E-commerce

A game changer?

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

Note: 2008 data without enterprises in the NACE Rev 2 group 95.1 referring to ‘Repair of computers and communication equipment’.

Source: Eurostat
E-commerce

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Sector Inquiry- Key Findings

- 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
**Manufacturers' Strategies**

<table>
<thead>
<tr>
<th>Measure</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Opening of own online shop(s)</td>
<td>64%</td>
</tr>
<tr>
<td>Admitting pure online distributor(s)</td>
<td>55%</td>
</tr>
<tr>
<td>Increased support for your retailers' online shops</td>
<td>54%</td>
</tr>
<tr>
<td>Increased support for your retailers' brick and mortar shops</td>
<td>41%</td>
</tr>
<tr>
<td>Introduction of new criteria in your distribution agreements</td>
<td>39%</td>
</tr>
<tr>
<td>Introduction of selective distribution system(s)</td>
<td>19%</td>
</tr>
<tr>
<td>Selling directly to end users via marketplace(s)</td>
<td>14%</td>
</tr>
<tr>
<td>Integration of manufacturing and distribution activities</td>
<td>3%</td>
</tr>
<tr>
<td>Moving towards an agency model</td>
<td>1%</td>
</tr>
<tr>
<td>Expansion of selective distribution system to other types of products</td>
<td>1%</td>
</tr>
</tbody>
</table>

**B. 23: Measures taken by manufacturers in the last 10 years to react to the growth of e-commerce**
Online Prices: Increased Monitoring

- ~50% of retailers track online prices of competitors
  - ~70% of those use (also) software
  - some adjust their own prices automatically (no manual intervention)
- ~30% of manufacturers track systematically online retail prices of their products sold by independent distributors
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.
Relevance of Marketplaces

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

B. 54: Proportion of retailers using different sales channels for selling online
Figure B. 55: Proportion of retailers in each turnover category that sell on marketplaces

- Below €100,000: 33% selling, 67% not selling
- €100,000 - €500,000: 46% selling, 54% not selling
- €500,000 - €2m: 54% selling, 46% not selling
- €2m - €10m: 38% selling, 62% not selling
- €10m - €50m: 27% selling, 73% not selling
- €50m - €100m: 34% selling, 66% not selling
- Above €100m: 28% selling, 72% not selling

Relevance of Marketplaces
Coty Judgment  
*(marketplace bans under Article 101)*

- The Metro criteria apply to a specific contractual clause designed to preserve the luxury image *(Coty, paragraph 40)*.

- Marketplace ban is appropriate *(Coty, paragraphs 42-51)*:
  - Goods will be exclusively associated with the authorised distributors
  - No contractual link with marketplace to ensure quality conditions
  - Liable to harm the luxury image

- Marketplace ban is proportionate *(Coty, paragraphs 52-57)*:
  - No absolute internet sales prohibition
  - Pre-defined quality conditions are not as effective
Internet sales restrictions and VBER

- **Not all contractual provisions** that (negatively) affect internet sales are "hardcore" restrictions (Article 4 VBER: "object of market partitioning", "to whom and where to sell")

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

- **Marketplace bans** (*Coty, paragraphs 65-68*)
  - *No de facto* prohibition of internet sales
  - Only restricts specific kind of internet sale, advertising for own website remains possible
  - No customer group restriction (Article 4 b) VBER)
  - No passive sales restriction (Article 4 c) VBER)
Conclusions

- "Renaissance" of vertical restraints in online markets

- The Commission is stepping up enforcement with respect to the restrictions identified during the e-commerce sector inquiry