

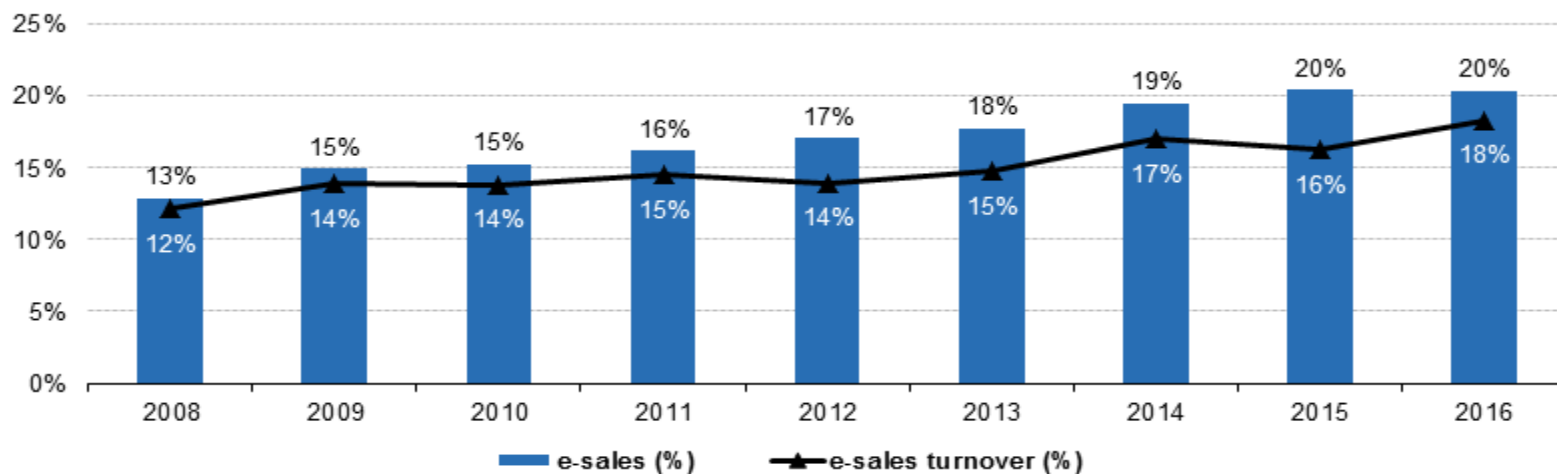


The follow-up to the E-commerce Sector Inquiry

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The views expressed are purely personal and do not necessarily represent an official position of the European Commission.

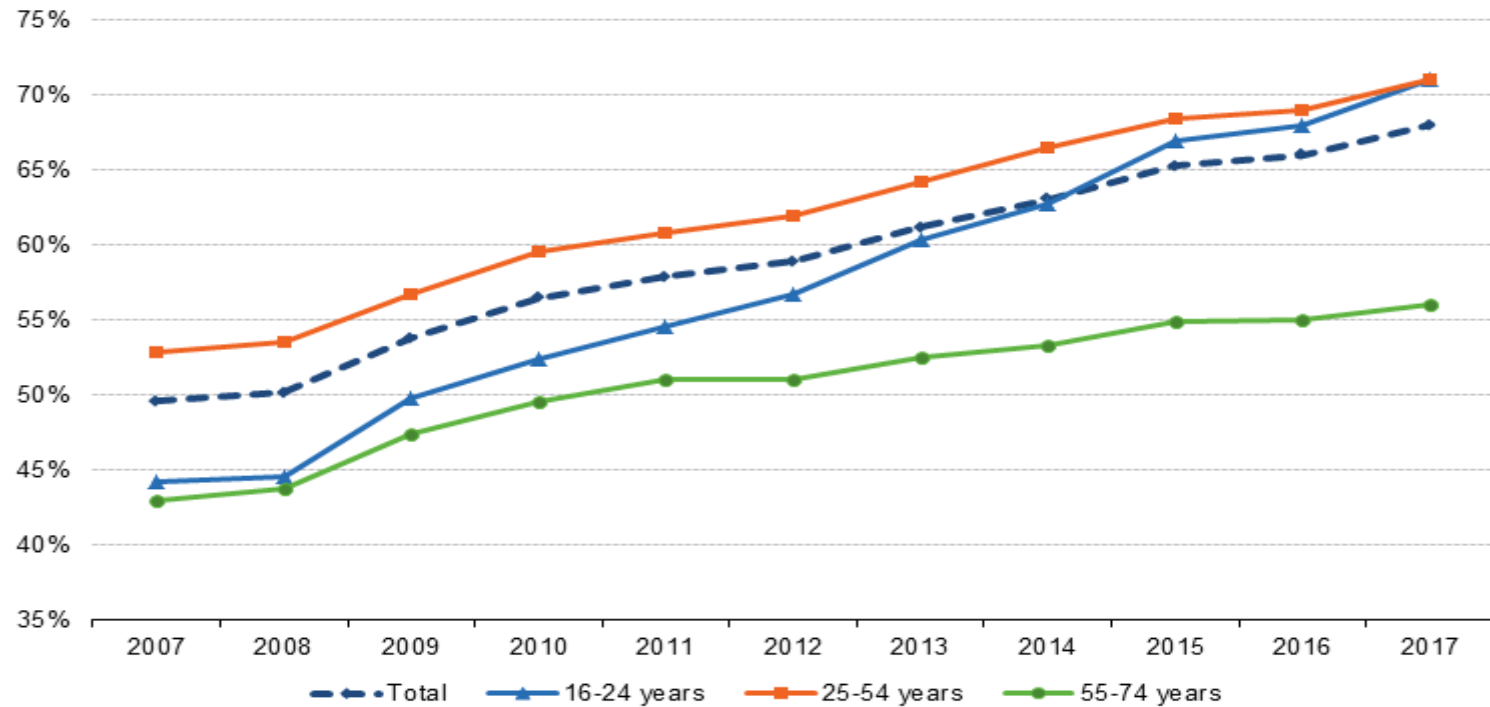
E-commerce



Note: 2008 data without enterprises in the NACE Rev 2 group 95.1 referring to 'Repair of computers and communication equipment'.

Source: Eurostat

E-commerce



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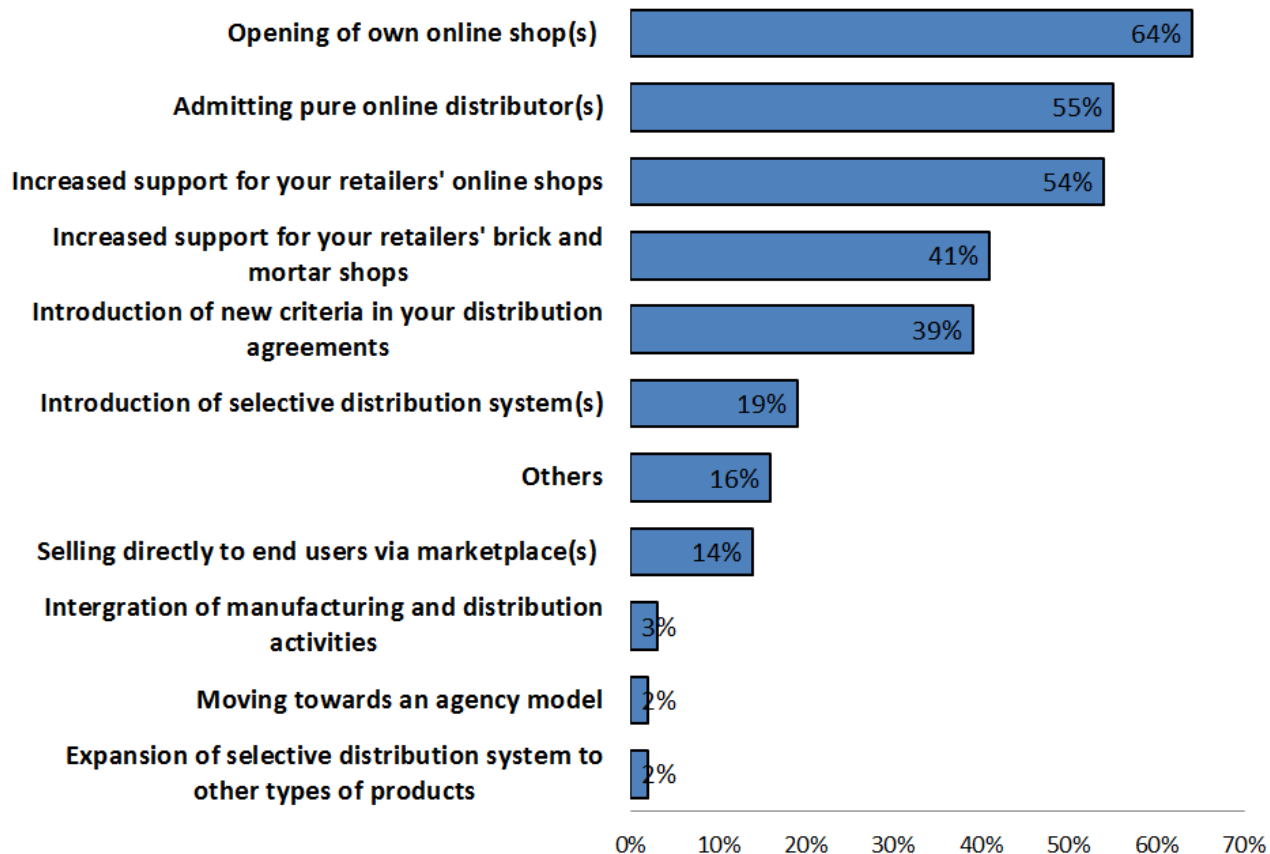
Digital Single Market Strategy

- ❖ Political priority of the Commission, adopted on 6 May 2015
- ❖ Aim: Better access for consumers and businesses to online goods and services across Europe - Remove unjustified barriers
- ❖ Actions:
 - Legislative actions → public or regulatory barriers
 - **Complemented by Sector Inquiry → private or company erected barriers**

Sector Inquiry- Key Findings

- ❖ More **price transparency** and **price competition**
- ❖ **More price monitoring**
- ❖ **Impact on distribution strategies**
- ❖ Increased presence of manufacturers at the retail level (own webshops)
- ❖ Increased recourse to selective distribution
- ❖ Vertical Restraints
 - Pricing restrictions (RPM)
 - Territorial restrictions
 - Online sales restrictions

Manufacturers' Strategies



B. 23: Measures taken by manufacturers in the last 10 years to react to the growth of e-commerce



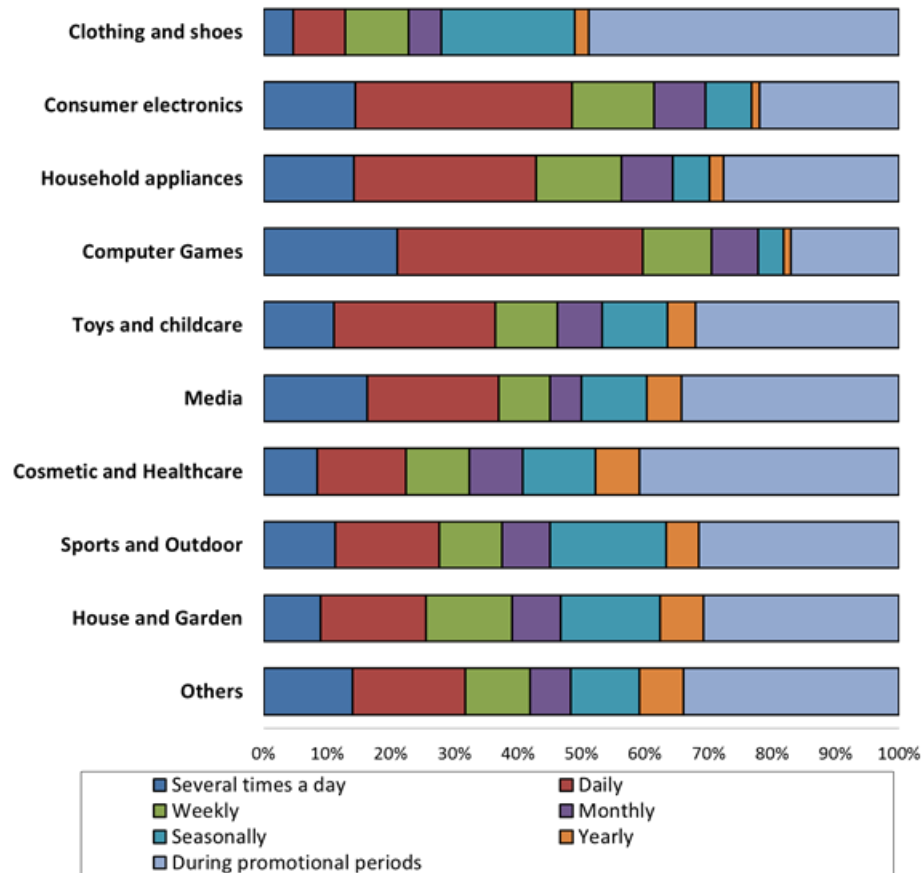
Enforcement

- ❖ Increased **focus on vertical restrictions**

- ❖ **Territorial restrictions**
 - Pioneer decision
 - Pay-TV investigation
 - Video Games investigation
 - Guess investigation

- ❖ **Resale price maintenance cases (RPM)**
 - No enforcement action of Commission for 15 years
 - RPM appears to be widespread online
 - Partially coupled with territorial restrictions
 - E-commerce increases incentives to engage in RPM (pressure on prices; monitoring possibilities)
 - Use of pricing software
 - Decisions in July 2018 against 4 manufacturers of consumer electronics (Philips, Pioneer, Asus, Denon & Marantz)

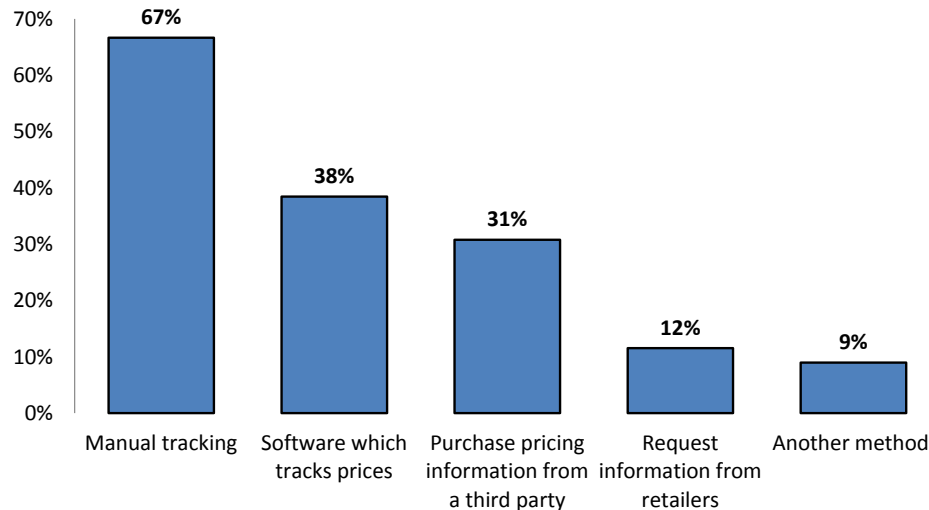
Price Transparency



B. 19: Frequency of modifying online prices based on the responses of retailers

Online Prices: Increased Monitoring

- ❖ ~ 50% of retailers track online prices of competitors
 - ~ 70% of those use (also) software
 - some adjust their own prices automatically (no manual intervention)
- ❖ ~ 30% of manufacturers track systematically online retail prices of their products sold by independent distributors



Recent RPM cases

Strategy:

- ❖ establishment of retail price monitoring system
- ❖ serial number tracking system, regularly applied to identify the origin of low-priced products, followed up by intervention (either only RPM or RPM + parallel trade restrictions)
- ❖ bonus systems / partnership programs (better purchase prices to certain retailers) excluding "non-cooperating" retailers / "red card" retailers

Threats:

- ❖ => at least credible threat of retaliation:
 - (threatening with) termination of contractual relationship
 - (threatening with) suspending deliveries of certain products
 - financial incentives and sanctions: (threatening with) no bonus, no partnership program



"Hallo Herr [...]

ich kann absolut nicht nachvollziehen warum [Retailer A] den aktuellen Status durch unsinnige Aktionen gefährdet. Bei vorbildlich stabilem Auftreten im Markt sind sie im Q4 bei uns unter den TOP 3 e-tailern und würden bei aktueller Runrate einen Bonus von über [...] € erhalten. Möchten Sie das ab Q1 nicht mehr?"[sic]

18 May: "Bitte [...] in Hamburg wegen Vertragsbruch sperren. [...] ich schlage vor dass [...] wie [...] für die nächsten drei Monate keine Neuheiten bekommt. Bitte Neuheiten zurück holen.

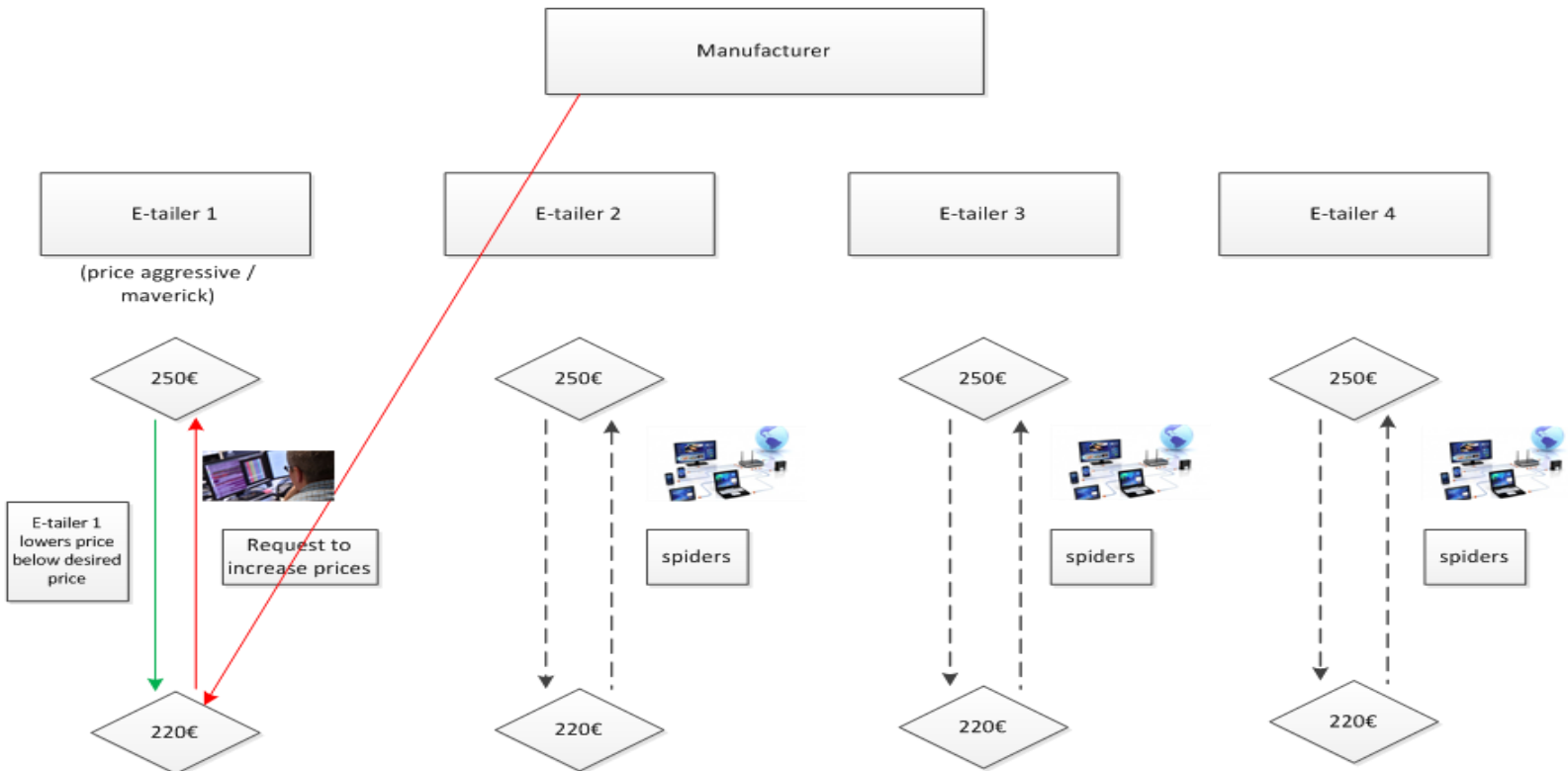
19 May: "Preise sind korrigiert und werden bei der nächsten Aktualisierung der Suchmaschine sichtbar sein."

*"so, you're not enjoying the job?"
"no, not really, it's not account management – it's price fixing mainly - seriously, i have to call customers so they put up their prices. It's crazy!!!!!"*



European
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RPM



Spiders are a software which monitors resale prices of key competitors and automatically adjust prices to match (lowest) price in the market. Getting price mavericks to adhere / raise to desired price levels has knock-on effects on multiple e-tailers.

Pricing algorithms: consequences

- ❖ **Broad impact** throughout the distribution network (intrabrand)
=> likely interbrand effect
- ❖ **Disciplines price mavericks** (typically smaller players) vs **"Followers"** (typically **bigger e-commerce players**)
- ❖ **Easy detection of deviation from recommended retail prices**
=> Higher risk of retaliation => lower incentive to deviate
- ❖ Potential for **"hub and spoke"** scenario. (No evidence of hub and spoke in our cases.)

Possible negative effects of RPM

❖ Foreclosure of other buyers:

The fixed or minimum price, possibly instigated by the incumbent buyer(s), deprives more efficient/new distributors from gaining market share by competing on price

❖ Softening of competition or facilitation of collusion between buyers

RPM may be induced by buyers as a way to facilitate collusion/soften competition; the enforcement of the obligation and the monitoring is partly executed by the supplier

Possible positive effects of RPM

❖ Solving a free-rider problem

Online free-riding works both ways. Are there less intrusive means?

❖ Support entry in (new) market

For a short period of time



Conclusions

- ❖ No need to review the current competition law framework before 2022
- ❖ The Commission is stepping up enforcement in e-commerce with respect to the restrictions identified during the sector inquiry