



Statement by Executive Vice-President Vestager on Statement of Objections to Amazon for the use of non-public independent seller data and second investigation into its e-commerce business practices

Brussels, 10 November 2020

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Today, the Commission has sent a Statement of Objections to Amazon with the preliminary conclusion that Amazon illegally distorted competition in online retail markets. The Commission has also decided today to open a second investigation into Amazon's e-commerce business practices.

I will first focus on the Statement of Objection before taking you through the new investigation we have just opened.

Amazon "Data" case - Statement of Objections

In July last year, the Commission opened an in-depth investigation to assess Amazon's use of sensitive data. The sensitive data comes from independent retailers selling on Amazon's marketplace.

The investigation started as a follow-up to our 2015 inquiry into e-commerce where we gathered a first insight on Amazon's business practices. And we have now come to the preliminary conclusion that Amazon illegally abused its dominant position as a marketplace service provider in Germany and France - the biggest markets for Amazon in the EU.

We all know how important e-commerce is today. And the current crisis has demonstrated even further that buying online is now commonplace for many of us. People shop online more frequently and for an increasing variety of products. The value of online sales in Europe has been growing steadily and almost doubled in the last 5 years, reaching almost €720 billion this year up from almost €375 billion in 2015.

Amazon is at the centre of this market development. More than 70% of consumers in France and more than 80% of consumers in Germany that made online purchases bought something from Amazon in the last 12 months.

We do not take issue with the success of Amazon or its size. Our concern is a very specific business conduct, which appears to distort genuine competition.

Amazon has a dual role as a platform. On the one hand, it operates marketplaces that allow third party sellers to offer products to consumers. We have found that Amazon is the most important or dominant marketplace in many European countries. On the other hand, Amazon is also a retailer on its own platform. So, Amazon directly competes with the third party sellers that rely on its platform to offer their products. Third party sellers are often SMEs selling their own products through the Amazon platform.

Amazon is a data-driven and highly automated company, where business decisions are based on algorithmic tools. We analysed a data sample covering over 80 million transactions and around 100 million product listings on Amazon's European marketplaces. Our investigation shows that very granular, real-time business data relating to third party sellers' listings and transactions on the Amazon platform, systematically feed into the algorithms of Amazon's retail business. It is based on these algorithms that Amazon decides which new products to launch, the price of each individual offer, the management of inventories, and the choice of the best supplier for a product.

When a seller decides to list on the Amazon platform a household product like a computer accessory, a kitchen appliance or a garden tool and when people start buying these products, Amazon gathers

data about those sellers and each transaction.

Amazon has for example access to data on the number of ordered and shipped units of sellers' products, the sellers' revenues on the marketplace, the number of visits to sellers' offers, information relating to shipping, the sellers' past performance, the consumer claims on sellers' products, including the activated guarantees. And Amazon gets these data for every seller, every listed product and every purchase on its platform.

Our concerns are not only about the insights Amazon Retail has into the sensitive business data of one particular seller. Rather, they are about the insights that Amazon Retail has about the accumulated business data of more than 800 000 active sellers in the EU, covering more than a billion different products. In other words, the case is about big data.

Our investigation shows that Amazon is able to aggregate and combine individual seller data in real time, and to draw precise, targeted conclusions from these data.

Many retailers invest heavily to identify products of interest and bring them to consumers, taking risks when they invest in new products or when choosing a specific price level. Amazon can avoid some of those risks by using the third party seller data for such business decisions. In fact, although Amazon only lists a minor share of all products on the platform, it captures the lion's share of the transactions in most product categories. In many of the most popular product categories, Amazon lists less than 10% of the products available on its platform, but makes 50% or more of all revenues in the category.

We have therefore come to the preliminary conclusion that the use of these data allows Amazon to focus on the sale of the best-selling products. This marginalises third party sellers and caps their ability to grow.

Amazon will now have the opportunity to respond to those preliminary conclusions in the coming weeks.

This brings me to the second investigation into Amazon's e-commerce business practices that we have opened today.

Amazon "Buy Box" - Opening of proceedings

Looking into Amazon's data-use also revealed that Amazon may have set certain rules on its platform that artificially favour both its own retail offers as well as the offers of sellers that use Amazon's logistics and delivery services.

For this reason, we have decided to open a second investigation into these business practices. This investigation will focus on the so-called "Buy Box" and on Amazon's Prime label, and on their relation with the use of Amazon's logistics and delivery services.

The Buy Box is the white box on the right side of your screen on the Amazon product detail page. It is the one that allows you to add items from a specific retailer directly into your shopping cart. The Buy Box is essential. It prominently shows the offer of one single seller for the chosen product, with the possibility for the consumer to purchase it directly. So, winning the Buy Box is crucial for the marketplace sellers, as it seems that more than 80% of all transactions on Amazon are channelled through it.

It is also of the essence for retailers to be able to sell their products under the "Prime label", which is Amazon's loyalty programme. Amazon's Prime consumers are very important to sellers, not only because of their constantly increasing number, but also because Prime consumers spend significantly more on Amazon than others would do.

Our concern is that Amazon may artificially "push" retailers to use its own related services. This may potentially lock deeper into Amazon's own ecosystem an increasing number of sellers.

So we will look into the potential effects of the rules set by Amazon for the Buy Box and for the Prime programme. We want to make sure that the sellers that do not use Amazon's logistics and delivery services also have a chance to compete on the merits on Amazon's platform. And we want to make sure that retailers can decide to switch to competing marketplaces without being locked into Amazon's ecosystem.

Conclusions

To conclude, both investigations into Amazon's business practices focus on competition concerns that are crucial in today's platform economy where more and more businesses depend on dominant platforms, and where more and more consumers use these platforms' services. It is the role of competition law enforcement to keep these markets open and to ensure undistorted competition.

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