

Press release

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Bundeskartellamt obtains far-reaching improvements in the terms of business for sellers on Amazon's online marketplaces

Bonn, 17 July 2019: In response to the competition concerns expressed by the Bundeskartellamt, Amazon is amending its terms of business for sellers on Amazon's online marketplaces.

Andreas Mundt, President of the Bundeskartellamt: *"In conclusion of our proceedings Amazon will adjust its terms of business for sellers active on its marketplace for the German marketplace amazon.de, for all European marketplaces (amazon.co.uk, amazon.fr, amazon.es, amazon.it) and marketplaces worldwide including those in North America and Asia. Amazon will today announce and publish the changes to its terms of business (Business Solutions Agreement - BSA). They will take effect 30 days later. The amendments address the numerous complaints about Amazon that the Bundeskartellamt received from sellers. They concern the unilateral exclusion of liability to Amazon's benefit, the termination and blocking of sellers' accounts, the court of jurisdiction in case of a dispute, the handling of product information and many other issues. With our proceedings we have obtained far-reaching improvements for sellers active on Amazon marketplaces worldwide. The proceedings are now terminated"*.

Amazon is the largest online retailer for many product categories and operates by far the largest online marketplace in Germany. Many sellers find Amazon's marketplace very important for their online sales, especially in terms of access to customers. In November 2018, following a large number of complaints from sellers, the Bundeskartellamt initiated abuse of dominance proceedings against Amazon to examine its terms of business and practices towards sellers on its German marketplace amazon.de ([see Bundeskartellamt press release of 29 November 2018](#)). The

Bundeskartellamt has now terminated its proceedings following the amendments made by Amazon.

The amendments in detail:

- Liability provisions:

Until now Amazon was practically exempted from any liability towards sellers.

There will now be a limitation in Amazon's exclusion of liability in favour of the sellers. The terms will also be more narrowly defined. In the future Amazon will be liable to the same extent as sellers for intent or gross negligence for any breach of major contractual obligations. This will bring Amazon's liability rules for the European marketplaces in line with European standards for Business to Business Relations (B2B).

- Termination and blocking of accounts:

As yet Amazon has had an unlimited right to immediately terminate and block sellers' accounts without justification.

In the future an ordinary termination of an account will require a 30 days' notice. In the case of an extraordinary termination (based on the alleged legal infringements by a seller) and the blocking of a seller's account, Amazon is now obliged to inform the seller and provide reasons for such measures.

- Court of jurisdiction:

Until now Luxembourg was specified as the only court of jurisdiction in the European terms of business applying to the marketplace as well as in the European terms of business for payment transactions. This provision made it difficult, in particular for smaller sellers, to even attempt to seek legal action.

The exclusivity of Luxemburg as the only court of jurisdiction is now removed from the terms of business for all European marketplaces. Under certain conditions, domestic courts can be the competent court of jurisdiction in future.

- Returns and reimbursements:

Nothing will change for customers. Amazon's rules on returns and reimbursements for customers will remain unaffected by the amendments.

So far sellers have had to unilaterally bear the costs and other consequences of a decision by Amazon to reimburse the customer. If they consider that the return was unjustified, they can pursuant to the new rules object it and are entitled to compensation from Amazon pursuant to the new regulations.

- Product information and rights of use:

Until now sellers have had to grant Amazon very extensive rights to use their own product material such as information, descriptions, images etc. Sellers also had to provide Amazon Marketplace

with product material of the same high quality as the one that they use in other sales channels (“parity requirement”).

Regarding the rights of use of product information, the amendments include improvements and clarifications to the sellers’ benefit. Now Amazon’s rights of use will be limited to certain purposes. The so-called “parity requirement” will no longer apply. In the future it will be possible to use material of higher quality or more specific product information and descriptions/images on other websites. However, Amazon’s Amazon will still be able to impose requirements with regard to the quality of the product material on its Marketplace. These amendments will enhance the ability of sellers and manufacturers to compete with Amazon Marketplace using their own websites.

- Confidentiality:

Until now sellers were only allowed to make public statements about their business relations with Amazon with Amazon’s written prior approval.

This clause will now be significantly reduced.

- Transparency:

The Bundeskartellamt made it easier in future for sellers to identify applicable rules and regulations in the first place. In the future these will be more easily traceable. Any changes will be announced with 15 days’ notice.

- Product reviews and sellers ratings:

Many sellers also complained about Amazon’s practice with regard to product reviews. They criticised that Amazon prefers its own sales as a retailer (Amazon Retail) compared to sales by Marketplace sellers, particularly because product reviews obtained from external providers are removed from the platform. Amazon argued that there is a considerable risk of fake and manipulative reviews and stated that it is willing to address the fundamentals of the problem. In particular, Amazon’s own “Vine” rating programme, which was previously available only to suppliers of Amazon Retail, will be gradually made available to those marketplace sellers which own a brand name registered with Amazon.

The Bundeskartellamt has therefore refrained from making further requirements regarding the rules for product reviews also in view of its current sector inquiry into “online user reviews” (see [Bundeskartellamt press release of 23 May 2019](#)) and the EU Commission’s current inquiry against Amazon (see below).

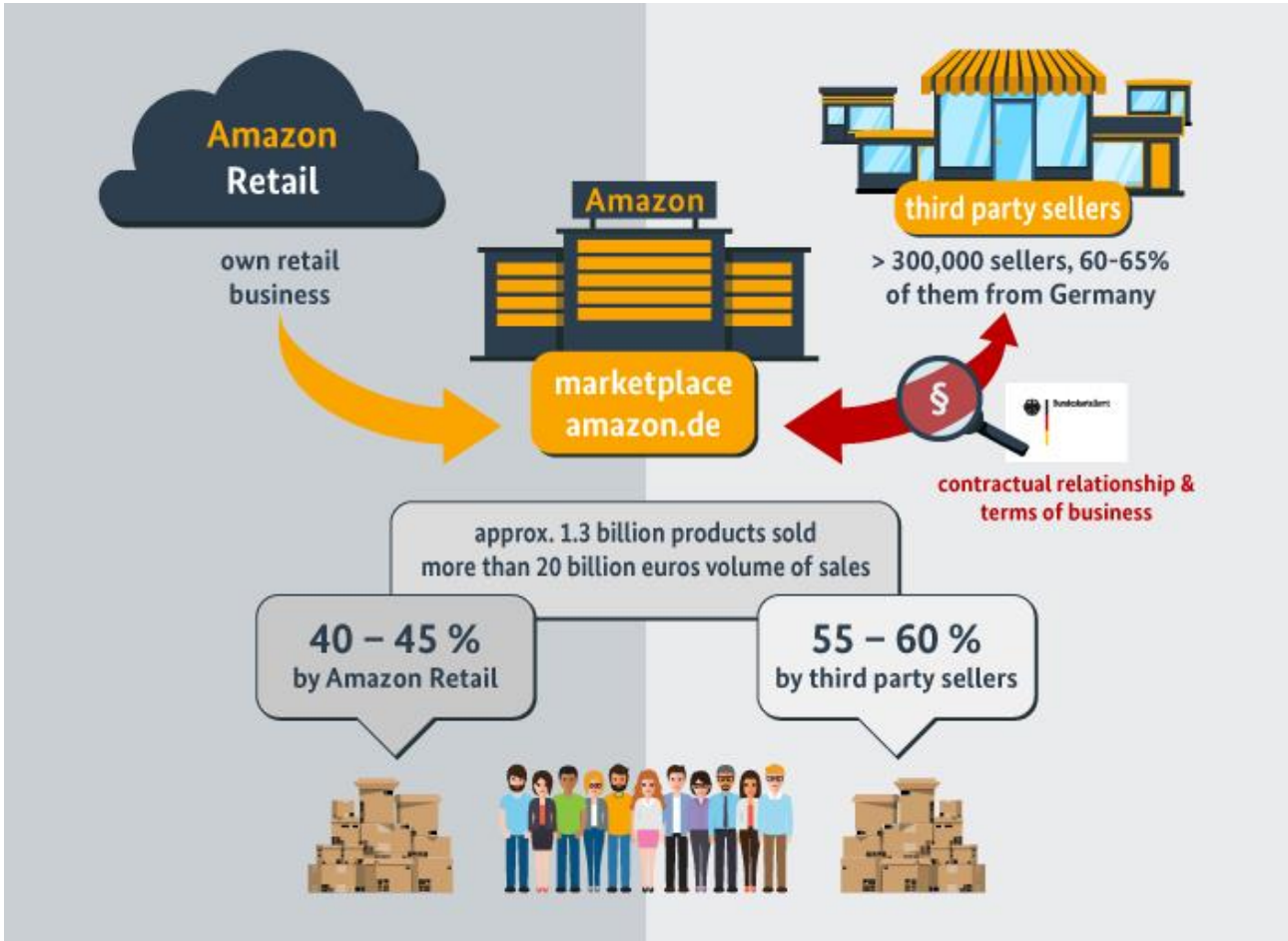
In 2018 more than 300,000 third-party sellers were active on the marketplace amazon.de. Considering the volume of sales of third-party sellers on amazon.de Marketplace, 60-65 percent were accounted for by German sellers, 20-25 percent by non-European sellers and 10-15 percent by sellers from other European countries, with less than 2 percent by sellers from Austria and much less by sellers from Luxembourg. More than 95 percent of the total volume of sales on amazon.de were sold to German or Austrian customers. In 2018 more than 300 million different

items (ASIN) were offered on amazon.de and approx. 1.3 billion products were sold. The (net) volume of sales on the German marketplace in 2018 amounted to well over 20 billion euros. Amazon.de is therefore by far the largest of the Amazon's five marketplaces in Europe. Of all five European marketplaces, the German marketplace accounts for 40-50 percent of the volume of sales, followed by the British and then the other three marketplaces (amazon.fr, amazon.es, amazon.it). Of the 37 million customers who purchased at least one product on the German marketplace in 2018, over 80 percent were from Germany and 5-10 percent from Austria. 40-45 percent of the volume of sales on amazon.de was achieved by Amazon's own retail business and 55-60 percent was achieved by third-party sellers. In 2018 Amazon blocked more than 250,000 seller accounts permanently and over 30,000 accounts temporarily. Amazon indicated fraud as the main reasons for account blocking but also the violation of industrial property rights and product counterfeiting).

During the proceedings the Bundeskartellamt maintained close contact with the European Commission, which in particular currently examines Amazon's collection and use of transaction data under European competition law. The Commission is taking a close look at Amazon's use of data and its effects on marketplace sellers.

The Bundeskartellamt has also exchanged information on the proceedings with several national competition authorities in and outside of Europe. The Bundeskartellamt also held intensive discussions in particular with the competition authorities in Austria (Bundswettbewerbsbehörde) and Luxembourg (Conseil de la concurrence), because they are also conducting abuse proceedings and investigations against Amazon.

Further information on these proceedings is available in a [case summary](#) on our website.



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