

IV

(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND
AGENCIES

EUROPEAN COMMISSION

Final Report of the Hearing Officer ⁽¹⁾

Cases AT.40462 – Amazon Marketplace and AT.40703 – Amazon Buy Box

(Text with EEA relevance)

(2023/C 87/04)

1. The present report relates to a draft commitments decision pursuant to Article 9(1) of Council Regulation (EC) No 1/2003 ⁽²⁾ (the 'Draft Decision') addressed to Amazon.com, Inc., Amazon Services Europe SARL, Amazon EU SARL and Amazon Europe Core SARL (together referred to as 'Amazon'), and concerns the following two investigations carried out under Article 102 of the Treaty on the Functioning of the European Union ('TFEU'):
 - the business practices of Amazon investigated by the Commission under case AT.40462 – *Amazon Marketplace*;
 - the business practices of Amazon investigated by the Commission under case AT.40703 – *Amazon Buy Box*.

Written procedure in case AT.40462 – Amazon Marketplace

2. On 17 July 2019, the Commission initiated proceedings in case AT.40462, pursuant to Article 2(1) of Council Regulation (EC) No 773/2004 ⁽³⁾, to investigate the business practices relating to Amazon's use of non-publicly available data, regarding third party sellers' listings and transactions, for the purposes of its retail operations.
3. Throughout the investigation, the Commission sent various requests for information ('RFIs') pursuant to Article 18(2) of Regulation No 1/2003 to Amazon, retailers and manufacturers, marketplace operators and third party solution providers.
4. On 10 November 2020, the Commission adopted a statement of objections ('SO') addressed to Amazon. The SO was notified to Amazon on 11 November 2020.
5. Amazon received access to the file by means of an electronic storage device on 13 November 2020. The Hearing Officer did not receive any complaints in relation to access to the file.

⁽¹⁾ Pursuant to Articles 16 and 17 of Decision 2011/695/EU of the President of the European Commission of 13 October 2011 on the function and terms of reference of the hearing officer in certain competition proceedings (OJ L 275, 20.10.2011, p. 29) ('Decision 2011/695/EU').

⁽²⁾ Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ L 1, 4.1.2003, p. 1) ('Regulation No 1/2003').

⁽³⁾ Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the EC Treaty (OJ L 123, 27.4.2004, p. 18) ('Regulation No 773/2004').

6. The time limit to submit the written reply to the SO, as initially set in the cover letter of the SO, ended on 25 January 2021. On 11 December 2020, Amazon requested the Directorate-General for Competition ('DG Competition') to extend the deadline for Amazon's SO response. On 15 December 2020, DG Competition agreed to an extension of the time limit for an SO response until 1 March 2021.
7. Through a submission of 15 January 2021 to the Hearing Officer, Amazon requested an extension of its deadline to respond to the SO until 26 April 2021, pursuant to Article 9(1) of Decision 2011/695/EU. On 20 January 2021, in view of the arguments set out by Amazon in its submission, the Hearing Officer (*) granted an extension of the deadline until 31 March 2021.
8. Amazon submitted its response to the SO on 31 March 2021. In the written response, Amazon did not request to develop its arguments at an oral hearing.
9. There was only one request from a third party – the consumer organisation BEUC – to be admitted as interested third person in the case, pursuant to Article 5 of Decision 2011/695/EU. The Hearing Officer admitted BEUC on 11 November 2020. The Commission informed BEUC in writing of the nature and subject matter of the procedure, in accordance with Article 13(1) of Regulation No 773/2004, and received BEUC's written comments on 12 February 2021.

Written procedure in case AT.40703 – Amazon Buy Box

10. On 10 November 2020, the Commission initiated proceedings in case AT.40703, to investigate Amazon's business practices in relation to (i) the conditions and criteria that govern the selection of the offer that features in the 'Buy Box' (the 'Buy Box-related Conduct'), and to (ii) the conditions and criteria that govern the eligibility of third party sellers to Prime and of their offers to the Prime label (the 'Prime-related Conduct').
11. Throughout the investigation, the Commission sent various RFIs pursuant to Article 18(2) of Regulation 1/2003 to Amazon, to marketplace operators, to social media operators and to third party solution providers.
12. On 15 June 2022, the Commission adopted a Preliminary Assessment pursuant to Article 9(1) of Regulation No 1/2003 setting out the Commission's competition concerns in relation to the Buy Box-related Conduct and to the Prime-related Conduct. This Preliminary Assessment was notified to Amazon by letter of 16 June 2022.

Commitments procedure for cases AT.40462 and AT.40703

13. On 8 July 2022, Amazon submitted commitments (the 'Initial Commitments') to the Commission in order to meet the concerns set out in the SO in case AT.40462 and the Preliminary Assessment in case AT.40703.
14. On 20 July 2022, a notice was published in the *Official Journal of the European Union* pursuant to Article 27(4) of Regulation No 1/2003, summarising the cases AT.40462 and AT.40703 and the Initial Commitments and inviting interested third parties to provide their observations on the Initial Commitments by 9 September 2022.
15. On 20 September 2022, the Commission informed Amazon of the observations received from interested third parties following the publication of the notice.
16. On 22 November 2022, Amazon submitted an amended proposal for commitments (the 'Final Commitments').
17. The Draft Decision makes the Final Commitments binding upon Amazon and finds that there are no longer grounds for action by the Commission as regards the concerns as set out in the SO (in case AT.40462) and in the preliminary assessment (in case AT.40703).

(*) The decision was taken by the former Hearing Officer in charge of the case, Mr Wouter Wils.

18. I have not received any request or complaint with respect to the commitments procedure pursuant to Article 15(1) of Decision 2011/695/EU. Overall, I consider that the effective exercise of procedural rights has been respected in this case.

Brussels, 13 December 2022.

Eric GIPPINI FOURNIER
