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## QUICK LINKS

[INTRODUCTION AND  
REFLECTIONS](#)

[FAIRNESS AND  
TRANSPARENCY  
REGULATION](#)

[EUROPEAN COMMISSION  
REPORT](#)

[UK AND DUTCH  
CONTRIBUTIONS](#)

[CASETRACKER](#)

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## REFLECTIONS ON RECENT PROPOSALS FOR REGULATING PLATFORMS AND DIGITAL MERGERS

The role of platforms in digital markets, and how best to ensure competition is preserved, is a hot topic among the competition community. This edition of our newsletter focuses on the debate in light of a number of recent contributions, which are being generated at across all levels of policy-making:

- At the EU-level, the [regulation](#) on promoting fairness and transparency for business users of online intermediation services was adopted in June (see [here](#)), and a [report](#) for the European Commission considering competition policy for the digital era has also been published (see [here](#)).
- At the Member State level, a recent [letter](#) in the Netherlands and a [report](#) to the UK's CMA outlined proposals relating to so-called 'gatekeeper' platforms (see [here](#)).

Broadly, these contributions consider (i) a 'top-up' of general competition rules with ex ante regulation, and (ii) how to capture and analyse potentially anti-competitive mergers. The remainder of this newsletter reports further on each of the proposals, but some of the common themes articulated are outlined below.

### 1. Ex-ante regulation

Some digital markets are prone to a *winner-takes-all* or *winner-takes-most* outcome, so ex-ante regulation is identified as a possible way to protect pro-competitive processes, by intervening early to prevent negative outcomes arising in the first place. Ex-ante tools are seen by some as offering a faster, more cooperative solution to existing ex-post approaches. Ex-ante regulation could take a number of forms, such as legally binding regulation, or industry-led codes of conduct, but would be centred on the concepts of fairness and transparency.

### 2. Gatekeeper platforms

A clear consensus on which platforms should be subject to any ex-ante regulation is yet to be reached, but a common language relating to so-called 'gatekeeper' platforms has emerged. Broadly, these are platforms which set the rules of the game when it comes to market access or the interaction between consumers, business users and service providers, meaning that their conduct is at risk of being scrutinised closely.

Detailed assessments of which platforms qualify as gatekeepers could be complex, and there is currently no definitive approach. The proposals from the UK and Netherlands discussed in this newsletter suggest that the test for establishing a gatekeeper would be narrow, and relate to a finding of indispensability – i.e. access by a competitor to the platform must be indispensable in order to compete in the downstream market. In contrast, the position at the EU level appears to be that dominance alone is enough, which would be a lower threshold: in the Google Shopping [case](#), the Commission considered it abusive to self-preference own results, without assessing whether Google Shopping was an indispensable platform. The report commissioned for Commissioner Vestager discussed in this newsletter equally does not provide a clear-cut solution, as the authors focus on platforms which act as 'regulators' in digital markets – alluding to indispensability and the essential facilities doctrine – but also noting that self-preferencing can be abusive where it is likely to result in leveraging of market power, without necessarily applying the essential facilities test.

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## COMPETITION LAW IN THE DIGITAL AGE

JULY 2019

QUICK LINKS

[INTRODUCTION AND  
REFLECTIONS](#)

FAIRNESS AND  
TRANSPARENCY  
REGULATION

EUROPEAN COMMISSION  
REPORT

UK AND DUTCH  
CONTRIBUTIONS

CASETRACKER

### **3. Transaction-value threshold in merger control**

Finally, there is a concern that so-called ‘killer acquisitions’ of low-turnover start-ups by big platforms to remove a potentially important future competitor escape merger control scrutiny, as they fall below applicable turnover thresholds. Germany and Austria recently introduced transaction value-based tests, and the effectiveness of these new thresholds will likely inform whether similar modifications are made to jurisdictional thresholds at the EU level or in other Member States. Whilst most authorities are adopting a ‘wait and see’ approach to any changes, others are keen to press ahead: [including](#) the Dutch Secretary of State .

## REGULATION ON PROMOTING FAIRNESS AND TRANSPARENCY FOR BUSINESS USERS OF ONLINE INTERMEDIATION SERVICES

### 1. Overview and context

Following approval in April by the European Parliament, on 14 June 2019 the Council adopted the regulation on promoting fairness and transparency for business users of online intermediation services (the “[Regulation](#)”). The Regulation forms part of the [Digital Single Market Strategy for Europe](#).

The Regulation comes at a time when the European Commission is increasingly looking at business practices associated with online intermediation services – such as platforms: for example, the European Commission’s [study on business to business relations in the online platform environment](#) concluded that 46% of users have noted problems in their relations with an online platform during their business relationship.

The Regulation recognises the benefits that online intermediation services have brought to bricks-and-mortar businesses by facilitating access to a broader base of potential customers, and providing the infrastructure required to compete internationally. It also notes that online intermediation services offer consumer benefits. Nevertheless, the Regulation considers that, currently, some intermediaries have become an essential tool for businesses, meaning that a set of uniform and targeted rules at the EU level are needed to ensure a fair, predictable, sustained and trusted online business environment. The Regulation therefore aims to ensure that business users of online intermediation services are treated with transparency and fairness, and have effective redress possibilities.

### 2. Content

The Regulation applies to online intermediation services, which are broadly defined as services that (i) allow business users to offer goods and services to consumers, with a view to facilitating direct transactions between those business users and consumers, and (ii) are provided on the basis of a contractual relationship between the service provider and the business users and consumers. Online payment services, online advertising tools and online advertising exchanges are not caught by the Regulation.

#### 2.1 Fairness and transparency

There are detailed rules on how terms and conditions made between online intermediation service providers and business users should operate. Some of the key provisions are as follows:

- i.** Providers of online intermediation services shall ensure that their terms and conditions are drafted in an intelligible and transparent manner.
- ii.** Terms and conditions must clearly indicate (i) the main parameters determining ranking, and (ii) the reasons for the relative importance of those main parameters as opposed to other parameters. Where business users can influence ranking via direct or indirect payments to the online intermediation services provider, this must be explained. However, providers will not be required to disclose algorithms or any other sensitive information to users.
- iii.** Providers are required to make clear in their terms and conditions if there are any differences in the treatment of goods and services offered to consumers on their online intermediation services or online search engines by businesses related to that provider and other, unrelated third party, businesses.
- iv.** Terms and conditions must outline the access that business users will receive to any personal data or other data which they or consumers provide to, or is generated through the provision of services by, the online intermediation services provider.
- v.** If providers of online intermediation services require that businesses cannot offer the same goods and services to consumers on different terms via other channels, they shall include the grounds for that restriction in their terms and conditions and make them available to the public.

**2.2 Redress possibilities**

To provide effective redress for business users, the Regulation requires that providers of online intermediation services will:

- i.** Establish an internal system for handling the complaints of business users based on the principles of transparency and equal treatment, whose functioning must be illustrated in the terms and conditions.
- ii.** Identify in their terms and conditions two or more mediators that can deal with disputes between the provider and the business user, including complaints that could not be resolved through the internal complaint-handling system.

Organisations and associations representing business users or corporate website users, as well as public bodies established in Member States, shall have the right to initiate judicial proceedings before national courts in the EU in cases of alleged non-compliance.

Lastly, it is envisaged that the European Commission will encourage the creation of industry codes of conduct, to foster proper application of the Regulation.

**3. Timing**

The Regulation will now be published in the Official Journal of the EU, and apply twelve months after the date of publication.

## FIT FOR PURPOSE? EUROPEAN COMMISSION PUBLISHES REPORT ON COMPETITION POLICY IN THE DIGITAL AGE

A report commissioned by Competition Commissioner Margrethe Vestager to explore how competition policy should evolve to promote pro-consumer innovation in rapidly evolving digital markets was published in April 2019 (the [“Report”](#)).

Authored by three special advisers, the Report concludes that existing competition law and policy remains a solid foundation for protecting competition in the digital age. It does, however, call out some specific areas where the authors believe improvements could better address the specificities of digital markets. This article covers some of the key topics and findings in the Report relating to (i) antitrust, and (ii) merger control.

### **Antitrust**

#### **I. Online platforms**

##### **A. Competition between platforms**

The Report highlights the importance for new entrants to attract a critical mass of users and generate positive network effects, concluding that any actions that hinder new entrants may not comply with competition law. On this point, it focuses on two practices:

- **Most-favored nation clauses (“MFNs”)**: The Report notes that wide MFNs (where a supplier commits not to offer its products at a cheaper price on its own website and on other platforms or comparison sites) are more likely to restrict competition and lead to higher prices than narrow MFNs (where a supplier commits not to offer its products at a cheaper price on sales channels that it directly controls). It suggests that a ban on narrow MFNs should only operate where competition between platforms is weak.
- **Multi-homing restrictions**: The Report notes that it is important to ensure multi-homing and switching are possible. It notes that multi-homing could be restricted through various means, like fidelity rebates and/or bundling, and suggests that these measures may be particularly problematic if they are implemented by dominant platforms.

##### **B. Competition on platforms**

Some platforms are now playing a dual role in digital markets – active both in the provision of platform services, and as a supplier of goods and services on that platform. The “regulatory role” some platforms play by facilitating interaction between consumers and businesses is flagged by the authors, and used as a lens through which to consider behavior which may raise questions from a competition perspective. For example:

- **Transparency**: The authors argue that, if a platform is dominant, transparency can be a competition policy issue if, for example, a platform responds to search queries based on the payments it receives instead of objective criteria such as quality or adequacy, and does not make such ranking explicit.
- **Leveraging and self-preferencing**: According to the authors, self-preferencing by a dominant platform could be abusive even in the absence of an “essential facility”, and should be subject to an effects-based analysis. For markets with high barriers to entry, the Report recommends that the burden of proof is reversed for certain platforms performing a “regulatory” function, so they must demonstrate the lack of long-term exclusionary effects of their practices and/or put forward efficiency gains.

## II. Data

Data is an important input for digital services and processes, and data sharing arrangements can often be pro-competitive. The Report notes that practices like data pooling (reciprocal data sharing arrangements in which (at least some) parties contribute data) could in some circumstances fall foul of Article 101 or Article 102 TFEU. For example, issues may arise if (i) pooled data is competitively sensitive, (ii) sharing discourages competition among participants, (iii) access to data is not provided on equal terms to competitors, leading to market exclusion, or (iv) the terms of data access are not fair, reasonable and non-discriminatory (FRAND).

### Merger control

The Report also considers whether the EU Merger Regulation (“**EUMR**”) adequately addresses the recent trend of acquisitions of small but successful start-ups with competitive potential by larger players. This question is approached from two angles: jurisdictional thresholds, and substantive analysis.

#### I. Jurisdictional thresholds

The Report concludes that the EU should not yet make changes to incorporate a non-turnover-based threshold, as designing an appropriate test would be challenging. Rather, the Commission should wait to assess (i) how the transaction value-based thresholds introduced in 2017 in Germany and Austria play out in practice, and (ii) whether the existing referral system that allows parties to refer their deals to the Commission where they are caught at the Member State level continues to function well.

The transaction value-based notification thresholds adopted in Germany and Austria supplement the existing turnover-based thresholds, and a public consultation on a draft guidance paper discussing application of the test was launched in May 2018. The latest version of the guidance [paper](#) was published in August 2018.

#### II. Substantive analysis

Whilst the jurisdictional thresholds do not require immediate updates, the Report advocates for a re-think of the substantive criteria used to assess acquisitions of start-ups.

For example, the fact that a conglomerate effects analysis is typically applied, because the start-up is often active in a related, rather than the same, market as the acquirer, is highlighted. The authors argue that whilst two tech companies may not directly compete in their core offerings, and are therefore not close competitors, they may compete at the fringes of one another’s “ecosystems”. Accordingly, a unilateral effects analysis may still be appropriate.

Moreover, competitive analyses could use broader market definitions to identify defensive acquisition strategies, as this would capture attempts to shield conglomerate ecosystems from peripheral competitive threats.

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## COMPETITION LAW IN THE DIGITAL AGE

JULY 2019

QUICK LINKS

INTRODUCTION AND  
REFLECTIONS

FAIRNESS AND  
TRANSPARENCY  
REGULATION

[EUROPEAN COMMISSION  
REPORT](#)

UK AND DUTCH  
CONTRIBUTIONS

CASETRACKER

### Conclusion

The Report comes at an important time, as other regulators like the [CMA](#) also consider whether they are well equipped to deal with fast-paced digital markets. This contribution to the debate concludes that the principles and tools underpinning EU competition policy are sound, but improvements are needed to ensure that the digital economy continues to work for the benefit of all.

The competition law community will now be watching to see how the proposals will shape thinking in the Commission.

## REGULATION IN DIGITAL MARKETS: CONTRIBUTIONS FROM THE UK AND NETHERLANDS

The effectiveness of existing regulation in digital markets has been a hot topic not just at the EU-level, but also within Member States, with recent contributions from the United Kingdom and Netherlands leading the way.

### I. United Kingdom

A detailed [report](#) on the digital economy was published by the UK's Digital Competition Expert Panel (the "**Panel**") in March 2019, outlining key recommendations to ensure that competition works effectively in digital markets (the "**Report**").

Titled *Unlocking digital competition*, the Report was commissioned by the UK Chancellor Philip Hammond with the purpose of reviewing the opportunities and challenges posed to competition and pro-competition policy by the emerging digital economy, and making recommendations on any changes that may be needed.

#### Key findings

The Panel - chaired by Jason Furman - recognises that the digital economy has fostered increased competition in some areas, but note that competition for the digital market cannot be counted on, by itself, to address negative outcomes. The Panel concludes that competition policy does not require a radical shift away from established practices to tackle the challenges emerging from the digital age, but new tools can be introduced. It also states that – in line with the increasing use of consumer protection powers by competition [regulators](#) – “consumer welfare is the appropriate perspective to motivate competition policy”, as it can take into account considerations other than price (which is the focus of pure competition analyses).

#### Policy recommendations

The Report contains policy recommendations in a number of areas, including in relation to merger control and antitrust investigation tools. Reforms in these two areas have also been considered recently at the EU level, in the European Commission's [report](#) on competition policy in the digital era .

On merger control, recommendations include (i) requiring digital companies with “strategic market status” to inform the CMA of intended acquisitions, and (ii) moving to a “balance of harms” approach for assessing if harm could arise from the acquisition of targets that might be important future competitors.

The principal recommendation is that the UK should establish a Digital Markets Unit (the "**Unit**"). The Unit would have three functions:

- First, developing a [code of competitive conduct](#) to complement antitrust enforcement. Rather than relying on complex antitrust judgments, a clear code of conduct would be agreed in consultation with industry and stakeholders. The code would be principles-based, and apply to digital platforms that have “strategic market status”. The Report does not provide a definition of this status, nor does it set out in detail types of behaviour that would be unacceptable under the code – but there is suggestion that it could blacklist behaviours or situations that are currently legal under competition rules.
- Second, enabling [greater personal data mobility and systems with open standards](#). Allowing users better and easier access to the personal data that businesses hold should foster increased switching, better data management across multiple platforms and opportunities to access innovative services that may deliver value.
- Third, advancing [data openness](#). Digital businesses could be required to share data they hold with third parties, to lower barriers to entry and facilitate new entrants in platform markets where there may be large incumbents. Given the interventionist nature of this tool, it would need to be considered carefully before use, and safeguards put in place for personal data.



The Panel also recommends that the CMA uses its statutory powers to launch a market study into digital advertising, which the CMA [launched](#) on 3 July 2019.

### II. Netherlands

In May 2019, the Dutch Secretary of State published a [policy letter](#) (the “**Policy Letter**”) calling for the introduction of a formal regulatory framework in the EU for ‘gatekeeper’ platforms (being platforms that are indispensable for companies to reach consumers, and for consumers to find services and products).

The Policy Letter suggests that the following measures could apply to gatekeeper platforms:

- [Access](#) should be granted to third parties on reasonable terms.
- Gatekeeper platforms should [not discriminate](#) between their customers, and must provide prominence, rankings and reviews on a fair and transparent basis.
- Where gatekeeper platforms offer intermediation services and are also active on a downstream market, they should [not self-preference](#) their own goods and services.
- Business customers should [not be unfairly restricted](#) from, or even penalised for, using competing platforms.

The Policy Letter also advocates for the introduction of a transaction value threshold at EU-level. According to the Dutch Secretary of State, taking over another digital business against a high transaction value whilst the target does not realise a high turnover is an indication that either its data are of high value or that the target is a potential competitor and should be taken off the market. Apparently, these scenarios are urgent enough for the Dutch Secretary of State to want to introduce a transaction value threshold at EU-level already now, instead of waiting to see what happens in Germany and Austria, as is suggested by the reports to the EC and CMA.

### Concluding thoughts

National regulators and policy-makers have an important role to play in devising solutions that work at the Member State level, but also driving international thinking as the digital economy is inherently global in nature. Indeed, the Digital Competition Expert Panel sees an opportunity for the UK to be a leader on competition policy for digital markets, given the country’s established rule of law and business-friendly environment.

The Report and Policy Letter both contain recommendations only, so time will tell whether – and how – they may be enacted by law-makers.

## CASE TRACKER: OVERVIEW OF PENDING AND RECENT RELEVANT ONLINE DISTRIBUTION CASES

### Online sales bans:

restriction on selling products/services online

- (EU) [Google](#)  
(July 2016, ongoing investigation)
  - (EU) [Google](#)  
(June 2017, Infringement decision)
- (EU) [Guess](#)  
(June 2017, Opening of proceedings)
  - (EU) [Guess](#)  
(June 2017, Press release)
  - (EU) [Guess](#)  
(December 2018, Opinion of the Advisory Committee)
  - (EU) [Guess](#)  
(December 2018, Report of the Hearing Officer)
  - (EU) [Guess](#)  
(December 2018, Press Release)
  - (EU) [Guess](#)  
(December 2018, infringement decision)
  - - UPDATE: (EU) [Guess](#)  
(March 2019, Closure of Proceedings)
- (EU) [Licensed merchandise](#)  
(Opening of proceedings)
  - (EU) [Sanrio](#)  
(June 2017, Opening of proceedings)
  - (EU) [Universal Studios](#)  
(June 2017, Opening of proceedings)
  - (EU) [Nike](#)  
(June 2017, Opening of proceedings)
  - - UPDATE: (EU) [Nike](#)  
(March 2019, Press Release)
- (EU) [Consumer electronics](#)  
(December 2013 Inspections)
  - (EU) [Asus](#)  
(February 2017, Opening of proceedings)
  - (EU) [Asus](#)  
(July 2018, Opinion of the Advisory committee)
  - (EU) [Asus](#)  
(July 2018, Report of the Hearing officer)
- (EU) [Asus](#)  
(July 2018, Press release)
- (EU) [Asus](#)  
(July 2018, Infringement decision)
- (EU) [Asus](#)  
(October 2018, Closure of proceedings)
- (EU) [Pioneer](#)  
(February 2017, Opening of proceedings)
  - (EU) [Pioneer](#)  
(July 2018, Opinion of the advisory committee)
  - (EU) [Pioneer](#)  
(July 2018, Report of the hearing officer)
  - (EU) [Pioneer](#)  
(July 2018, Press release)
  - (EU) [Pioneer](#)  
(July 2018, infringement decision)
  - (EU) [Pioneer](#)  
(October 2018, closure of proceedings)
- (EU) [Philips](#)  
(February 2017, Opening of proceedings)
  - (EU) [Philips](#)  
(July 2018, Opinion of the advisory committee)
  - (EU) [Philips](#)  
(July 2018, Report of the Hearing Officer)
  - (EU) [Philips](#)  
(July 2018, Press release)
  - (EU) [Philips](#)  
(July 2018, Infringement decision)
  - (EU) [Philips](#)  
(October 2018, Closure of proceedings)
- (EU) [Denon & Marantz](#)  
(February 2017, Opening of proceedings)
  - (EU) [Denon & Marantz](#)  
(July 2018, Opinion of the advisory committee)
  - (EU) [Denon & Marantz](#)  
(July 2018, Report of the hearing officer)
  - (EU) [Denon & Marantz](#)  
(July 2018, Press release)

## CASE TRACKER: OVERVIEW OF PENDING AND RECENT RELEVANT ONLINE DISTRIBUTION CASES

- (EU) [Denon & Marantz](#)  
(July 2018, Infringement decision)
- - UPDATE: (EU) [Denon & Marantz](#)  
(October 2018, Closure of Proceedings)

- (F) [Bang & Olufsen](#)  
(March 2014 Paris Court of Appeal judgment)
- (PL) [Roland Polska](#)  
(May-June 2016, Poland Court of Appeal judgment)
- (UK) [Sports & entertainment merchandise](#)  
(August 2016 Infringement decision)
- (UK) [Trod / GB eye](#)  
(December 2016, Director disqualification)
- (UK) [Trod / GB eye](#)  
(December 2016, Director disqualification)
- (UK) [Ping Europe Limited](#)  
(August 2016, Statement of objections)
- (UK) [Ping Europe Limited](#)  
(August 2017, Infringement decision)
- (UK) [Ping Europe Limited](#)  
(December 2017, Non-confidential decision)
- (UK) [Ping Europe Limited](#)  
(October 2017, Appeal)
- (UK) [Ping Europe Limited](#)  
(March 2017, Interlocutory decision)
- (UK) [Ping Europe Limited](#)  
(September 2018, CAT appeal judgment)
- NEW: (ES) [Adidas](#) (November 2018, opening of proceedings)
- - NEW: (ES) [Adidas](#) (November 2018, press release)

### Resale price maintenance:

obligation to use fixed or minimum resale prices

- (D) [Portable navigation devices](#)  
(May 2015, Infringement decision)
- (D) [CIBA Vision](#)  
(December 2009, Infringement decision)
- (I) [Enervit](#)  
(July 2014, Commitments)
- (UK) [Ultra Finishing](#)  
(May 2016, Infringement decision)
- (UK) [ITW](#)


- (May 2016, Infringement decision)
- (UK) [Mobility Scooters](#)  
(October 2014, Infringement decision)
- NEW: (NL) [Consumer goods](#) (December 2018, press release)

### MFNs/Price Parity Clauses:

guarantee to an online platform that supplier will treat the platform as favourably as the supplier's most-favoured-customer

- (EU) [Amazon e-books](#)  
(June 2015 Opening of proceedings)
- (EU) [Amazon e-books](#)  
(December 2016, Opening of proceedings)
- (EU) [Amazon e-books](#)  
(January 2017, Market Test Notice Art. 27(4))
- (EU) [Amazon e-books](#)  
(January 2017, Proposed Commitments)
- (EU) [Amazon e-books](#)  
(May 2017, Commitments accepted)
- (EU) [Amazon e-books](#)  
(August 2017, Decision concerning the Trustees)
- (EU) [E-books](#)  
(July 2013 Commitments)
- Hotel bookings:
- (D) [HRS](#)  
(January 2015 Düsseldorf Higher Regional Court judgment)
- (D) [booking.com](#)  
(Dec 2015 Infringement decision)
- (F) [booking.com](#)  
(Apr 2015 Commitments)
- (F) [booking.com](#)  
(October 2015, Decision Court of Appeal Paris)
- (F) [booking.com](#)  
(November 2016, Decision Business Court Paris)
- (F) [booking.com](#)  
(February 2017, Assessment of commitments made by booking.com)
- (I) [booking.com](#)

## CASE TRACKER: OVERVIEW OF PENDING AND RECENT RELEVANT ONLINE DISTRIBUTION CASES

- (Apr 2015 Commitments)
-  (SE) [booking.com](#)  
(Apr 2015 Commitments)
-  (SE) [booking.com](#)  
(July 2018, Stockholm Patent and Markets Court ruling)
-  (EU) [Holiday Pricing](#)  
(February 2017, Opening of proceedings)
  -  (EU) [REWE/DER](#)  
(August 2017, Opening of proceedings)
  -  (EU) [TUI](#)  
(August 2017, Opening of proceedings)
  -  (EU) [Thomas Cook](#)  
(August 2017, Opening of proceedings)
  -  (EU) [Kuoni](#)  
(August 2017, Opening of proceedings)
  -  (EU) [Melia](#)  
(August 2017, Opening of proceedings)
-  NEW: (UK) [CompareTheMarket](#) (September 2017, Opening of proceedings)
  -  NEW: (UK) [CompareTheMarket](#) (November 2018, Statement of objections)
-  (EU) [Report on ECN monitoring exercise in the online hotel booking sector](#) (April 2017)

### Exclusivity clauses:

preventing access to platforms by competitors

-  (I) [TicketOne](#)  
(September 2018, Press release)
-  (EU) [Amadeus & Sabre](#)  
(November 2018, Press release)
  -  - UPDATE: (EU) [Amadeus](#) (November 2018, Opening of proceedings)
  -  - UPDATE: (EU) [Sabre](#) (November 2018, Opening of proceedings)

### Geo-blocking:

preventing online cross-border shoppers from purchasing consumer goods or accessing digital content services

-  (EU) [Pay-TV](#)  
(April 2016, Commitments)
  -  (EU) [Cross-border access to pay-TV](#)  
(July 2017, Commitments)
  -  (EU) [Cross-border access to pay-TV](#)  
(July 2017, Decision concerning the Trustees)
  -  (EU) [Cross-border access to pay-TV](#)  
(January 2018, Opening of proceedings)
  -  (EU) [Cross-border access to pay-TV](#)  
(October 2018, Proposed commitments)
  -  (EU) [Cross-border access to pay-TV](#)  
(October 2018, Press release)
  -  (EU) [Cross-border access to pay-TV](#)  
(November 2018, Market test notice Art. 27(4))
  -  (EU) [Cross-border access to pay-TV](#)  
(December 2018, NBCUniversal Proposed commitments)
  -  (EU) [Cross-border access to pay-TV](#)  
(December 2018, Sony Pictures Proposed Commitments)
  -  (EU) [Cross-border access to pay-TV](#)  
(December 2018, Sky Proposed commitments)
  -  (EU) [Cross-border access to pay-TV](#)  
(December 2018, Warner Proposed commitments)
  -  (EU): [Cross-border access to pay-TV](#)  
(December 2018, Press release)
  -  (EU): [Cross-border access to pay-TV](#)  
(December 2018, Market Test Notice (Art. 27(4)))
  -  (EU): [Cross-border access to pay-TV](#)  
(December 2018, Market Test Notice (Art. 27(4)))
  -  - UPDATE: (EU) [Cross-border access to pay-TV](#)  
(February 2019, Final commitments)
  -  - UPDATE: (EU) [Cross-border access to pay-TV](#)  
(March 2019, Press Release)
  -  - UPDATE: (EU) [Cross-border access to pay-TV](#)  
(March 2019, Commitment decision)

## CASE TRACKER: OVERVIEW OF PENDING AND RECENT RELEVANT ONLINE DISTRIBUTION CASES

- - UPDATE: (EU) [Cross-border access to pay-TV](#)  
(April 2019, Opinion of the Advisory Committee)
- - UPDATE: (EU) [Cross-border access to pay-TV](#)  
(April 2019, Summary Decision)
- - UPDATE: (EU) [Cross-border access to pay-TV](#)  
(April 2019, Report of the Hearing Officer)

- (EU) [Video games](#)  
(March 2016, Investigation)
  - (EU) [Capcom](#)  
(February 2017, Opening of proceedings)
  - (EU) [Bandai Namco](#)  
(February 2017, Opening of proceedings)
  - (EU) [Focus Home](#)  
(February 2017, Opening of proceedings)
  - (EU) [Koch Media](#)  
(February 2017, Opening of proceedings)
  - (EU) [Zenimax](#)  
(February 2017, Opening of proceedings)
  - - UPDATE: (EU) [Video Games](#)  
(April 2019, Statement of Objections)

### Dual pricing:

charging different prices for the same product/service when sold online.

- (D) [LEGO](#)  
(July 2016, Commitments)
- (D) [Gardena](#)  
(November 2013, Commitments)
- (D) [Bosch Siemens Hausgeräte](#)  
(December 2013, Commitments)
- (D) [Bathroom fittings](#)  
(December 2011, Commitments)
- 🇬🇧 (UK) [Fridge and bathroom suppliers](#)  
(May 2016, Infringement decision)

### Third party platform ban:

restriction on using third-party online market places





- (D) [Adidas](#)  
(July 2015, Commitments)
- (D) [Sennheiser](#)  
(December 2013, Commitments)
- (D) [Asics](#)  
(August 2015, Infringement decision)
  - (D) [Asics](#)  
(April 2017, Higher Regional Court of Düsseldorf)
  - (D) [Asics](#)  
(December 2017, Federal Court of Justice ruling)
- (D) [Deuter](#)  
(December 2015, Frankfurt Higher Regional Court, appeal pending)
- (D) [Coty](#)  
(April 2016, request for a preliminary ruling)
  - (EU) [Coty](#)  
(March 2017, Hearing)
  - (EU) [Coty](#)  
(July 2017, Opinion)
  - (EU) [Coty](#)  
(December 2017, Judgment)
- (F) [Caudalie](#)  
(February 2016, Paris Court of Appeal judgment)
  - (F) [Caudalie](#)  
(September 2017, French Supreme Court judgment)
  - (F) [Caudalie](#)  
(March 2018, dawn raid)
- (F) [Adidas](#)  
(November 2015, Commitments)
- (F) [Samsung & Amazon](#)  
(November 2015, request for a preliminary ruling)
  - (EU) [Samsung & Amazon](#)  
(December 2016, preliminary ruling)
- (NL) [Shure Distribution Benelux](#)  
(May 2016, Gelderland district court ruling)
- (UK) [BMW](#)  
(January 2017, BMW changes policy)
- (UK) [L'Oréal](#)  
(March 2018, High Court London)

## CASE TRACKER: OVERVIEW OF PENDING AND RECENT RELEVANT ONLINE DISTRIBUTION CASES

-  (NL) [Nike](#)  
(October 2017, Amsterdam Court Judgment)
-  (UK) [Google](#) (April 2018, Injunction)  
(May 2018, Interim relief)
-  (NL) [Size Zero](#)  
(October 2018, Amsterdam Court Judgment)
-  (F) [Stihl](#)  
(October 2018, Infringement decision)
-  NEW: (UK) [OnTheMarket](#) (July 2017, Competition Appeal  
Tribunal Judgment)
-  NEW: (UK) [OnTheMarket](#) (January 2019, Court of  
Appeal Judgment)

### **Unfair trading practices by online platform:**

Use-of-platform clauses which are anticompetitive

-  (FR) [Google](#) (January 2019, decision concerning  
interim measures)
-  (EU) [Amazon](#) (September 2018, preliminary investigation)
-  (D) [Amazon](#) (November 2018, opening of proceedings)
-  (AT) [Amazon](#) (February 2019, opening of proceedings)
-  NEW: (IT) [Amazon](#) (April 2019, opening of proceedings)
-  NEW: (NL) Apple (April 2019, [Opening of Proceedings](#))

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