



## Antitrust: Commission sends Statement of Objections to Amazon for the use of non-public independent seller data and opens second investigation into its e-commerce business practices

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The European Commission has informed Amazon of its preliminary view that it has breached EU antitrust rules by distorting competition in online retail markets. The Commission takes issue with Amazon systematically relying on non-public business data of independent sellers who sell on its marketplace, to the benefit of Amazon's own retail business, which directly competes with those third party sellers.

The Commission also opened a second formal antitrust investigation into the possible preferential treatment of Amazon's own retail offers and those of marketplace sellers that use Amazon's logistics and delivery services.

Executive Vice-President Margrethe **Vestager**, in charge of competition policy, said: "We must ensure that dual role platforms with market power, such as Amazon, do not distort competition. Data on the activity of third party sellers should not be used to the benefit of Amazon when it acts as a competitor to these sellers. The conditions of competition on the Amazon platform must also be fair. Its rules should not artificially favour Amazon's own retail offers or advantage the offers of retailers using Amazon's logistics and delivery services. With e-commerce booming, and Amazon being the leading e-commerce platform, a fair and undistorted access to consumers online is important for all sellers."

### Statement of Objections on Amazon's use of marketplace seller data

Amazon has a dual role as a platform: (i) it provides a marketplace where independent sellers can sell products directly to consumers; and (ii) it sells products as a retailer on the same marketplace, in competition with those sellers.

As a marketplace service provider, Amazon has access to non-public business data of third party sellers such as the number of ordered and shipped units of products, the sellers' revenues on the marketplace, the number of visits to sellers' offers, data relating to shipping, to sellers' past performance, and other consumer claims on products, including the activated guarantees.

The Commission's preliminary findings show that very large quantities of non-public seller data are available to employees of Amazon's retail business and flow directly into the automated systems of that business, which aggregate these data and use them to calibrate Amazon's retail offers and strategic business decisions to the detriment of the other marketplace sellers. For example, it allows Amazon to focus its offers in the best-selling products across product categories and to adjust its offers in view of non-public data of competing sellers.

The Commission's preliminary view, outlined in its Statement of Objections, is that the use of non-public marketplace seller data allows Amazon to avoid the normal risks of retail competition and to leverage its dominance in the market for the provision of marketplace services in France and Germany- the biggest markets for Amazon in the EU. If confirmed, this would infringe Article 102 of the Treaty on the Functioning of the European Union (TFEU) that prohibits the abuse of a dominant market position.

The sending of a Statement of Objections does not prejudge the outcome of an investigation.

### Investigation into Amazon practices regarding its "Buy Box" and Prime label

In addition, the Commission opened a second antitrust investigation into Amazon's business practices that might artificially favour its own retail offers and offers of marketplace sellers that use Amazon's logistics and delivery services (the so-called "fulfilment by Amazon or FBA sellers").

In particular, the Commission will investigate whether the criteria that Amazon sets to select the winner of the "Buy Box" and to enable sellers to offer products to Prime users, under Amazon's Prime loyalty programme, lead to preferential treatment of Amazon's retail business or of the sellers that use Amazon's logistics and delivery services.

The "Buy Box" is displayed prominently on Amazon's websites and allows customers to add items from a specific retailer directly into their shopping carts. Winning the "Buy Box" (i.e. being chosen as the offer that features in this box) is crucial to marketplace sellers as the Buy Box prominently shows the offer of one single seller for a chosen product on Amazon's marketplaces, and generates the vast majority of all sales. The other aspect of the investigation focusses on the possibility for marketplace sellers to effectively reach Prime users. Reaching these consumers is important to sellers because the number of Prime users is continuously growing and because they tend to generate more sales on Amazon's marketplaces than non-Prime users.

If proven, the practice under investigation may breach Article 102 of the Treaty on the Functioning of the European Union (TFEU) that prohibits the abuse of a dominant market position.

The Commission will now carry out its in-depth investigation as a matter of priority. The opening of a formal investigation does not prejudge its outcome.

## **Background and procedure**

[Article 102](#) of the TFEU prohibits the abuse of a dominant position. The implementation of these provisions is defined in the Antitrust Regulation ([Council Regulation No 1/2003](#)), which can also be applied by the national competition authorities.

The Commission [opened the in-depth investigation into Amazon's use of marketplace seller data on 17 July 2019](#).

A Statement of Objections is a formal step in Commission investigations into suspected violations of EU antitrust rules. The Commission informs the parties concerned in writing of the objections raised against them. The addressees can examine the documents in the Commission's investigation file, reply in writing and request an oral hearing to present their comments on the case before representatives of the Commission and national competition authorities. Sending a Statement of Objections and opening of a formal antitrust investigation does not prejudge the outcome of the investigations.

More information on the investigation is available on the Commission's [competition website](#), in the public [case register](#) under case number AT.40462.

The Commission has informed Amazon and the competition authorities of the Member States that it has opened a second in-depth investigation into Amazon's business practices.

This investigation will cover the European Economic Area, with the exception of Italy. The Italian Competition Authority started to investigate partially similar concerns last year, with a particular focus on the Italian market. The Commission will continue the close cooperation with the Italian Competition Authority throughout the investigation.

More information on the investigation will be available on the Commission's [competition website](#), in the public [case register](#) under case number AT.40703.

There is no legal deadlines for bringing an antitrust investigation to an end. The duration of an antitrust investigation depends on a number of factors, including the complexity of the case, the extent to which the undertakings concerned cooperate with the Commission and the exercise of the rights of defence.

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