

Amazon.de Marketplace

1 Course of the proceedings

- (1) In 2017 and 2018, the Federal Competition Authority (BWB) received individual complaints concerning business practices on the Amazon.de Marketplace. Finally, in December 2018, the Austrian Retail Association, a voluntary interest group representing retail enterprises, submitted a complaint against Amazon Services Europe S.à.r.l. that related to business practices and patterns of behaviour towards Austrian retailers who offered their goods on the Amazon Marketplace ("Austrian Marketplace sellers").¹ The complaints were subsequently expanded upon and formulated in more specific terms. These complaints were based on numerous accounts of the situation that had been communicated to the Austrian Retail Association by Marketplace sellers. In this connection, reference was also made to a number of provisions in the Amazon Services Europe Business Solutions Agreement (BSA) that were problematic in the view of the complainant. Numerous further accounts were subsequently received both by the complainant and by the Federal Competition Authority itself – overwhelmingly from Marketplace sellers. The points put forward were finally explored more extensively and in greater depth in a survey of marketplace sellers.
- (2) The complaints were concerned in particular with the following patterns of behaviour:
 - the unjustified blocking and closure of Marketplace seller accounts,
 - the retention of positive balances earned by blocked Marketplace sellers,
 - inadequate options for Marketplace sellers to communicate with the platform (in particular, for the resolution of problems),
 - far-reaching rights to exploit Marketplace sellers' materials (licence),
 - far-reaching exclusions of liability and indemnification agreements,
 - the arbitrary extension of delivery times by Amazon,
 - the unequal treatment of sellers who do not use Amazon's logistics service,
 - the disclosure of Marketplace sellers' purchasing prices to Amazon,
 - restrictions on the marketing of products,
 - adjustments made in connection with unjustified customer returns,
 - a lack of transparency with regard to product and Marketplace seller rankings
 - and pressure to use further Amazon Services.
- (3) The following terms and conditions in the BSA were described as questionable by the complainant and looked at in the course of the investigations:
 - the termination or suspension of the Agreement with immediate effect at any time without any statement of grounds (Section 3),
 - the royalty-free, irrevocable, perpetual, worldwide right and licence for Amazon to use, reproduce, perform etc. the materials provided by sellers (Section 4),
 - the far-reaching exclusion of liability (sections 7 and 8),
 - the modification of terms and provisions in the BSA (including service terms and program policies) by Amazon at any time at its own discretion (Section 17),
 - the applicability of Luxembourgish law and the competence of the courts of Luxembourg City (Section 19),

¹ "3P sellers" in Amazon terminology.

- the far-reaching exclusion of liability in favour of Amazon under the Fulfilment by Amazon Service (Section F.11.),
 - the far-reaching exclusion of liability with regard to warehousing under the Fulfilment by Amazon service (Section F.13).
- (4) Following an initial analysis of the situation, the Federal Competition Authority took up investigations on suspicion of abuse of a dominant position (§ 5 Federal Cartel Act (KartG), Art. 102 Treaty on the Functioning of the European Union (TFEU)). As a working hypothesis with regard to the relevant market, the Federal Competition Authority used the market for online trading platforms from a German-Austrian perspective. On this market, Marketplace sellers act as the customers of an intermediary service and Amazon.de as its provider. Requests for information were then addressed to Amazon, which were concerned *inter alia* with the structure and turnover of the company itself, the market for online trading platforms and individual practices that had been the subject of complaints from sellers.
- (5) At meetings with representatives from Amazon, they were confronted with the points of complaint, and the further course of the proceedings was explained. A survey of Marketplace sellers, and an assessment of the problematic terms in the BSA and the proposed modifications to it put forward by Amazon were central to these proceedings.
- (6) On the basis of § 5 Federal Cartel Act and Article 102 TFEU, the Federal Competition Authority's investigations were conducted on suspicion of abuse of a dominant position, in particular by demanding inappropriate terms and conditions (abusive conditions).² A company is dominant on the market when it is not exposed to any competitive pressure or is only exposed to competition to an insignificant extent as a supplier or customer, or holds a predominant market position in relation to other competitors. A company is assumed to have a dominant position by the Federal Cartel Act as of a market share of 30%, unless this is disproved. In the present case, Amazon's position supplying services as an online retail intermediary is relevant.
- (7) In addition to this, the concept of relative market dominance, which takes account of a company's predominant market position in relation to its customers or suppliers, is a feature of Austrian cartel law. Such a predominant market position is found, in particular, when customers or suppliers are reliant on the maintenance of their business relationships with the company in order to avert grave economic disadvantages.
- (8) In the course of the market survey, about 400 Austrian Marketplace sellers engaged in selling activities on the Amazon.de Marketplace in 2018 were asked for information. Information was recorded about the significance of the Amazon Marketplace for individual Marketplace sellers (including in comparison to other sales channels) and, concomitantly, the relevant alternatives from the retailers' perspective. Furthermore, information was gathered about potentially abusive patterns of behaviour on Amazon's part. In this respect, the focus was placed on the topics that had been raised with the Federal Competition Authority by the complaints received from the Austrian Retail Association and individual Marketplace sellers.
- (9) At the time when the investigations were instituted by the Federal Competition Authority, the German Federal Cartel Office and the European Commission were already conducting proceedings against Amazon, while the points of complaint and therefore the subject matter investigated in the proceedings conducted by the Federal Competition Authority and the German Federal Cartel Office were essentially identical. The focus of the Commission's proceedings lies on Amazon's dual role as a platform for retailers and a service provider, and the possibly abusive exploitation of the data obtained from Marketplace sellers. The Federal Competition Authority coordinated its investigations with both authorities and, in particular, also cooperated closely with the German Federal Cartel Office. Luxembourg and

² According to § 5 Federal Cartel Act, an abuse of a dominant position may consist in particular in "demanding purchasing or selling prices or other business terms which differ from those which would be very likely to arise if effective competition existed."

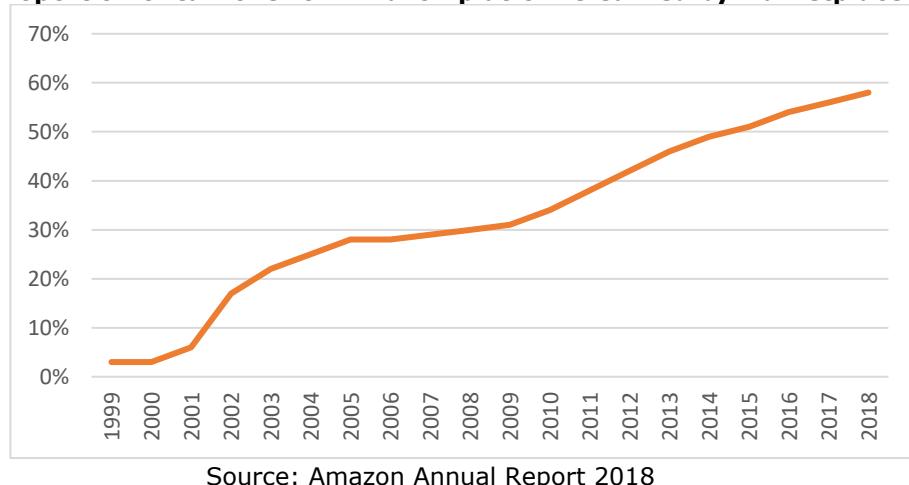
Italy's competition authorities subsequently opened proceedings as well. A closely coordinated approach on the part of all the European authorities that were involved was guaranteed on the basis of the far-reaching opportunities for cooperation within the European Competition Network (Regulation (EC) 1/2003).

- (10) In response to the concerns expressed about a number of provisions in the BSA, Amazon initially submitted proposed modifications to the German Federal Cartel Office, which were intended to make it possible for any further investigation of individual business practices based on these provisions to be dispensed with. Within the framework of the Federal Competition Authority's cooperation with the German Federal Cartel Office, points that were material to the Austrian proceedings were also taken into consideration. The proposals were made available to the Federal Competition Authority for it to examine.

2 Amazon's role in e-commerce

- (11) Amazon was established in the USA in 1994. Whereas it exclusively sold books to begin with, the range of goods found today on Amazon's online platforms, such as Amazon.com, Amazon.co.uk and Amazon.de, extends to almost all consumer goods. Apart from online trading, Amazon markets cloud computing services (Amazon Web Services), develops search engine and advertising technology (A9), produces consumer electronics (including the Kindle e-reader), films and television programmes (Amazon Studios), publishes books (Amazon Publishing), and offers downloading and streaming services for videos, music and audiobooks (Amazon Prime Video, Amazon Music and Audible). Amazon is currently the most valuable brand in the world.³
- (12) On Amazon's individual online trading platforms, Marketplace sellers and Amazon itself (Amazon Retail) market goods to private customers, as well as corporate clients ("customers"). In terms of turnover figures, Amazon Retail is the biggest online retailer in the world.⁴ Given that the Amazon platforms make transactions between the two types of user possible, they are to be understood as *transaction platforms*.⁵ Marketplace sellers have been able to market goods on Amazon's platforms since 1999. The proportion of the turnover on Amazon's marketplaces earned by Marketplace sellers has risen since then from 3% to 58% (see Figure 1).⁶

Figure 1: Proportion of turnover on Amazon platforms earned by Marketplace sellers



Source: Amazon Annual Report 2018

- (13) The "users" of Amazon's online trading platforms are, on the one hand, the customers who search for, compare and buy goods there. On the other hand, Marketplace sellers use these platforms to market their goods. The European Commission's recent report on competition law in the digital era emphasises that all the kinds of users of such platforms can be defined as "consumers". This conforms with the EU's existing competition law and the concept of the consumer surplus.⁷

³ Brandz (2019), *Top 100 Most Valuable Global Brands 2019*, 32, https://brandz.com/admin/uploads/files/BZ_Global_2019_WPP.pdf.

⁴ Digital Commerce 360 (2019), "Top 10 online retailers: How the largest online retailers in the world fared in 2018", <https://www.digitalcommerce360.com/2019/03/14/top-10-online-retailers/>.

⁵ Wismer, S. and Rasek, A. (2017), *Market definition in multi-sided markets*, OECD, 4 –5, [http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DAF/COMP/WD\(2017\)33/FINAL&docLanguage=En](http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DAF/COMP/WD(2017)33/FINAL&docLanguage=En).

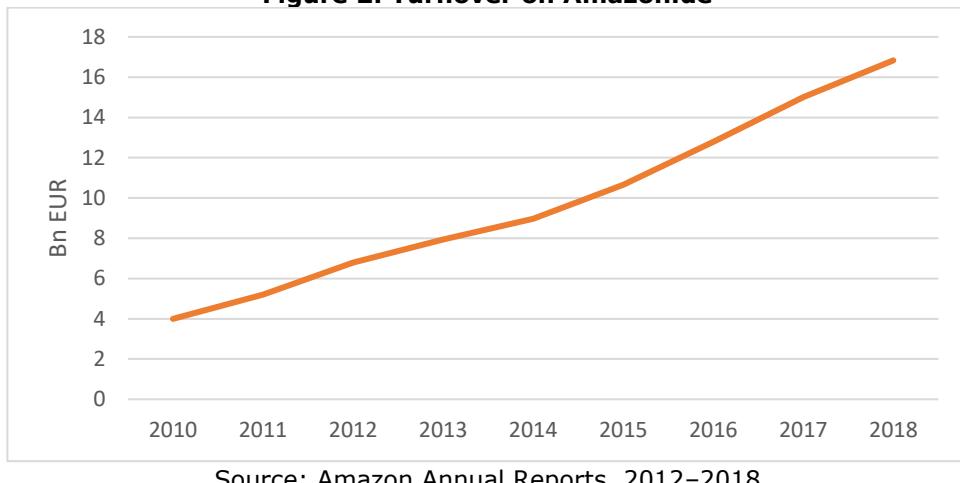
⁶ Addressing Amazon's shareholders, Jeffrey P. Bezos, the company's founder, commented on this development as follows: "Third-party sellers are kicking our first party butt. Badly."

Amazon (2019), *Annual Report 2018*, <https://ir.aboutamazon.com/static-files/0f9e36b1-7e1e-4b52-be17-145dc9d8b5ec>.

⁷ Crémer, J., de Montjoye, Y.-A. and Schweitzer, H. (2019), *Competition Policy for the digital era: Final report*, Luxembourg: Publications Office of the European Union, <http://ec.europa.eu/competition/publications/reports/kd0419345enn.pdf>.

- (14) A classic interpretation as “one-sided” markets is inadequate for Amazon’s online trading platforms; rather, they are to be understood as “two-sided” or, more generally, “multi-sided” markets. Whether multi-sided markets are to be defined as separate markets for the various types of users or as a single, unified market is a topic of controversial discussion in the relevant literature. However, there is consensus that the interdependencies of the individual sides of the market are to be taken into consideration.⁸ With regard to Amazon’s online trading platforms, the demand from customers depends on the prices, the number and the diversity of the products that are offered. If selling prices are low and the selection of products is large, in other words if the offer made by the Marketplace sellers is attractive to customers, this consequently has positive impacts on demand on this side of the market. In turn, the demand from Marketplace sellers to market their products on the Marketplace depends on the number of customers who use it. If large numbers of customers search for and purchase products on Amazon’s online trading platforms, the probability of generating turnover on this market then increases for Marketplace sellers.
- (15) The ecosystem of Amazon’s online trading platforms encompasses a large number of adjoining markets, for both customers and Marketplace sellers. For example, Amazon offers customers the Prime subscription, which makes it possible for Prime goods to be delivered rapidly free of charge to subscribing members. In turn, Marketplace sellers can market their goods as Prime products, and store and dispatch their goods using Amazon’s logistics service Fulfilment by Amazon (FBA). Without Prime status, there is little potential for sales to Prime subscribers.
- (16) In 1998, Amazon set up its first websites for online trading platforms outside the USA. In the same year, Amazon took over the German Internet bookshop ABC-Bücherdienst GmbH, after which it went online with Amazon.de.⁹ The online trading platform has grown strongly ever since. The turnover earned on Amazon.de tripled during the years 2010 to 2018 (see Figure 2).¹⁰ In Austria, the turnover on Amazon.de was €1.4bn in 2017. This means that roughly half the euros spent on the Internet in Austria went to Amazon.de. Of this money, 46% was earned by Amazon Retail and 54% by Marketplace sellers on Amazon.de.¹¹

Figure 2: Turnover on Amazon.de



Source: Amazon Annual Reports, 2012–2018

⁸ Wismer and Rasek (2019).

⁹ Amazon (2018), “20 Jahre Amazon.de: Nach 7.306 Tagen ist immer noch Tag 1”, <https://www.aboutamazon.de/%C3%BCber-amazon/20-jahre-amazon-de-nach-7-306-tagen-ist-immer-noch-tag-1>.

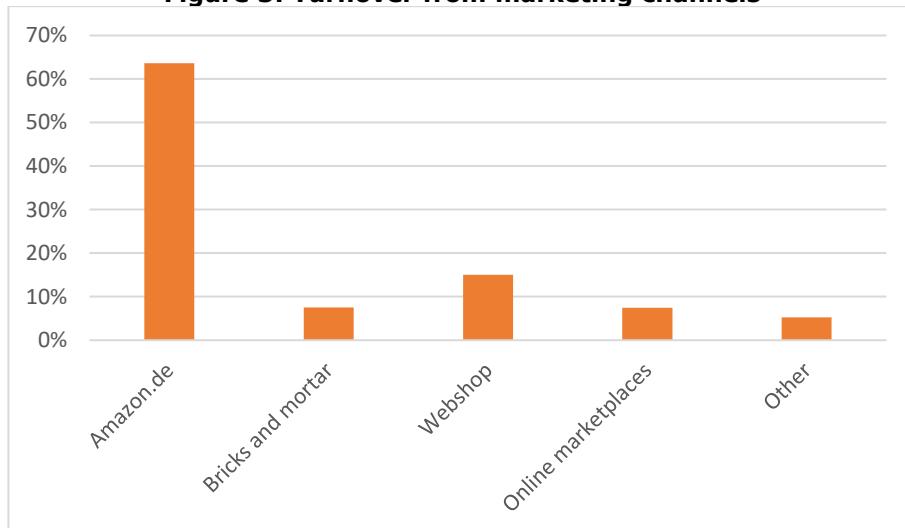
¹⁰ In comparison to this, the whole German online trading sector recorded growth (164%) half as great as that of Amazon.de (321%). See: <https://einzelhandel.de/presse/zahlenfaktengrafiken/861-online-handel/1889-e-commerce-umsaetze>.

¹¹ EHI, Statista and Austrian Retail Association (2018), *E-Commerce-Markt in Österreich und Schweiz*.

3 Austrian sellers on the Amazon.de marketplace: market survey by the Federal Competition Authority

- (17) More than 4,500 Marketplace sellers domiciled in Austria were active on Amazon.de in 2018. The Federal Competition Authority contacted the 379 Austrian Marketplace sellers with the greatest turnover from sales activities on Amazon.de in 2018. In the year in question, these sellers earned 87% of Austrian Marketplace sellers' total turnover on Amazon.de. Above all, the survey therefore depicts the experience of the group of Austrian Marketplace sellers with higher levels of turnover. 81% of the traders approached took part in the survey.
- (18) On average, the Marketplace sellers who were surveyed earned 64% of their turnover on Amazon.de in 2018, 15% in their own webshops, and 7–8% each in bricks-and-mortar shops and on other online trading platforms (see Figure 3). The proportion of respondents' total turnover generated on Amazon.de rose between 2014 and 2018 from 55% to 64%; the proportion of turnover earned through other channels that were asked about went down over the same period; for example, the proportion of turnover from sellers' own webshops declined from 21% to 15%.

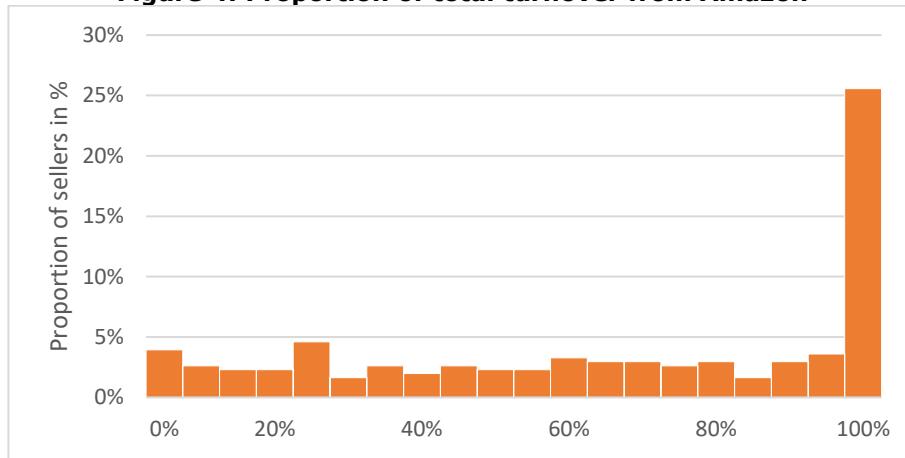
Figure 3: Turnover from marketing channels



Source: BWB survey of Marketplace sellers

- (19) The distribution of turnover across the various marketing channels was heterogeneous among the respondents to the survey. A quarter of these Marketplace sellers were (almost) exclusively active on Amazon.de (share of turnover >95%, see Figure 4).

Figure 4: Proportion of total turnover from Amazon



Source: BWB survey of Marketplace sellers

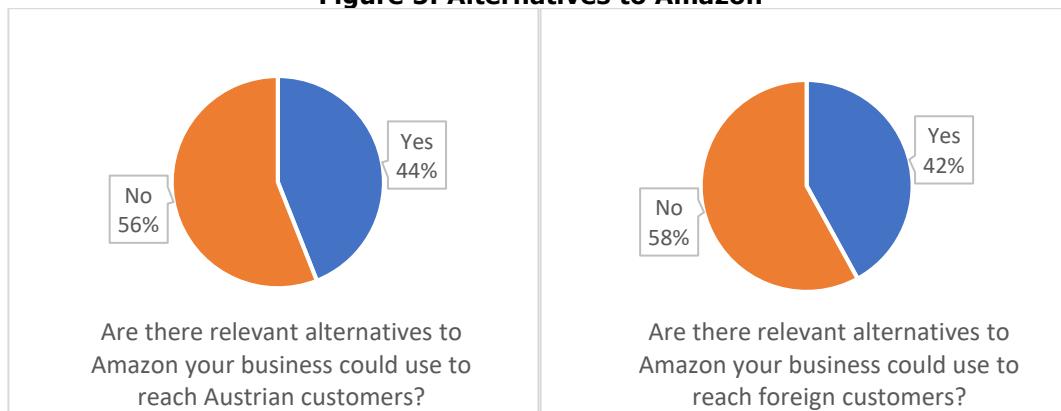
- (20) Of the Marketplace sellers who were surveyed, 56% stated they had no relevant alternatives to Amazon with which they could reach Austrian customers. 58% stated they had no relevant alternatives to Amazon with which they could reach foreign customers (see Figure 5). On average, the turnover of Marketplace sellers who stated they had no relevant alternatives to Amazon broke down by marketing channel as follows:

- 70% Amazon.de Marketplace
- 13% own webshop
- 6% bricks-and-mortar retail
- 7% other online marketplaces
- 4% other marketing channels

On average, the turnover of Marketplace sellers who stated they had relevant alternatives to Amazon broke down by marketing channel as follows:

- 57% Amazon.de Marketplace
- 19% own webshop
- 9% bricks-and-mortar retail
- 8% other online marketplaces
- 7% other marketing channels

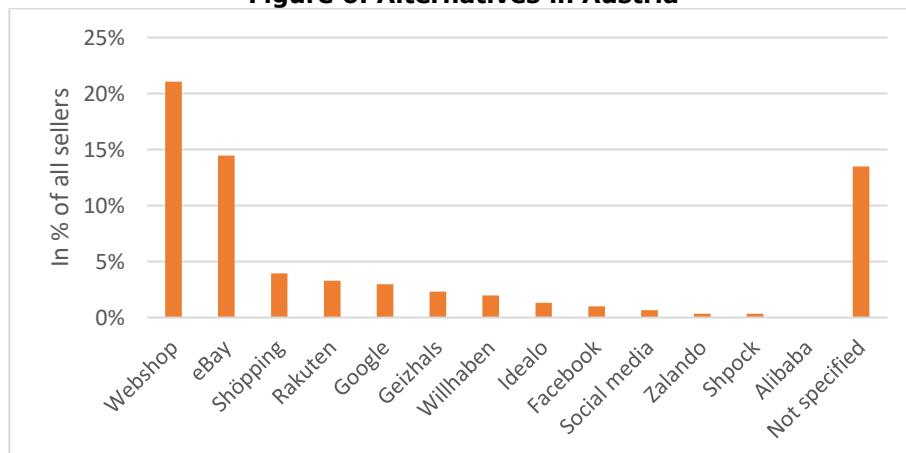
Figure 5: Alternatives to Amazon



Source: BWB survey of Marketplace sellers

- (21) The relevant alternatives referred to were primarily sellers' own webshops and eBay (see Figure 6). 21% of the Marketplace sellers who were surveyed mentioned their own webshop as a relevant alternative with which they could reach Austrian customers, while 19% mentioned it as a relevant alternative with which they could reach foreign customers. eBay was mentioned as a relevant alternative by 14% for Austrian customers and 15% for foreign customers. At the same time, those Marketplace sellers who, according to their responses, had relevant alternatives to selling via Amazon frequently remarked that the reach of other online trading platforms or their own webshop, and therefore the turnover that could be generated from them, were not comparable.

Figure 6: Alternatives in Austria



Source: BWB survey of Marketplace sellers

- (22) The small selection of comparable alternatives to Amazon is also reflected in Amazon's power to set prices. The overwhelming majority of the Marketplace sellers who were surveyed stated that they would continue to sell their goods on Amazon even if its fees were raised. If there were a hypothetical increase in fees by 5%, nine out of ten Marketplace sellers stated they would continue to want to sell their goods on Amazon. If there were a hypothetical increase in fees by 10%, two-thirds of Marketplace sellers stated they would continue to want to sell their goods on Amazon.
- (23) As far as Austrian Marketplace sellers on Amazon.de are concerned, the platform offers above all the opportunity to reach customers in Germany. In 2018, the average proportion of turnover earned by Austrian Marketplace sellers from customers in Germany was about 75%, and the proportion of turnover earned from customers in Austria averaged 20%, while Swiss customers played a merely marginal role. This is indicative of what is, comparatively, the rather stronger demand from Austrian customers reported by Austrian Marketplace sellers. The proportion of turnover from Austrian customers on Amazon.de is markedly lower than this.¹²
- (24) The Federal Competition Authority is not adopting a conclusive position on the definition of the market for the present report. As discussed in section 2 above, market definition in the field of online trading platforms is the subject of intense debates in academia and among public authorities. However, the results that have been presented support the preliminary assumption of a market for online trading platforms that, on the Marketplace seller-platform side, does not include either their bricks-and-mortar shops or their own webshops. Webshops differ clearly from Amazon's offer in terms of the functionality offered to the retailer (essential marketing functions are performed by the platform). In addition to this, when they use a platform, a retailer also acquires the trust placed in that platform, an essential asset compared to their own webshop or a bricks-and-mortar outlet. Whether this is true to the same extent for other online trading platforms with related functionality (e.g. eBay, Rakuten, Zalando), cannot be judged conclusively on the basis of the data available from the survey. A spatial division between Austria and Germany is suggested in particular by Austrian Marketplace sellers' somewhat stronger focus on Austrian customers and structural factors, such as differences in delivery times; this assumption is undermined by Amazon.de's similarly strong penetration in Germany and Austria, and the very high proportion of German customers served by Austrian Marketplace sellers.
- (25) Irrespective of the market definition that is ultimately chosen, the survey of Marketplace sellers by the Federal Competition Authority has shown that Amazon.de has market power for a representative sample of large Austrian Marketplace sellers.¹³
- According to their statements, the respondents had hardly any relevant alternatives with which they could reach their customers.
 - Most of the respondents would be prepared to accept 5–10% price rises on Amazon's part.
 - Those Marketplace sellers who claimed they had alternatives nonetheless earned by far the greatest share of their turnover on Amazon.de.
 - A large proportion sold exclusively on Amazon.de.
 - Other marketing channels, such as webshops, bricks-and-mortar retail and other online trading platforms were rarely mentioned as alternatives, and only contributed small proportions of sellers' turnover.

¹² The turnover generated from Austrian customers on Amazon.de was roughly €1.4bn in 2018 (see EHI, Statista and Austrian Retail Association (2018)). Relative to the platform's total turnover of roughly €17bn in 2018 (see Figure 2), this represents a proportion of less than 10%.

¹³ According to the European Commission, it is to be recommended when analysing multi-sided markets that the focus be placed less on a precise market definition, and attention paid primarily to a plausible theory of harm (see Wismer and Rasek (2017)).

4 Points of complaint submitted

(26) This section discusses points of complaint raised in the submissions from the Austrian Retail Association and the comments made in the course of the market survey. Furthermore, the arguments put forward by Amazon and, where relevant, adjustments made to its terms and conditions are discussed and assessed.

4.1 Blocking and closure of seller accounts, withholding of blocked sellers' positive balances

- (27) Marketplace sellers claimed that Marketplace seller accounts were frequently blocked temporarily and closed permanently without comprehensible grounds being given. This happened without advance notice. 59% of respondents who had previously experienced having their accounts blocked stated that Amazon did not inform them about the reasons why this happened in a comprehensible fashion and within an appropriate period of time. Marketplace sellers' positive balances were frozen, so that they had no access to the money they had earned, which led in turn to liquidity problems. The long period that passed before an account was reinstated was also to be seen in connection with Amazon's inadequate approach to communication. It was only after several automated responses had been received that sellers were actually able to make contact with the platform. Particularly in cases in which the grounds for an account being blocked were perceived to be unjustified, Marketplace sellers regarded it as important that information was provided rapidly.
- (28) The concerns raised by the Austrian Retail Association about the provisions on the term of the Agreement and its termination in the BSA are also to be seen in connection with these complaints. To date, Section 3 of the Agreement has provided for the Agreement to be terminated or suspended with immediate effect at any time without any reason having to be given for this.
- (29) On these complaints, Amazon remarked *inter alia* that the blocking and termination of accounts were important parts of its efforts to combat fraud, the deception of customers and the manipulation of transactions by users with fraudulent intentions. If a seller failed to comply with Amazon's rules and standards, Amazon would as a matter of principle bring this breach to his attention. If their conduct did not change, their sales privileges would be suspended until they had drawn up and implemented a Plan of Action that was intended to prevent future breaches. Only if the seller was not willing or in a position to comply with the rules would Amazon block or terminate their account without prior warning.
- (30) According to Amazon, the Marketplace seller was guided through the appeal procedure by Seller Central. If the Plan of Action met the standards that had been set, Amazon would lift the block on the account again (usually within 48 hours), and would restore the functions and privileges associated with the account. In 2018, blocked accounts had been reactivated within [confidential] days on all the Amazon websites, which was equivalent to a 70% reduction in comparison to 2017. 25% of these accounts had been reinstated within [confidential] days.
- (31) Furthermore, Amazon explained that funds had been withheld from marketplace sellers whose accounts were subject to possible sanctions, for instance the permanent blocking or temporary suspension of selling rights due to fraudulent or abusive conduct. On the basis of the A-to-z Guarantee, any customer order could be reversed, which was why every order was associated with considerable financial risk for Amazon. Even if no new orders could be placed because an account was temporarily or permanently blocked, such accounts could still be charged as a result of returns or other claims.
- (32) Amazon committed to amend the provisions on the term of the Agreement and its termination. The newly drafted Section 3 provides for a notice period of thirty days for the orderly termination of the Agreement or the use of individual services. Termination or suspension with immediate effect is now only possible if the Marketplace seller (a) has materially breached the Agreement and failed to cure this within a period of seven days

following a cure notice (except where Amazon is exposed to liability towards a third party as a result of this); (b) the seller's account has been used for deceptive or fraudulent or illegal activities, or inquiries give evidence that it may have been used for such activities; or (c) the use of services has harmed other sellers, customers or Amazon's legitimate interests, or controls indicate that the use of services might lead to such harm. Furthermore, provision is made for information to be provided promptly about the termination or suspension of an account, setting out the reason for this step and the possible options to appeal against it, except where this would hinder the investigation or prevention of illegal activities.

- (33) The revised provisions concerning the term of the Agreement and its termination are well suited to remedy the complaints about the unjustified blocking and closure of seller accounts. Both the introduction of a notice period and the exhaustive listing of the reasons for an account's immediate termination or suspension signify a clear improvement for Marketplace sellers in this context. On the basis of the above-mentioned submission from Amazon in conjunction with the new wording of Section 3 of the BSA, the Federal Competition Authority will therefore dispense with any further investigation of these complaints for the time being. This also relates to the withholding of positive balances, since such action is taken as a consequence of the blocking or closure of accounts. In this connection, the improvements made by Amazon in its communication with Marketplace sellers are also of significance, in particular the creation of the Account Health Specialist service.

4.2 Competent courts and choice of law

- (34) It was argued both by the Austrian Retail Association and in the survey of Marketplace sellers that the exclusive competence of the courts in Luxembourg City and the applicability of Luxembourgish law made it difficult to assert rights against Amazon through the courts. Many sellers stated that they avoided legal disputes on account of their dependence on Amazon. In particular, there were fears of seller accounts being blocked. Given the different levels of resources available to the parties, legal steps appeared to have no prospect of success to many Marketplace sellers.
- (35) Amazon argued on this point that the competence of the courts in Luxembourg and the applicability of Luxembourgish law were expressly permitted by European law. Apart from this, it was sensible to put the same parameters in place for all Marketplace sellers because more than 50% of all Marketplace sellers were not domiciled in Germany, and many were also active on other European websites operated by Amazon. Luxembourg was a Member State of the European Union, and its law was determined to a significant extent by European directives and regulations, which were equally valid in every other Member State. Luxembourg had a functioning justice and administrative system. With the revision of the BSA, the competence of the courts in Luxembourg City would merely be non-exclusive.
- (36) To date, the courts of Luxembourg City have been provided for as the courts with exclusive competence for businesses under Section 19 of the BSA. The revised wording of this provision (now Section 17) provides as a matter of principle for disputes to be adjudicated non-exclusively by the courts of Luxembourg City. In the view of the Federal Competition Authority, this means it has become significantly easier for Marketplace sellers to take legal action. The sole applicability of Luxembourgish law does not appear problematic as a matter of principle. The Federal Competition Authority will not investigate these points of complaint any further.

4.3 Communication

- (37) Many Marketplace sellers emphasised that an inadequate approach to communication and inadequate opportunities for communication impeded, delayed or made totally impossible the resolution of problems. When accounts were blocked, generic stock texts were sent out, but no specific information was provided about the breach of the Agreement that had led to the action being taken. Communication using standardised stock texts was exemplified by

the repeated demands for a Plan of Action to be drawn up, even though such a Plan had already been submitted. No reference was made to specific failings in these communications. Marketplace sellers mentioned long waiting times (up to several weeks) in their correspondence with Amazon. This was associated with serious economic consequences, in particular in connection with the blocking and closure of accounts.

- (38) A large number of other points of complaint from the survey of Marketplace sellers were motivated primarily by communicative failings on Amazon's part. For example, it was possible for product descriptions to be altered without prior notification, which could sometimes lead to incorrect information about quantities or sizes being provided. Customer complaints received as a result of this could in turn lead to negative ratings and/or accounts being blocked. On account of inadequate communication, adjustments for goods that had been lost or damaged at the Amazon warehouse involved a protracted process that sometimes held out no prospect of success.
- (39) Complaints also reached the Federal Competition Authority in connection with the inadequate communication of modifications to Amazon's terms of business and service to Marketplace sellers. Under the previous Section 17 (now Section 15), Amazon reserved the right to modify the terms and provisions of the BSA (including terms of service and program policies) at any time at its own discretion.
- (40) With regard to the complaints about its inadequate approach to communication, Amazon commented that Amazon Seller Support operated various call centres, which could be contacted round the clock. A worldwide initiative to simplify the formal appeal procedure had been launched at the beginning of 2018 with the Account Health Specialist (AHS) service. Amazon attempted to telephone Marketplace sellers in advance (after notice had been given) in order to inform them about the impending blocking of their accounts and clarify the causes of the failings with them. At the same time, Amazon made its policies and expectations clear, and stipulated steps with which failings could be avoided in future. The service had made it possible for the blocking of seller accounts to be avoided in more than 13,000 cases ([*confidential*]% of all accounts that could potentially have been blocked). Particularly rapid assistance could be obtained in particular situations by checking the "Urgent" box on the contact form. 600,000 to 700,000 Marketplace sellers active on Amazon.de had requested immediate assistance in 2018. They had received assistance by telephone within 30 seconds in 96% of cases, and an answer to their email inquiry within 60 minutes in 92% of cases.
- (41) Amazon argues that it set out transparent reasons in particular when it came to the termination or blocking of accounts and measures relating to listings. The large number of cases of fraud using highly developed technologies made it necessary for Amazon to take action against possible cases of fraud with automated programs and self-learning algorithms. Its communication only differed where there was a suspicion of fraud or fraud had been proven. In such cases, Marketplace sellers were *inter alia* not warned before measures were taken.
- (42) In the view of the Federal Competition Authority, transparency¹⁴ and clarity are essential when it comes to the terms and conditions for Marketplace sellers. The new version of the provisions on the modification of terms of business and service provides for notice to be given at least fifteen days before any such modification is undertaken. It is only permissible for modifications to be made at any time with immediate effect (a) if there are legal, regulatory or security reasons or this is done to prevent fraud or abuse; (b) if existing features of services are changed or new features are added (provided this does not have material, adverse effects on the use of services); or (c) in order to restrict products or

¹⁴ According to the European Commission report, transparency is a competition policy issue. Consequently, a lack of transparency, e.g. with regard to rankings, would contravene Article 6 Unfair Commercial Practices Directive (2005/29/EC), and potentially Article 102(c) and (a) TFEU, which are of relevance to competition policy.

See: Crémer, de Montjoye and Schweitzer (2019).

activities that Amazon deems to be unsafe, inappropriate or offensive. This modification gives Marketplace sellers greater predictability and a sounder basis for planning.

- (43) The Federal Competition Authority takes note of the efforts described by Amazon to improve its communication, although these efforts – in particular the AHS service – were not yet reflected in the survey of Marketplace sellers. Here, observation of the further development of complaints to the Federal Competition Authority will show whether these measures actually have any effect. The Federal Competition Authority will not investigate this point of complaint any further for the time being, but reserves the right to take it up again should it be confronted with a relevant number of substantiated complaints.
- (44) Since the survey of Marketplace sellers found that communication with Amazon is a central problem, the Federal Competition Authority has recommended to Amazon that it specify (at least) one contact in its terms and conditions to whom Marketplace sellers could turn directly, and whose functions could consist in the unbureaucratic remedying of communicative deficiencies, as well as mediation between Amazon and Marketplace sellers. The Federal Competition Authority expressly upholds this recommendation because it views it as a measure for the sustainable resolution of this problem.

4.4 Indemnification/indemnity

- (45) One point of complaint raised by the Austrian Retail Association is concerned with Section F.11. of the BSA. This deals with Marketplace sellers' goods (Units) that Amazon has shipped from its warehouse to the seller's customers. If a Marketplace seller uses Amazon's logistics service (FBA), a further indemnification obligation is added *inter alia* to the general indemnification obligation set out in Section 6. This arises in relation to claims in connection with Units, irrespective whether title over them has transferred to Amazon or not, including all Units that Amazon has identified as the Marketplace seller's pursuant to Section F.4, irrespective whether these Units are the actual articles the Marketplace seller shipped to Amazon.
- (46) In the new version of Section F.11., the passage according to which it is insignificant whether the Unit is the actual article the Marketplace seller shipped to Amazon has been deleted. Furthermore, Amazon has made a modification to the provisions on the general indemnification obligation (Section 6). They now no longer provide for an indemnification obligation to be triggered by actual or claimed breaches of the BSA, but by failure to comply with applicable legislation; moreover, indemnification obligations towards Marketplace sellers have been introduced for Amazon.
- (47) As a matter of principle, it is to be noted with regard to Section F.11. that Amazon has a legitimate interest in economic, efficient warehousing, which doesn't make it possible for instance to separate the inventories of different Marketplace sellers (including Amazon itself). However, this interest is not sufficient to justify an indemnification obligation, irrespective whether a Unit is the actual article that was originally shipped by the Marketplace seller to Amazon. On the basis of the deletion of this passage and also the modifications made to Section 6, the Federal Competition Authority will not investigate this point of complaint further.

4.5 Exclusion of liability/limitation of liability

- (48) In its complaint, the Austrian Retail Association criticised the fact that Sections 7 and 8 of the BSA provided for a far-reaching exclusion of liability or far-reaching limitation of liability in favour of Amazon.
- (49) In the revised BSA, Section 7 has been deleted without replacement, and Section 8 (now Section 7) has been reformulated to the extent that, as a matter of principle, both parties are only liable for damages suffered as a result of wilful misconduct or gross negligence. Liability for minor negligence is provided for in relation to injuries to life, body or health and

foreseeable, typically occurring damages that result from the breach of fundamental contractual obligations.

- (50) An exclusion of liability concerning the Fulfilment by Amazon service (Section F.13.), with which Amazon had repudiated all the obligations of a bailee or warehousekeeper, and with which the Marketplace sellers who used this service waived all the rights of a bailor, has been deleted without replacement – just like the indemnification obligation in connection with this service (Section F.12.).
- (51) On the basis of the modifications to the BSA that have been cited, the Federal Competition Authority will not investigate these points of complaint further.

4.6 Restrictions on the marketing of products

- (52) A quarter of the Marketplace sellers who were surveyed stated that their businesses had been debarred once from marketing particular products in the past, although other Marketplace sellers on Amazon (incl. Amazon itself) had continued to be able to offer these products for sale. One reason for sellers' debarment frequently cited by Amazon was that doubts had been raised about the authenticity of the product marketed by the Marketplace seller. Here, the suspicion was expressed by respondents that Amazon was removing competing offers from the Marketplace without adequate grounds.
- (53) Respondents also referred to the fact that, in cases where there were restrictions on the marketing of a product, the reasons for this were not communicated immediately and clearly by Amazon, as a result of which Marketplace sellers were also unable to set out their view of the matter appropriately. Furthermore, in the context of the approval process for products that could potentially be problematic/dangerous, it was not always possible to find out why the marketing of a product was not allowed. The complaints therefore pointed to overlaps with Amazon's communication policy, which is generally perceived to be inadequate.
- (54) Amazon claimed that most Marketplace sellers were able to decide freely which products they marketed on the platform. Restrictions might be imposed by selective distribution systems, "under which suppliers stipulate particular criteria that have to be fulfilled" before the sale of their products was permitted via online marketplaces. These systems may stipulate both a complete prohibition on products' sale via online marketplaces and particular conditions under which they have to be sold.
- (55) Furthermore, Amazon stated that the platform reserved the right to limit the "sale of products in the case of safety or other compliance concerns". There were policies that Marketplace sellers had to abide by in this regard. These policies were published on Seller Central. In addition to this, restrictions were in place "in order to prevent cases of abuse at customers' expense." In particular, the sale of counterfeit products was relevant in this respect. Evidence had to be provided by Marketplace sellers that could be used to verify the authenticity of their products. The existing restrictions with regard to product listings applied equally to Marketplace sellers and Amazon Retail.
- (56) Some restriction on the marketing of products may undoubtedly be required on account of both various legal aspects and other compliance concerns. In the view of the Federal Competition Authority, it is of material significance that the criteria that may lead to an offer being restricted are, on the one hand, communicated transparently and, on the other hand, also applied in an objective, non-discriminatory fashion to both Marketplace sellers and Amazon Retail. Subject to the presupposition that – as claimed by Amazon – these conditions will be fulfilled in future, the Federal Competition Authority will not investigate this point of complaint further for the time being.

4.7 Logistics

- (57) According to the statements made by Marketplace sellers, the delivery times visible to customers play a decisive role with regard to their possible levels of turnover. This was

exemplified for a large number of Marketplace sellers by one respondent who stated, "Amazon limits Austrian sellers' turnover by setting transport times that are too long (six to nine working days), instead of the two to three working days that would be realistic, although all the criteria for a top rating have been fulfilled. This stops many customers from ordering because of course the delivery date is too far in the future, although the goods are actually delivered much earlier. This makes a difference of 50% here."

- (58) Particular significance attaches in this respect to Christmas trading, which contributes a significant proportion of many retailers' annual turnover. Some Marketplace sellers reported that Austrian Marketplace sellers' delivery times to Germany during the Christmas 2018 trading period were raised to a shipping time of six to nine working days, irrespective of how their delivery service had actually performed in the past. The delivery times Amazon quoted as of autumn 2018 were also corrected upward if Marketplace sellers posted shipments less than 1.5 kg as letters instead of shipping them as parcels. Complaints have also been made to the Federal Competition Authority about delivery times not being kept to on account of national public holidays.
- (59) According to Marketplace sellers' statements, Amazon exerted pressure on them to use other Amazon services, in particular by making sales more difficult if these services were not used. One frequently mentioned example of this was the Fulfilment by Amazon (FBA) service. Under FBA, Marketplace sellers ship their products to an Amazon logistics centre. For Austrian Marketplace sellers, these logistics centres are mainly located in Germany, Czechia and Poland. Amazon subsequently stores the goods, ships them to customers, provides customer service and processes returned goods (as well as providing other optional services, such as packaging).
- (60) It was argued in many responses that the use of FBA gave the Marketplace seller in question advantages with regard to delivery times and rankings compared to Marketplace sellers who organised their deliveries independently. In particular, this was even the case when the seller's delivery service had previously achieved close to 100% punctuality levels. Marketplace sellers who distributed their products via FBA were not affected by the increase in delivery times during the Christmas 2018 period discussed in para. 58, and were therefore able to avoid a fall in turnover in their important Christmas trading. Some of the respondents assumed that Amazon wished to "force" Marketplace sellers to use FBA in this way.
- (61) Amazon claimed that Marketplace sellers were "free to select their parcel service provider, unless they use a special service such as Seller Fulfilment Prime or Fulfilment by Amazon." Marketplace sellers who organised their deliveries independently gave a "delivery promise", which "is a factor in the setting of processing and delivery times." The standard shipping time from Germany to remote areas (which also included Austria) was two to three working days. The Marketplace seller's estimated delivery time also depended on the chosen forwarding agent.
- (62) Furthermore, Amazon explained that adjustments to the estimated delivery time were made on account of bad weather or during the high season in a non-discriminatory fashion for all Marketplace sellers who organised their deliveries independently. "Especially during high seasons", Amazon provided for "a safety buffer in order to ensure that products could actually still be delivered in good time." By contrast, those Marketplace sellers who made use of FBA "avail themselves of Amazon's own Fulfilment network and delivery chain, and therefore do not have to rely on third-party providers."
- (63) With regard to the pressure to use further Amazon services such as FBA, Amazon stated that Marketplace sellers "decide freely whether they use the additional service offer (delivery services, for instance) or not."
- (64) The Federal Competition Authority regards it as indisputable that there will be seasonal peaks in activity in the field of logistics (in particular at Christmas) that may have an impact on the average delivery time of e-commerce parcels. In this respect, there is a legitimate interest in the most realistic possible estimated delivery times from the customers' point of

view. The Federal Competition Authority takes note of Amazon's submission that, in considering these seasonal fluctuations, it pursues a non-discriminatory approach towards all Marketplace sellers who organise their deliveries independently. In the view of the Federal Competition Authority, however, the principle of non-discrimination should apply between Amazon itself, FBA Marketplace sellers and non-FBA Marketplace sellers. Unequal treatment with regard to the calculation of estimated delivery times for which there is no objective justification is certainly to be refrained from. As far as this point is concerned, Amazon has so far failed to adequately refute the accusation of unequal treatment, in particular between those Marketplace sellers who use FBA and those who do not use FBA.

- (65) No conclusive assessment of the role of logistics for Austrian Marketplace sellers can therefore be made for the time being. The respondents' turnover generated from German customers amounts to approximately 75% of their total turnover. The falls in turnover experienced when the estimated delivery time is increased are to be assessed as considerable. A strategic restriction of Austrian Marketplace sellers' potential turnover during what is traditionally the most important time of year for the retail trade is to be avoided. In this respect, the further investigation of this point will depend in particular on the further development of the complaints received by the Federal Competition Authority.

4.8 Disclosure of purchasing prices

- (66) Marketplace sellers stated that, in some cases, Amazon obtained knowledge of purchasing prices and supplier information. A quarter of the respondents said that Amazon had demanded information about purchasing prices from their businesses (e.g. indirectly by means of the disclosure of manufacturers' invoices or as part of its turnover tax service). When conducting the survey, the Federal Competition Authority received contradictory responses about whether this information was demanded by Amazon on a compulsory basis. For example, when requests were made for the provision of supplier invoices, it was unclear to some Marketplace sellers whether they would be allowed to redact purchasing prices. Other Marketplace sellers emphasised explicitly that they had made use of the option to redact their purchasing prices. Some businesses' redacted invoices had been rejected repeatedly, and only the unredacted versions accepted by Amazon. FBA Marketplace sellers reported that, in cases where damages were suffered, invoices with unredacted purchasing prices had been demanded for the purposes of reimbursement. Purchasing prices had to be provided under Amazon's turnover tax service. Participating Marketplace sellers were additionally called upon to provide figures from transactions that were processed outside Amazon's systems.
- (67) According to Marketplace sellers' statements, supplier invoices had to be provided for the approval and authentication of products, while it was not allowed for suppliers' addresses to be redacted when these invoices were provided. Thanks to the partial disclosure of purchasing prices and suppliers' details, Amazon obtained detailed, commercially relevant information that could be used by Amazon to the disadvantage of Marketplace sellers.
- (68) Amazon stated that the disclosure of Marketplace sellers' purchasing prices was "as a matter of principle not" demanded, but was merely necessary in "a few exceptional cases". When the authenticity of a product was being examined, Marketplace sellers were "asked to provide evidence from which it is apparent that the goods have been acquired directly from an authorised distributor or directly from the manufacturer." Amazon's attention was drawn to counterfeit products again and again, as a result of which these checks had become necessary. In this respect, however, Marketplace sellers were expressly told "that they can redact the purchasing price." When reimbursements were paid, Amazon only demanded the disclosure of purchasing prices where there was "disagreement about the level of the reimbursement". Under the Amazon turnover tax service, the disclosure of purchasing prices was merely requested "in relation to cross-border transactions involving goods in order to meet tax declaration obligations that are consequent upon such transactions," but was not obligatory.

- (69) In the view of the Federal Competition Authority, Amazon is to be afforded sufficient opportunity to halt the sale of counterfeit products and trademark infringements, which is also to be welcomed from customers' point of view. The survey of Marketplace sellers has revealed what is, for the present, an inconsistent picture with regard to the obligatory disclosure of purchasing prices and supplier information. Further investigation of this topic by the Federal Competition Authority is not indicated for the time being. In this connection, reference may also be made to the European Commission's ongoing proceedings against Amazon.

4.9 Returns, adjustments and storage

- (70) Marketplace sellers claimed that the actual handling of the A to z Guarantee by Amazon made fraud by customers possible. 61% of Marketplace sellers who were surveyed stated that Amazon demanded the reimbursement of the purchase price from their business when unjustified returns were received from customers. Used and counterfeit goods were returned and charges reclaimed for goods that had allegedly not been delivered. The costs of unjustified adjustments were primarily borne by Marketplace sellers and not by Amazon itself. Amazon made it difficult for Marketplace sellers to claim charges back from Amazon that had been made on account of unjustified adjustments. In particular, the period allowed for the submission of objections was very short in this connection (three days).
- (71) FBA Marketplace sellers' returns were sent to the Amazon warehouse. Since it was expensive and uneconomic to have goods returned to Austria, Austrian FBA Marketplace sellers found it difficult, if not impossible to inspect returned goods. Marketplace sellers stated that it was not possible for goods to be returned from the Amazon warehouse to Austrian addresses, as a result of which they could only be sent back via German addresses, from where they were forwarded to Austria. The higher costs made it difficult to inspect returns and therefore gave Marketplace sellers an incentive to accept any decision taken by Amazon.
- (72) Amazon claimed that the A-to-z Guarantee¹⁵ (which covers rights to refunds that go "beyond the statutory requirements") was beneficial for all Marketplace sellers because they "profit from the customer confidence protected by the A-to-z Guarantee and achieve turnover without having to be known for special service or particular product quality themselves."
- (73) With regard to its actual returns practice, Amazon stated this distinguished between Marketplace sellers who made use of the FBA service and those who organised their deliveries independently. FBA Marketplace sellers' goods were returned to the Amazon warehouse. An employee there used a "software-based dynamic checklist" to determine the condition of the articles. If unsellable or used articles had been used "properly" ("within the meaning of the refund policies") by the customer, "the products go back (without any offer of indemnity) into the Marketplace seller's inventory as unsellable". The seller could have these products shipped to him from the Amazon warehouse within a period of thirty days, or have the products disposed of directly by Amazon.
- (74) Amazon explained that the goods of Marketplace sellers who organised their deliveries independently were both shipped from and returned directly to the Marketplace seller's address. The Marketplace seller subsequently decided themselves whether the article in question "can be sold again and whether the preconditions of the refund policies for customers are fulfilled." If the customer was not in agreement with the seller's decision, they could "submit an A-to-z Guarantee request, subject to particular preconditions." Amazon decided on this request, possibly obtaining further information from the Marketplace seller and/or the customer. If the A-to-z Guarantee request was accepted, the Marketplace seller could "appeal against the decision", but the power to make the final decision had to lie with Amazon in the interests of the consistent application of the current

¹⁵ Amazon's A-to-z Guarantee covers the condition and prompt delivery of articles purchased from Marketplace sellers. On the relevant terms, see:

https://www.amazon.de/gp/help/customer/display/ref=hp_lpm_p_aaz?nodeId=201889410.

refund policies. The detection of fraud was “all the more difficult” among Marketplace sellers who organised their deliveries independently “because Amazon neither originally shipped the goods nor processed their return.” The Marketplace sellers affected “certainly” had “the option open to them to document the shipping and return processes” so that evidence could be provided.

- (75) Furthermore, Amazon claimed it was possible for goods to be returned from the Amazon warehouse directly to Austria, and this option was also used by Marketplace sellers. “[C]ross-border shipping” was clearly “more expensive” than “shipping within a single country.”
- (76) The Federal Competition Authority takes note of Amazon’s submission with regard to returns to Austria, and will provisionally refrain from investigating this point further.
- (77) In the view of the Federal Competition Authority, a fair approach by Amazon towards the platform’s customers with regard to returns deserves to be welcomed. The argument put forward by Amazon that Marketplace sellers were able to profit indirectly from this fair dealing through higher sales on the Marketplace is also comprehensible. Nevertheless, the distribution of the costs of this returns policy in accordance with the principle that costs should be borne by those who cause them is desirable, partly in order to maintain incentives for measures to prevent returns. There would be competition policy concerns if Amazon used its market power as an online trading intermediary to pass on the costs of its returns policy one-sidedly to Marketplace sellers.
- (78) It is material for the Federal Competition Authority that Marketplace sellers are able to contest Amazon’s decisions about reimbursements within an appropriate period. If this were not the case, Amazon might have an incentive to pass on the costs of a returns practice that goes beyond the fair dealing of the A-to-z Guarantee solely or mostly to Marketplace sellers, and at the same time to profit from an enhanced reputation among customers that would be accompanied by higher sales. Section S-3.2 of the revised BSA has extended the appeal period for Marketplace sellers in the case of reimbursements approved by Amazon under the A-to-z Guarantee from three to thirty days. This represents a material improvement for Marketplace sellers.

4.10 Ranking of products and Marketplace sellers

- (79) Marketplace sellers claimed that product and Marketplace seller rankings were calculated intransparently and arbitrarily. 58% of the respondents stated that rankings were not calculated on the basis of objective, comprehensible criteria. When queries were made, no information was forthcoming about how rankings were arrived at. In particular, it was noticeable that products sold by Amazon Retail and FBA Marketplace sellers (who therefore used Amazon’s own logistics service) were, as a matter of principle, ranked number one and therefore placed in the Buy Box, even when their selling prices were higher. Furthermore, FBA Marketplace sellers had an advantage because negative customer ratings were more likely to be deleted. Generally the use of further Amazon services led to an improvement in the seller’s ranking. This was exemplified by the purchase of advertising without which, according to their statements, some Marketplace sellers would hardly achieve any turnover.
- (80) Amazon stated that it took account of “many factors when selecting which products are to be displayed to the customer in search results.” These factors certainly did not include the “purchase of advertising space” and the “use of other Amazon service offers”. In any event, advertising was clearly labelled as such, for example when “sponsored” products were featured in search results.
- (81) In the view of the Federal Competition Authority, any discrimination against Marketplace sellers who organise their deliveries independently, and therefore also ensure there is competition in the field of logistics services would certainly have to be classified as questionable. It will have to remain open for the time being whether FBA Marketplace sellers

are actually given preferential treatment, something that was claimed by survey respondents and vigorously denied by Amazon. In its comment for the Federal Competition Authority, Amazon addressed above all the products displayed to the customer, but not the sequence of offers within a product listing. A better ranking here could also result from the better service offered under FBA in comparison to the independent organisation of deliveries. This means it remains open whether the appearance of preferential treatment for FBA Marketplace sellers in which this results is sufficiently objectively justified. An impression of this kind certainly creates a knock-on effect that makes the use of Amazon's own logistics under the FBA service more attractive. In any event, the Federal Competition Authority shares the opinion expressed by some Marketplace sellers that the rankings on the platform are not to be abused as a tool with which Amazon attempts to extend its own influence. In this context, reference may be made to the EU Online Platforms Regulation, Article 5 of which provides for the main parameters that determine rankings and the reasons for the relative importance of those main parameters to be set out.

- (82) In the view of the Federal Competition Authority, the claim made by several Marketplace sellers that advertising had a material influence on successful sales is to be regarded critically in so far it is suggestive of a further extension of Amazon's market position as an online commerce intermediary to the sale of an additional offer (advertising). Provisionally, however, this point will be left in abeyance in so far as no adequate indications have come to light that Amazon fails to adequately identify advertised products as such.

4.11 Licensing

- (83) The provision in Section 4 of the BSA according to which every Marketplace seller has to grant Amazon a royalty-free, non-exclusive, worldwide, perpetual right and licence to use, reproduce, perform, display, distribute, adapt, modify, re-format, create derivative works of and exploit Marketplace sellers' materials was described as questionable by the Austrian Retail Association in its complaint.
- (84) Here, as a result of the new version of the provision to which Amazon has committed itself, this has been limited to the granting of a royalty-free, worldwide, non-exclusive right and licence for Amazon Services or other products and services that lasts for the duration of the Marketplace seller's intellectual property rights.
- (85) On the basis of the modification that has been made, the Federal Competition Authority will not investigate this point of complaint any further.

5 Conclusion

- (86) In the course of these proceedings, the Federal Competition Authority has engaged both with a large number of individual complaints from Marketplace sellers, and with concerns about provisions in Amazon's terms and conditions. When the survey of Marketplace sellers was evaluated, these individual complaints were collated into groups of cases, during which it became apparent that most of the groups were connected with provisions in the terms and conditions to which objections had been raised. The Federal Competition Authority confronted Amazon with the points of complaint and gave it the opportunity to comment. In its comment, Amazon set out what improvements (for instance, in connection with communication) had already been initiated, but also pointed out that certain practices and rules were required for the protection of customers, to guarantee high quality standards, for reasons of efficiency and to preserve Amazon's reputation. As discussed above, Amazon submitted a revised version of its terms and conditions to the Federal Competition Authority in the course of the proceedings.
- (87) The Federal Competition Authority has considered Amazon's submission and examined the modifications to its terms and conditions that have been presented. In doing so, it has come to the conclusion that a comprehensible, transparent legal framework will be the best way to counter problematic business practices in future. In this connection, it is to be noted that the revised terms and conditions are essentially well suited not only to remedy the concerns put forward about individual provisions but, in addition to this, will also help put an end to most of the practices to which objections have been raised. In so far as this matter has been acted upon successfully, the Federal Competition Authority will therefore not further investigate the points of complaint in question for the time being. Irrespective of this closing of the proceedings, however, it has become apparent that individual aspects still require further observation. This relates in particular to the points communication and logistics. Should it become apparent on the basis of well-founded complaints that individual measures or modifications to the BSA mentioned in Amazon's submission have not had the desired success, the Federal Competition Authority reserves the right to reopen the proceedings. It will also be possible to institute fresh proceedings if new facts that have not been taken into account to date come to light, in which respect use could be made of the results of the present investigation as well.
- (88) Those complaints that relate to the disclosure of purchasing prices are to be seen in connection with the European Commission's ongoing investigations, and will therefore not be further investigated by the Federal Competition Authority. However, the Federal Competition Authority will make the results of its investigations available to the European Commission, in so far as they are relevant to the main focus of the European proceedings.