

Online sales restrictions: the Commission puts its money where its mouth is

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The effects-based approach towards vertical restraints, as applied by the Dutch competition authority, is seemingly losing ground. The European Commission appears to be siding with a long list of national competition authorities taking a hard line on vertical restraints. Following the preliminary results of the antitrust e-commerce sector inquiry, the Commission has launched three targeted investigations into suspected online sales restrictions. Most competition authorities have been tackling similar issues for a while now; most recently in the German competition authority's publication of draft guidelines on vertical price fixing in food retail, and the UK competition authority's warning to online retailers against price-fixing through automated re-pricing software. Companies are strongly advised to double-check their distribution agreements and underlying commercial policies for possible online vertical restraints. Software providers are advised to check their compliance programmes too.

The [antitrust sector inquiry into e-commerce](#) was launched in May 2015 and is part of the Commission's [Digital Single Market Strategy](#), which seeks to remove barriers to cross-border e-commerce. Following this ongoing sector inquiry, the European Commission has launched investigations into:

- Consumer electronics manufacturers

The Commission has launched an in-depth investigation into whether Asus, Denon & Marantz, Philips and Pioneer have prevented their online retailers from setting their own retail prices for consumer electronics products. This is a topic which must have been troubling the Commission long before the launch of the e-commerce sector inquiry, as dawn raids had already been conducted in [2013](#) on suspicion of restrictive online sales practices. According to a [speech](#) by Competition Commissioner Vestager in March 2015, inspections were also carried out at a number of online retailers around that time.

However, the [press release](#) announcing the Commission's investigation seems to imply that the online retailers involved will be left untouched. The German competition authority has no intention of doing this, since its decisional practice showed that food retailers played a significant role in resale price maintenance practices. The [draft guidance note](#) on vertical price fixing in food retail expressly stipulates that competition rules apply to both the supplier's interference with a retailer's pricing policy and to the retailer's conduct, because the retailer "*ultimately agreed to the suggested price fixing practice and thus concluded an anti-competitive agreement with the supplier*".

According to the Commission's [press release](#), the effects of the

suspected price restrictions may have been aggravated by the online retailers' use of pricing software that automatically adapts retail prices to those of leading competitors. The UK competition authority recently issued a [warning](#) to online retailers about price-fixing following its decision in [Trod/GB](#). In that case, two online sellers agreed not to undercut each other's prices for posters and frames sold on Amazon's UK website. The online sellers had used automated repricing software to implement their price-fixing cartel. The UK competition authority also warned software providers that they could be in breach of the competition rules if they assist their customers in using software to facilitate this price-fixing.

- Video games

It was only a matter of time before the Commission launched a case-specific investigation into geo-blocking. In March 2015, Competition Commissioner Vestager [mentioned](#) investigations into the alleged geo-blocking of certain video games sold online for personal computers. In March 2016, the Commission published its initial findings on [geo-blocking](#), which suggested that geo-blocking is widespread throughout Europe (see our newsletter of [April 2016](#) for more information).

The bilateral agreements between Valve Corporation, owner of the Steam game distribution platform, and five PC video game publishers are the first to be targeted for suspected geo-blocking practices; namely, using an "activation key" to block access to the games depending on the customer's country of residence.

- Hotel accommodation

The Commission is looking into hotel accommodation agreements concluded between a number of tour operators and hotels which may contain clauses that discriminate between customers based on nationality or country of residence. This practice could prevent customers from benefiting from better deals offered by tour operators in other countries.