

EU-Commission
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Antitrust: Feedback by German Federal Association of eCommerce BVOH on commitments offered by Amazon concerning marketplace seller data and access to Buy Box and Prime

Dear Executive Vice-President Vestager,
Dear Mr Kramler,

it was a surprise when we suddenly heard about a proposal from Amazon on how they intend to proceed in the future to rebut the justified accusations from the EU Commission.

It was a positive surprise because it shows that your work makes a difference, that even a company like Amazon takes it seriously and looks for a solution.

This comparison offered by Amazon to the EU Commission is a good one and leads to a new fairer relationship between Amazon Marketplace, Amazon Retail and the third-party Sellers.

The EU Commission team that has been negotiating with Amazon for years can be very satisfied with what has been worked out here. However, I would like to add a few important points:

Restriction on use of non-public Seller Data for Retail Operations in competition with Sellers

Beyond the explanations in the definition in the paper, it must be ensured that no data from Amazon Marketplace may go to Amazon Retail along the entire value chain, i.e. incl. procurement of goods, pricing, storage, shipping and online marketing. There must be a clear separation, a kind of Chinese wall between these organisations. This separation must be guaranteed in particular at the same Amazon locations and must exist across all organisational levels.

This must also explicitly apply to documents that Amazon Marketplace requests from sellers for reasons of risk assessment. These documents contain prices, quantities and producer addresses, which are absolute business secrets and may not be disclosed to the competitor Amazon Retail.

And to be particularly clear here, this "Restriction on use of non-public Seller Data for Retail Operations" must apply to all Amazon companies and services. Amazon Retail must not be able to view data from Amazon Marketplace, Amazon Pay, Amazon Fulfilment or any other existing or future Amazon business unless that data is freely available to the public. Furthermore, Amazon Retail may only use this data if it is possible for anyone to access this free data. Information behind a cryptic link that Amazon Retail knows but that is not comprehensible to an outsider is not considered a publicly accessible data set.

Pricing

In particular, this separation of data use must mean that, contrary to current practice, Amazon Retail uses price changes by Sellers to adjust its own price even before the Seller's price is online. Today it happens that a Seller who is in direct competition with Amazon Retail on a product and reduces the price to be cheaper than Amazon Retail's offer is undercut again by Amazon Retail because Amazon recalculates and adjusts Amazon Retail's own price even before the seller's price is updated online.

In this context, Amazon Retail must be prevented from concluding so-called "compensation clauses" with manufacturers. These price compensation clauses make it possible for Amazon Retail to go below an imputed and economic minimum price, because the manufacturer will compensate this price range upon proof. Since almost all Sellers on Amazon are too small as SMEs to also agree such a price compensation clause with manufacturers, this approach by Amazon distorts competition due to its market dominance and must be stopped.

Amazon Retail must also be prohibited from exchanging lists with manufacturers of which Seller has undercut Amazon Retail's price for which product and when!

In addition, Amazon Retail must be prohibited from reading the offers and prices of Sellers on other platforms and its online shop. SME Sellers do not have these technical possibilities and resources.

Application of non-discriminatory conditions and criteria in determining the Featured Offer

Amazon Marketplace uses a "Seller Performance Rating" to analyse the performance of a Seller and to rate the Seller's offers accordingly. This means that if the Seller does not ship within one day, the offer will receive a lower Amazon Marketplace internal rating. In the future, it is imperative that the seller Amazon Retail is rated with the same criteria. As far as we know, there is no internal Amazon Marketplace rating for Amazon Retail. It is already the case that not every product from Amazon Retail reaches the buyer the next day. Currently, there is no internal rating of Amazon Retail as a merchant.

This also means that Amazon Retail is absolutely forbidden to fall back on goods from sellers after its own stock has been sold out. Again and again, Sellers tell us that in the event of incorrect planning in the warehouse, etc., Amazon Fulfilment takes products from Sellers out of the warehouse when Amazon Retail sells, and not Amazon Retail's own products. If there is no Amazon Retail product left in stock, then it must be considered a short sale and the buyer must be informed. In addition, this shortage must be included in Amazon Retail's seller performance.

In addition, Amazon Retail must pay the same conditions for the use of Amazon Fulfilment and receive the same service levels. Only then is a level playing field between Amazon Retail and the Sellers guaranteed.

The display of a second Offer in the Offer Display

We understand that it sounds sensible to display a second or Multiple Offer so that a Seller's offer is definitely displayed alongside a possible Amazon Retail offer.

Only we do not understand why

- the second offer must be hidden behind a click.
- the second offer must be given a negative headline.
- the first offer is upgraded by displaying the price twice.

We propose the following variants:

1. A buy-box offer remains, but this must be presented on a rolling basis between the best offers. This requires that not too many criteria are defined as to which offer is the best offer (between three and five criteria), because if there are many criteria, it is possible to make other offers worse than they are through small deviations. This would make it possible for Amazon Retail to win the buy box again with minimal adjustments.
2. There are three prizes in the buy box with the clear allocation of
 - i. Best (price-performance ratio)
 - ii. Fastest delivery
 - iii. Refurbished

Even though Amazon Marketplace will say that it is not possible to show so many prices on one level, we are sure that there is a way if Amazon Marketplace has to.

Prime

Amazon Marketplace and Amazon Retail have in the past taught European eCommerce how online trade must function today with the requirements for delivery and service. The buyer has now experienced a standard that must also be delivered in the future. Amazon has achieved this with its Prime programme. No seller can survive in the market if this level of service is not maintained.

Therefore, it is no longer necessary to run an extra Prime programme for sellers. The changes and adjustments announced in the paper are already underway in the market and are also acceptable.

This raises the question for us, who owns Amazon Fulfilment? Is Amazon Marketplace or Amazon Retail the master of Amazon Fulfilment? Of course, in the future Amazon Retail will have to be just another customer like all sellers who use Amazon Fulfilment. Amazon Fulfilment must not give preferential treatment to Amazon Retail just because it is Amazon. This requires a contractual basis, which other retailers could also obtain.

Will there be a new programme on the part of Amazon Marketplace after Prime? If so, there must be clear and comprehensive communication of the criteria to Sellers. We currently hear from Sellers that the criteria for "Prime by Seller" are not clearly communicated, so that Sellers do not know exactly what Amazon Marketplace's requirements are. However, as long as Amazon Marketplace evaluates the claims in the backend, this can lead to bad ratings in the performance of the seller account, up to a blocking, which every seller wants to prevent. This means that we are calling on the EU Commission, in addition to this settlement, to refer to the P2B Regulation once again, which Amazon in particular must adhere to and comply with.

Monitoring Trustee

Bundesverband Onlinehandel warmly welcomes the introduction of an arbitration board to review the implementation of all the changes at Amazon Marketplace and Amazon Retail.

What we absolutely have to point out is that this arbitration board must have special know-how in the marketplace business and eCommerce via marketplaces from the point of view of SMEs! It makes no sense to commission a company that sends a questionnaire to Amazon and then makes an evaluation afterwards. This is about business processes and multiple dependencies between a market-dominating company and countless SMEs all over Europe.

If the EU Commission is serious about supporting SMEs in Europe, this trustee must have demonstrable competence in the field of "trade via marketplaces, especially Amazon"! A big consultancy cannot deliver that.

Summary

As already written at the beginning, we welcome this proposed settlement on the part of Amazon. But we call on the EU Commission to read and examine the above points carefully.

The agreement on a settlement between the EU Commission and Amazon accelerates the definition of the implementation and reduces the risk of long disputes afterwards.

With the above adjustments, the EU Commission will open a new fair door in the dealings between dominant companies and SMEs in Europe.

The BVOH will be happy to answer any questions the EU Commission or Amazon may have.

We hereby authorise the EU Commission to publish this letter and thus the response to Amazon's proposal.

Yours sincerely



Oliver Prothmann
President
Berlin, September 9th, 2022

BVOH

The German Federal Association of eCommerce (Bundesverband Onlinehandel e.V.) has represented medium-sized multi-channel companies in Germany and Europe since 2006.

With the Choice-in-eCommerce initiative, the BVOH has clearly positioned the issue of sales restrictions and led to the launch of the Sector Enquiry eCommerce by the EU Commission.

In various ground-breaking studies on sales restrictions and Amazon, the restrictions and obstacles for SME retailers have been made clear repeatedly.

The Bundesverband Onlinehandel is one of the few trade associations in Germany and Europe where only sellers and not platforms or marketplaces have membership and a say.

We are the Voice of the eCommerce SMEs.