
Amazon's Dual Role of Merchant and Platform Under Antitrust Scrutiny in the EU

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Amazon embraced a business model which places innovation, accessibility and customer satisfaction at its core and its current position indicates that it probably is the best company in the world in terms of implementing this model. According to most, the extraordinary growth and great commercial success of Amazon is mainly due to its focus on value creation rather than revenue, and its ability to identify and satisfy customer expectations even before such expectations are explicitly manifested.

In recent days, Amazon joined Apple in the trillion club by achieving a valuation exceeding \$1 trillion. This monumental growth of Amazon from being a small bookseller into world's largest online retailer (and on-demand cloud service provider) with a valuation of more than \$1 trillion is subject to numerous articles and books penned by top-line economists and strategists. Everyone is keen on finding out what made such a significant success possible. Although there are various theories, it seems that Amazon's ability to collect and process customer data is key in its business model. Some argue that Amazon is operating on razor thin profit margins in its retail business to maximize the amount of transactions over its platform which provides the company with even more precise information regarding the behaviours, habits and expectations of its customers. In other words, it may be the case that Amazon prefers to be paid in data rather than cash.

This unorthodox approach of Amazon has caused some mixed feelings amongst antitrust experts. The representatives of the classical Chicago-school approach who place price-based consumer welfare on a pedestal and refuse to even consider any alternative parameter whilst evaluating the potential anti-trust effects of certain behaviours consider Amazon as the upmost role-model whom all others must look up to. Whereas the representatives of the newly emerging "*hipster*" antitrust movement are urging the competition authorities to shift their exclusive focus on prices and start paying attention to other parameters such as the monopolization of big data which they claim to have serious implications in terms of privacy and freedom of that are no less important when compared to end user prices. The proponents of this approach see Google, Apple, Facebook and Amazon (they sometimes refer to these companies as data-opolies) as huge threats whose immense power over data constitute an antitrust risk.

It appears that Amazon's huge accretion also caught European Commission's ("**Commission**" or "**EC**") attention. Even though the Commission did not publish an official announcement yet, EC Commissioner Margrethe Vestager stated that a preliminary investigation was initiated into Amazon's use of data collected from merchants that sell through its online platform.

It is no secret that huge tech companies (especially American companies) has been under the Commission's radar lately and that the Commission is not going easy on them. Only in the last two years, European Commission has fined (i) Facebook \$122 million, (ii) Qualcomm \$1.2 billion and (iii) Google \$7.7 billion. At the same time, on the other side of the Atlantic, the Federal Trade Commission ("FTC"), which also enforces antitrust laws, have preferred a hands-off approach with respect to such tech companies. Yet, that approach adopted by the FTC seems to change recently as they announced series of hearings to be held with respect to tech giants, by which the FTC will take a closer look to issues like market power of the tech companies, barriers to competing against them, the interaction between data privacy and competition, and how emerging algorithms affect consumers.

In order to get to the bottom of the preliminary investigation initiated by the Commission, one should also consider the business model adopted by Amazon. Along with its operations in logistics, payments, hardware, data storage and media sectors, Amazon's operations in e-commerce basically fall into two categories: (i) making direct sales to customers and (ii) enabling merchants and individual sellers to utilize its platform to sell goods. In 2017, Amazon was responsible for 44% of all e-commerce sales with a revenue of \$178 billion solely in the United States¹. This success in e-commerce, among others, mostly stems from customer data collection and people-based marketing.

Amazon gathers data from its hundreds of millions of customers, including; products viewed, time when a product is displayed, products purchased, shipping information, selling history and buyer review information, accessibility, use, and referral sources. This way Amazon understands and analyses the needs of their customers even before they make any purchases and encourage them to be loyal and frequent shoppers. Some also argued that Amazon's \$13.7 billion acquisition of Whole Foods in 2017 was also based upon the consumer data regarding grocery buying habits and patterns that comes with the acquisition: *"With massive amounts of data from Whole Foods shoppers, Amazon will ultimately be able to tailor the grocery shopping experience to the individual"*².

The preliminary investigation of the EC focuses on the way Amazon uses customer data. Since Amazon operates as a marketplace for merchants it gathers data on every transaction and from every merchant in order to improve its services. However, Amazon also operates as a merchant that competes with other merchants using its platform. Therefore, Amazon's use of other merchants' customers' data and could be against antitrust rules. The reason is that the data gathered from its competitors could grant Amazon a huge competitive advantage as a merchant and could ultimately harm competition. According to Commissioner Vestager, this competitive advantage of Amazon, is due its ability to assess the *"new big thing"*, *"things people want"*, *"offers people like to receive"* and *"things that makes people buy stuff"* and to use this information to improve its own offerings.

While the method to regulate tech giants' business practices is being discussed by European officials, the result of this preliminary investigation will most certainly shed light on the approach to data-related competition concerns. Although it is true that the significance of big data in the new economy may justify a change of approach in antitrust implementation, the competition authorities must be very diligent in determining how much they are willing to diverge from the traditional price-

based consumer welfare tests, which seem to be the only reliable method of making concrete cost-benefit analyses. Moreover, it is also crucial that such investigations do not outlaw business practices that boost technological innovation and development.

Footnotes

1. <https://www.statista.com/statistics/266282/annual-net-revenue-of-amazoncom>
2. <https://www.forbes.com/sites/gregpetro/2017/08/02/amazons-acquisition-of-whole-foods-is-about-two-things-data-and-product/#714f9630a808>