



# **Vertical restraints and e-commerce – recent enforcement**

Fabian Kaiser  
DG Competition

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*The views expressed are purely personal and do not necessarily represent an official position of the European Commission.*

# The E-Commerce Sector Inquiry



## Sector Inquiry - Key Findings (May 2017)

- More **price transparency** and **price competition**
- **More price monitoring**
- **Impact on distribution strategies**
  - Increased **presence of manufacturers at the retail level** (own webshops)
  - Increased **recourse to selective distribution**
  - Vertical Restraints
    - Pricing restrictions (RPM)
    - Territorial restrictions
    - Online sales restrictions



# Enforcement

- Increased **focus on vertical restrictions**
  
- **Territorial restrictions**
  - Pioneer decision (07/2018)
  - Pay-TV commitments (03/2019)
  - Video Games SOs (04/2019)
  - Guess decision (12/2018)
  - Nike / licensed merchandise decision (03/2019)
  
- **Resale price maintenance** cases (RPM)
  - Decisions in July 2018 against 4 manufacturers of consumer electronics (Philips, Pioneer, Asus, Denon & Marantz)

## Fines / Cooperation reduction

	Reduction for cooperation	Fine (€)
<b>Asus - AT.40465</b>	40 %	63 522 000
<b>D&amp;M - AT.40469</b>	40 %	7 719 000
<b>Philips - AT.40181</b>	40 %	29 828 000
<b>Pioneer - AT.40182</b>	50 %	10 173 000
<b>Guess - AT.40428</b>	50 %	39 821 000

## RPM cases (ASUS, D&M, Pioneer, Philips)

### Strategy:

- establishment of retail price **monitoring system**
- serial number tracking system, regularly applied to **identify the origin of low-priced products**, followed up by intervention (sometimes coupled with parallel trade restrictions)
- **bonus systems / partnership programs** (better purchase prices to certain retailers) excluding "non-cooperating" retailers
- colour codes applied to retailers according to their "distance" (-5% / -10%) from recommended retail price, and **lists of retailers circulated internally** on a daily/weekly basis, for "action" and for retaliation

### Threats:

- => at least **credible threat of retaliation**:
  - (threatening with) termination of contractual relationship or suspending deliveries
  - financial incentives and sanctions: (threatening with) no bonus, no partnership program

## Evidence (1)

*"Hallo Herr [...] ich kann absolut nicht nachvollziehen warum [Retailer A] den aktuellen Status durch unsinnige Aktionen gefährdet. Bei vorbildlich stabilem Auftreten im Markt sind sie im Q4 bei uns unter den TOP 3 e-tailern und würden bei aktueller Runrate einen Bonus von über [...] € erhalten. Möchten Sie das ab Q1 nicht mehr?"*

*"Bitte [...] in Hamburg wegen Vertragsbruch sperren. [...] ich schlage vor dass [...] wie [...] für die nächsten drei Monate keine Neuheiten bekommt. Bitte Neuheiten zurück holen."*

*"so, you're not enjoying the job?"  
"no, not really, it's not account management – it's price fixing mainly - seriously, i have to call customers so they put up their prices. It's crazy!!!!!"*




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# Evidence (2)

From: [redacted]  
To: [redacted]  
Cc: [redacted]  
Subject: VG 248QE

Tomorrow morning...



### Brand 1 Monitor VG 248QE

ab 222,00 €\* [Jetzt bewerten](#) & Testberichte

Hersteller: Monitor-Flatscreen, 61 cm  
Bildschirmdiagonale, Bildschirmgröße 24", Panel-  
Technologie: TN, Auflösung: 1.920 Pixel x 1.080 Pixel, mehr...

[Preisalarm](#) [Preisverlauf](#) [Produkt-Agent](#)

Full HD Monitor, 61cm (24 Zoll)... **222,00 €\*** [Zum Shop](#)

Versand: 5,99

### Unser Newsletter

- ✓ Spannende Neuigkeiten
- ✓ Exklusive Deals & Gewinnspiele
- ✓ Kostenlos und jederzeit widerrufbar

[Jetzt anmelden](#)

Bitte beachten Sie unsere [Datenschutzhinweise](#)

36 Angebote ab 222.00€\*

Sortieren nach: Beste Treffer  Preise inkl. Versand anzeigen

Merchant	Product	Shipping	Price	Action
Merchant 1	VG248QE 61 cm (24 Zoll) Monitor (FullHD, DVI, HDMI, DisplayPort, lms Reaktionszeit) s	Versand: <b>frei!</b> ● 24 Stunden	<b>222,00 €*</b> 22.10.2018	<a href="#">Zum Shop</a>
Merchant 2	VG248QE LED Gaming-Monitor 24 Zoll, lms Reaktionszeit schwarz	Versand: <b>frei!</b> ● sofort lieferbar / Lieferzeit: 1-2 Werktage	<b>225,00 €*</b> 18.10.2018	<a href="#">Zum Shop</a>
Merchant 3	VG248QE Monitor	Versand: <b>frei!</b> ● sofort lieferbar	<b>225,00 €*</b> 18.10.2018	<a href="#">Zum Shop</a>
Merchant 4	VG248QE (EEK: A+) 90LMGG301Q022E1C- Energyeffizienzklasse: A-	Versand: <b>frei!</b> ● auf Lager, Lieferzeit 1-2 Werktage	<b>225,00 €*</b> 21.10.2018	<a href="#">Zum Shop</a>
Merchant 5	VG248QE LED Gaming-Monitor 24 Zoll, lms Reaktionszeit schwarz - Neuware -	Versand: <b>frei!</b> ● unbekannt	<b>225,00 €*</b> 22.10.2018	<a href="#">Zum Shop</a>

Illustration only!

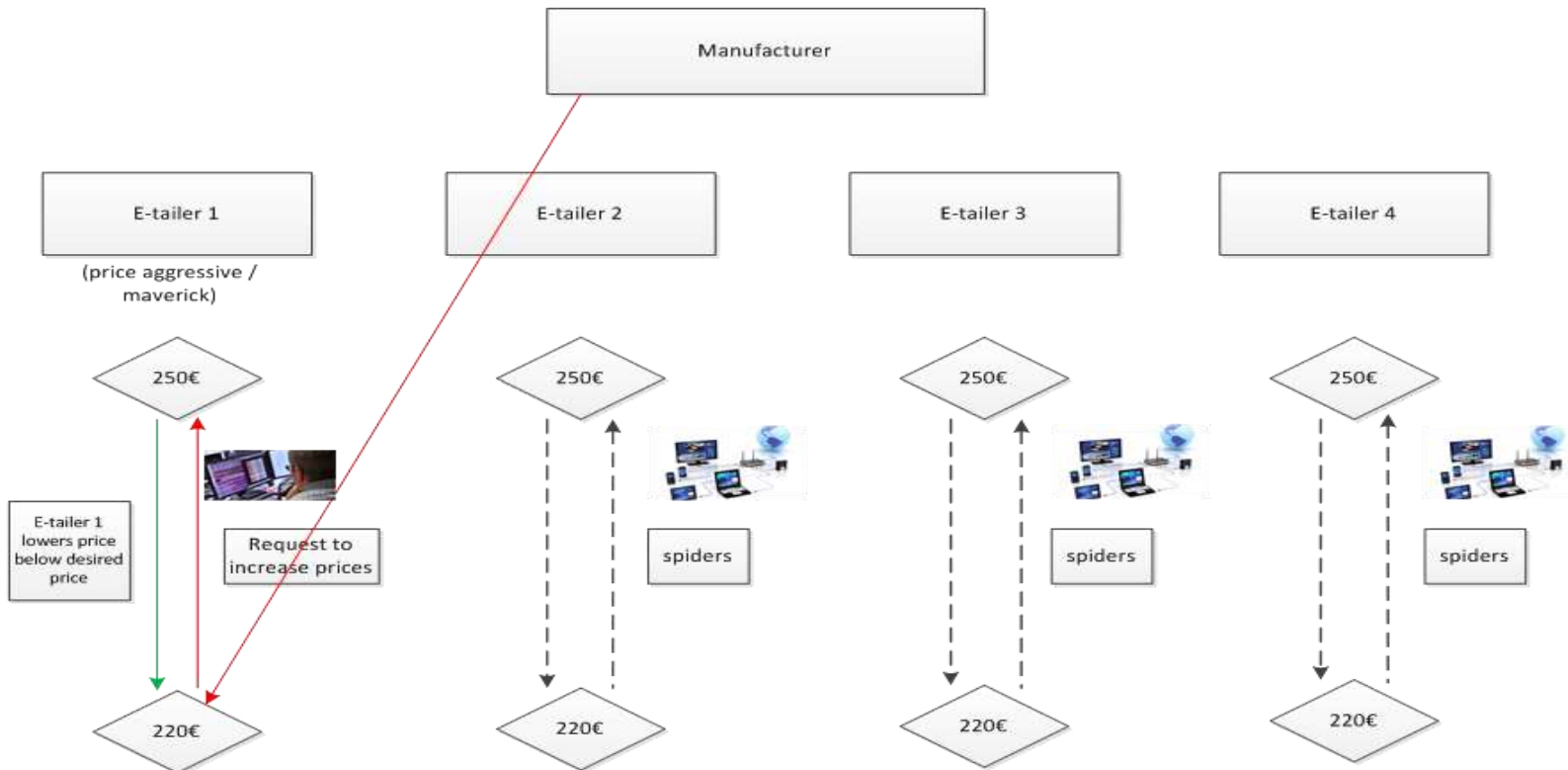
Competition





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# Pricing algorithms: small intervention – big impact



Spiders are a software which monitors resale prices of key competitors and automatically adjust prices to match (lowest) price in the market. Getting price mavericks to adhere / raise to desired price levels has knock-on effects on multiple e-tailers.

## Possible negative effects of RPM

### ➤ **Foreclosure of other buyers:**

The fixed or minimum price, possibly instigated by the incumbent buyer(s), deprives more efficient/new distributors from gaining market share by competing on price

### ➤ **Softening of competition or facilitation of collusion between buyers**

RPM may be induced by buyers as a way to facilitate collusion/soften competition; the enforcement of the obligation and the monitoring is partly executed by the supplier

## Possible positive effects of RPM

- **Solving a free-rider problem**

Free-riding works both ways. Are there less intrusive means?

- **Support entry in (new) market**

For a short period of time.

# Guess Decision



- ❖ **Selective distribution system**
- ❖ EEA-wide
- ❖ Wholesale level: one wholesaler per Member State (either a subsidiary of Guess Europe or an independent one)
- ❖ Retail level:
  - Mono-brand stores owned by Guess
  - Mono-brand stores run by third parties
  - Multi-brand stores run by third parties
- ❖ Guess used the same standard agreements in the EEA (except for FR, SP, PT)

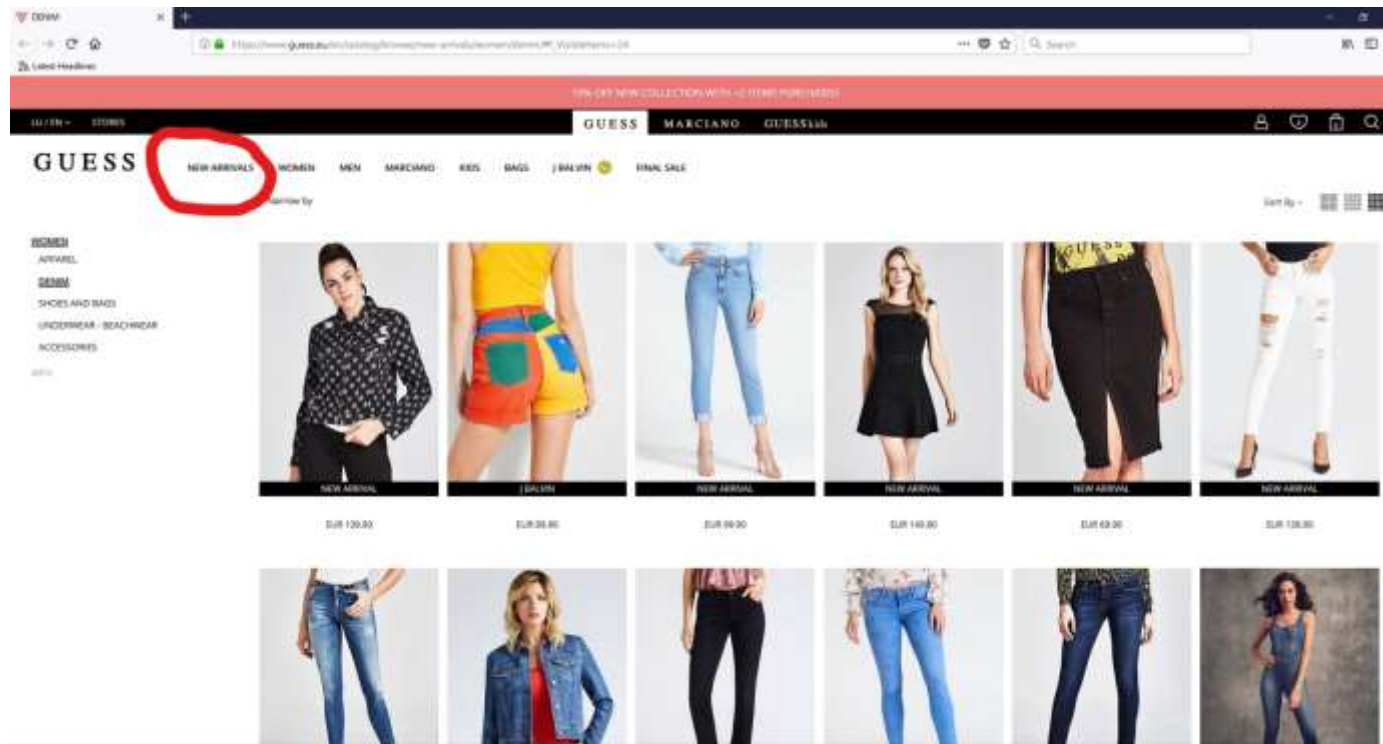


# Guess decision

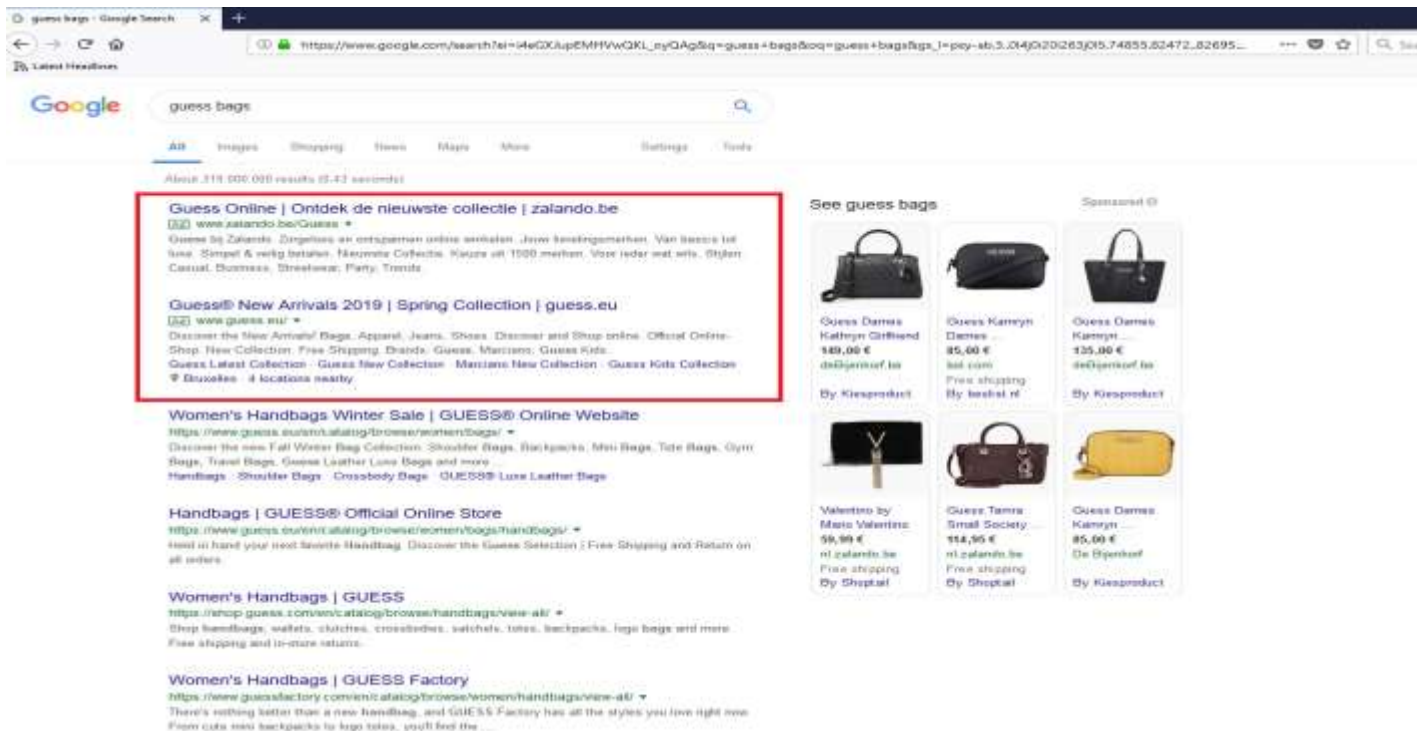
Guess restricted authorised distributors in a selective distribution system from:

- selling to end users **located outside the authorised distributors' allocated territory** - Article 4 c) VBER
- **cross-selling** among authorised wholesalers and retailers – Article 4 d) VBER
- determining their **resale prices** independently - Article 4 a) VBER
- using the Guess brand names and trademarks for the purposes of **online search advertising**
- selling online without **first obtaining a specific authorisation** which Guess had **full discretion** to either grant or refuse and where no quality criteria had been specified for deciding whether or not to grant an authorization

# The strategy of Guess



# Online search advertisement restriction



guess bags - Google Search

https://www.google.com/search?hl=nl&q=guess+bags&oeq=guess+bags&igs\_j=pey-sb.3\_04jD20263j05.74855.82472\_82695...

guess bags

About 311,000,000 results (0.43 seconds)

**Guess Online | Ontdek de nieuwste collectie | zalando.be**  
<https://www.zalando.be/Guess>  
 Guess bij Zalando. Ontdek een ontspannen online aanbod. Jero lezingenmerken. Van basics tot luxe. Simpel & veilig betalen. Nieuwste Collectie. Waars 100 merken. Voor ieder wat wils. Stijlen Casual, Business, Streetwear, Party, Trends.

**Guess® New Arrivals 2019 | Spring Collection | guess.eu**  
<https://www.guess.eu/>  
 Discover the New Arrivals/ Bags, Apparel, Jeans, Shoes, Dresses and Shop online. Official Online-Shop. New Collection. Free Shipping. Brands: Guess, Marciano, Guess Kids. Guess Latest Collection - Guess New Collection - Marciano New Collection - Guess Kids Collection - Boutiques - 4 locations nearby.

**Women's Handbags Winter Sale | GUESS® Online Website**  
<https://www.guess.eu/en/catalog/browse/women/bags/>  
 Discover the new Fall Winter Bag Collection: Shoulder Bags, Backpacks, Mini Bags, Tote Bags, Gym Bags, Travel Bags, Guess Leather Luxe Bags and more. Handbags - Shoulder Bags - Crossbody Bags - GUESS® Luxe Leather Bags.







**Handbags | GUESS® Official Online Store**  
<https://www.guess.eu/en/catalog/browse/women/bags/handbags/>  
 Need to hand your next favorite Handbag. Discover the Guess Selection | Free Shipping and Return on all orders.

**Women's Handbags | GUESS**  
<https://shop.guess.com/en/catalog/browse/handbags/view-all/>  
 Shop handbags, wallets, slutches, crossbodies, satchels, totes, backpacks, hobo bags and more. Free shipping and in-store returns.

**Women's Handbags | GUESS Factory**  
<https://www.guessfactory.com/en/catalog/browse/women/handbags/view-all/>  
 There's nothing better than a new handbag, and GUESS Factory has all the styles you love right now. From cute mini backpacks to hobo totes, you'll find the ...

**See guess bags**

**Sponsored**

 <b>Guess Dames Kathryn Giftband</b> <b>149,00 €</b> <a href="https://www.guess.eu/">guess.eu</a> By Kieproduct	 <b>Guess Dames Kathryn</b> <b>85,00 €</b> <a href="https://www.guess.eu/">guess.eu</a> Free shipping By basket.nl	 <b>Guess Dames Kathryn</b> <b>135,00 €</b> <a href="https://www.guess.eu/">guess.eu</a> By Kieproduct
 <b>Valentino by Maria Valentino</b> <b>59,99 €</b> <a href="https://www.zalando.be/">nl zalando.be</a> Free shipping By Sheptal	 <b>Guess Dames Small Society</b> <b>114,95 €</b> <a href="https://www.zalando.be/">nl zalando.be</a> Free shipping By Sheptal	 <b>Guess Dames Kathryn</b> <b>85,00 €</b> <a href="https://www.guess.eu/">De Gjenhof</a> By Kieproduct

## Online sales restriction



selling online without first obtaining from Guess a specific authorization which Guess had full discretion to either grant or refuse and where **no quality criteria** had been specified for deciding whether or not to grant an authorization





# VBER Review

- **VBER review launched on 3 October 2018 (expiry on 31 May 2022)**
- Review is divided in two phases: **Evaluation** (approx. 18 months, until Q2/2020) and **Impact Assessment** (approx. 24 months, until expiry)
- **Public consultation** from 4 February to **27 May 2019** (evaluation questionnaire)
- The evaluation phase is aimed at **gathering evidence on the functioning of the VBER** (together with the accompanying **Guidelines on Vertical Restraints**)
- Dedicated **stakeholder workshop** planned for autumn 2019
- Close cooperation with national competition authorities (ECN)
- Context: **increased importance of online sales** and the emergence of **new market players** such as online platforms