

EU Competition Law in the Digital Era

Some Implications for E-Commerce and Logistics

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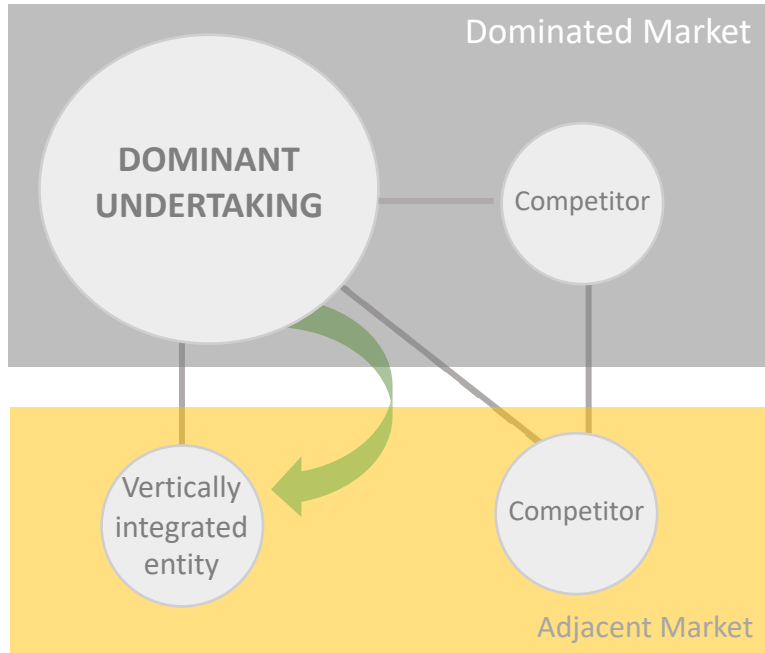
General Counsel Parcels & Logistics



Digitalization Profoundly Transformed Logistics Services

- E-commerce changed the nature of logistics services
 - Decrease in traditional mail services
 - Increase in integrated parcel delivery services (e.g. fulfilment)
 - Dynamic, fast-changing competitive landscape
- E-commerce facilitated new business models
 - Entry into logistics by vertically integrated digital platform providers
 - New delivery models (less network-based, *e.g.*, crowd-sourced last-mile delivery)
 - Emergence of new employment models ('gig-workers')

Abuse of Dominance: Introduction



Dominance: Ability to behave independently of competitors, customers and, ultimately, final consumers

- Actual market position (market share)
- Potential constraints and barriers to entry
- Countervailing buyer power
- other

Abuse: examples

- Refusal to supply downstream competitors
- Tying and bundling
- Exclusionary pricing (e.g., below cost)
- Exclusivity
- Excessive pricing

Abuse of Dominance In The Digital Context

Factors of dominance

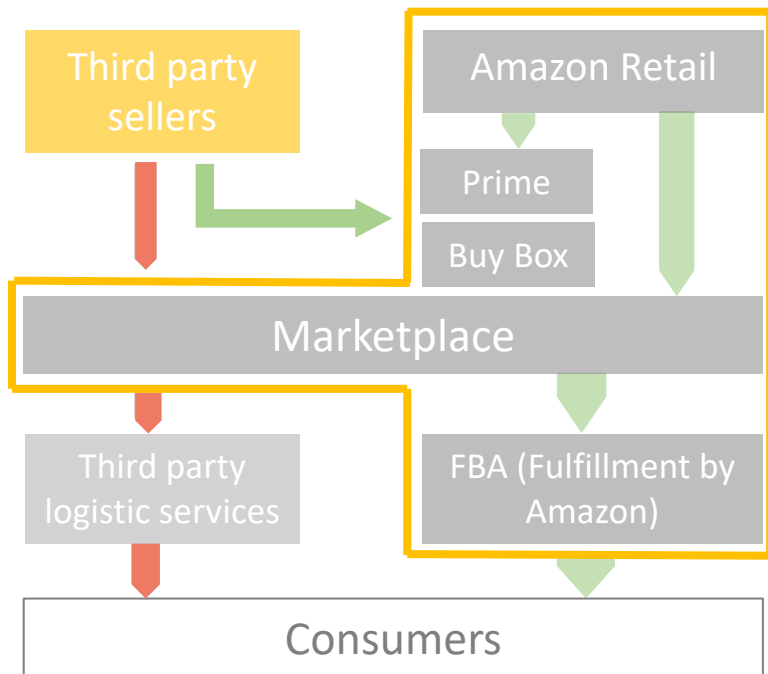
- Network effects
- Increasing returns to scale ('first-mover')
- Access to data
- Lock-in effects
- Unavoidable trading partner ('gatekeeper')
- 'Conglomerate ecosystems'
- other

Forms of abuse

- Self-preferencing
- Forced free-riding (use of third-party data)
- Envelopment strategies (e.g. tying of privacy policy)
- Ecosystem access restriction (e.g. App Store)
- other

Recommended reading: OECD, [Abuse of Dominance in Digital Markets](#), 2020

Current EU Investigations into Alleged Market Abuses by Digital Players: The Amazon Example



Amazon's dual role as:

- Provider of a marketplace that connects sellers and buyers; and
- Seller of (own-label) products via its marketplace.

2 investigations:

- Possible systematic reliance on non-public business data of independent sellers on the marketplace to benefit own retail business.
- Potential favouring of own services via the criteria to win the “Buy Box” and access Prime service.

Current National Investigations: The Italian Amazon Case

- Part of decentralized enforcement efforts across the EU
- Italian competition authority investigates Amazon's practices e.g., on the markets for:
 - “Marketplace brokerage services”
 - “Logistics services for e-commerce”
- Preliminary concerns:
 - Potential leveraging of the marketplace to favor own retail and logistics offers
 - Tying preferential platform sale conditions to the use of its own logistics services

Digital Markets Act: Proposed Ex-Ante Regulation To Reduce Need For Ex-Post Enforcement?

- Why regulate the digital sector?
 - Digital markets risk becoming incontestable, leading to market imbalance or failure
 - *Ex post* competition enforcement too slow in fast-moving digital markets
- DMA will codify recent enforcement practices
 - Clarification of 'dominance': large online platforms that qualify as 'gatekeepers'
 - Limitation of 'abuses': Restrictions on pre-defined unfair practices (e.g., self-preferencing)
 - Enforcement: Interim measures; fine (up to 10% of global annual turnover); commitments