

Let's get digital: prepare for extreme scrutiny of online vertical restraints

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prepare for upcoming e-commerce information requests and possible dawn raids.

Companies should brace themselves for the extra attention their agreements with – particularly online – distributors are soon likely to get. The European Commission intends to launch a sector inquiry into barriers to cross-border e-commerce. Not only is the sector inquiry likely to lead to dawn raids and case-specific investigations into contractual bans of online sales, it will also provide national competition authorities with more ammunition to deal with distribution restrictions. The Dutch supervisor ACM has stated that it will use the outcome of the sector inquiry to complement its recently published guidance on enforcement of vertical agreements. And it is not likely to end there, as competition authorities worldwide also recently discussed online vertical restraints at the annual International Competition Network conference. Companies are thus well-advised to double-check their distribution agreements for possible online vertical restraints and to make preparations for a potential dawn raid.

The European Commission conducts [sector inquiries](#) into sectors of the economy that it believes are not working as well as they should, possibly as a result of competition law violations. If it finds grounds for doing so, the Commission may decide at a later stage to open specific investigations to ensure compliance with the competition rules. The intended e-commerce sector inquiry will [focus](#) on private and, in particular, contractual barriers to cross-border e-commerce in digital content and goods. According to [Commissioner Vestager](#), the inquiry will strengthen the actions that the Commission and Europe's national competition authorities take against restrictions of online sales and make these actions more uniform.

The ACM has already stated that it will take the outcome of the sector inquiry to heart in its enforcement of vertical agreements. The ACM recently set out its strategy and enforcement priorities with regard to vertical agreements in a [guidance paper](#). In this guidance, the ACM states that – in the absence of market power – vertical agreements are usually beneficial to consumers and that enforcement will focus on vertical agreements that negatively affect consumers. The ACM therefore seems to take a more [liberal approach](#) towards vertical restraints than most of its fellow competition authorities in the EU. The upcoming sector inquiry will hopefully provide more insight to competition authorities in how to best deal with vertical restraints in online markets. Awaiting the sector inquiry's outcome, national competition authorities in the EU may monitor online vertical restraints more closely. Online vertical restraints may even have gained attention from competition authorities worldwide, given that it was one of the topics at the recent annual International Competition Network conference.

Either way, companies are well-advised to double-check their distribution contracts for competition law compliance and to