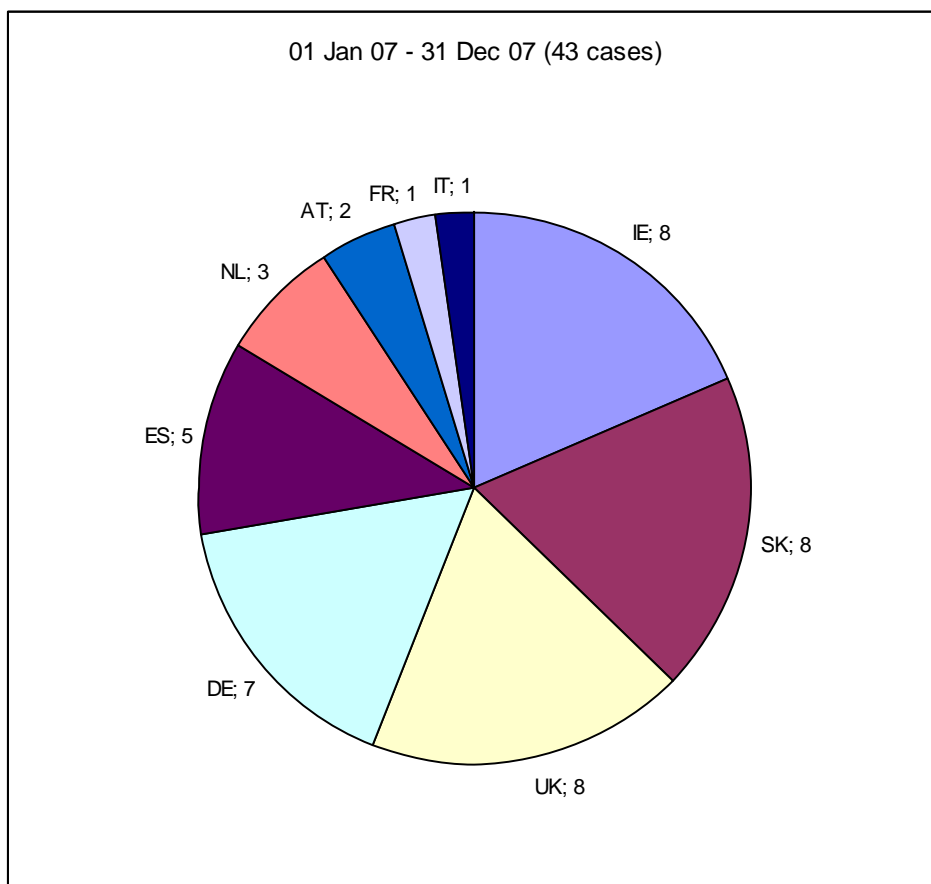
Source: ECC IT Tool

**Figure 22. Normal complaints and disputes handled by ECCs concerning refusal to sell and involving the Internet as the selling method, by country of the trader ECC**



Source: ECC IT Tool

**Figure 23 - Normal complaints and disputes handled by ECCs concerning refusal to sell and involving the Internet as the selling method, by country of the trader ECC**



Source: ECC IT Tool

**Table 2 – Reasons mentioned by interviewees that could discourage online businesses from selling across borders**

Language, cultural and technical barriers	<ul style="list-style-type: none"> <li>➤ Maintaining websites and customer support, complaint handling/dispute resolution in multiple languages</li> <li>➤ Different consumer preferences and technical standards translate into complex inventory management and website customisation</li> <li>➤ Failure to understand customer demographics outside home market</li> </ul>
Cross-border logistics	<ul style="list-style-type: none"> <li>➤ Lack of interoperability of postal systems and difficulty of managing the last mile to the consumer</li> <li>➤ "Border effect" increases cost of delivery</li> <li>➤ Difficult to set up reverse logistics to deal with returns</li> </ul>
Cross-border payments	<ul style="list-style-type: none"> <li>➤ Lack of interoperability of payment systems</li> <li>➤ Credit card fraud a real threat in cross-border transactions</li> <li>➤ Consumer reluctance concerning privacy/security</li> </ul>
Administrative and regulatory barriers  <i>inter alia</i> VAT, national transposition of WEEE, copyright, consumer protection rules, selective distribution, sector-specific rules	<ul style="list-style-type: none"> <li>➤ Uneven application at national level generates compliance costs that are prohibitive</li> <li>➤ Territorial nature of some rights may lead to market segmentation at retailer level</li> <li>➤ Retailers may refuse to serve some countries</li> </ul>
Search and advertising	<ul style="list-style-type: none"> <li>➤ Search engines might not naturally show cross-border offers, requiring more time and effort by consumers</li> <li>➤ Advertising is "geo-targeted"</li> <li>➤ Price comparison websites do not generally operate on a cross-border basis</li> </ul>

Source: interviews with business stakeholders conducted between September and November 2008

## ANNEXE 2

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## ANNEXE 3

### CONSUMERS AND ONLINE SHOPPING: OBSTACLES TO CROSS-BORDER E-COMMERCE

#### 1. FACT-FINDING EXERCISE AND STAKEHOLDER CONSULTATION

From September to November 2008, the Commission conducted a fact-finding exercise to determine the nature, extent and prevalence of obstacles to cross-border e-commerce in the EU that may be preventing consumers from shopping online. Various stakeholder groups were consulted on the basis of a questionnaire. Their replies are presented below.

At the meeting of the ECC Net of 16 September 2008, the Commission invited the European Consumer Centres (ECCs) to contribute their views. The network of ECCs handles cross-border consumer complaints throughout the EU. 27 ECCs replied.<sup>63</sup> In addition, statistical data on formal complaints and disputes handled by the ECCs was extracted from the ECC Net IT tool for the period running from 1<sup>st</sup> January 2007 to 30 September 2008.

The Commission consulted the consumer movement via the European Consumer Consultative Group (ECCG), at its meeting of 30 September 2008 and received replies from 11 consumer organisations.<sup>64</sup>

The Commission invited the Member States to express their views at the meeting of the Consumer Protection Cooperation Network (CPC) of 8 October 2008. The CPC is the EU-wide enforcement network of national, public enforcement authorities which has been given the means to exchange information and to work together to stop rogue traders or any other cross-border breach to consumer protection laws. Public or government authorities from 20 countries replied to the questionnaire.<sup>65</sup>

Finally, the Commission conducted a series of fact-finding interviews with business stakeholders and trade associations from September to November 2008 on the basis of the same questionnaire that was sent to consumer organisations, the Member States, and the ECCs. The Commission interviewed 17 representatives of trade associations, e-commerce companies ranging from pan-EU multinationals to individual sellers, industry-bodies or trust mark schemes, postal operators, search engines and price comparison sites.<sup>66</sup>

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<sup>63</sup> The following ECCs replied: Austria, Belgium, Bulgaria, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Slovakia, Slovenia, Sweden, Spain, and the United Kingdom.

<sup>64</sup> The following organisations replied: Altroconsumo (Italy), Bundesarbeitskammer (Austria), Club for Protection of Consumer Interests (Latvia), Consumentenbond (the Netherlands), KEPKA - Consumers Protection Centre (Greece), Norwegian Consumer Council (Norway), OIVO-CRIOC (Belgium), SOS - Consumers Protection Association (the Czech Republic), Union Luxembourgeoise des Consommateurs (Luxembourg), Verbraucherzentrale Bundesverband e.V. - Federation of German Consumer Organisations (Germany), Which? (United Kingdom).

<sup>65</sup> Public or government authorities from the following countries replied to the questionnaire: Austria, Cyprus, the Czech Republic, Estonia, Finland, Germany, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, the United Kingdom. In some countries, the questionnaire was forwarded to various departments or local authorities that do not formally sit on the CPC. However, as they represent public or governmental bodies, their views are included here. Ireland forwarded the questionnaire to several local or national authorities; their replies have also been summarised here.

<sup>66</sup> See Annex 4: List of stakeholders consulted

## 2. SUMMARY OF THE REPLIES OF THE CONSUMER PROTECTION COOPERATION NETWORK (CPC)

### Assessment of remaining obstacles to cross-border online shopping

*Question 1a: While many market barriers have been removed at EU level, trade levels suggest that consumers are not taking advantage fully of the opportunity to shop online in another Member State and businesses are still reluctant to sell cross-border. What are the reasons that could discourage consumers from purchasing goods or services on the Internet from e-commerce retailers based in another Member State or could discourage businesses from selling across borders? Please describe.*

The Member States cited several issues that could prevent consumers from conducting online purchases in another country. Taste, customer preferences, regional or national preferences, and the nature of the product or service may not be suitable to e-commerce in the first place. Consumers may not have access to the Internet or may not be comfortable using this technology. In addition, language barriers may prevent both consumers and sellers from entering into a transaction or from communicating after the transaction has been completed.

Putting aside these "natural" barriers, several practical issues affect the fulfilment of cross-border orders. Cross-border delivery, higher delivery costs, difficulties in receiving after-sales service, in returning goods or in exercising the right to a guarantee are all rendered more difficult and cumbersome when the trader is located in a different country.

Payment security, data protection and the fear of online fraud are often mentioned by respondents. In addition, the extra charges or complications linked to cross-border payments or credit card purchases are a burden. National payments systems may not be available in cross-border situations (for e.g. cash upon delivery) or pre-payment may make consumers wary of conducting cross-border purchases. The solution in this case may be to strengthen security rules for electronic transactions, educate consumers and promote alternative payment methods. Restrictions on the use of credit cards are also mentioned (sellers will not accept payments if the credit card holder has an address outside the seller's country). Hidden service costs or currency fluctuations that affect the final price and are not visible at the time of payment were also mentioned.

Consumers are more reluctant to make cross-border online purchases because they are unsure that the level of protection that they enjoy at home will apply when they buy cross-border. This is connected to the practical difficulties of ensuring that consumers will enjoy cross-border enforcement of their rights and to the fact that out-of-court mechanisms are not sufficiently developed in all countries. Several respondents add that the lack of confidence also stems from the fact that consumers are not well informed.

In some countries, this issue is compounded by a general apprehension with online sales in general and the difficulty of establishing whether a seller is trustworthy or not. Respondents proposed several ways to overcome these domestic and cross-border difficulties, such as setting up a single European trade registry, encouraging multilingual websites, setting up trust marks, promoting and strengthening cross-border complaints handling structures such as the European Consumer Centres (ECCs).

Concerning the various legal requirements applicable to online transactions, respondents' views were mixed over whether this constitutes an obstacle for consumers. The minimum harmonisation approach used by Member States in implementing consumer protection

regulations has resulted in a patchwork of national laws. On one hand, some respondents said that consumers often complain of the lack of transparency of the contract terms in relation to the applicable law. On the other hand, some respondents argued that consumers are often ill-informed about their rights and that legal considerations do not seem to influence their purchasing decision beforehand. Consumers are more concerned with the possibility of obtaining redress in case they encounter a problem with the seller. In addition, the law applicable to distance contracts should always be the law of the country of the consumer.

The reasons discouraging businesses from selling across borders are the perceived insecurity of transactions and the higher risk of fraud and non-payments in cross border sales, the difficulty to resolve complaints and conflicts cross-border and in ensuring an efficient after-sales service, the extra costs arising from cross-border delivery. Retailers are also concerned with the different national fiscal regulations and with the differences in national laws regulating consumer transactions. The fragmentation of the consumer protection legislation is a problem for businesses that can be addressed by further harmonising these regulations.

*Question 1b: Depending on where they are located, consumers may not be able to purchase goods and services on the same terms. What are the reasons that could prevent consumers from purchasing goods or services on the Internet from e-commerce retailers based in another Member State, under the same conditions that apply to consumers located in that Member State? Please describe.*

A majority of respondents referred to their answer to the previous question when answering this question, citing, among other reasons, delivery and payment options as having an impact on the differences experienced by consumers. VAT rates as well as the charges linked to the handling of the VAT procedures were also mentioned. Technical standards and norms as well as restrictions on the sale of certain goods may also influence the nature of the product offering.

A few respondents thought that one of the main issues preventing consumers from conducting online purchases from a trader based in other Member State were the territorial restrictions for the delivery of goods contained in the contract terms of the trader. Traders might apply different contractual terms for the following reasons: traders might be trying to minimize the risks they face in some countries, possibly as a result of the differences in consumer rights legislation in the Member States. Another reason might be the restrictions placed on sellers by manufacturers: "by blocking purchases from consumers in other countries with a higher price level, the manufacturers are able to divide the European market into 'price zones' where they claim a higher price in the countries with a higher price level".

One respondent wrote: "consumers have long complained of technical barriers to cross-border shopping—e.g. where the website automatically routes the shopper to a national site or where the national credit card is not accepted". Delivery costs, particularly of large physical items, may prevent consumers from making cross-border purchases on the same terms. This should not, however, have any influence on the cross-border offering of digital products such as downloads or software.

In respect to the latter, one respondent cited intellectual property regulations as having been used anti-competitively, adding that the Commission's antitrust decision of 16 July 2008 should encourage the cross-border licensing of music, which may help with rights clearance for pan-European online projects (the decision prohibits European collecting societies from

restricting competition by limiting their ability to offer their services to authors and commercial users outside their domestic territory).<sup>67</sup>

*Question 2: Are the same concerns shared by e-commerce retailers? If so, how do they affect the ability or willingness of companies to serve consumers equably? Please describe.*

Most respondents declined to answer this question or either referred to explanations already mentioned in their answer to questions 1a and 1b. The willingness to serve consumers in another country may depend on the number of orders from that particular country and the level of profitability expected. Retailers who have no direct experience with cross-border sales may be much more concerned with potential obstacles.

### **Complaints and enforcement cases**

*Question 3: Have national authorities or consumer organisations in your country been faced with complaints from consumers who were unable to purchase goods or services on the Internet from an e-commerce trader located in another Member State?*

With a few exceptions (Finland, Ireland), Member States were generally not aware of any complaints from consumers who were unable to purchase goods or services on the Internet from an e-commerce trader located in another Member State. In Ireland, the National Consumer Agency stated that hardware stores in the UK will not supply Irish consumers because the cost of delivery would be prohibitive. Another major web trader will not deliver to Irish consumers because of the charges it would incur for waste from electrical and electronic equipment (WEEE charges). In Austria, the majority of Internet cross-border complaints dealt with cases of fraud where consumers had been charged for services they had not purchased.

*Question 4: If so, could you please describe any actions that have been undertaken and the results obtained?*

Respondents were not aware of any actions undertaken in this context or did not have the authority to tackle this issue. Some of them referred to their national European Consumer Centre or to the national competition authority.

### **Causes of remaining cross-border obstacles**

*Question 5: Please describe the different causes that may prevent consumers from purchasing goods and services in another Member State or from benefiting from the same conditions offered to other consumers. To what extent can they be explained by the economic conditions of providing the good or service?*

The answers of the respondents were similar to those given in question 1a and 1b or indeed referred back to their answers to the previous questions. In addition, respondents mentioned

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<sup>67</sup> See Commission Decision of 16 July 2008 relating to a proceeding under Article 81 of the EC Treaty and Article 53 of the EEA Agreement (Case COMP/C2/38.698 – CISAC)

non-economic aspects such as the need to tackle cross-border enforcement with relation to the clarity of prices, the risk of false, misleading or deceptive advertising, unfair contract terms, scams and frauds.

*Question 6: Are these causes more prevalent when it comes to using the Internet as a sales channel, as opposed to traditional forms of retailing?*

Approximately half the respondents did not see a difference with traditional forms of retailing. One respondent pointed out that cross-border complaints are higher in Internet retailing simply because e-commerce makes cross-border purchases easier. The other half referred to the virtual nature of this sales channel and its implications for consumers compared to physical shops (problems relating to the distance between seller and consumer, the importance of trust and reputability, and the fact that legal considerations over the applicable law are not relevant to in-store selling). One respondent (Luxembourg) added that it was not his government's policy to favour one sales channel over another, but that all sales channels provided answers to different consumer needs. It was therefore in the interest of consumers to have a varied source of offers and it was expected that harmonisation of consumer regulations would encourage sellers to provide goods and services to small countries.

### **Additional comments and concluding remarks**

*Question 7: Please state any additional comments or concluding remarks that you may wish to communicate. We would welcome any references to supporting evidence or economic studies that your services may have carried out on this topic.*

A few respondents mentioned surveys of online shopping conducted in their country or examples of cases handled. One respondent (Estonia) deplored the lack of out-of-court protection afforded to consumers who had been treated unfairly and argued for more competencies for national enforcement agencies as well as for the need for traders to provide guarantees of their solvency. Cyprus mentioned plans to promote and support the use of electronic commerce by setting up a dedicated government office.

## **3. SUMMARY OF THE REPLIES OF THE EUROPEAN CONSUMER CENTRES (ECC NET)**

### **Assessment of remaining obstacles to cross-border online shopping**

*Question 1a: While many market barriers have been removed at EU level, trade levels suggest that consumers are not taking advantage fully of the opportunity to shop online in another Member State and businesses are still reluctant to sell cross-border. What are the reasons that could discourage consumers from purchasing goods or services on the Internet from e-commerce retailers based in another Member State or could discourage businesses from selling across borders? Please describe.*

Most ECCs gave an answer to this question from the consumer point of view while a few also offered insights into the reasons that could discourage businesses.

A certain number of reasons that could discourage consumers from purchasing goods or services from e-commerce retailers based in another Member States appear to be structural and linked to the sales medium itself. Several ECCs cited the access of households to the Internet and limited knowledge of information and communication technologies as a limiting factor.

Some concerns are linked to the particular constraints of distance selling. They relate to the security of online transactions (payment security or the preference to pay in cash) and to the reluctance to disclose personal data or credit card numbers on the Internet. In other instances, consumers may prefer to shop in person as they are uncomfortable with the "virtual", "anonymous" nature of the Internet or may prefer not to have to wait for their order to be delivered. Environmentally-conscious consumers may also prefer to buy locally in order to minimise the perceived impact of delivery on the environment.

In a majority of cases, these reasons were cited irrespective of whether consumers are shopping in their own country or not, but respondents seemed to think that the reluctance linked to these aspects is compounded by the fact that the transaction is taking place in a cross-border situation. This seems to be the case particularly when trust, consumer confidence, reliability and reputability are viewed as key factors. The fact that the transaction is taking place with a foreign entity that consumers may not be familiar with in their home market makes it difficult to ascertain the reputability of the trader and whether the consumer is exposing himself to the risk of fraud, scams or non-delivery. In connexion to this, brand loyalty to domestic brands may also be an inhibiting factor.

Consumers may therefore not be able to establish whether the trader is trustworthy or not: "consumers probably have more confidence when shopping in their home country because they already know [the merchant] or have heard about [him]". Therefore, the cross-border nature of the transaction is perceived as an extra complication, which is not worthwhile in the absence of strong financial incentives (i.e. savings): "for small purchases, (...) the difference (...) is not enough to take the risk of buying on an online shop from another country". Another ECC pointed out that "consumers tend to look first on the homepages of national traders and only if the prices are much lower, or if the good/service is only available in another Member State, will they buy from a foreign Internet trader". Some ECCs concluded that the lack of a well-known trust mark or e-commerce label at EU level is a factor working against cross-border selling.

The Polish ECC doubted whether it was actually possible for consumers to compare cross-border offers in the first place. Consumers using price comparison websites are not likely to find out about more interesting cross-border offers because some Polish comparison portals do not display offers from foreign online shops. In 2008, ECC Denmark carried out a price survey of flat screen television sets that concluded that it is difficult to find foreign web traders who will sell to Danish consumers, that it is difficult to compare the prices online and that savings were marginal once the total price including all costs were factored in. Price comparison sites should be encouraged to compare prices based on the total price and not just the price of the product itself.

The reasons that are directly linked to the cross-border nature of the transaction relate to the additional costs of delivery, language and communication problems in relation to after-sales services, payment systems, as well as confusion over the rules applicable and where/how to obtain redress.

Delivery problems are cited by respondents often in connection with the additional cost of transport, either because it is difficult to ascertain how much the consumer will be charged for them (postage costs unclear, additional costs and insurance may be charged), or because the

existence of these costs is a disincentive as such. One respondent stated that consumers don't find it interesting enough to buy from another Member State, as prices don't differ much once the cost of cross-border transport is factored in. Some traders may also impose a minimal order value for cross-border shipping. Several respondents thought that it was more difficult to resolve issues of non delivery, late delivery, delivery of the wrong order, or delivery of damaged goods with a foreign trader. Several respondents stated that some companies refused to deliver to their country (e.g. Estonia, Hungary, Malta, and the Czech Republic).

Payment systems were mentioned as a cross-border problem in connection with several issues. Firstly, domestic payment solutions may not all be available cross-border. Second, it is deemed difficult, if not impossible, to recover payments in cross-border situations, especially in instances when the trader has gone bankrupt. Thirdly, the arrangements in place by some traders to screen consumers' creditworthiness or identity before validating a transaction seem to be particularly burdensome, with some respondents reporting complaints of consumers being asked to provide copies of photographic evidence, utility bills or phone numbers.

The inability to understand a site in a foreign language was mentioned by most respondents as a major inhibiting factor. In addition, communication problems were often mentioned in relation to after-sales services and the difficulties of following up on complaints in a foreign tongue. A trader may market his products with advertising in the local language but may fail to offer that language as part of his customer service afterwards. In general, respondents were of the opinion that it is more difficult to get good after-sales services from a trader based in another Member State.

Most respondents generally stated in one form or another that consumers may be more reluctant to make online cross-border purchases because they are not sure that the level of protection that they enjoy at home will apply when they buy cross-border. Respondents mentioned several reasons in connection to this. Consumers may fear that businesses in other Member States are less likely to respect consumer protection laws. Consumers may also feel confused over which sets of rules apply to them, especially in the context of fragmented consumer protection rules (in theory there should be no discrepancy for the consumer who is always subject to the consumer protection rules of his home country) and whether they can seek redress against a foreign trader in the jurisdiction of their local court. Respondents often added that the lack of confidence usually stems from the fact that consumers are not well informed about their rights in the first place. One respondent pointed out that these types of problems can be reduced through consumer education to help increase awareness of consumer rights and redress mechanisms under EU consumer law.

One of the greatest concerns to consumers is the perceived difficulty of being able to enforce their rights and resolve a dispute if something should go wrong with the transaction. For some ECCs, the main legal challenge facing consumers resides primarily with the lack of redress mechanisms and out-of-court options available to them to enforce their rights, not with the differences between legal systems (the law of the consumer's country should always be the applicable law). One respondent noted that the introduction of the European Small Claims Procedure will allay consumers' concerns in this regard.<sup>68</sup>

A few respondents offered insights into the reasons that could discourage businesses from selling across borders. Some of them are symmetric to those of consumers; they concern delivery issues, language and translation costs, the difficulty to resolve complaints and to ensure an efficient after-sales service, the higher risk of fraud and non-payments, the cost and

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<sup>68</sup> Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European small claims procedure

effort of complying with different national legislations regulating consumer transactions and different national fiscal regulations. Concerning the different national legislations regulating consumer transactions, several respondents welcomed the legislative initiative of the Commission on consumer contractual rights in the hope that it would facilitate compliance by businesses.

*Question 1b: Depending on where they are located, consumers may not be able to purchase goods and services on the same terms. What are the reasons that could prevent consumers from purchasing goods or services on the Internet from e-commerce retailers based in another Member State, under the same conditions that apply to consumers located in that Member State? Please describe.*

Respondents thought that differences in the conditions applicable to consumers were reflected primarily in the price of the goods or service. The cost of transport was the factor cited most frequently. However, it is difficult to deduce from their answers which factors are predominant. Respondents cited several reasons why prices might differ:

- The cost of cross-border logistics: a majority of respondents cited distance and the extra costs of delivery abroad, causing the final prices to be less competitive. According to one respondent this may include additional insurance for the shipment if it is sold to certain countries.
- Regional/national pricing and geographic segmentation: traders may price their products differently depending on the country, creating situations where price differentials are accompanied by arrangements that segment the distribution of goods or services (see below).
- The cost of after-sales and managing returns may be different. In some countries, consumers may make more use of their right to a cooling-off period or may complain more, which presumably increases the cost of handling returns which are then passed on in the price charged to consumers. In some situations, the fact that there are no brand representatives of the manufacturer's service-centre in the Member State of residence of consumer could potentially result in a more costly and less effective after-sales service.
- Certain promotional offers that can have an impact on the final price paid by consumers may not be available in all countries. For example, a service that can be purchased online may require on-site performance, by the seller or his representative, which might not be available in all Member States (such as offers of "free delivery" or "free installation").
- Different VAT rates may apply.
- Customs regimes may be different (only applicable to Iceland).
- Regulatory differences may translate into different prices.
- Currency conversion for countries not part of the Euro zone.

In addition, respondents interpreted the question in a qualitative way. In their view, different conditions could also mean that:



- Consumers do not benefit from the same level of after-sales or that delivery may be more problematic. The performance of Member States' postal operators and courier services may also vary.
- Some goods are not intended or recommended for use in particular Member States, particularly because of technical norms (e.g. compatibility with electrical system).

Finally, some answers focused on the reasons that could prevent consumers from purchasing goods or services from cross-border sellers and were thus partly similar to the answers to question 1a:

- For some countries (e.g. Estonia, Hungary), the main issue is that sellers set territorial restrictions for the delivery of goods.
- Cultural and psychological reasons, former negative experiences with cross-border trade and lack of confidence may hold consumers back.
- Consumers may not be aware that conditions are different in the first place.

Concerning situations where price differentials are accompanied by arrangements that segment the distribution of goods or services, respondents' opinions were split, making it difficult to draw a conclusion as to the main reason underpinning these arrangements.

The Danish ECC reported several reasons for price differences, including situations where the trader simply may see an opportunity to earn more money by selling his goods at a higher price.

The Belgian ECC stated that consumers sometimes complain of the fact that they are redirected to the Belgian version of an online store where prices are higher, a possible explanation being that some businesses presumably set up barriers in order to maintain different prices and to protect specific markets.

According to ECC Malta, in some situations, "different subsidiaries in different Member States of a multinational will refuse to sell in another Member State and refer consumers to the seller in their own Member State—where prices can be higher".

The Czech ECC gave the example of a consumer residing in the Czech Republic who wanted to fly from Germany, but once he entered the Czech Republic as his country of residence, the airfare tripled. However, he later found out that by configuring his route to depart from his home country, the price was practically the same.

ECC France and ECC Germany were of the opinion that generally retailers offer goods and services cross-border under the same conditions for all consumers (in which case only the shipping costs would be different), but that some traders redirect consumers to a national webpage where conditions and prices are significantly different from one country to another. This practice seems to be more widespread for cross-border financial services, car rental, flight tickets and train tickets.

They note that large companies that propose different web portals to their international clients also put in place corresponding national customer services, based on the law of the consumer applicable to the transaction. However, in their view, the differences in legal systems are not the main reason. Rather, they see economic reasons (the profitability of establishing a branch in another country or of setting up a national website) as the main driver: "in the end, it is an entrepreneurial decision whether goods/services are sold abroad". (For financial services and

the insurance sector, the differences can be explained by the risk assessments that are conducted on a country-basis).

Both ECCs conducted price comparisons (not restricted to e-commerce) between France and Germany and found significant differences in two border regions, including for a mail order company with branches in both countries.<sup>69</sup>

*Question 2: Are the same concerns shared by e-commerce retailers? If so, how do they affect the ability or willingness of companies to serve consumers equably? Please describe.*

This question elicited low response rates. Many respondents did not have an answer or thought that business stakeholders would be better placed to provide one. Opinions were split over the degree of awareness of companies.

On the one hand, some ECCs noted that even if e-commerce potentially represents an excellent opportunity to extend businesses' operations across borders, traders may be unwilling to consider new distribution channels if the customer base is not sufficiently appealing and if regulatory barriers are too important.

On the other hand, some ECCs thought that companies might not be able to serve all consumers equably, given the various factors that impact on the price of goods or services or on the costs of after-sales service. The vertical agreements in place between producers and retailers also limit the ability of some retailers to extend the geographical scope of their distribution.

Several ECCs noted that the trader's assessment of whether or not to sell or provide the service to certain jurisdictions should be viewed as the result of a business decision. For the ECCs, the issue is controversial, as this kind of refusal to sell can be interpreted as discrimination based on the place of residence of the consumer whereas for others this practice is acceptable, based on the freedom of choice for contractual parties.

## **Complaints and enforcement cases**

*Question 3: Have national authorities or consumer organisations in your country been faced with complaints from consumers who were unable to purchase goods or services on the Internet from an e-commerce trader located in another Member State?*

Roughly half the ECCs reported cases or complaints from consumers who were unable to purchase goods or services on the Internet from an e-commerce trader located in another Member State. The other half did not report any complaints cases or did not know of any.

In general, for the ECCs that reported complaints, such cases were not frequent for the reason that consumers do not necessarily lodge complaints in such instances and simply shop elsewhere. In addition, such concerns, when they exist, might not be registered as complaints because the trader is not acting illegally. In such instances, consumers can only be encouraged to enquire with the trader as to the reasons for refusing to sell.

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<sup>69</sup> Euro-Info-Consommateurs/Chambre de consommation d'Alsace: "Analyse des résultats de l'enquête comparative des prix dans la région Alsace et Bade-Wurtemberg", May 2007

Statistical data on formal complaints and disputes handled by the ECCs was extracted from the ECC Net IT tool for the period running from 1<sup>st</sup> January 2008 to 30 September 2008. Over this period, the ECCs handled 2523 cases involving e-commerce as the sales medium. Out of these complaints, 60 cases involved a refusal to sell (approximately 2.3% of cases). More than half the cases concerned transport services, including 31 cases in air transport alone.

For the period running from 1<sup>st</sup> January 2007 to 31 December 2007, the ECCs handled 2489 normal complaints and disputes involving e-commerce as the selling method. Of these complaints, 43 involved a refusal to sell (approximately 1.7% of cases), suggesting that the number of complaints related to this issue is slightly on the rise. Of these 43 cases, an even higher proportion concerned air transport alone (32 cases). The breakdown of complaints by product/service category and by country of the trader is presented in figures 20 to 23 in Annexe 1.

*Question 4: If so, could you please describe any actions that have been undertaken and the results obtained?*

As a result of the relatively low number of cases, most ECCs were not aware of many enforcement actions that have been undertaken by national authorities. Some of them referred to the need to consult the Consumer Protection Cooperation Network (see the summary of replies from the CPC).

Some ECCs hastened to add that as traders enjoy the freedom to decide upon their own business strategy and where they wish to operate their business, such decisions can hardly be the subject of enforcement actions:

"In the majority of cases, the decision of an e-commerce trader to not supply goods or services to a consumer based in another country is taken from a purely commercial point of view. National authorities or consumer organisations do not have the power to compel a trader to provide goods or services to a particular country, as this would essentially be deciding the trader's business and trade decisions on his behalf" (ECC Ireland).

On the other hand, ECCs also pointed out that the EU is moving to legislate against discrimination based on the place of residence in passenger air transport. They mentioned the new EU regulation on common rules for the operation of air transport services in the Community, which bans price discrimination on the basis of the place of residence or the nationality of the customer or the place of establishment of the travel agent.<sup>70</sup>

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<sup>70</sup> Regulation of the European Parliament and of the Council No 1008/08 of 24 September 2008, OJ L 239, 31 October 2008

## Causes of remaining cross-border obstacles

*Question 5: Please describe the different causes that may prevent consumers from purchasing goods and services in another Member State or from benefiting from the same conditions offered to other consumers. To what extent can they be explained by the economic conditions of providing the good or service?*

Most respondents referred back to their answer to questions 1-2. When it comes to price differences, one ECC commented, "it makes more business sense for a company to price its product to suit the market it is being sold on". Respondents mentioned factors such as wealth, the economic situation, VAT rates, the cost of marketing operations, consumer willingness to pay, and consumer demand. The latter two are driven by income levels, which can vary significantly in different Member States. Therefore, products sold a certain price in one country could be considered standard, whereas the same price in another country might lead them to be considered as a luxury good.

In addition, cultural factors, currency, language and any notable differences in taste could explain the practice of tailoring individual websites to suit the consumers of a particular country. Differences in delivery costs were frequently mentioned, especially since they can affect not only the price of forward shipping, but also the cost of after-sales service and returns in some countries (respondents point out that the consumer is entitled to a replacement or a repair, in either case free of charge. Since this also includes the postage costs incurred by the consumer in sending back the item to the seller, which should be borne by the trader, this may also enter the trader's considerations in some countries).

In the area of consumer electrical or electronic goods, the European Consumer Centre in Ireland regularly receives complaints from Irish consumers who are informed by a leading UK e-commerce retailer that they will no longer ship electrical or electronic equipment to Ireland. This seems to be the result of the transposition of the Waste Electrical and Electronic Equipment (WEEE) Directive 2002/96/EC into Irish legislation.

*Question 6: Are these causes more prevalent when it comes to using the Internet as a sales channel, as opposed to traditional forms of retailing?*

Most respondents agreed that the problems outlined above are linked to the specific nature of e-commerce. However, some also noted that e-commerce has enabled consumers to overcome the main obstacle to cross-border shopping in the EU: distance.

From the consumer's point of view, there are only two other situations where consumers are in contact with a trader in another Member State: either consumers go on a shopping trip to a neighbouring country (because prices or quality are more interesting, or certain goods and services are not offered in their own country) or conduct purchases during a holiday or business trip abroad. In these situations, the place of residence of the consumer is of no relevance: the same conditions apply to all consumers.

Some of the problems faced by consumers online may be the result of unintended consequences. One ECC noted that "the Internet provides access to companies in other countries who may never have had any intention of supplying goods or services outside of their own country. The fact that they maintain a website and use it as a sales channel invariably means that consumers from all over the world will be able to access the website."

As a result, small local businesses intending only to operate within a fixed and confined geographical territory within their own Member State may receive orders that they are not

prepared to deal with. The same respondent added, "the fact of his using a website to advertise and offer for sale his products should not impose upon him [the seller] obligations to supply the entire European Union, particularly as he would not be under any such obligation other than by virtue of the fact that he runs and maintains a website".

### **Additional comments and concluding remarks**

*Question 7: Please state any additional comments or concluding remarks that you may wish to communicate. We would welcome any references to supporting evidence or economic studies that your services may have carried out on this topic.*

The ECCs have analysed the problems linked to online shopping in a series of reports on consumer complaints.<sup>71</sup> In their concluding remarks to this consultation, the ECCs emphasised that there was room for improvement in the following areas:

- A common European approach on how to distinguish serious web traders from fraudulent ones. Initiatives exist in this area, such as various trust mark schemes and an online shopping assistant, but the lack of an easy and uniform way of distinguishing between reputable web traders and fraudsters is keeping consumers from shopping abroad.
- Efficient alternative dispute resolution mechanisms (ADR). The lack of well-functioning ADR mechanisms in most EU countries means that consumers are often dependent solely on the goodwill of traders when seeking redress.
- Effective enforcement of general consumer protection rules. This was found to be lacking in several countries. One respondent goes as far to suggest that it should be possible for enforcement bodies to order websites to be closed temporarily, or to impose solvency requirements on online traders.
- Promote transparency. Traders could be encouraged to clarify or explain their sales policy instead of informing consumers after the fact. For example, web traders should state clearly on their websites to which countries they deliver and clearly itemise delivery costs, credit card fees, etc.
- Harmonisation of consumer law. Several ECCs welcomed the Commission's initiative for a proposal for a Directive on Consumer Rights that increases the level of harmonisation in the EU.<sup>72</sup>
- Provide safety nets for credit card payments. One respondent suggests that credit card operators could play the role of trustees in online transactions.

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<sup>71</sup> See inter alia *The European Online Marketplace: Consumer Complaints 2005* and *The European Online Marketplace: Consumer Complaints 2007*, accessible at:

<sup>72</sup> [http://ec.europa.eu/consumers/reports/reports\\_en.htm#ecc-net](http://ec.europa.eu/consumers/reports/reports_en.htm#ecc-net)  
See Proposal for a Directive on Consumer Rights (COM(2008) 614 final) of 8 October 2008.

#### 4. SUMMARY OF THE REPLIES OF CONSUMER ORGANISATIONS

##### **Assessment of remaining obstacles to cross-border online shopping**

*Question 1a: While many market barriers have been removed at EU level, trade levels suggest that consumers are not taking advantage fully of the opportunity to shop online in another Member State and businesses are still reluctant to sell cross-border. What are the reasons that could discourage consumers from purchasing goods or services on the Internet from e-commerce retailers based in another Member State or could discourage businesses from selling across borders? Please describe.*

The explanations given were similar to those given by the other groups of stakeholders. Compared to other stakeholders, some consumer organisations emphasised the particular challenges linked to the provision of digital goods, in addition to the challenges posed by the cross-border sale of goods.

There are many reasons that discourage consumers from making cross-border purchases. Consumers may prefer to shop in their own language. Internet penetration is uneven throughout the EU and some consumers prefer to shop in physical stores. Consumers are concerned about payment security and privacy issues. Consumers are also concerned that it will be more difficult to obtain a refund from a trader in another country and they are worried about the complications linked to returning goods or obtaining repairs and replacements for defective goods. Environmentally-conscious consumers may also think that shipping goods over long distances is unsustainable.

Consumers are concerned that products purchased in another country are more likely not to be delivered and are reluctant to pay higher delivery charges. One respondent commented that this is the reason for the rapid growth of online purchases of non-physical goods such as music downloads, or electronic ticketing for flights and concerts.

Consumers are concerned that they will not enjoy an equally high level of consumer protection when purchasing in other countries. In particular, this fear relates to doubts that cross-border enforcement is possible. This is compounded by the lack of awareness of consumers, with one respondent commenting that "terms and conditions in different Member States do not affect the consumer decision to shop online because consumers start to think about their rights only after things go wrong".

The main problems of consumers in these situations are linked to communication with the trader (language barriers, costs associated with communication, postal charges, or legal help etc.) and with conflict of law rules that represent an obstacle to reaching a legal remedy for many consumers. There is also a lack of out-of-court settlement procedures, which, in most complaints, is the most feasible solution.

Consumer confidence is also dented by the apparent ease with which unfair commercial practices and scams can be used online, and the difficulties of spotting them quickly. One respondent advocates that the best way to enhance consumer confidence is through education, legislation and enforcement and mentions the Online Shopping Assistant, an interactive online tool developed by the network of European Consumer Centres (ECC Net).

Consumers do not choose a trader based only on price. Purchasing decisions are based on customer recommendations from family and friends, or comparative product testing, and these factors are linked to the consumer's residence and language. As a result, one respondent thought that the emphasis should be on cultural restrictions rather than artificial geographical restrictions.

However, some consumer organisations were also strongly aware of restrictions based on residence and of the fact that some traders might deliberately decide not to serve consumers in their country. This can relate to the refusal by the trader to sell products to consumers based in a particular country, or to the trader offering the same product for sale in different Member States at different prices (on the latter point, see answers to next question). Luxembourg's consumer organisation UCL provided numerous instances of consumers reporting on apparent restrictions based on the country of residence of the consumer, on the part of pan-European traders and small- and medium-sized companies alike.

It is difficult for consumers to identify where traders are willing to sell what. The fact that most traders now have a website that is visible to consumers everywhere means that they are liable to receive orders from customers in countries where they are not actively marketing their products. The lack of transparency on the part of various web traders as regards the countries to which they are willing to offer their products or services for sale frustrates the expectations of consumers who meet these practices with incomprehension. One respondent proposed to impose a pre-contractual obligation for traders to clearly indicate any restrictions on their homepage and to provide explanations to consumers upon request.

The barriers limiting online opportunities for consumers are manifold, but several organisations mentioned that they were not limited to the sale of goods and also included the issue of the cross-border provision of services in their reply (citing digital products and the travel industry in particular). Several respondents gave an assessment of the reasons underpinning these barriers (see question 5 below).

*Question 1b: Depending on where they are located, consumers may not be able to purchase goods and services on the same terms. What are the reasons that could prevent consumers from purchasing goods or services on the Internet from e-commerce retailers based in another Member State, under the same conditions that apply to consumers located in that Member State? Please describe.*

Respondents referred to their answers to the previous question and to the higher price of delivery (or longer delays). Some traders may offer different conditions or different prices via customised national websites.

According to some respondents, traders are reluctant to sell to (and thus discourage) consumers from countries that offer more consumer protection than the country in which the trader is located. Another legal reason for the reluctance to provide cross-border offers could be the multiple national variations in pre-contractual information duties, which could deter small and medium retailers especially (it is particularly costly for small sellers to adapt their web sites to cross-border selling). Respondents did not always share the same views as to the results of greater harmonisation of consumer protection regulations in this area.

Another problem is the differentiation of prices depending on the consumer's residence. In some instances, consumers may not choose which website to order from as they are automatically redirected to the national site. This makes it impossible for consumers to compare prices. Some national sites may require an address in that country or a national

payment card. While acknowledging that this differentiation of prices can be detrimental to consumers, one respondent thought that it was primarily a competition issue.

Admittedly, there are several different parameters that impact the charges paid on top of the price of products by consumers conducting cross-border purchases: such as transport, VAT, currency conversion (even customs duty and clearance charges according to one Norwegian organisation). One respondent commented that retailers might not want to offer their products at different prices and instead refuse to deliver to certain Member States.

*Question 2: Are the same concerns shared by e-commerce retailers? If so, how do they affect the ability or willingness of companies to serve consumers equably? Please describe.*

Respondents thought retailers would be better placed to answer this question.

### **Complaints and enforcement cases**

*Question 3: Have national authorities or consumer organisations in your country been faced with complaints from consumers who were unable to purchase goods or services on the Internet from an e-commerce trader located in another Member State?*

Roughly two-thirds of respondents were aware of issues or cases in this area, but were hard-pressed to provide complaints statistics, either because: they refer cross-border complaint cases to their national European Consumer Centre; such inquiries cannot be considered as actual complaints and are largely unreported; or case numbers are not significant compared to other types of cross-border complaints (concerning mostly delivery, guarantees, or unfair commercial practices according to some respondents).

One organisation wrote: "The amount of complaints we receive about cross-border shopping is comparatively low. This can be related to the low number of cross-border purchases in general, but also to the sentiment that exists with consumers that it will cost far too much effort to enforce their rights with a foreign trader. Consumers also have very low expectations on the outcome of complaining to a foreign trader".

Another respondent added that, "consumers might not inform our organization about these cases. Many of them don't understand these practices as a problem to solve. They don't need legal help and they are able to find the same product in other e-shops".

Two organisations mentioned the case of a major web trader offering music downloads. The UK consumer organisation Which? filed a complaint with the European Commission (DG Competition) about the site's pricing policy.<sup>73</sup> While the site subsequently abolished price differentials for customers based in the UK, consumers in some countries are still prevented from accessing the service or from accessing all the songs on offer.

Consumer organisations also reported on cases of online scams or fraud. One particular online scam that seems to be popular with fraudsters consists in misleading consumers to sign contracts and then to charge them with more money due to their country of origin.

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<sup>73</sup> See case COMP/C-2/39154 PO/iTunes



*Question 4: If so, could you please describe any actions that have been undertaken and the results obtained?*

See answers to question 3.

### **Causes of remaining cross-border obstacles**

*Question 5: Please describe the different causes that may prevent consumers from purchasing goods and services in another Member State or from benefiting from the same conditions offered to other consumers. To what extent can they be explained by the economic conditions of providing the good or service?*

The underlying causes of the obstacles that consumers are faced with can be traced back to the explanations provided in questions 1a and 1b. Some practical aspects mentioned above affect the cross-border sale of physical goods, such as the cost/time of delivery, problems with online payments, sales returns, language barriers, etc. In most cases, these factors influence the final cost paid or the ability to provide the good or service cross-border. However, some barriers mentioned are regulatory and in this case it is more difficult to understand to what extent they are underpinned by the economic conditions of providing the good or service.

For example, selective distribution systems limit the territorial scope of activity of retailers or distributors to actively market products in another country. Competition policy allows for the use of selective distribution by certain manufacturers in certain situations where it is objectively justified (in particular by certain public health and safety considerations).

However, in some situations, restrictions are less clearly justifiable in particular when considering the use of online distribution channels as opposed to in-store sales (for example the justification that a certain level of staff qualification, after-sale service, or sale ambience is needed). According to one respondent, "it should be the consumer who dictates when this is and is not appropriate, not the retailer".

In addition, passive sales are relatively rare, according to the same respondent, despite the fact that the vertical block exemption prohibits restrictions on passive sales. In practice, they are discouraged by the incentives placed upon exclusive distributors by manufacturers, or by the territorial nature of intellectual property rights that exist in virtually any product.

In some instances, the refusal to sell or differences can be justified by the practical factors detailed above, but in other instances it is more manipulative. "Such differences will only come to light by accident or if an investigator is specifically looking for the problem – the average consumer will not spend enough time to notice".

Turning to the cross-border provision of services, one respondent wrote: "it is hard to understand, and lacks all market logic and reason, that digital cultural products like audio and audiovisual products along with literature and software are almost impossible to access cross-border. Given the nature of these digital products, cross-border online shopping is long overdue in this market, and should be dealt with accordingly".

Another respondent deplored the fragmentation of copyrights licensing that has resulted in a compartmentalisation of the market for digital music (similar issues are likely to arise in relation to downloadable films). The territorial nature of licensing of these rights, based on collecting societies that operate on a national basis, as well as the multiple rights (be they recording or publishing rights) related to an individual track, force companies which could otherwise operate on a pan-European basis to fragment the market.

The same respondent pointed out that this issue is not limited to the music industry, to copyright or to the online world. Territorial protection founded on intellectual property rights can be used by manufacturers to manipulate markets in the physical and offline world (they concern the practice of selling slightly different versions of the same product to different countries). Without putting in question the necessity and importance of enforcing IP rights, there is a line to draw between practices that are legitimate and practices that are not.

Finally, in most cases, legal risks and litigation costs seem to be a powerful deterrent for most consumers (and companies) as the costs associated with disputes and dispute settlement/redress can be significant or claiming redress is simply too burdensome to be worthwhile.

*Question 6: Are these causes more prevalent when it comes to using the Internet as a sales channel, as opposed to traditional forms of retailing?*

The question elicited low response rates. While the Internet is the one of the most important sales channel for cross-border shopping, some respondents thought that the same reasons detailed above would apply to other forms of retailing, especially for products necessitating some form of after-sale service.

However, compared to other sales channels, the Internet has made both the breadth of commercial opportunities and potential market barriers more visible. As one respondent summarised the situation: "The key change that the Internet and the digital age have provided is to make these barriers more visible to the consumer. In addition, the technological advances associated with digital products and services makes such barriers easier to monitor and maintain, for example through the use of digital rights management (DRM) technology, or the ability to direct a consumer automatically to a particular website".

### **Additional comments and concluding remarks**

*Question 7: Please state any additional comments or concluding remarks that you may wish to communicate. We would welcome any references to supporting evidence or economic studies that your services may have carried out on this topic.*

For those organisations that made additional remarks, the need for greater transparency concerning traders' terms was the common conclusion. Several respondents stressed that it is important that retailers clearly stipulate whether they refuse to deliver to certain EU Member States. A solution could be an information duty on restrictions applicable to delivery on retailers' welcome page. Other aspects mentioned concerned the revision of the consumer acquis as one of the measures that can be taken to enhance consumer confidence in cross-border shopping (and the need to ensure a common high level of protection for consumers) and the need for enhanced enforcement of the legislation applicable to unfair commercial practices.

## 5. SUMMARY OF THE REPLIES OF BUSINESS STAKEHOLDERS

### Assessment of remaining obstacles to cross-border online shopping

*Question 1a: While many market barriers have been removed at EU level, trade levels suggest that consumers are not taking advantage fully of the opportunity to shop online in another Member State and businesses are still reluctant to sell cross-border. What are the reasons that could discourage consumers from purchasing goods or services on the Internet from e-commerce retailers based in another Member State or could discourage businesses from selling across borders? Please describe.*

The first obstacle consistently mentioned by businesses, large or small, is the language barrier and, linked to this, cultural and technical barriers. From a consumer point of view, most businesses understand that providing a site in the language of the customer that is customised to national practices and consumer preferences is the first condition to foster consumer trust. The decision to market a product or to offer a website in different languages has important economic implications for traders, even for large companies, that must invest considerable efforts in adapting and maintaining several versions of the same site, not to mention providing customer support. For example, one interviewee representing a large pan-European seller of electronic goods insisted that every extra section of a website creates its own IT support and operating challenges in terms of providing a reliable service—a cost that is multiplied by the number of languages supported. As a result of perceived language barriers, companies may also fail to understand the demographics of their market i.e. that there is a demand in other markets for their products.

In addition, the EU is still a culturally diverse and fragmented market when it comes to consumer habits and preferences. In practical terms, this signifies that companies trading on a pan-European basis must manage an inventory of several combinations of every product sold (referred to as a Stock Keeping Unit), for example, different keyboards or native software languages. SKU management remains a challenge compared to an integrated market such as the United States, further complicated by the co-existence of a wide variety of national technical requirements. The complexities of managing several thousand combinations in several language versions are too costly, especially for low price-point items (for example, offering a German keyboard on a UK site on the off-chance that a German consumer residing in the UK will want to purchase it).

The second obstacle frequently mentioned concerns cross-border logistics. For the same distance, it is more costly to send a parcel to another country within the EU than it is to ship it domestically—a “border effect” that is a particular deterrent for small companies. In addition, postal services in the EU are not seamlessly integrated. Options that increase customer security, such as parcel tracking, are usually not available internationally (courier services provide a more costly alternative) and in some EU countries, according to some distance sellers, the postal operator is simply not reliable. Companies will be reluctant to venture into markets where they have little or no control over “the last mile” to the customer, not to mention the challenges of setting up reverse logistics.

The possibility to set up a reliable return process is a particularly inhibiting factor as postal operators will accept to deliver outbound parcels weighing up to 2kg, but the threshold for international return services is 250g. Higher returns thresholds are subject to bilateral agreements between postal operators. One respondent in the UK acknowledges that, as a

result, the systems of most large mail-order companies will not accept orders from outside the UK, with many large companies reluctant to change their systems. While cross-border logistics remain a major challenge for distance selling companies, it is important to note the emergence of market solutions to fill the gaps left by postal operators, such as international systems of pick-up points, while some postal operators are also in the process of experimenting with innovative delivery options.

Thirdly, the challenges posed by credit card security and cross-border payments remain major obstacles for most businesses. Most traditional payment methods apart from credit cards cannot be used for cross-border purchases (cash payments, cheques or wire transfers). For example, according to one seller, intra-EU wire transfers, which supposedly are free under a certain threshold, are still much too cumbersome for most consumers and businesses. Credit card payments still seem to imply a high administrative and financial burden for most sellers. Understandably, consumers are more nervous about using their credit card in a foreign country, especially for an Internet transaction, than domestically.

From a retailer perspective, according to most respondents, cross-border credit card fraud is a very real threat. For example, when consumers abroad ask for a charge-back it is reportedly very difficult to obtain proof of delivery to verify their claim that the goods have not been delivered. Domestically, the threat that the company will file a complaint for fraud with the local authorities is usually sufficient to force fraudulent consumers to pay, but this is much more difficult to do abroad. In addition, it may be more difficult for traders, especially those that sell high value goods, to access various fraud lists from abroad in order to run security checks on a foreign credit card, which may explain why some traders may restrict payment options to domestic card holders. For companies wishing to expand internationally, fraud is a risk that must be factored into their business models. Various electronic payment methods offer alternatives to credit card payments, but may not yet be widespread or well-known from consumers and businesses.

A fourth obstacle frequently mentioned by interviewees comprises administrative and regulatory barriers. In addition to the national regulations mentioned above, these barriers come in the form of copyright rules, national rules on the disposal of electronic and electrical waste, VAT rules, fragmented national consumer protection regulations, and according to some respondents, selective distribution law and trade mark rules.

For example, some respondents described the uneven implementation of the Copyright directive as a particular challenge to cross-border sellers resulting in market fragmentation. The directive imposes copyright levies on sales of blank media and recording devices. However, the levels of the levies vary throughout the EU, which creates an administrative burden on cross-border traders for reporting and paying the levy, with some traders calling for the rates and rules for levies to be reviewed, in particular in situations where traders end up paying multiple levies (paying the levy several times). In some circumstances, traders will refuse cross-border sales because of the costs attached to paying copyright levies. For example, Amazon informed the Commission that it has been forced to suspend blank media sales from its German web site to customers in Austria, as a result of legal uncertainty with regard to Austrian copyright levies sought on top of the levies already applied in Germany.

In a similar fashion, several multinational companies selling electronic equipment, in addition to several trade associations, complained of the burdens imposed on traders by the Directive on Waste of Electrical and Electronic Equipment (WEEE Directive) as transposed in national law. The legislation provides for the creation of collection schemes where consumers return their used e-waste free of charge. In addition, the directive provides for financing by producers for the collection, treatment, recovery and environmentally sound disposal of

waste. Many interviewees deplored the lack of harmonisation in the implementation of the directive, with national rules providing for various levels of fees and thresholds or different rules on the display of the above-mentioned cost. As a result, some traders have stopped serving certain markets because it is too costly to comply with the national legislation. Several respondents and two major pan-EU traders told the Commission that national transposition of the WEEE Directive has made selling consumer electronics into Ireland prohibitive. For example, Amazon told the Commission that, notwithstanding its desire to meet consumer demand, the fragmented implementation of the WEEE Directive has prevented Amazon from offering its customers in various Member States a range of consumer electronic products. It also mentioned its desire to have a system allowing pan-European retailers or producers to register and report sales only in the Member State in which the company is established, with sales to other Member States handled through a clearance system operated and maintained by the WEEE registries.

Most, if not all, respondents mentioned issues concerning the application of VAT rules. Under the regime applicable to distance selling (of goods), traders must pay the VAT rate applicable in the country where they are established, provided that their sales to foreign customers do not exceed a certain threshold. Over the threshold, traders must register with the tax authorities in the countries where their sales exceed the threshold and pay the applicable rate in those countries. One issue mentioned by interviewees was the fact that VAT rates and thresholds vary depending on the country; this is a source of extra complication for traders selling to several countries. A second issue concerns the administrative burden of dealing with several tax authorities, which may be particularly problematic for small sellers who would perhaps decide not to sell over the threshold.

Businesses frequently mentioned the fragmented national consumer protection regulations in force in the EU Member States as a major obstacle to operating on a pan-EU basis and one that generates significant compliance costs. These laws transpose a number of directives regulating returns and cancellation rights ("cooling-off" periods), sales guarantees, etc. The effects of the fragmentation are felt by business because of the conflict-of-law rules (in particular the Rome I Regulation that obliges traders not to go below the level of protection afforded to foreign consumers in their country of origin). As a result traders wishing to sell cross-border must incur legal and other due diligence costs to ascertain that contract terms respect the level of consumer protection in the country of destination. These costs reduce the incentive for businesses to sell cross-border, particularly to consumers in small Member States. The traders interviewed welcomed the Commission's proposal for a Consumer Rights Directive that proposes to further harmonise these national provisions.<sup>74</sup>

One company (eBay) identified "the lack of clarity and consequent abuse of the rules on vertical restraints as one of the major obstacles to cross-border e-commerce". Vertical restraints (in the form of exclusive or selective distribution agreements, for example) are agreements or concerted practices entered into between two or more companies each of which operates, for the purposes of the agreement, at a different level of the production or distribution chain, and relating to the conditions under which the parties may purchase, sell or resell certain goods or services. Other business respondents were of another opinion, arguing that manufacturers' abilities to control the distribution channels in the primary market for their products are crucial for maintaining brand value and delivering customer support to clients.

Other regulatory barriers were mentioned by stakeholders. They included labelling rules or sector-specific rules on the sale of certain products (for example, rules limiting the sale of

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<sup>74</sup> See Proposal for a Directive on Consumer Rights (COM(2008) 614 final) of 8 October 2008.

pharmaceuticals on the Internet, or rules on book pricing that ban the discounting of books in some Member States).

Finally, a fifth obstacle may have to do, paradoxically, with the nature of Internet search. When searching for products and services to buy on the Internet, most consumers may not encounter cross-border offers spontaneously as search engines will return results in the language of the query. In addition, advertisers seem frequently to take advantage of "geo-targeting" to avoid their online advertisement appearing in another country. It is possible for consumers to see different products from abroad on Google, for example, and indeed to use the company's language tools to translate pages, but this requires an investment in time from the consumer. Most consumers are not in the mindset of searching for products specifically in another country: brand recognition and awareness influence their search queries. This may impact consumer awareness and the possibility to compare prices and products. Nevertheless, some price comparison websites now offer default cross-border price comparisons. For example, the Commission interviewed a site called Twenga that offers cross-border price comparisons in 11 countries.

*Question 1b: Depending on where they are located, consumers may not be able to purchase goods and services on the same terms. What are the reasons that could prevent consumers from purchasing goods or services on the Internet from e-commerce retailers based in another Member State, under the same conditions that apply to consumers located in that Member State? Please describe.*

Following from the above, the reasons that could translate into price differentiations in the EU are: VAT, delivery charges, WEEE fees, copyright levies, currency conversion etc. Other factors that affect the cost of providing goods abroad may be internalised by companies (such as higher fees related to payment systems, extra insurance, higher rates of returns or non-deliveries, etc).

In addition, firms' marketing strategies may influence the price of their offerings. There is no standard or prescribed practice in this respect, with some companies enforcing a policy of a unique, global price, while others enforce national pricing policies (this latter practice is sometimes referred to as "regional" or "dual" pricing). Respondents were keen to remind the Commission that prices are the result of equilibrium between supply and demand. For some companies, local market conditions hold sway over the decision to enforce a certain price-point in one country and not in another. This can be the result either of competitive pressure or of consumer demand (higher willingness to pay).

In terms of the information available to consumers, various regulatory information requirements, such as invoicing requirements or pricing display requirements in the local currency, affect the comparability of the information shown to consumers. The result for businesses is a level of complexity that is costly to administer, that creates business risks and that may not be economically viable for certain products. The result for consumers trying to conduct cross-border purchases translates into complex commercial offerings that are difficult to compare and to understand. Contract terms and sales conditions are also subject to variations depending on the national law (see point above).

Finally, sector-specific rules may prohibit or limit the cross-border or distance selling of certain products.

*Question 2: Are the same concerns shared by e-commerce retailers? If so, how do they affect the ability or willingness of companies to serve consumers equably? Please describe.*

Respondents were very much aware of the issues raised, but not always in the same order of priority. When considering the obstacles to cross-border trade, there is a distinction to draw between large and small traders. When it comes to language, cultural, logistics and payment issues, one pan-EU trader, for example, said that "we see it as our business to make it easier for customers to shop with us" and emphasised the relative importance of regulatory barriers to his firm's business model instead. This is not to say that regulatory and administrative barriers are of no concern to SMEs (they may actually be particularly acute for these companies). However, SMEs that have not yet developed the economies of scale to go cross-border may consider language, logistics and payment issues as a significant hurdle.

Among SMEs, one should also distinguish between two categories of small traders. Some small traders are able to make a living out of selling branded, manufactured goods across borders by undercutting the prices of traditional distribution channels in the destination country (in some instances, the trader may even be acting in concert with the brand owner himself as a first step to becoming a licensed online distributor). Other small traders active in the light manufacturing or arts and craft industry may use the Internet to sell own-products across the EU.

Furthermore, there is a distinction to be drawn between "accidental" exporters and cross-border players. SMEs in the arts and craft industry or that sell own-products may use the Internet as a shop window, but not as their main activity. These companies use the Internet to advertise their offline services and may offer an extra online service while maintaining a traditional brick-and-mortar presence in their country. However, in this case, such a shop window is exposed to anyone in the outside world to see, irrespective of where consumers are located. These companies may not be aware of the challenges linked to cross-border provisions when, per chance, they decide to contract with a customer in another country.

For online sellers that are already market leaders in their sector, the decision to sell cross-border may not be the result of a conscious decision, but of market maturity. One respondent in the UK gave the example of a top retailing brand for fashion in the UK that now receives 20% of its orders from outside the UK (mostly from Ireland, France, the Netherlands and the Nordic countries) without ever having taken the decision to deliberately market its products outside its home market. Several respondents stressed that, as market conditions mature in "advanced" e-commerce economies, companies will seek to sustain growth levels by venturing into the rest of the EU internal market.

Companies are also acutely aware of the difficulties of providing after-sales service, customer support, complaint handling and dispute settlement in another country. Because of the challenges linked to providing a high level of customer service in another country, most e-traders that are serious about addressing a given market will ultimately seek to establish a physical presence in the destination country, in one form or another (either by setting up a call centre or a warehousing facility). In addition to pure Internet players, traditional retailers or mail-order companies that already have physical branches in several countries enjoy a market presence that can facilitate the fulfilment of their online operations.

### **Complaints and enforcement cases**

*Question 3: Have national authorities or consumer organisations in your country been faced with complaints from consumers who were unable to purchase goods or services on the Internet from an e-commerce trader located in another Member State?*

Most respondents were not able to answer this question or provided speculative remarks. The trust mark schemes or trade bodies with complaint-handling responsibilities did not record complaints in this area.

*Question 4: If so, could you please describe any actions that have been undertaken and the results obtained?*

This question is not applicable to business stakeholders.

### **Causes of remaining cross-border obstacles**

*Question 5: Please describe the different causes that may prevent consumers from purchasing goods and services in another Member State or from benefiting from the same conditions offered to other consumers. To what extent can they be explained by the economic conditions of providing the good or service?*

Most respondents found this question difficult to answer. One respondent pointed out that in order to make a neutral analysis and a proper comparison across countries, it would be necessary to untangle the cost components of the decision to provide a good or service. This is particularly difficult as differences in competition can result in different price-points in certain countries and prices may be driven down temporarily to maintain the same level of sales.

Respondents felt that variations in the conditions offered to consumers, if and when they occur, were driven by local market conditions (including the regulatory dimension analysed above). Another respondent thought that it is normal that some products are more expensive in some Member States than in others. This is the result of differences in the cost base of different Member States (i.e. labour costs, fixed costs, the cost of storage and warehousing, etc), especially for distributors of goods. Respondents also questioned the economic rationale for the differences between international vs. domestic shipping tariffs.

*Question 6: Are these causes more prevalent when it comes to using the Internet as a sales channel, as opposed to traditional forms of retailing?*

Interviewees were ambivalent in their replies. On the one hand, they acknowledged that some of the issues identified are specific to e-commerce and therefore irrelevant to traditional bricks-and-mortar retailers. On the other hand, interviewees mostly did not think that the causes were more prevalent, but more noticeable: consumer selection, choice and price visibility on the Internet is vast compared to a local store. This creates a heightened sense of frustration when consumers are not able to purchase goods and makes these concerns more noticeable.

Furthermore, there is interdependence between online trade and traditional forms of retailing. Respondents stressed that the most successful retailers are those who combine offline and online channels. Online trade has increased competition in some product groups or markets as customers use the Internet for window shopping, before conducting an actual purchase in a physical store.

For most respondents, the key to success in retailing (Internet and in-store) is the ability to adapt to local market conditions. Some large retailers are already established in several Member States and may use both offline and online sales as part of a multichannel marketing



strategy. As a result, they might not use the Internet as a cross-border channel. The issues of cross-border e-commerce may therefore be more relevant for specialised retailers, pure Internet players and SMEs.

### **Additional comments and concluding remarks**

*Question 7: Please state any additional comments or concluding remarks that you may wish to communicate. We would welcome any references to supporting evidence or economic studies that your services may have carried out on this topic.*

Business stakeholders were generally of the opinion that it is not in a business's interest to refuse orders and that businesses are willing to sell, despite the fact that the environment for doing so is not conducive. Many interviewees stressed that more could be done to foster legal harmonisation and promote self-regulation.

Several organisations said that they were working to create codes of practice and promoting frameworks for safe and inclusive trading platforms, but that some problems could only be fixed at EU level. The representative of a certification scheme insisted on the need for clear and standardised complaints procedures, supported by a guarantee scheme. Promoting transparency and the ability to compare prices and products was also seen as a measure to foster consumer confidence, in addition to providing mediation mechanisms.

## ANNEXE 4

### LIST OF STAKEHOLDERS CONSULTED

Altroconsumo (Italy)  
Amazon  
Apple  
Association pour le commerce et les services en ligne (ACSEL)  
British Retail Consortium (BRC)  
Bundesarbeitskammer (Austria)  
Club for Protection of Consumer Interests (Latvia)  
Consumentenbond (the Netherlands)  
Dell  
eBay  
Eurocommerce  
European E-commerce and Mail Order Trade Association (EMOTA)  
Fédération des Entreprises de Vente à Distance (FEVAD)  
Google  
Interactive Media in Retail Group (IMRG)  
KEPKA - Consumers Protection Centre (Greece)  
Norwegian Consumer Council (Norway)  
OIVO-CRIOC (Belgium)  
Pixmania  
Royal Mail  
SafeBuy  
SOS - Consumers Protection Association (the Czech Republic)  
The Consumer Protection Cooperation Network (CPC)  
The European Consumer Centres Network (ECC-Net)  
Trusted Shops GmbH  
Twenga SA  
Union Luxembourgeoise des Consommateurs (Luxembourg)  
Verbraucherzentrale Bundesverband e.V. - Federation of German Consumer Organisations (Germany)  
Which? (United Kingdom)