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Pázmány Law Working Papers

2021/1

OROSZI Fanni

**The Hybrid Role of Platforms, with
Special Regard to Amazon**

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1 Introduction

Online platforms are all around: on our smartphones, computers, tablets, and most importantly, almost constantly on our minds. We use them to stay in touch with our family and friends, to post photos, to order lunch, to buy books and many other things, to order a ride and even to find love. They have entered almost every segment of a person's life.

This special importance, however, comes with a need to make sure that these platforms are acting at all times in accordance with antitrust rules. The main concern of antitrust enforcement agencies is that digital markets 'are, or may become, dominated by firms that maintain their market power through anticompetitive conduct and acquisitions', these firms, many times, being digital platforms.¹ Yet, '[r]egulators should refrain from mechanically applying standard antitrust ideas where they do not belong.'²

Tech giants are currently under great scrutiny on both sides of the Atlantic, and Amazon is no exception to that. Amazon had been the subject of an investigation in Germany which ended with Amazon undertaking commitments to change the content of its terms of business for sellers on its online marketplaces.³ Amazon is currently under two formal investigations conducted by the European Commission. The first case, opened in July 2019 concerns its hybrid role as a marketplace and a retailer at the same time (Amazon – Marketplace case) which, according to the European Commission, could raise issues as regards its access to non-public business data of third party sellers.⁴ The second formal antitrust investigation of the European Commission opened in November 2020 looks into the possible preferential treatment of the tech giant's own retail offers and of those using the logistics and delivery services granted by Amazon (Amazon – Buy Box).⁵ It is also the subject of an on-going investigation in Italy on similar grounds as the European Commission's Amazon Buy Box case. And, would this not be enough, the FTC

¹ HOWARD A. SHELANSKI, 'Information, Innovation, and Competition Policy for the Internet', (2013) *University of Pennsylvania Law Review*, Vol. 161:1663. at p.1665.

² JEAN TIROLE, 'Market failures and Public Policy' (2015) *American Economic Review*, 105(6): p.1665-1682., at p. 1675.

³ Bundeskartellamt, Press Release, 'Bundeskartellamt obtains far-reaching improvements in the terms of business for sellers on Amazon's online marketplaces' (2019), retrieved 1 May 2020, https://www.bundeskartellamt.de/SharedDocs/Publikation/EN/Pressemitteilungen/2019/17_07_2019_Amazon.pdf?__blob=publicationFile&v=4.

⁴ European Commission, Press Release (IP/20/2077), 'Antitrust: Commission sends Statement of Objections to Amazon for the use of non-public independent seller data and opens second investigation into its e-commerce business practices'. https://ec.europa.eu/commission/presscorner/detail/en/ip_20_2077

⁵ *Ibid.*

and state attorneys general from New York and California are also investigating Amazon's online marketplace.

In my paper, I analyse the hybrid role of platforms, and I pay special attention to Amazon. In Section 2 I look into the nature of online platforms, then, in Section 3 I observe the hybrid role of platforms. To better understand it, I observe Amazon's business strategy and also its hybrid role in Section 4. In Section 5, I briefly describe the on-going formal investigations of the European Commission into Amazon's practices as a hybrid platform and to its possible preferential treatment of its own retail offers and of offers of fulfilment by Amazon sellers.

2 The nature of online platforms

As one author puts it, online platforms are comparable to light: 'we are all aware of it, use it and can provide examples of it yet its definition remains a complex matter.'⁶ According to SHELANSKI, digital platforms, as he calls them, are 'gateway[s] between consumers and many diverse applications' and they comprise 'products or services through which end users and a wide variety of complementary products, services, or information ("applications") can interact', including devices, software and services.⁷

When we are talking about online platforms, we can trace the notion back to the theory of two-sided markets. Two-sided markets, or two-sided platforms, as some authors call it⁸, have as their 'fundamental role [...] to enable parties to realize gains from trade or other interactions by reducing the transactions costs of finding each other interacting.'⁹ This can be achieved by different means, i.e. 'matchmaking, building audiences, and minimizing costs' through the elimination of duplication¹⁰ and, as mentioned, through the lowering of transaction costs as well.¹¹ Thus, what is true to all platforms is that they all 'help reduce costs by providing a virtual or physical meeting place for customers.'¹² The 'two-sided platform businesses' provide

⁶ DANIEL MANDRESCU, 'Applying EU competition law to online platforms: the road ahead - Part 1', (2017) *European Competition Law Review*, 38(8), p.353-365, at 354.

⁷ HOWARD A. SHELANSKI, *supra* note 1, p.1665-1666.

⁸ DAVID S. EVANS, RICHARD SCHMALENSEE, 'The Industrial Organization of Markets with Two-Sided Platforms', (2017) *Competition Policy International*, Volume 3, Number 1, at p.151.

⁹ *Ibid.*, p.151.

¹⁰ *Ibid.*

¹¹ DAVID S. EVANS, RICHARD SCHMALENSEE, 'Markets with Two-Sided Platforms', (2008) *Issues in Competition Law and Policy*, Chapter 28, p.667.

¹² DAVID S. EVANS, RICHARD SCHMALENSEE, *supra* note 8, p.15.

services to different customer groups that are in need of each other¹³, meaning that there is an element of interdependency between them. Therefore, ‘cross-group externalities are present, and the benefit enjoyed by a member of one group depends upon how well the platform does in attracting custom from the other group.’¹⁴ Platforms are thus acting as intermediaries between these two groups, i.e. they are ‘intermediation service providers.’¹⁵

There are different views regarding when can a market be considered as a two- or multi-sided market. According to ROCHET and TIROLE, many (probably most) markets with network externalities are two- (or multiple-) sided markets.¹⁶ According to them, the distinctive feature that makes a market with network externalities a two-sided one, is the possibility of cross-subsidization ‘between different categories of end users that are parties to a transaction’.¹⁷ Contrary, according to EVANS and SCHMALENSEE, the key features of platform businesses are ‘two or more groups of customers’ in need of each other who are not capable to capture the value of this ‘mutual attraction on their own’ and who rely on the platform, as they call it, on the ‘catalyst’ to ‘facilitate the value-creating interactions between them’.¹⁸ In a broad sense, RYSMAN defines a two-sided market with the presence of ‘two sets of agents interact[ing] through an intermediary or platform’, whose decisions affect ‘the outcomes of the other set of agents, typically through an externality.’¹⁹

It must not be forgotten that two-sidedness is not only part of businesses based on the Internet, but also of traditional, ‘old economy industries’, for example of ‘advertising-supported media’.²⁰ We could even say that every (or most) online platforms are two-sided markets, but not every two-sided market is an online platform. ‘[I]nformational intermediation’, with the provision of services such as ‘search, [...] advertising, and price discovery’ brings ‘larger

¹³ DAVID S. EVANS, RICHARD SCHMALENSEE, *supra* note 11, p.667.

¹⁴ MARK ARMSTRONG, ‘Competition in Two-Sided Markets’ (2006) *The RAND Journal of Economics*, Vol. 37. No. 3. p.668-691., at 668.

¹⁵ BERNARD CAILLAUD, BRUNO JULLIEN, ‘Chicken & Egg: Competition among Intermediation Service Providers’, (2003) *The RAND Journal of Economics*, Vol. 34. No. 2, p.309-328, at 309.

¹⁶ JEAN-CHARLES ROCHET, JEAN TIROLE, ‘Platform Competition in Two-Sided Markets’, (2003) *Journal of the European Economic Association*, Volume 1, Issue 4, p.990–1029, at 1017.

¹⁷ *Ibid.* p.1017-1018.

¹⁸ DAVID S. EVANS, RICHARD SCHMALENSEE, ‘The Antitrust Analysis of Multi-Sided Platform Businesses’, (2012) *Institute for Law and Economics Working Paper Series*, No. 623., University of Chicago, retrieved 20 April 2020, https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=1482&context=law_and_economics, p.7.

¹⁹ MARC RYSMAN, ‘The Economics of Two-Sided Markets’ (2009) *Journal of Economic Perspectives*, Vol. 23, Number 3, p.125-143, at 125.

²⁰ DAVID S. EVANS, RICHARD SCHMALENSEE, *supra* note 11, p.667.

expected gains, the larger the number of users on the other side of the market’, thus it is driven by indirect network externalities.²¹

According to ROCHET and TIROLE, markets with network externalities are, most of the times, ‘characterized by the presence of two distinct sides whose ultimate benefit stems from interacting through a common platform.’²² According to CAILLAUD and JULLIEN, this attribute, however, comes with a ‘chicken & egg’ problem, meaning that to attract one consumer group, the intermediary - i.e. the platform - has to attract the other consumer group as well, and *vice versa*.²³

The value of scale is also an important factor when observing two- or multi-sided platform businesses.²⁴ Due to the indirect network effects that are present, it is possible that larger but fewer competing two-sided platforms are promoted and in case of lack of countervailing factors, there could be ‘competition for the market’, and not competition on the market.²⁵ There is a ‘tipping point’ problem: when one company achieved enough customers, that is, it overcame the ‘chicken and egg’ problem of getting more than one groups of customers on its platform, competing firms might find it more and more difficult to compete with the incumbent.²⁶ The incumbent firm, thanks to the indirect network effects, will be able to attract even more customers, as larger the customer base on one side, larger the number of customers on the other side as well.²⁷ Thus, the platform – thanks to a positive feedback loop²⁸ – becomes even more attractive compared to its competitors, and there is a chance that ‘the market moves towards there being a single, large platform.’²⁹ There are differing views in this regard, saying that ‘turbulent waves of disruptive innovation have shaken the business models of platform leaders and opened new avenues of entry and competition.’³⁰ Online platforms are competing with each

²¹ BERNARD CAILLAUD, BRUNO JULLIEN, *supra* note 15, p.309.

²² JEAN-CHARLES ROCHET, JEAN TIROLE, *supra* note 16, p.991.

²³ BERNARD CAILLAUD, BRUNO JULLIEN, *supra* note 15, p.310.

²⁴ CHRISTOPHER PICKARD, ‘Competition Policy and the Rise of Digital Platforms’ (2019) *European Competition Law Review*, 40(11), p.507-510, at 508.

²⁵ DAVID S. EVANS, RICHARD SCHMALENSEE, *supra* note 8, p.164.

²⁶ CHRISTOPHER PICKARD, *supra* note 24, p.508.

²⁷ *Ibid.*

²⁸ FRISO BOSTOEN, ‘Online Platforms and Vertical Integration: The Return of Margin Squeeze?’ (2018) *Stockholm Faculty of Law Research Paper Series*, no 42, retrieved on 18 April 2020, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3075237, p.12.

²⁹ CHRISTOPHER PICKARD, *supra* note 24, at 508.

³⁰ DAVID S. EVANS, ‘Why the Dynamics of Competition for Online Platforms Leads to Sleepless Nights, but not Sleepy Monopolies’ (2017) Retrieved 10 April 2020, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3009438, p.3.

other: consumers can start their product searches either on Amazon or on Google.³¹ Even though online platforms are ‘leaders in [different] ‘particular categories’, they ‘compete for the scarce attention of people’³², thus they can constitute competitive constraints on each other even in cases when they are not specialized in the same service. It might be possible, that these online platforms will be ‘forces of competition, and disruption, throughout the economy’ instead of ‘settling into the quiet life of monopoly.’³³ It means that if a market has tipped, it might not be for long-term, because the next player could already be knocking on the door of tech giants claiming its seat at the table.

Furthermore, if a platform is two- or multi-sided, it has to set a ‘price structure’ instead of a simple ‘price level’ to be charged for its services.³⁴ The customers on one side of the market are often considered to be the profit centres, while customers on the other side are the loss leaders, or they can also be, in some cases, financially neutral.³⁵ Thus, when observing the transaction volume and profit of a platform, not only the ‘total price charged to the parties to the transaction’, but also the ‘decomposition’ of this price has to be considered.³⁶

In a public consultation the European Commission proposed a possible definition of online platforms, including the elements of interdependency of different customer groups, interactions and value generation.³⁷ When providing examples of such platforms, the EC referred to online marketplaces, namely Amazon, eBay, Allegro and Booking.com.³⁸ However, the results of the

³¹ *Ibid.*, p.3.

³² *Ibid.*, p.4.

³³ *Ibid.*, p.5.

³⁴ JEAN-CHARLES ROCHET, JEAN TIROLE, *supra* note 16, p.990.

³⁵ JEAN-CHARLES ROCHET, JEAN TIROLE, *supra* note 16, p.991.

³⁶ JEAN-CHARLES ROCHET, JEAN TIROLE, *supra* note 16, p.1018.

³⁷ European Commission, Public Consultation on the Regulatory environment for platforms, online intermediaries, data and cloud computing and the collaborative economy’ (2015), retrieved 22 April 2020, <https://ec.europa.eu/digital-single-market/news/public-consultation-regulatory-environment-platforms-online-intermediaries-data-and-cloud>, p.5.

According to the Public Consultation, an online platform ‘refers to an undertaking operating in two (or multi)-sided markets, which uses the Internet to enable interactions between two or more distinct but interdependent groups of users so as to generate value for at least one of the groups. Certain platforms also qualify as Intermediary service providers.’

³⁸ *Ibid.*

consultation showed that respondents do not agree with this definition, moreover, they expressed their doubts about the possibility of a ‘one-size-fits-all’ definition.³⁹

An online platform is thus hard to define, nonetheless, its definition can be based on the characteristics of two- or multi-sided markets with adding the element of the Internet to it. The author of this thesis proposes that online platforms could be defined as an intermediary present on the Internet providing the opportunity to at least two interdependent customer groups to enter into transactions.

3 The hybrid or dual role of platforms

There are many multi-sided platform models, however, a possible differentiation can be made based on the fact whether platforms ‘act purely as the marketplace provider’, like eBay, or apart from that, they also ‘trade as merchants on their own account’, like Amazon.⁴⁰ Moreover, when a multiproduct firm starts to ‘host rivals’, it might ‘learn from the rival specialist’, and decide ‘to offer its own better version’ of the product.⁴¹ This phenomenon is a sort of vertical integration. According to some views, a rational firm would decide to integrate vertically if ‘that was the most efficient method of marketing its product.’⁴² ‘If it is correct then the consumer will benefit by the product being cheaper. If it is wrong then it will suffer accordingly.’⁴³ Nonetheless, in that case the neutrality of the platform can be jeopardized and it can also create conflicts of interest between the platform service provider and its third-party seller customers.⁴⁴

³⁹ European Commission, Synopsis Report on the Public Consultation on the Regulatory environment for platforms, online intermediaries, data and cloud computing and the collaborative economy’ (2015), retrieved 22 April 2020, <https://ec.europa.eu/digital-single-market/en/news/results-public-consultation-regulatory-environment-platforms-online-intermediaries-data-and>, p.6.

⁴⁰ ALEXANDER M. WAKSMAN, ‘Multi-Sided Platforms: three questions for antitrust’, (2019) *European Competition Law Review*, 40(5), p.207-211, at 210.

⁴¹ ANDREI HAGIU, BRUNO JULLIEN, JULIAN WRIGHT, ‘Creating Platforms by Hosting Rivals’ (2019) Retrieved 10 April 2020, https://www.tse-fr.eu/sites/default/files/TSE/documents/doc/wp/2018/wp_tse_970.pdf, p.19.

⁴² PAUL CRAIG, GRÁINNE DE BÚRCA, *EU Law. Text, Cases, and Materials* (2015) New York, Oxford University Press, p.1065.

⁴³ *Ibid.*, p.1073

⁴⁴ TÂNIA LUÍSA FARIA, ‘Abuse of a Dominant Position in the Digital Economy, in the EU and the US: the Big Four and the War of the Worlds’ (2020) *European Competition Law Review*, 41(3), p.144-151., at 145.

In platform-based markets, it is a way to capture more value or to limit the users' bargaining power to imitate successful products and appropriate the value of their innovations.⁴⁵ Thus, as platforms are growing, they might 'enter new markets that are connected to the platform by amplifying their market power at the level of the platform.'⁴⁶ When entering these markets, platforms compete with their own users.⁴⁷ In this scenario, the platform service is the upstream market, and the market where the platform entered is the downstream market, which differs in every case based on the nature of the platform.⁴⁸

Since there could be a conflict of interest, in case if the platform is dominant and, moreover, it abuses its dominant position, that 'dual role' might give rise to competition law infringements.⁴⁹ Furthermore, vertical integration and network effects, that characterize the business model of two- or multi-sided platforms, can together give rise to large platforms leveraging their power 'from one segment or service to the other'.⁵⁰ Obviously, every man kindles his own spot, but this leveraging of power brings with itself the question regarding to what extent can an undertaking 'give preferential treatment to its [own] vertically-integrated services.'⁵¹

Apart from the question of compliance with antitrust rules, a platform provider also has to think about the possible negative consequences on the platform itself when 'squeezing complementors', i.e. its users.⁵² Complementors, if they doubt that they can capture value from their innovations, may decide to switch to other platforms.⁵³ Thanks to the indirect network effects, the more users are on one side of the platform, the more users are going to join on the other side of it. However, this allegation is true the opposite way as well: if users, e.g. sellers leave one side of the market, users of the other side, e.g. buyers, as a consequence, will leave as well. Platforms must 'maintain the health of their entire ecosystem', because 'their own

⁴⁵ FENG ZHU, QIHONG LIU, 'Competing with Complementors: An Empirical Look at Amazon.com' (2015) retrieved 10 April 2020, https://mackinstitute.wharton.upenn.edu/wp-content/uploads/2015/04/Zhu-Feng-Liu-Qihong-Competing-with-Complementors.-An-Empirical-Look-at-Amazon.com_.pdf, p.3.

⁴⁶ FRISO BOSTOEN, *supra* note 28, p.11.

⁴⁷ *Ibid.*

⁴⁸ *Ibid.*

⁴⁹ ALEXANDER M. WAKSMAN, *supra* note 40, p.210.

⁵⁰ FLORENCE THÉPOT, 'Co-opetition among Digital Platforms and Consumer welfare' (2018) Submission to the European Commission's call for contribution 'Shaping Competition Policy in the Era of Digitisation', retrieved on 20 April 2020, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3403629

at p.5.

⁵¹ *Ibid.*

⁵² FENG ZHU, QIHONG LIU, *supra* note 45, p.3.

⁵³ *Ibid.*

survival depends on it.⁵⁴ However, the situation might be different if the market has already tipped and users on both sides are locked-in to one platform: even though certain products are, for example, copied by the platform owner, sellers are not going to leave, as they don't have anywhere else to go. Moreover, even if some of the sellers leave the platform, the buyers on the other side will stay on the platform anyway, as they cannot or do not want to make their purchases anywhere else anymore. Therefore, supposing that the platform provider has a high market share and a high market power or that it has a dominant position, it might not encounter the same constraints from the different sides of the platform, thus it is not as concerned with encouraging the entry and with discouraging the leaving of complementors after the tipping point has taken place.

According to certain views⁵⁵, vertical integration and the pushing out of complementors have happened already, moreover there are at least two European Commission cases in this regard.⁵⁶ Microsoft pushed out Netscape and Real Networks from its Windows platform with its own rival applications, Internet Explorer and Windows Media Player, respectively.⁵⁷ In these cases, Microsoft played a dual role: it acted as a platform provider with its Windows platform service, which is present on the upstream market, but it also produced its own applications, competing with competing application providers present on its own platform. With the same analogy, Apple is also taking up a hybrid role: when releasing a new operation system, it makes 'previously essential third-party apps obsolete', thus it excludes players that were previously its customers so that it can enter the market downstream.⁵⁸

4 Understanding Amazon

4.1 What is Amazon: to each his own?

On one of the websites operated by Amazon, the tech giant describes itself as follows: 'Amazon is guided by four principles: customer obsession rather than competitor focus, passion for invention, commitment to operational excellence, and long-term thinking.'⁵⁹ These are the same

⁵⁴ *Ibid.*

⁵⁵ *Ibid.*

⁵⁶ Commission decision of 16.12.2009, Microsoft (Tying) (COMP/C-3/39.530) and Commission decision of 24.03.2004, Microsoft (COMP/C-3/37.792).

⁵⁷ FENG ZHU, QIHONG LIU, *supra* note 45, p.2.

⁵⁸ *Ibid.*

⁵⁹ Retrieved 25 April 2020, <https://www.aboutamazon.com/>.

principles that Amazon indicated in its comments on the Preliminary Report of the European Commission on the E-commerce Sector Inquiry.⁶⁰ In the document it also adds that ‘Amazon has been relentlessly focused on being the Earth’s most customer-centric company, where people can find and discover anything they want to buy online.’⁶¹ This ‘customer obsession’ is, according to Jeffrey Preston Bezos, the founder of the company, is to ‘figure out what [customers] want, what’s important to them.’⁶² Even if it is true, that Amazon is most interested in the wishes of its customers, the road to hell is also paved with good intentions. However, the author of this thesis argues that this ‘consumer obsession’ is more about the business strategy of Amazon than about a charitable soul.

The company was established as an online book retailer in 1994 by Jeffrey Preston Bezos, and then step by step it started to expand its product range. Since Shakespeare, we know that how we call something, does not have a great importance, because ‘[w]hat's in a name? That which we call a rose By any other name would smell as sweet.’⁶³ Thus, it does not really matter, what we call Amazon, it will stay the same, but what is it at its core? Amazon ‘is a marketing platform, a delivery and logistics network, a payment service, a credit lender, an auction house, a major book publisher, a producer of television and films, a fashion designer, a hardware manufacturer, and a leading provider of cloud server space and computing power.’⁶⁴ More than that, ‘Amazon is the worldwide largest online retailer with a range of more than 250 million different products’⁶⁵, it is ‘the largest online retailer in the United States, and also a platform on which third-party sellers can sell their products directly to their customers.’⁶⁶ This platform is called Amazon Marketplace. However, some say that it is no more, after all, than a data company, and that, for Amazon, ‘[e]ach opportunity to interact with a customer is another

⁶⁰ Preliminary Report of the European Commission on the E-commerce Sector Inquiry („Preliminary Report”) Comments of Amazon EU Sàrl, November 2016, retrieved 2 May 2020, https://ec.europa.eu/competition/antitrust/e_commerce_files/amazon_eu_en.pdf, at p.1.

⁶¹ *Ibid.*

⁶² LEO KELION, ‘Why Amazon knows so much about you’ (2020) BBC News, retrieved 15 April 2020, <https://www.bbc.co.uk/news/extra/CLQYZENMBI/amazon-data>.

⁶³ WILLIAM SHAKESPEARE, *Romeo and Juliet*, retrieved 2 May 2020, <https://www.arcanum.hu/hu/online-kiadvanyok/ShakespeareAngol-william-shakespeare-osszes-muvei-angol-1/tragedies-2/romeo-and-juliet-9B6/act-ii-AB0/scene-ii-AC0/?list=eyJmaWx0ZXJzJjogeyJNVSI6IFsiTkZPX0tPTlIfU2hha2VzcGVhcmVBbmdvbF8xIl19LCAicXVIcnkiOiAicm9zZSJ9>.

⁶⁴ LINA M. KHAN, ‘Amazon’s Antitrust Paradox’ (2017) *Yale Law Journal*, Vol. 126, p.710-805, at 713.

⁶⁵ KONSTANTIN SCHRADER, ‘Hybrid platforms: Amazon’s Hybrid Position as a Retailer and Operator of its Marketplace in the Focus of the Competition Authorities’ (2019) Lexology, retrieved 2 May 2020, <https://www.lexology.com/library/detail.aspx?g=56f1861f-1023-4724-add4-c8cde8f1b4b8>.

⁶⁶ FENG ZHU, QIHONG LIU, *supra* note 45, p.4.

opportunity to collect data.⁶⁷ Data, as a corporate asset different from traditional ones, is created continually when a company provides an additional service.⁶⁸ The role of data in Amazon's practices is outstanding. Indeed, companies always had an interest in understanding the preferences of their consumers in order to offer products and services which are more targeted and are sold at the right price.⁶⁹ However, large digital companies are amassing a 'scale and breadth' of data that is 'unprecedented', and, in many cases, this data is only a 'by-product of an activity.'⁷⁰ The author of this thesis argues that Amazon should be considered to be a data merchant at its core, which gathers, analysis and sells data to different undertakings which base their business model in some way on big data.

4.2 Amazon's unique business strategy built on long-term thinking

According to KHAN's paper concerning Amazon, the company has a business strategy that enabled it to establish a significant share of market activity.⁷¹ This business strategy is characterized by 'a willingness to sustain losses and invest aggressively at the expense of profits, and integration across multiple business lines.'⁷² The company, interestingly, encountered in the past more years in which it had losses than years when it gained profits, and even when it closes the year with a positive margin, it is a very thin one.⁷³ Nevertheless, investors are always there to back up the company which seems not to be interested in profits.⁷⁴ The author quotes Jeffrey Preston Bezos' first letter to Amazon's shareholders, which sheds some light on his idea of success: based on thinking over the long-term, extension and solidification of the company's market position, aggressive investments into and leveraging of its customer base, its brand and its infrastructure and establishing an 'enduring franchise'.⁷⁵ KHAN translates the premise of Amazon's business model as the establishment of scale, for which it put growth in the first place: investing aggressively with the goal of becoming a 'one-stop-shop' for consumers.⁷⁶ The Amazon Prime service is one of the examples of the company's

⁶⁷ LEO KELION, *supra* note 62.

⁶⁸ SIMON VAN DORPE, 'EU Antitrust Probe Targets Amazon's 'Dual Role' (2019) Politico, retrieved 1 May 2020, <https://www.politico.eu/article/eu-antitrust-probe-targets-amazons-dual-role/>.

⁶⁹ Digital Competition Expert Panel, 'Unlocking Digital Competition' (2019) retrieved 2 May 2020, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/785547/unlocking_digital_competition_furman_review_web.pdf, p. 23.

⁷⁰ *Ibid.*

⁷¹ LINA M. KHAN, *supra* note 64, p.746-747.

⁷² *Ibid.*, p.747.

⁷³ *Ibid.*, p.747.

⁷⁴ *Ibid.*, p.748.

⁷⁵ *Ibid.*, p.749.

⁷⁶ *Ibid.*, p.749.

aggressive investments: Amazon decided to offer it at a price on which it was losing money, with the aim of making users more likely to buy on Amazon's platform, so that they can maximize the return on their investment of the subscription to the service.⁷⁷ Amazon Prime is a loyalty program that offers unlimited two-day shipping on Amazon products and, amongst others, video streaming, audio streaming and e-books.⁷⁸ It is said to be '[o]ne of the keys to Amazon's success.'⁷⁹

Amazon's business model could be described as an octopus, with each business lines being one of its snares. It integrating and expanding into multiple business lines. It reached this expansion mostly by the acquisition of existing companies.⁸⁰ By involving itself 'in multiple, related business lines', it became a rival of its customers in many cases, which could create conflicts of interest, if Amazon was to favour itself in different scenarios over its competitors, and, it is positioned to be able to do so.⁸¹ It is argued that the goal of Amazon was to become an essential 'utility' to commerce, that is, the targeted customers were not only buyers, i.e. end-consumers, but also other businesses.⁸² That might be true: if we try to read between the lines when looking at the principles that govern the tech giant, the principle 'customer obsession rather than competitor focus'⁸³ can be understood in different ways. First, that customers include more than only buyers present on the platform, as proposed by KHAN.⁸⁴ Second, the author of this thesis argues that the goal of Amazon is to turn companies, that once have been or still are its competitors, into its customers. This way, its competitors are becoming dependent on it, which is a key advantage for Amazon.⁸⁵

4.3 Amazon Marketplace: a wolf among sheep?

Amazon is a 'prime example' of an intermediary that sells products both as a reseller and a marketplace.⁸⁶ Amazon 'initially bought and resold books and other products' and later, already

⁷⁷ *Ibid.*, p.750-752.

⁷⁸ FRISO BOSTOEN, *supra* note 28, p.22.

⁷⁹ *Ibid.*

⁸⁰ LINA M. KHAN, *supra* note 64, p.754.

⁸¹ *Ibid.*

⁸² *Ibid.* p.755.

⁸³ *Supra* note 59.

⁸⁴ LINA M. KHAN, *supra* note 64, p.755.

⁸⁵ *Ibid.*

⁸⁶ ANDREI HAGIU, JULIAN WRIGHT, 'Marketplace or reseller?' (2014) Working Paper, Harvard Business School. Retrieved 23 April 2020, https://dash.harvard.edu/bitstream/handle/1/14358172/hagiu,wright_marketplace-or-reseller.pdf?sequence=1, p.17.

with an established buyer base, it started to open up its marketplace to attract independent suppliers.⁸⁷ Inviting third-parties to sell their products on Amazon Marketplace⁸⁸ in 2000⁸⁹ was part of a strategy named Launch and Learn, and after a 'slow start', it turned out to be a great success.⁹⁰ The platform offers different functionalities to merchants on its Amazon Marketplace.⁹¹ Amazon allows third-party merchants to sell their goods,⁹² and they can use it as a new or additional sales channel.⁹³ As part of the service, it 'manages the platform and handles the payment in return for a subscription fee and a referral fee.'⁹⁴ Amazon is thus able to charge a price not only for sellers to be able to join the platform, but also for using it.⁹⁵ Amazon Marketplace can thus be characterized as a two-sided transaction market.⁹⁶ It is characterized by two externalities: membership externalities (also referred to as indirect network effects), that arise when a third-party seller joins Amazon Marketplace, and usage externalities, that arise when products are sold on the platform.⁹⁷

They can also purchase additional services.⁹⁸ For an additional fee, it also grants the option 'Fulfilment by Amazon'.⁹⁹ If third-party merchants choose this option, it is Amazon that takes care of shipping and customer service as well.¹⁰⁰

One of the reasons of the success of Amazon Marketplace is that Amazon is sharing analytics with sellers joining its Marketplace, however, they cannot obtain full access to this data.¹⁰¹ Moreover, Amazon collects all the data that these users, e.g. sellers generate.¹⁰² Since, for some

⁸⁷ *Ibid.*, at p.28.

⁸⁸ LEO KELION, *supra* note 62.

⁸⁹ JENNIFER RANKIN, 'Third-Party Sellers and Amazon – a double-edged sword in e-commerce', (2015) *The Guardian*, retrieved 20 April 2020, <https://www.theguardian.com/technology/2015/jun/23/amazon-marketplace-third-party-seller-faustian-pact>.

⁹⁰ LEO KELION, *supra* note 62.

⁹¹ THOMAS HÖPPNER, PHILIPP WESTERHOFF, 'The EU's competition investigation into Amazon Marketplace', (2018) *Kluwer Competition Law Blog*, retrieved 22 April 2020, http://competitionlawblog.kluwercompetitionlaw.com/2018/11/30/the-eus-competition-investigation-into-amazon-marketplace/?doing_wp_cron=1588683488.8899700641632080078125.

⁹² FRISO BOSTOEN, *supra* note 28, p.21.

⁹³ THOMAS HÖPPNER, PHILIPP WESTERHOFF, *supra* note 91.

⁹⁴ FRISO BOSTOEN, *supra* note 28, p.21.

⁹⁵ LAPO FILISTRUCCHI, DAMIEN GERADIN, ERIC VAN DAMME, PAULINE AFFELDT, 'Market Definition in Two-Sided Markets: Theory and Practice', (2014) *Journal of Competition Law & Economics*, 10(2), p.293–339, at 298.

⁹⁶ *Ibid.*

⁹⁷ *Ibid.*

⁹⁸ THOMAS HÖPPNER, PHILIPP WESTERHOFF, *supra* note 91.

⁹⁹ FRISO BOSTOEN, *supra* note 28, p.21.

¹⁰⁰ *Ibid.*

¹⁰¹ LEO KELION, *supra* note 62.

¹⁰² *Ibid.*

merchants, Amazon can be the breakthrough in reaching out to many buyers around the world, they accept the trade-off that the platform provider does not grant them all its available analytical data and that it also collects data regarding its merchants.¹⁰³ They stay on the platform anyway¹⁰⁴, even though ‘[t]here is no guarantee [that Amazon] won’t take advantage’¹⁰⁵ of this data when making decisions regarding its own sales activities.

Amazon is a thus platform that provides the possibility for different merchants to sell their products on its platform. However, sometimes Amazon also enters the downstream market in order to act as a retailer on its own platform. A firm is said to be vertically integrating when it is starting to produce the same or competing products that its users are producing.¹⁰⁶ Consequently, it can be argued that, Amazon is vertically integrating when it starts to sell ‘products in its own name after seeing them become popular thanks to the sales efforts of third-party sellers on its marketplace’.¹⁰⁷

When a platform owner, such as Amazon, decides to enter the market of its merchants and start competing with them, there can be two possible explanations why it decides to do so.¹⁰⁸ It either targets ‘the most successful complementors so as to appropriate value from their innovations’ or it ‘may target poor performing complementors to improve the platforms’ overall quality.’¹⁰⁹

According to HAGIU and WRIGHT, a platform should act as a reseller ‘for all products where it has an information advantage over suppliers’ and as a marketplace ‘for all products where the advantage lies with suppliers.’¹¹⁰ As Amazon has already invested in a massive infrastructure, it ‘has lower variable costs of handling and marketing any product on its site than third-party merchants.’¹¹¹The authors predict that the platform ‘should sell short-tail products as a reseller and long-tail products as a marketplace¹¹², by letting third-party merchants to sell the products without entering the downstream market. The authors state that this theory is ‘consistent with descriptions of Amazon’s strategy with respect to third-party sellers’, as it often observes which

¹⁰³ *Ibid.*

¹⁰⁴ *Ibid.*

¹⁰⁵ JENNIFER RANKIN, *supra* note 89.

¹⁰⁶ FRISO BOSTOEN, *supra* note 28, p.21.

¹⁰⁷ ANDREI HAGIU, BRUNO JULLIEN, JULIAN WRIGHT, *supra* note 41, p.19.

¹⁰⁸ FENG ZHU, QIHONG LIU, *supra* note 45, p.1.

¹⁰⁹ *Ibid.*

¹¹⁰ ANDREI HAGIU, JULIAN WRIGHT, *supra* note 86, at p. 18.

¹¹¹ *Ibid.*, at p.26.

¹¹² *Ibid.*

products are successful on its marketplace just to start selling them as a retailer.¹¹³ Going back to the question of information advantage, when ‘Amazon reaches information parity with its sellers,’ it starts to act as a reseller ‘to exploit its scale advantage.’¹¹⁴

Based on the analysis conducted by ZHU and LIU, ‘Amazon is more likely to enter a product space when the product has a higher price, lower shipping costs and greater demand’, and the higher the rating of a product, the more likely that it enters.¹¹⁵ However, if a product is already using the distribution system of Amazon, it is less likely to enter that specific product market.¹¹⁶ Moreover, large numbers of third-party sellers seem attractive to the giant.¹¹⁷ The authors conclude that Amazon’s motivation when entering these third-party product spaces is to capture more value, and not the improvement of the platform’s quality.¹¹⁸

According to the European Commission, the provision of competitively sensitive information by third party sellers to the marketplace owner, in this case, to Amazon, ‘could be used to boost the retail activities of the marketplace operators at the expense of third-party sellers’, in case if there are no safeguards in place.¹¹⁹ The question is whether Amazon is engaging in such activities, and under what category of abuse could the European Commission establish an infringement in its current investigation into Amazon’s practices. However, a recent article brought to light, based on ‘more than 20 former employees of Amazon’s private-label business and documents reviewed’, that Amazon, ‘when it makes and sells its own products’, it does ‘use information that it collects from the site’s individual third-party sellers’.¹²⁰ According to the article, Amazon does not admit that it would abuse its position and argues that ‘the use of private-label brands is common in retail.’¹²¹ Based on these allegations, we could conclude that Amazon *is* targeting successful products sold by third-parties on its platform with the aim to appropriate value from it.

¹¹³ *Ibid.*

¹¹⁴ *Ibid.*

¹¹⁵ FENG ZHU, QIHONG LIU, *supra* note 45, p.15.

¹¹⁶ *Ibid.*

¹¹⁷ *Ibid.*

¹¹⁸ *Ibid.*

¹¹⁹ ALEXANDER M. WAKSMAN, *supra* note 40, p.210.

¹²⁰ DANA MATTIOLI, ‘Amazon Scooped Up Data From Its Own Sellers to Launch Competing Products’ (2020) The Wall Street Journal, retrieved 25 April 2020, <https://www.wsj.com/articles/amazon-scooped-up-data-from-its-own-sellers-to-launch-competing-products-11587650015>.

¹²¹ *Ibid.*

Amazon has its reasons to enter these markets, such entries have their consequences as well. In their paper, ZHU and LIU received the following results.¹²² Concerning the impact on third-party products, they conclude that shipping costs decreased after the entry of Amazon on the retail level, which resulted in an augmented number of sales.¹²³ Whereas, third-party sellers of the affected products were ‘discouraged from continuing to offer these products’¹²⁴, ‘from growing their businesses on the platform’, moreover, they were ‘more likely to stay away from developing close relationships subsequently.’¹²⁵ However, this goes against what was said in an article concerning Amazon’s alleged practice of copying products of third-party sellers, as, according to the article, ‘this is an acceptable trade-off’ for many merchants.¹²⁶ Whether a third-party seller decides to leave or not Amazon’s Marketplace platform depends on many factors, for example the presence of competing online retailers on the geographic market, the (lack of) possibility of multi-homing of the merchants and of the buyers, the awareness of consumers regarding the third-party seller itself.

5 The formal investigations launched by the European Commission into the alleged anticompetitive practices of Amazon

After concluding its Final Report on the E-commerce Sector Inquiry, in September 2018, the European Commission sent out formal requests for information with the aim of investigating allegations regarding the alleged anticompetitive conducts of Amazon¹²⁷ and received a great amount of data from the 1500 contacted retailers.¹²⁸ Moreover, it is said that the European Commission ‘asked Amazon to provide 700 gigabytes of data on how products are priced, the volume of third-party sales and their inventory levels.’¹²⁹

In its Final Report on the E-commerce Sector Inquiry, the European Commission concluded ‘that the growth of e-commerce over the last decade had a significant impact on companies’ distribution strategies and customer behaviour.’¹³⁰ It added that online marketplaces, which

¹²² FENG ZHU, QIHONG LIU, *supra* note 45, p.15-20.

¹²³ *Ibid.*, p.16.

¹²⁴ *Ibid.*

¹²⁵ *Ibid.*, p.19.

¹²⁶ LEO KELION, *supra* note 62.

¹²⁷ THOMAS HÖPPNER, PHILIPP WESTERHOFF, *supra* note 91.

¹²⁸ SIMON VAN DORPE, *supra* note 68.

¹²⁹ *Ibid.*

¹³⁰ European Commission, Final Report on the E-commerce Sector Inquiry, 10 May 2017, Brussels, retrieved 2 May 2020, https://ec.europa.eu/competition/antitrust/sector_inquiry_final_report_en.pdf, p. 4.

they consider ‘alternative online distribution models’, facilitated for retailers to access customers.¹³¹ Moreover, they recognized also that ‘[s]mall retailers may, with limited investments and effort, become visible and sell products through third party platforms to a large customer base and in multiple Member States.’¹³² Nevertheless, they emphasized that this may ‘clash with the distribution and brand strategies of manufacturers.’¹³³

According to the Commission Staff Working Document accompanying the Final Report on the E-Commerce Sector Inquiry,

’[o]nline marketplaces are multi-sided platforms bringing together different user groups (sellers, buyers and potentially advertisers) and facilitating transactions between them. They allow sellers to list their products on the marketplace and allow buyers of the marketplace to find and buy these products.’¹³⁴

The document distinguishes between pure marketplaces and other marketplaces.¹³⁵ Pure marketplaces are operating only as sales platforms, they don’t engage in any activity as a seller on their own platforms.¹³⁶ Other marketplace operators act as retailers and they also offer the sales platforms to third-party sellers.¹³⁷ The products sold by the platform as a retailer are typically presented together with third-party retailers’ products and platforms sell the same products in many cases ‘in direct competition’ with the third-party sellers.¹³⁸ The proportion of pure marketplaces is 32 %, compared to 68 % of marketplaces that also act as retailers.¹³⁹

On 17 July 2019 the European Commission announced that it has opened a formal antitrust investigation into the alleged anticompetitive practices of Amazon relating to ‘interdependencies between [Amazon Marketplace] and Amazon’s own online retail operations’.¹⁴⁰ On 10 November 2020, the European Commission sent out its statement of

¹³¹ *Ibid.*, p.5.

¹³² *Ibid.*

¹³³ *Ibid.*, p.5.

¹³⁴ European Commission, Commission Staff Working Document, Accompanying the document Report from the Commission to the Council and the European Parliament, Final report on the E-commerce Sector Inquiry, 10 May 2017, Brussels, retrieved 2 May 2020, https://ec.europa.eu/competition/antitrust/sector_inquiry_sw_d_en.pdf, at p.34.

¹³⁵ *Ibid.*

¹³⁶ *Ibid.*

¹³⁷ *Ibid.*

¹³⁸ *Ibid.*

¹³⁹ *Ibid.*, p.34-35.

¹⁴⁰ European Commission, Opening of Proceedings in Case AT.40462 Amazon Marketplace, 17 July 2019, https://ec.europa.eu/competition/antitrust/cases/dec_docs/40462/40462_6210_9.pdf. The document reads

objections to Amazon in the case opened formally in July 2019, and opened a second formal investigation into Amazon's practices.¹⁴¹ The new investigation concerns 'the conditions and criteria that govern the selection mechanism of the Buy Box and the Prime label of Amazon'.¹⁴² (The Buy Box shows the offer of one single seller which the consumers can purchase directly, Prime label products are offered to users of the Prime programme.¹⁴³)

The hybrid role of Amazon 'has created a strong conflict of interest' for the platform.¹⁴⁴ Allegations concern Amazon's collection and use of third-party data, namely that it uses the data that it collects as a platform provider to compete with merchants present on its platform.¹⁴⁵ According to merchants' allegations, Amazon either approaches the original manufacturer of a product to resell them at a lower price, or it launches the same products under its own brand, 'Amazon Basics'.¹⁴⁶ It allegedly offers these products at the lowest price so that it appear in its Buy Box as a first choice.¹⁴⁷

It is said that European Commission officials have already been able 'to establish that Amazon's contracts allow the company to pass aggregate sales information — from at least two merchants — from its marketplace to its retail branch' and that it will be investigated if this practice has anti-competitive effects on the sellers.¹⁴⁸ The aim of the EC's investigation is to find out 'whether Amazon's use of sensitive data from independent retailers who sell on its marketplace is in breach of EU competition rules'¹⁴⁹ and of the EEA Agreement.¹⁵⁰ According to the Competition Commissioner Margrethe Vestager, the EC takes a 'very close look at Amazon's business practices and its dual role as marketplace and retailer'.¹⁵¹ When acting as a platform provider via its Marketplace, Amazon gathers data, that could constitute, according to the EC,

'[i]nfringements [...] were allegedly committed by Amazon.com, Inc.; Amazon Services Europe SARL; Amazon EU SARL; Amazon Europe Core SARL and all legal entities directly or indirectly controlled by them (together referred as "Amazon").'

¹⁴¹ European Commission Press Release, *supra* note 4.

¹⁴² European Commission, Opening of Proceedings in Case AT.40703 Amazon Buy Box, 10 November 2020. https://ec.europa.eu/competition/antitrust/cases/dec_docs/40703/40703_67_4.pdf

¹⁴³ *Ibid.*

¹⁴⁴ THOMAS HÖPPNER, PHILIPP WESTERHOFF, *supra* note 91.

¹⁴⁵ *Ibid.*

¹⁴⁶ *Ibid.*

¹⁴⁷ *Ibid.*

¹⁴⁸ SIMON VAN DORPE, *supra* note 68.

¹⁴⁹ European Commission Press Release, *supra* note 4.

¹⁵⁰ Opening of Proceedings in case AT.40462 Amazon Marketplace, *supra* note 138.

¹⁵¹ European Commission, Press release (IP/19/4291), Antitrust: Commission opens investigation into possible anti-competitive conduct of Amazon, retrieved 23 April 2020, https://ec.europa.eu/commission/presscorner/detail/en/IP_19_4291.

‘competitively sensitive information – about marketplace sellers, their products and transactions on the marketplace.’¹⁵² The EC is looking into whether Amazon used the data that it gathers as a platform provider as regards its own retail activities, and whether this data plays a role when selecting the ‘Featured Offer’ in Amazon’s Buy Box.¹⁵³ A great percentage of sales are conducted via the Buy Box, of which every product has only one.¹⁵⁴ If multiple sellers are offering the same product, they must compete to be featured in the box.¹⁵⁵ If Amazon acts as a retailer for the product in particular, it also has to compete with the third-party retailers for the place.¹⁵⁶ Allegedly, an algorithm is used in determining the winner of the Buy Box based on the products’ price and customer reviews.¹⁵⁷ The question is whether this could be manipulated by Amazon to promote its own products, and if there is a possibility to do so, whether Amazon manipulates it or not thanks to its informational advantage and its role as a platform provider. Big data thus plays an important role in the investigation, as thanks to it Amazon has a valuable insight into consumption patterns.¹⁵⁸

The EC does not mention whether it will consider Amazon to be a two- or multi-sided market or a one-sided one. However, it must be emphasized, that there are views saying that observing two-sided markets ‘as one-sided markets just runs counter the evidence’ because of the application of price structures instead of price levels, and because of the sensitiveness of end-users ‘to the allocation of cost between them’.¹⁵⁹ If the regulator ‘fails to understand the nature of two-sided markets [it] might misleadingly complain about predation or even excessive pricing on the high-price side’.¹⁶⁰ Few commentators hold the view that there is no reason to treat multi-sided platforms in a different way.¹⁶¹ Economics literature shows that results that

¹⁵² *Ibid.*

¹⁵³ *Ibid.* Regarding the Featured Offer and the Buy Box, Amazon provides the following information: ‘Featured offer ("Buy Box") The featured offer on a detail page. Customers can add to their cart or “Buy Now”’ <https://sell.amazon.com/beginners-guide.html>.

¹⁵⁴ GEORGINA PRODHAN, FOO YUN CHEE, ‘Explainer: What is the EU's antitrust investigation into Amazon about?’ (2019) Reuters, retrieved 1 May 2020, <https://www.reuters.com/article/us-eu-amazon-com-antitrust-explainer/explainer-what-is-the-eus-antitrust-investigation-into-amazon-about-idUSKCN1UC24R>.

¹⁵⁵ *Ibid.*

¹⁵⁶ *Ibid.*

¹⁵⁷ *Ibid.*

¹⁵⁸ SIMON VAN DORPE, *supra* note 68.

¹⁵⁹ JEAN-CHARLES ROCHET, JEAN TIROLE, *supra* note 16, p.1017.

¹⁶⁰ JEAN TIROLE, *supra* note 2, p.1675.

¹⁶¹ DAVID S. EVANS, RICHARD SCHMALENSEE, *supra* note 18, p. 4.

are applicable to one-sided markets are in general not applicable to their two-or multi-sided counterparts serving ‘interdependent customer groups.’¹⁶²

If one-sided tools really do not apply, or if they need substantial changes,¹⁶³ it might be a wise decision to find new or modified tools when dealing with cases involving platforms such as Amazon. This could also mean the finding of a new category of abuse, like it happened in 2017 in the EC’s decision in the Google Search (Shopping) case¹⁶⁴. The European Commission established a *sui generis* abuse, according to which ‘Google has abused its market dominance as a search engine by giving illegal advantage to its comparison shopping service’.¹⁶⁵ The EC is thus able and eager to deter to a certain extent from its previous decisional practices, nevertheless, undertakings might complain about a lack of legal certainty due to such decisions.

The fact that the European Commission initiated proceedings ‘does not mean that [it] has made a definitive finding of an infringement, but merely signifies that [it] will deal with the case as a matter of priority.’¹⁶⁶ However, issuing a statement of objections in one case, and opening a second formal investigation in another one are already telling as regards how the European Commission sees Amazon’s conduct.

As regards the Amazon Marketplace case what the authority objects to is Amazon’s usage of non-public marketplace seller data.¹⁶⁷ This, in the authority’s view, can allow Amazon to ‘to avoid the normal risks of competition and to leverage its dominance in the market for the provision of marketplace services in France and Germany.’¹⁶⁸ In the European Commission’s view, Amazon might be abusing its dominance on these markets.¹⁶⁹ For this, first, the authority has to prove that Amazon has a dominant position, for which a narrow market definition will definitely be helpful. As already forecasted, this product market is the market for the provision of marketplace services, with only a country-wide geographic market definition. In the Amazon Marketplace case, the European Commission did not specify the conduct which could amount

¹⁶² *Ibid.*

¹⁶³ *Ibid.*, p.4.

¹⁶⁴ Commission decision of 27.06.2017, Google Search (Shopping) (CaseAT.39740).

¹⁶⁵ FRISO BOSTOEN, *supra* note 28, p.19.

¹⁶⁶ Opening of Proceedings in case AT.40462 Amazon Marketplace, *supra* note 140.

¹⁶⁷ *Ibid.*, *supra* note 4.

¹⁶⁸ *Ibid.*

¹⁶⁹ *Ibid.*

to an abuse of dominance, thus it might be that the European Commission will establish a *sui generis* infringement based on Amazon's use of non-public data.

As regards the Amazon Buy Box case, the European Commission is concerned about Amazon abusing its alleged dominance by giving a preferential treatment to its own retail offers and to those sellers who chose to use the platform's own logistics and delivery services (fulfilment by Amazon or FBA sellers).¹⁷⁰ The European Commission is especially concerned about the selection of the Buy Box' winner and of the retailers entitled to use Amazon's Prime label.¹⁷¹ As regards the allegation concerning the Amazon Buy Box investigation that Amazon favours its own and FBA sellers' sales activities, it is not clear when would that amount to an abuse, but this conduct, if established, is also based on the information advantage of Amazon: if a seller decides to use the fulfilment by Amazon service, the seller provides more data regarding its sales activities, as it opts in for yet another service of the platform. This would mean that Amazon is rewarding these FBA sellers for their opt-in.

In the opinion of the author, the alleged conducts applied by Amazon aim at the gathering of more data regarding the products and activities of third-party sellers via either convincing them to engage in more services provided by Amazon or via obliging them to share information that is not necessary for Amazon to provide its services to them as a platform provider. The author of this paper argues that every road takes Amazon's practices to data, and that these practices should be looked at as tools of a bigger goal: Amazon engages in them in order to gain more information, both about buyers, about third-party sellers, and about the transactions taking place on its platform. It finds recourse to do so via different means and different business lines, but, at the end of the day, Amazon is more of a data company than anything else, and its goal is to profit from this big data on another market, where it is acting as a data merchant. Therefore, it might be more rational to assess all these practices as a whole instead of breaking them up in smaller scale cases, because taken separately, they might not amount to infringements of Article 102 TFEU.

¹⁷⁰ *Ibid.*

¹⁷¹ *Ibid.*

6 Conclusion: The Amazon Effect¹⁷²

When a company becomes the denominator of a phenomenon, defined as an ‘impact created by the online, e-commerce or digital marketplace on the traditional brick and mortar business model due to the change in shopping patterns, customer expectations, and a new competitive landscape’¹⁷³, it might be a warning sign. However, this warning is not necessarily a negative one: markets have always been evolving, and with the Internet and the e-commerce forging ahead, there is no way to stop it. What regulators and antitrust authorities should do, is to stay vigilant and to try to accommodate to the changing market structures. Translating this to the case of Amazon, the European Commission should try to assess Amazon’s conduct as a whole, including the evaluation of Amazon’s practices in the context of all of its business lines. In that case, the results might come out in a different way, meaning that what seems to be an infringement at first sight, might not be one and *vice versa*.

¹⁷² SOBHIT SETH, ‘The Amazon Effect’, (2020) Investopedia, retrieved 4 May 2020, <https://www.investopedia.com/terms/a/amazon-effect.asp>.

¹⁷³ *Ibid.*