Kluwer Competition Law Blog

Amazon's Second DMA Compliance Workshop – The Power of No: Where the Balance Should Land

Alba Ribera Martínez (Deputy Editor) (University Villanueva, Spain) · Tuesday, June 24th, 2025

The **Digital Markets Act** (DMA) became entirely applicable on 7 March 2024 for most gatekeepers. By then, the gatekeepers issued their compliance reports documenting their technical solutions and implementation of the DMA's provisions under Article 11 DMA as well as their reports on consumer profiling techniques as required under Article 15 DMA. A year later, six gatekeepers submitted an update to the first version of their compliance reports (they can be found **here**).

As I did last year through **The Power of No series**, I will be covering this year's compliance workshops held by the European Commission, where the gatekeeper representatives meet stakeholders to discuss their compliance solutions to the DMA's obligations (and the updates they introduced since 2024). Yesterday, I already covered Microsoft's compliance workshop in detail, whereas this blog post considers Amazon's compliance workshop and the few differences that I could spot from its previous workshop held in 2024.

Regulatory dialogue on data portability and access

In this second round of compliance workshops, the European Commission (EC) has decided to provide a bit of an overview of the points of discussion that it has tabled on its regulatory dialogue with the gatekeepers.

For Amazon's case, the EC has taken issue with its data-related obligations connected to business and end user access to data in different forms, notably under the premise of portability under Article 6(9) and the instances of mandated transparency set out in Articles 5(9), 5(10) and 6(8) of the DMA. Amazon's compliance approach with these provisions was exhaustive and detailed, as stemming from its 2024 compliance report (and from the details it presented on the previous iteration of the compliance workshop last year). The vast majority of the technical solutions it already put forward in 2024 remain in place, such as the APIs accessible to third parties to exercise portability of end user data or the Seller API, allowing sellers and authorised third parties by them to integrate tools to receive access to data on their business operations within the Amazon marketplace. Amazon's legal representatives went over the advantages and features of those once again this year.

Nonetheless, the impending issues surrounding Amazon's compliance approach highlighted by the EC went back to broader notions of principle. For instance, the EC takes issue with the complex validation process that Amazon created to provide authorised third parties the possibility to connect to the data portability APIs. In the regulator's view, Amazon established too many restrictions to enable third-party access to sensitive data, classified by the gatekeeper as Category 2 data, such as the end user's shopping history, shopping wishlists, interest-based ads preferences, or contact details. One cannot say that Amazon introduced these limitations without any justification, insofar as its legal representatives highlighted at the workshop that over 75% of the applications they received for such data types corresponded to non-EU-based applications from data aggregators, who are mainly based in countries with EU adequacy decisions pursuant to the GDPR. In other words, business users or third parties that cannot, generally, access any type of personal data from data subjects located in the EU. In any case, the gatekeeper accommodates some of the EC's petitions by, for instance, streamlining some of the questions that Amazon made to third parties to screen them on the validation process for accessing the portability API (as already set out on page 54 of their recent 2025 compliance report). Amazon's representatives stressed the need for further guidance to be issued by the EC on these aspects overlapping with the data protection framework, hopefully through the release of guidance alongside the EDPB, which both institutions ensure is currently underway.

Alternatively, Amazon also established additional controls for end users to be able to consult the data authorisation's status, especially in those cases where such action has expired or been cancelled directly by the customer (page 45 of the report). In a similar vein, Amazon also goes to great lengths to accommodate more transparency into the process for business users to measure their performance within the gatekeeper's CPS pursuant to Article 6(10) by, for instance, enhancing a new dedicated 'Amazon Seller Data Access' help page to increase awareness on its data solutions (page 75 of the report).

In its initial remarks, the European Commission also briefly referred to its ongoing discussions with the gatekeeper relating to the ad transparency provisions. As pointed out by the regulator, there are some areas of Amazon's compliance that are being questioned and which are currently being analysed, such as the modalities of access to the data or data granularity. Although Amazon's legal representatives did review the gatekeeper's compliance solutions in detail for these provisions, their regulatory position has not changed since 2024, since the data on the ground shows that business users (including advertisers and publishers) seem reasonably satisfied with the available APIs and processes available to them.

Price gouging and the DMA's harmonisation objectives

On the first set of interventions to the workshop, Amazon delivered some provocative remarks, building on former VP and Commissioner Vestager's words when the DMA was being discussed in the legislative process; "*we want a single European rulebook. We have tabled this proposal to avoid fragmentation*".

Even though the DMA's approval and entering into force entailed that some legislative proposals by the French and Dutch administrations aimed at establishing digital rules addressing market power were stopped on their own tracks, one of the Member States did go under the radar: Germany. Through the approval of Section 19a to its competition law regime (GWB), the German

competition authority designated undertakings with a paramount significance for competition across markets, Amazon being one of them. The debate that ensued before the Courts made just the more evident the collision between the DMA as a European regulation and the potential application of the principle of primacy to Section 19a GWB. The Bundeskartellamt had enforced Section 19a GWB in a few instances (e.g., on Google's data processing practices, see here). A few weeks ago, however, the German competition authority issued an SO against Amazon relating to its price control mechanisms and the way by which it reviews sellers' prices to altogether remove some third-party seller offers from the Marketplace.

This enforcement action through the German national competition law regime runs in parallel to the EC's own monitoring of Amazon's compliance, considering Article 5(3) DMA, to the extent that the regulator is currently discussing with the gatekeeper on those measures that could bring an equivalent effect to parity clauses under the provision. As set out by Amazon's legal representatives on the workshop (and on Annex I to its compliance report in pages 5-7), to ensure that offers by third-party sellers only show competitively priced products, it applies certain governance rules to protect customers from significantly high prices or from price errors/egregiously high prices. The gatekeeper considers the prices that third-party sellers set in reputable competing stores to set out the lowest price in the market as a benchmark to compare Amazon with the outside-of-Amazon pricing. Based on this yardstick, when an offering on a competing marketplace is available for less than the offer in Amazon Store, the gatekeeper will not include that product as the Featured Offer (FO), which is the prominent section on a product's detail page where customers can easily add items to their cart or make a purchase. In this same vein, if Amazon spots that the price shown by the third-party seller is egregiously higher, it will eliminate the offer from its platform.

Amazon failed to provide further details to questions from the participants on how those prices are set and from what reputable competing stores they are extracted from. Notwithstanding, the main concern here is not only that Amazon performs such governance of its platform. Instead, the EC takes issue with the fact that Amazon, via these indirect means, may deter third-party sellers from selling on other platforms (or on their own websites) for lower prices than it does on its own platform, aka bringing an equivalent effect to those impacts produced by parity clauses. Needless to say, the Bundeskartellamt's arguments are quite similar, but they are translated into competition terms (and not the terms of broader contestability and fairness concerns).

To this call, Amazon provided an unconvincing explanation of the reasons justifying its imposition of this lowest-price benchmarking to show the FO. Its legal representatives simply stated that the system does not benchmark seller prices on Amazon vis-à-vis their prices on other platforms, and it does not restrict sellers from pricing lower elsewhere. Amazon believes that the European Commission already reviewed the system under Article 102 TFEU through its Amazon Buy Box case closed in 2022 with commitments. As a matter of fact, if one navigates to the third commitment presented by Amazon on that case it already established that for setting the FO it "*may use factors that are objectively justified in order to protect consumers from the risk of Seller fraud and abuse when deciding whether a Seller qualifies for participation* (…)". In my own mind, two sets of cases must be set apart in terms of considering whether Amazon complies with Article 5(3) DMA, as shown in the table below.

Type of restriction	Impact	Justification

Protecting customers from significantly high prices.	Not highlight that offer as the FO (although available in the Amazon Store).	Protect shopping experience.
Protecting from price errors and egregiously high prices.	Offer eliminated from shopping experience.	Combatting fraud and abuse.

From the outset, it seems that Amazon deliberately conflates the first restriction's impacts on the FO under the justification of the second type of limitation to automatically assign them into the Amazon Buy Box's scope. But that does not mean that it should. Under the premises of proportionality and necessity, one should not follow from the other. Having said that, and regardless how unconvincing Amazon's scarce statements on the workshop were, from Amazon's compliance report (Annex I, pages 6-7) we learn that the EC has already intervened by requesting information on the composite benchmark value used for both tools and they have confirmed (according to the gatekeeper, that is), "*that Amazon does not require Sellers to change their price in the Amazon Store to match their off-Amazon pricing on third-party online intermediation services or own direct to consumer websites*". The matter is now whether this conclusion is credible or not, bearing in mind that stakeholders participating in the workshop already highlighted that, in practice, third-party sellers respond to the application of this system by catering to different product types on Amazon as opposed to those provided on different marketplaces.

Same ol' same ol' self-preferencing

As the renowned meme reads, here we go again. Back on Amazon's first compliance workshop, its allegations that it did not self-preference its Amazon Retail products vis-à-vis third-party seller products through its ranking algorithms did not qualify as unconvincing. Nor did they on this second iteration of the workshop, because we heard the same arguments on repeat.

According to Amazon's legal representatives, its ranking of the product research results page and the product detail page remains neutral and non-discriminatory because it relies on objective inputs that are transparent, fair, and non-discriminatory. Those same tenets not only apply to its general ranking of results for a particular user query, but also to the rest of its features, such as Sponsored Ads or Widgets. The ranking criteria used, for instance, to display 'trending now' offerings are not based on the seller catering to them or who provides the logistics for their delivery, but rather on objective criteria such as an offering's popularity. Asked on how it performs continuous monitoring on the application of these objective criteria on its ranking, Amazon highlighted it had created a forward-looking mechanism to ensure that any changes to the ranking inputs and process are properly reviewed by an Amazon team so as to ensure they are DMA compliant. A vague response to a vague premise, but the European Commission has not yet challenged through its enforcement action, despite that it has had access to Amazon's ranking algorithms, as confirmed at the workshop.

Call me, beep me: Amazon's Rufus AI tool

Those who lived (or endured) the Disney Channel era will remember Rufus, the mole-rat of Ron

Stoppable, creating all sorts of mayhem in every episode of Kim Possible. Amazon has its very own Rufus, not a pet, but rather a genAI-powered shopping assistant to help customers on their shopping experience. The chatbot was rolled out into some Member States in the EU (France, Germany, Italy, and Spain) through its beta version late last year and has caused some confusion ever since.

Like any other AI system, Rufus suffers from hallucinations. For instance, if asked for the cheapest options of a given product, it simply does not deliver them. Amazon acknowledged that Rufus could spew some dysfunction when responding to user prompts since "*it's still early days for generative AI, and the technology won't always get it exactly right*". Notwithstanding, Amazon's legal representatives extolled Rufus' virtues by demonstrating the capabilities it would bring to the market and to Amazon Store in particular, e.g., comparing different options relating to the same product type, such as a drip vs. a pour-over coffee maker. In this sense, they did indicate that Rufus is an integral part of the Amazon Store and that it is DMA-compliant. The gatekeeper highlighted that Rufus makes decisions to respond to user prompts regardless of the seller (whether Amazon Retail or a third-party seller) and those in charge of performing the delivery and logistics of the product (page 21 of Annex I of the compliance report). In other words, Rufus aligns with the regulatory requirements of Article 6(5) DMA.

To questions of the workshop participants on its potential misalignment with Articles 5(2) and 6(2) DMA, Amazon's legal representatives did not provide any immediate or satisfactory reaction. For instance, when asked about how the processing of personal data for training Rufus (and also for user-inserted data) worked, they simple reiterated some of the previously available information on the tool; that Rufus is trained on publicly available data from across the web and on data from its Amazon Store such as its product catalogue, customer reviews and community Q&As, so that the legal requirements under Article 5(2) DMA did not activate as a consequence. It is unclear whether 'publicly available data' is short for web scraping. In that particular case, Amazon would not result to be unscathed from the application of Article 5(2) DMA, as I point out in a recent paper. On this same note, the gatekeeper's legal representatives did confirm that Amazon was considering rolling out ads on the AI tool, which would make cross-using and combining data across its two CPSs unavoidable. In the end, Rufus may (once again) cause a headache or two to the main characters of the DMA story.

This entry was posted on Tuesday, June 24th, 2025 at 9:00 am and is filed under AI, Algorithms, Amazon, Digital, Digital competition, Digital economy, Digital markets, Digital Markets Act, European Commission, European Union, Ex ante regulation
You can follow any responses to this entry through the Comments (RSS) feed. You can leave a response, or trackback from your own site.