

## Preliminary results of the EU sector inquiry identifies practices that limit online competition – Choice in eCommerce welcomes the results

### The interim report of the e-commerce sector inquiry presented today brings clarity on restrictions in online retailing

Berlin, 15.09.2016 – The fact remains that there are still serious barriers within the desired single market: "The sector inquiry into e-commerce has succeeded in detecting and identifying the devastating effects of sales restrictions on small and medium sized entrepreneurs (SMEs) which are so important for the digital single market" **Oliver Prothmann**, President of the German Federal Association of eCommerce (BVOH) and spokesman of Choice in eCommerce says. In the interim report of the "sector inquiry into e-commerce", the EU Commission sets out an overview of the barriers faced. "The interim report of the sector inquiry detects what our survey has already implied. The report clearly shows the need of action as 50 per cent of small and medium-sized retail enterprises experience one or more restrictions and do not have the necessary economic muscle to move brand owners and manufacturers towards more practical business solutions." says **Oliver Prothmann**. In summer 2016, Choice in eCommerce carried out a [Europe-wide survey](#) in cooperation with the BVOH. More than 7,000 retailers participated and gave [examples of a whole range of restrictions](#) including marketplace bans. This means that seven times more merchants took part in this survey than in the sector inquiry.

With the sector inquiry into e-commerce launched last year, the EU Commission illustrates the barriers and problems that hinder the establishment of the Digital Single Market. Stakeholders now have the opportunity to comment on these preliminary results. Choice in eCommerce will be stating their position and calls upon online retailers to add their voice to the consultation. The final report is expected in first half of 2017.

Choice in eCommerce welcomes the ambition of the EU Commission to tackle barriers that make access difficult or even block access to the internal market for companies, including the Internet economy. The clear trend in the Internet is for brands to sell directly in collaboration with a few large retailers. The report shows with 62 per cent of manufacturers opening their own online shops in the last years, retailers find themselves competing against their own suppliers! "This emerging development has nothing to do with a single market, but with a protected market of individual players. Competition is not possible as the manufacturer will consistently disregard SMEs," says **Oliver Prothmann**.

The types of restrictions are manifold. As of the interim report, 2 out of 5 retailers report marketplace restrictions in their contracts with suppliers. A practice that harms SMEs in first case as they mostly tend to sale through marketplaces where the sales infrastructure is already given and where international trade can be tested and allocated the easiest way.

Consumers themselves are significantly affected by sales restrictions, couldn't finding the products searching for and often paying substantially more for products than they would with a properly functioning competitive marketplace. This should not be allowed to continue. The cost amounts to billions of euros every year," says Choice in eCommerce president **Oliver Prothmann**. Choice in eCommerce estimates that more than 10,000 companies in Germany alone have already had to lay off employees.

The future of eCommerce is under threat. Thousands of small and medium-sized online retailers in Europe are facing closure. Their very existence is at stake, because they are victims of anti-competitive practices by manufacturers and brand owners.

According to the [Choice in eCommerce survey](#) conducted this year, in alignment with today's EC interim report, over 50 per cent of European retailers complain about loss of sales by manufacturer restrictions. Almost one fifth of European online merchants report an annual loss of more than 25 per cent due to these restrictions.

42 per cent of retailers reported to be experiencing pricing restrictions which would mean a raise of prices to the detriment of the consumers. "This shows in an alarming way how manufactures act on the

market. Even absolutely clear illegal rules will be broken by controlling the price and the market," Oliver Prothmann resumes.

"If the consumer is harmed by these restrictions, if the SME retailers are harmed by them, if competition is harmed by them and if even the Digital Single Market is harmed by them and in the end only the brand companies are the winners, I very much wonder what the Digital Agenda actually stands for," says **Oliver Prothmann**.

Thus, Choice in eCommerce calls on action has set up a five-point programme based on many years' experience of working with retailers and policy.

### Choice in eCommerce calls on politicians

1. For a clear vote by the European Commission against any type of impediment to and restriction of free trade in Europe.
2. To strengthen the national and European competition authorities so that they can quickly take comprehensive and sustained action against illegal vertical restrictions. As a guide, the survey provides a [List of most frequently mentioned brands and manufacturers](#).
3. To facilitate the enforcement of compensation claims by affected retailers and consumers.
4. To promote compliance with competition law and the single market in a dialogue including industry manufacturers and brand owners.
5. To assess the impact on small and medium enterprises of existing and new EU regulations and to ensure that these SME retailers can participate in a diverse future in the single market.

### Choice in eCommerce calls on politicians to strengthen the competition authorities

The Choice in eCommerce initiative demands decisive action against the rampant abuse of anti-competitive sales restrictions suffered in particular by small and medium-sized online retailers. The Internet should not become the exclusive playing field of retail giants and other large corporations. It must remain open to SMEs. In fact, variety in trading thrives on the ideas and investments of small and medium-sized entrepreneurs.

Politicians need to act now because, unfortunately, national competition authorities such as the Federal Cartel Office are unable to tackle the problem adequately due to lack of human resources. The competition authorities need to be strengthened so that they can effectively take action against vertical restrictions and penalties for the offence must be significant for companies and their managers. This would be a notable benefit to consumers.

### Retail restrictions within the EU are widespread

Choice in eCommerce has now been opposing discrimination against online retailers compared to stationary retail companies for three years. In 2013 Choice in eCommerce handed over a petition with more than 14,000 retailers' signatures to EU Vice-President Olli Rehn. Every year Choice in eCommerce presents the public with new alarming statistics of online restrictions. The latest [survey shows nearly 2,000 brands](#) from areas that range from fashion to electronics which prohibit or impede Internet sales in Europe, creating significant barriers for eCommerce.

### An overview of the development of trade restrictions

Some national competition authorities, for instance France and Germany, have already rejected restrictions such as marketplace bans. But these cases are often limited to a few member states and only focus on specific markets. "The Commission, however, has to take a clear Europe-wide position:

online restrictions such as general marketplace bans, price controls or delivery restrictions are not compliant with the principles of European competition law," says **Oliver Prothmann**.

In the middle of 2014, Adidas reversed restrictions on trade imposed upon sports retailers on 1 January 2013. The Federal Cartel Office had started investigations against Adidas and Asics. In the view of the Federal Cartel Office, these are hardcore restrictions. Moreover, Adidas' behaviour makes it abundantly clear that restrictions are almost arbitrary and can be resolved from one day to the next. The damage to SME online trading companies remain.

Also, the ECJ ruling will deal with the issue of harmonising online marketplace prohibitions with European competition law. The Frankfurt Higher Regional Court submitted a case concerning a marketplace prohibition by the perfume manufacturer Coty to the highest European court (Case C-230/16). The ECJ now has the opportunity to make the final decision on the admissibility of platform prohibitions. "We call on the EU Member States to take a position on the process in the next few weeks and to emphasise the relevance of online marketplaces for consumers and online retailers, and not least to prohibit sales restrictions imposed by manufacturers and brands," says **Oliver Prothmann**.

Therefore Choice in eCommerce maintains its hard-line stance and makes this demand: The European Commission must seize this opportunity and put forward distinct solutions to the problems created by sales restrictions. This may include measures such as identifying cases against brand owners and manufacturers or making position statements that clarify the existing legislation.

On 6 October, 2016 **Oliver Prothmann**, President of the BVOH and initiator of Choice in eCommerce, will meet with manufacturers, political and industry representatives in Brussels to discuss the "Preliminary Findings of the E-commerce Sector Inquiry".

### **On Choice in eCommerce's initiative**

With the second pan-European survey on restrictions on eCommerce, in 2015 Choice in eCommerce could demonstrate for the first time the consequences of restrictions on eCommerce imposed by manufacturers and brands. It was clearly shown that small and medium-sized trade is suffering as this behaviour can lead to significant drops in sales and even bankruptcy.

A major objective of the initiative is to highlight in the public and especially the political arena the issue of restrictions on sales by manufacturers and brands. One result of their intensive work is the inclusion of this topic in the 2015 European Commission e-commerce sector inquiry.

In the last three years, all German courts have ruled in favour of the online trading process and have prohibited sales restrictions, especially marketplace bans. Only the OLG Frankfurt departed from this line and made a different decision. The OLG has now passed this to the ECJ for a ruling. Choice in eCommerce will also remain active here. Furthermore, we expect a decision by the German Supreme Court on the subject.

The 3rd pan-European survey on eCommerce restrictions now shows that the danger caused by restrictions imposed by manufacturers and brands is still very acute. For the first time ever, this survey names and identifies the 1,864 manufacturers and brand names from the responses to the survey. The list also categorises the type of restriction described by more than 7,000 dealers.

### **About the BVOH**

The Federal Association of eCommerce (BVOH) has been representing the interests of business owners, as well as consumers within the online business community since 2006. Another important goal of the BVOH is to increase acceptance and security in e-commerce business through the introduction of uniform standards.

The BVOH is the face and voice of reputable online retailers and has set itself the task of bringing together online retailers, politicians, online marketplaces, suppliers and equipment suppliers.

In 2016 the BVOH celebrates its 10th anniversary on eCommerce Day, 11 November, in Berlin.

### **About Choice in eCommerce**

"Choice in eCommerce – Initiative for Choice and Innovation in Online Trade" is an initiative by online retailers which campaigns for unrestricted trade and innovation throughout Europe.

Oliver Prothmann is spokesman and founder of the initiative. In summer 2013, Choice in eCommerce launched a petition calling for free and fair trade. On 17 December 2013, Oliver Prothmann handed a petition containing more than 14,000 signatures from online retailers from across Europe to Olli Rehn, Vice-President of the European Commission in Brussels. The petition called for manufacturers and brand owners to refrain from trade restrictions or prohibitions for online retailers.

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