SVENSKT NÄRINGSLIV
SWEDISH ENTERPRISE

Comments:
Call for Evidence – Digital Fairness Act

The Confederation of Swedish Enterprise wants to contribute to the Call for Evidence regarding a Digital Fairness Act.

Besides our Joint Nordic Comments on a Digital Fairness Act, we want to highlight two proposals to improve consumer protection in the European Union without adding additional new legislation with a Digital Fairness Act (DFA):

1. The Commission should start working with the **review of the Consumer Protection Cooperation Regulation** (**CPC**) immediately with the aim of strengthening cross-border enforcement, ensuring strong protection for consumers and a level playing field for all traders serving EU consumers, regardless of where they are located.

2. **A cross-functional task force across the different departments in the Commission** (**DG JUST and DG CNECT**) responsible for monitoring the implementation of consumer protection laws, to ensure enforcement speed, coordination and knowledge-sharing within the Commission and member states should be created. There is a need for a formal structure with clear mandates and resources to coordinate across member states and ensure enforcement of all relevant consumer protection regulations.

Three additional reflections we want to bring forward:

Simplification and a Digital Fairness Act
The general approach to a DFA should be in line with this Commission's commitment to simplification, including the upcoming Digital Omnibus, which will better serve consumer protection goals while ensuring effectiveness and coherence for a more competitive digital economy.

Don't endanger ECJ's consumer concept
We want to advocate for not endangering the well-established consumer concept of the Court of the European Union (ECJ). The ECJ considers that the average consumer is reasonably well informed and reasonably observant and circumspect (also known as the modern consumer model) and uses this benchmark when determining the standard of protection of consumer protection provisions. This is a well-established concept in the case law of the ECJ, capable of incorporating special circumstances. This standard aims to ensure a balance between entrepreneurial freedom and the risk of consumers being misled. The ECJ also refers to the criterion of proportionality in relation to interventions in the freedom to conduct, while a certain degree of influence on the consumer must be accepted, as the consumer is given a certain degree of responsibility.

The concept of "vulnerable consumer" is also well developed in case law, and should, to avoid legal uncertainty, not be redefined in hard law.

Instead, focus should be on improving consumer awareness and education. Additionally, targeting consumers' "possible vulnerabilities" is already prohibited under multiple existing frameworks (UCPD, GDPR, AI Act), and new requirements would create practical challenges in identifying and assessing these vulnerabilities, particularly in digital environments. Enhancement of existing enforcement mechanisms would be more effective than creating overlapping requirements.

Avoid a reversal of burden

The European Commission should act cautiously when reflecting on introducing new rules around evidence (e.g. reversal of the burden of proof in favour of claimants). Civil law traditions in Europe establish that those who make the claim must prove it. Shifting the burden of proof from the claimant to the defendant would be a fundamentally disruptive factor in European justice and national civil liability systems, with unforeseen consequences in terms of litigation trends, and it could prove disproportionate.

We should avoid an increase in abusive or frivolous litigation that can negatively impact business models and ultimately harm EU competitiveness.

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