

Vertical restraints and the digital revolution

Has the Internet changed the rules of the game?

15th GCLC Annual Conference – 30 January 2020

Yves Botteman

A brave new world?

- Competition for the eyeballs
- Distribution models reinvented
 - Offline vs. Online?
 - Suppliers vs. marketplaces?
 - Distributors vs. fulfillers?
 - Suppliers going direct
 - Role of data
 - Role of social media
- Increased sophistication and complexity in relationships, calling for humility

EU antitrust enforcement in the vertical space...

...the state of play

Online bans and vertical price-fixing

Non-Price restraints

Online sales bans



PING

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TREK

GUESS

Online platform bans

COTY

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CAUDALIÉ
PARIS

Price comparison websites bans



Online advertising and keyword search bans

GUESS

Cross-border sales restrictions

Pioneer

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Most-favored nation clauses



Price restraints

Resale Price Maintenance

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marantz

PHILIPS

Pioneer



CASIO

GUESS

Minimum Advertised Price



In a nutshell...

- Old tools, new setting
- Focus on online restraints that impose a blanket prohibition on e-retailers' access, visibility and reachability on the Internet
 - Bans vs. Proportionality and equivalence
- Focus on online price-fixing by the EC and the NCAs



Call for a new enforcement paradigm...

...taking advantage of the VBER review?

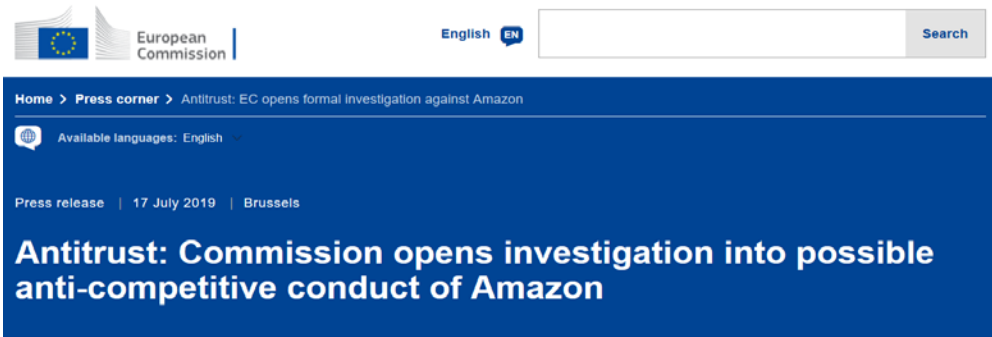
Are the old rules still fit for the digital age?

- Resale price-fixing in the online world
 - Is it always invariably bad, so harmful to competition?
 - Focus on Internet context, product lifecycle, market power, claimed efficiencies
 - Price not always the single most important parameter: **case study**
 - Downward price spiraling effect
 - Harm to innovation and new product availability
 - Consumer choice
 - Current 'hardcore' standard has a chilling effect on distinctive distribution strategies

Suppliers going direct

- Why vertical downstream integration?
 - Access to first-hand information about retail dynamics
 - Complementary offering with retailers
 - Better control over product promotional and positioning activities
- Dual role played by brand as supplier and retailer
 - Scope for improper information exchange with independent retailers
 - Need to consider firewalls and separate teams?
 - Recommended Resale Price guidance?
- VBER & Guidelines: dual distribution exception

Dual role & big data: the platforms' theory of harm



European Commission | English EN | Search

Home > Press corner > Antitrust: EC opens formal investigation against Amazon

Available languages: English

Press release | 17 July 2019 | Brussels

Antitrust: Commission opens investigation into possible anti-competitive conduct of Amazon

Bloomberg

Technology

Amazon Probed by EU on Data Collection From Rival Retailers

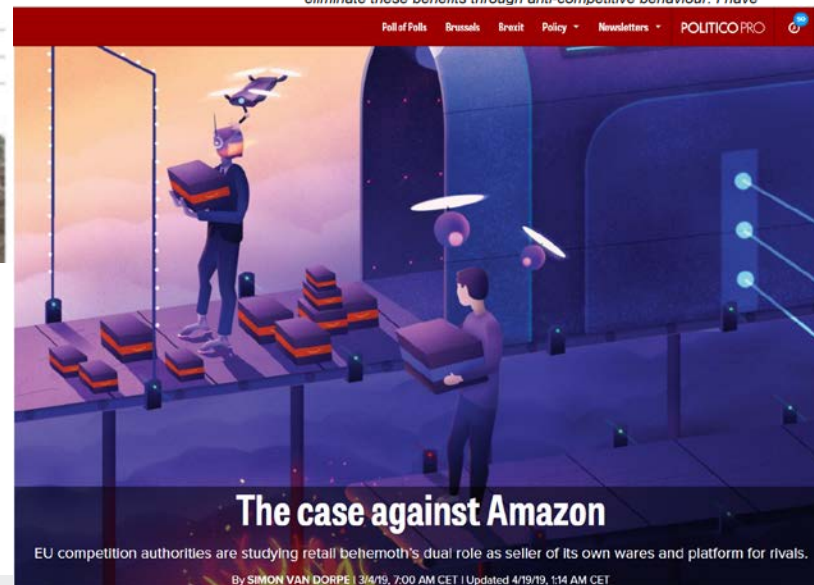
By Aoife White
19 September 2018, 12:16 BST Updated on 19 September 2018, 17:52 BST

- ▶ EU's Vestager is checking how Amazon uses rival sales data
- ▶ Amazon has dual purpose as retailer and host to other sellers



The European Commission has opened a formal antitrust investigation to assess whether Amazon's use of sensitive data from independent retailers who sell on its marketplace is in breach of EU competition rules.

Commissioner Margrethe Vestager, in charge of competition policy, said: "European consumers are increasingly shopping online. E-commerce has boosted retail competition and brought more choice and better prices. We need to ensure that large online platforms don't eliminate these benefits through anti-competitive behaviour. I have



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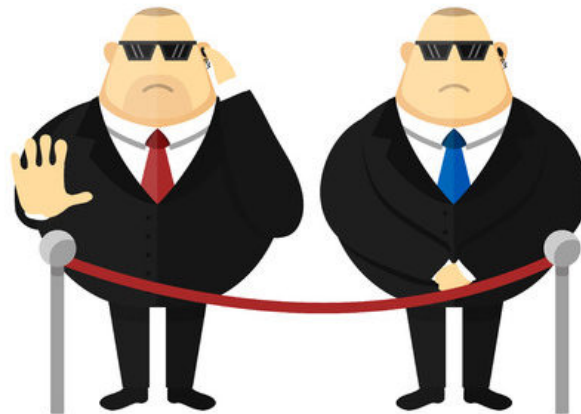
The case against Amazon

EU competition authorities are studying retail behemoth's dual role as seller of its own wares and platform for rivals.

By SIMON VAN DORPE | 3/4/19, 7:00 AM CET | Updated 4/19/19, 1:14 AM CET

From gateways to gatekeepers

Platforms may have the ability and, with vertical integration, the necessary incentives to decide who gets access to consumer and who does not



Thank you!



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