The E-Commerce Sector Inquiry

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The views expressed are purely personal and do not necessarily represent an official position of the European Commission.
Estimated evolution of the total and online retail sales in goods, 2000-2014 (in billion EUR, from Duch-Brown and Martens, JRC, 2015)
Context: Digital Single Market Strategy

❖ Political priority of the Commission, adopted on 6 May 2015

❖ Aim: Better access for consumers and businesses to online goods and services across Europe - Remove unjustified barriers

❖ Actions:
  • Legislative actions → public or regulatory barriers
  • Complemented by Sector Inquiry → private or company erected barriers
Key Findings – Consumer Goods

- 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
  - Territorial restrictions
  - Online sales restrictions
Price transparency and price competition in online markets
Price Transparency

Frequency of modifying online prices based on the responses of retailers

- Several times a day
- Weekly
- Seasonally
- During promotional periods
- Daily
- Monthly
- Yearly

Clothing and shoes
Consumer electronics
Household appliances
Computer Games
Toys and childcare
Media
Cosmetic and Healthcare
Sports and Outdoor
House and Garden
Others
Price Monitoring

Most commonly reported methods to monitor retail prices by manufacturers:

- Manual tracking: 67%
- Software which tracks prices: 38%
- Purchase pricing information from a third party: 31%
- Request information from retailers: 12%
- Another method: 9%
Pricing Algorithms

May increase price competition, but potentially ...

- facilitate horizontal collusion
- Hub and spoke (usage of same algorithm)
- incentivize RPM practices
- Artificial Intelligence and collusion?
Online business strategies
Rating the parameters of competition by manufacturers
Pure Online Players – Drivers

Rating the parameters of competition by pure online players
Manufacturers' Strategies

- Opening of own online shop(s): 64%
- Admitting pure online distributor(s): 55%
- Increased support for your retailers' online shops: 54%
- Increased support for your retailers' brick and mortar shops: 41%
- Introduction of new criteria in your distribution agreements: 39%
- Introduction of selective distribution system(s): 19%
- Others: 16%
- Selling directly to end users via marketplace(s): 14%
- Integration of manufacturing and distribution activities: 3%
- Moving towards an agency model: 2%
- Expansion of selective distribution system to other types of products: 2%

Measures taken by manufacturers in the last 10 years to react to the growth of e-commerce
Selective Distribution

Number of respondent manufacturers active in one product category only and sell via selective distribution
Contractual restrictions on online sales
Contractual Restrictions

Proportion of retailers having contractual restrictions, per type of restriction
Internet sales restrictions

❖ **Absolute internet sales bans** (Pierre Fabre)
  • Hardcore restriction under Article 4 b) and 4 c) VBER

❖ **Not all contractual provisions** that (negatively) affect internet sales hardcore (Art. 4 VBER: "object of market partitioning")

❖ **Marketplace bans**

❖ **Price comparison tool bans**
Marketplace Sales Restrictions – 1

Proportion of retailers in each Member State that have agreements containing marketplace restrictions

- Germany: 32%
- France: 21%
- Netherlands: 17%
- Austria: 17%
- Spain: 16%
- United Kingdom: 15%
- Poland: 13%
- Belgium: 10%
- Italy: 9%
- Sweden: 8%
- Denmark: 6%
- Total EU: 18%
Relevance of Marketplaces

Proportion of retailers using different sales channels for selling online:

- Own online shop only: 61%
- Marketplace only: 31%
- Both: 4%
- Neither: 4%

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Price Comparison Restrictions – 1

Proportion of retailers in each EU Member State that have agreements containing a restriction to use price comparison tools
Main conclusions

- No need to review VBER and Vertical Guidelines prior to 2022
- The Commission is stepping up enforcement on e-commerce (Digital Single Market objective)
- Results will be used to broaden dialogue with national competition authorities (consistent approach)
Enforcement

- **Increased focus on vertical restrictions in the Single Market**

- **Resale price maintenance cases** (RPM)
  - Separate cases opened in February 2017 against 4 manufacturers of consumer electronics (Philips, Pioneer, Asus, Denon & Marantz)

- **Territorial/online sales restrictions cases**
  - Holiday pricing: agreements between hotels and tour operators to differentiate based on nationality or country of residence (February 2012)
  - Guess investigation: passive sales, cross supply restrictions in a selective distribution system concerning clothing, shoes and accessories
  - Pay-TV cases
  - PC video games cases