



## Antitrust: Commission seeks feedback on commitments offered by Amazon concerning marketplace seller data and access to Buy Box and Prime

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The European Commission invites comments on [commitments](#) offered by Amazon to address competition concerns over its use of non-public marketplace seller data and over a possible bias in granting sellers access to its Buy Box and its Prime programme.

### The Commission's investigations

Amazon is a data-driven company whose retail decisions are for most driven by automated systems, fuelled by the relevant data. 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 independent sellers. As a result of this dual position, Amazon, has access to large sets of data about the independent sellers' activities on its platform, including non-public business data.

[On 17 July 2019](#), the Commission opened a formal investigation to assess whether Amazon's **use of non-public data** from independent retailers selling in its marketplace breached EU competition rules. [On 10 November 2020](#), the Commission issued a Statement of Objections outlining its preliminary view that Amazon should not rely on independent sellers' business data to calibrate its retail decisions, as this distorts fair competition on its platform and prevents effective competition.

In parallel, the Commission opened a [second investigation](#) into:

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

The Commission preliminarily found that the rules and criteria for the Buy Box and Prime unduly favour Amazon's own retail business, as well as marketplace sellers that use Amazon's logistics and delivery services. This bias may harm other marketplace sellers, their independent carriers, other marketplaces, as well as consumers that may not get to view the best deals.

### The offered commitments

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

- **With respect to the marketplace seller data**, Amazon commits to refrain from using non-public data relating to, or derived from, the activities of independent sellers on its marketplace, for its retail business that competes with those sellers. This would apply to both Amazon's automated tools and employees that could cross-use the data from Amazon Marketplace, for the purposes of retail decisions. The relevant data would cover both individual and aggregate data, such as sales terms, revenues, shipments, inventory related information, consumer visit data or seller performance on the platform. Amazon commits not to use such data for the purposes of selling branded goods as well as its private label products.
- **In relation to the Buy Box** Amazon commits:
  - to apply equal treatment to all sellers when ranking their offers for the purposes of the selection of the winner of the Buy Box;
  - and in addition, to display a second competing offer to the Buy Box winner if there is a second offer that is sufficiently differentiated from the first one on price and/or delivery. Both offers will display the same descriptive information and provide for the same purchasing experience. This will enhance consumer choice.
- **Lastly, regarding Prime** Amazon commits:

- to set non-discriminatory conditions and criteria for the qualification of marketplace sellers and offers to Prime;
- to 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 to use any information obtained through Prime about the terms and performance of third-party carriers, for its own logistics services. This is to ensure that carriers' data is not flowing directly to Amazon's competing logistics services.

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

The commitments would remain in force for five years. Their implementation would be monitored by a monitoring trustee who would report regularly to the Commission.

The Commission invites all interested parties to submit their views on Amazon's proposed commitments before 9 September 2022.

A summary of the proposed commitments will be published in the [EU's Official Journal](#). The full text of the commitments will be available on DG Competition's website.

## Background

[Article 102 of the Treaty on the Functioning of the European Union](#) prohibits the abuse of a dominant market position, including the imposition of unfair pricing in the form of excessive prices. The implementation of these provisions is defined in the EU's Antitrust Regulation, ([Council Regulation \(No\) 1/2003](#)), which is also applied by national competition authorities.

Article 9(1) of the Regulation (No) 1/2003 enables companies investigated by the Commission to offer commitments in order to meet the Commission's concerns and empowers the Commission to make such commitments binding on the companies. Article 27(4) of Regulation (No) 1/2003 requires that before adopting a decision pursuant to Article 9 of Regulation (No) 1/2003, the Commission shall provide interested third parties with an opportunity to comment on the offered commitments.

If the market test indicates that the commitments address the competition concerns, the Commission may adopt a decision making them legally binding Amazon. Such a decision would not conclude that there is an infringement of EU antitrust rules, but would legally bind Amazon to respect the commitments it has offered.

If Amazon breaks such commitments, the Commission can impose a fine of up to 10% of the company's worldwide turnover, without having to prove an infringement of the EU antitrust rules.

More information on the investigations is 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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