



Antitrust: Commission accepts commitments by Amazon barring it from using marketplace seller data, and ensuring equal access to Buy Box and Prime

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The European Commission has made commitments offered by Amazon legally binding under EU antitrust rules. Amazon's commitments address the Commission's competition concerns over Amazon's **use of non-public marketplace seller data** and over a possible bias in granting to sellers access to its **Buy Box** and its **Prime programme**.

The Commission's concerns

[In July 2019](#), the Commission opened a formal investigation into Amazon's **use of non-public data** of its marketplace sellers. [On 10 November 2020](#), the Commission adopted a Statement of Objections in which it preliminarily found Amazon dominant on the French and German markets, for the provision of online marketplace services to third-party sellers. It also found that that Amazon's reliance on marketplace sellers' non-public business data to calibrate its retail decisions, distorted fair competition on its platform and prevented effective competition.

In parallel, on [10 November 2020](#), the Commission opened a second investigation to assess whether the criteria that Amazon sets to select the winner of the **Buy Box** and to enable sellers to offer products under its **Prime Programme**, lead to preferential treatment of Amazon's retail business or of the sellers that use Amazon's logistics and delivery services.

In the second investigation, the Commission preliminarily concluded that Amazon abused its dominance on the French, German and Spanish markets for the provision of online marketplace services to third-party sellers.

It also preliminarily concluded that Amazon's rules and criteria for the Buy Box and Prime unduly favour its own retail business, as well as marketplace sellers that use Amazon's logistics and delivery services.

The commitments

To address the Commission's competition concerns in relation to both investigations, Amazon initially offered the following commitments:

- **To address the data use concern**, Amazon proposed to commit:

- not to use non-public data relating to, or derived from, the independent sellers' activities on its marketplace, for its retail business. This applies to both Amazon's automated tools and employees that could cross-use the data from Amazon Marketplace, for retail decisions;
- not to use such data for the purposes of selling branded goods as well as its private label products.

- **To address the Buy Box concern**, Amazon proposed to commit to:

- treat all sellers equally when ranking the offers for the purposes of the selection of the Buy Box winner;
- display a second competing offer to the Buy Box winner if there is a second offer from a different seller that is sufficiently differentiated from the first one on price and/or delivery. Both offers will display the same descriptive information and provide the same purchasing experience.

- **To address the Prime concerns** Amazon proposed to commit to:

- set non-discriminatory conditions and criteria for the qualification of marketplace sellers and offers to Prime;
- allow Prime sellers to freely choose any carrier for their logistics and delivery services and

negotiate terms directly with the carrier of their choice;

- not use any information obtained through Prime about the terms and performance of third-party carriers, for its own logistics services.

Between 14 July 2022 and 9 September 2022, the Commission [market tested Amazon's commitments](#) and consulted all interested third parties to verify whether they would remove its competition concerns. In light of the outcome of this market test, Amazon amended the initial proposal and committed to:

- **Improve the presentation** of the **second competing Buy Box offer** by making it more prominent and to include a **review mechanism** in case the presentation is not attracting adequate consumer attention;
- **Increase the transparency and early information flows** to sellers and carriers about the commitments and their newly acquired rights, enabling, amongst others, early switching of sellers to independent carriers;
- Lay out the means for **independent carriers to directly contact their Amazon customers**, in line with data-protection rules, enabling them to provide equivalent delivery services to those offered by Amazon;
- **Improve carrier data protection** from use by Amazon's competing logistics services, in particular concerning cargo profile information;
- **Increase the powers of the monitoring trustee** by introducing further notification obligations;
- Introduce a **centralised complaint mechanism**, open to all sellers and carriers in case of suspected non-compliance with the commitments.
- **Increase to seven years**, instead of the initially proposed five years, the **duration of the commitments relating to Prime and the second competing Buy Box offer**.

The Commission found that Amazon's final commitments will ensure that Amazon does not use marketplace seller data for its own retail operations and that it grants non-discriminatory access to Buy Box and Prime. The Commission decided to make them legally binding on Amazon.

The offered commitments cover all Amazon's current and future marketplaces in the European Economic Area. They exclude Italy for the commitments relating to the Buy Box and Prime in view of the decision of 30 November 2021 of the Italian competition authority imposing remedies on Amazon with regard to the Italian market.

The final commitments will remain in force for seven years in relation to Prime and the display of the second competing Buy Box offer, and five years for the remaining parts of the commitments. Under supervision of the Commission, an independent trustee will be in charge of monitoring the implementation and compliance with the commitments.

If Amazon were to breach the commitments, the Commission could impose a fine of up to 10% of Amazon's total annual turnover, without having to find an infringement of EU antitrust rules or a periodic penalty payment of 5% per day of Amazon's daily turnover for every day of non-compliance.



Background

Amazon has a dual role as a platform. It runs a marketplace where independent sellers can sell products directly to consumers and at the same time, it sells products on its platform as a retailer, in competition with those independent sellers. As a result of this dual position, Amazon, has access to large data sets about the independent sellers' activities on its platform, including non-public business data.

Amazon's **Buy Box**, prominently displays the offer of one single seller and allows products to be swiftly purchased by directly clicking on a buy button. Amazon's **Prime programme**, offers premium services to customers for a fee and allows independent sellers to sell to Prime customers under certain conditions.

[Article 102](#) of the Treaty on the Functioning of the European Union prohibits the abuse of a dominant position that may affect trade within the EU and prevent or restrict competition. The implementation of this provision is defined in the EU Antitrust Regulation ([Regulation No 1/2003](#)), which can also be applied by the national competition authorities.

Article 9 (1) of the EU Antitrust Regulation ([Regulation 1/2003](#)) allows the Commission to conclude antitrust proceedings by accepting commitments offered by a company. Such a decision does not reach a conclusion as to whether there is an infringement of EU antitrust rules but legally binds the company to respect the commitments. A policy brief on commitment decisions under Article 9 is available [here](#).

More information, including the full text of today's Article 9 Commission decision and the full version of the commitments will be available on the Commission's [competition website](#) in the public [case register](#) under the case numbers [AT.40462](#) and [AT.40703](#).

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Quotes:

Today's decision sets new rules for how Amazon operates its business in Europe. Amazon can no longer abuse its dual role and will have to change several business practices. They cover the use of data, the selection of sellers in the Buy Box and the conditions of access to the Amazon Prime Programme. Competing independent retailers and carriers as well as consumers will benefit from these changes opening up new opportunities and choice.
Margrethe Vestager, Executive Vice-President in charge of competition policy - 20/12/2022

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