Barcelona School of Economics

Amazon Logistics, Italy: Discussion

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Abuse of dominance in digital markets

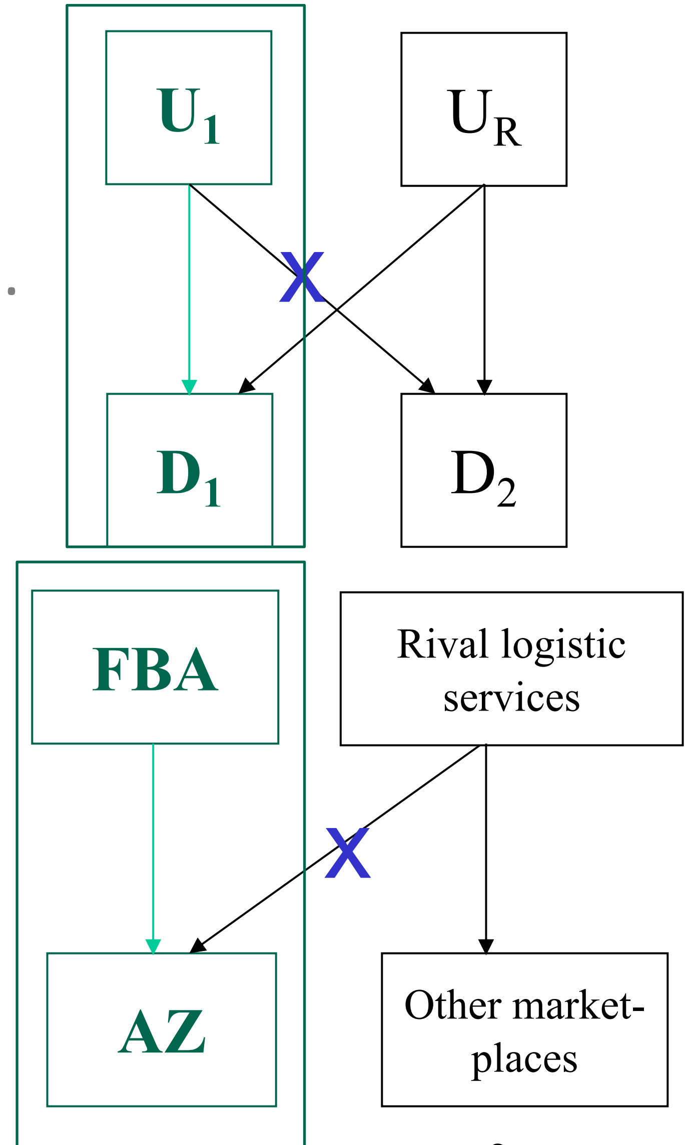
(Exclusion in vertically-related or complementary markets)

- Reaction to imperfect rents extraction
  - Self-preferencing (and ‘refusal to deal’): *Google (G.) Shopping (EU); Amazon Marketplace (EU); ApplePay (EU); G. Privacy Sandbox, G./EnelX (ITA); G. favouring own ad exchange (UK)*
  - Denial of information/data: *G. Privacy Sandbox (UK,US,EC)*
  - Tying and pre-installation: *G. Android (EU, US DoJ)*
  - Anti-steering provisions: *Apple v. Spotify (EU); Apple v. Epic (US)*
- Exclusion of potential competitors (dynamic foreclosure)
  - Degradation of interoperability (and copying): *Facebook (US FTC);*
  - Refusal to supply: *Apple cloud-gaming and web apps (CMA)*
- **Raising Rivals’ costs**
  - **Denying ‘advantages’ to rival logistic services**: Amazon Marketplace (ITA)

Vertical foreclosure: Raising Rivals' Costs

- Input foreclosure (Ordover et al.): with no input from U_1, downstream rival D_2 will be obliged to buy at a higher price from U_R. Thus, D_1 will enjoy higher prices and profits.
  - Same logic has been extended to partial foreclosure, in models with bargaining over input prices.
- Customer foreclosure: by not buying (or making it less attractive) the input from U_R, D_1 will reduce scale and raise costs for U_R. This in turn will decrease competitiveness for D_2.

➢ Theory of harm for Amazon Logistics

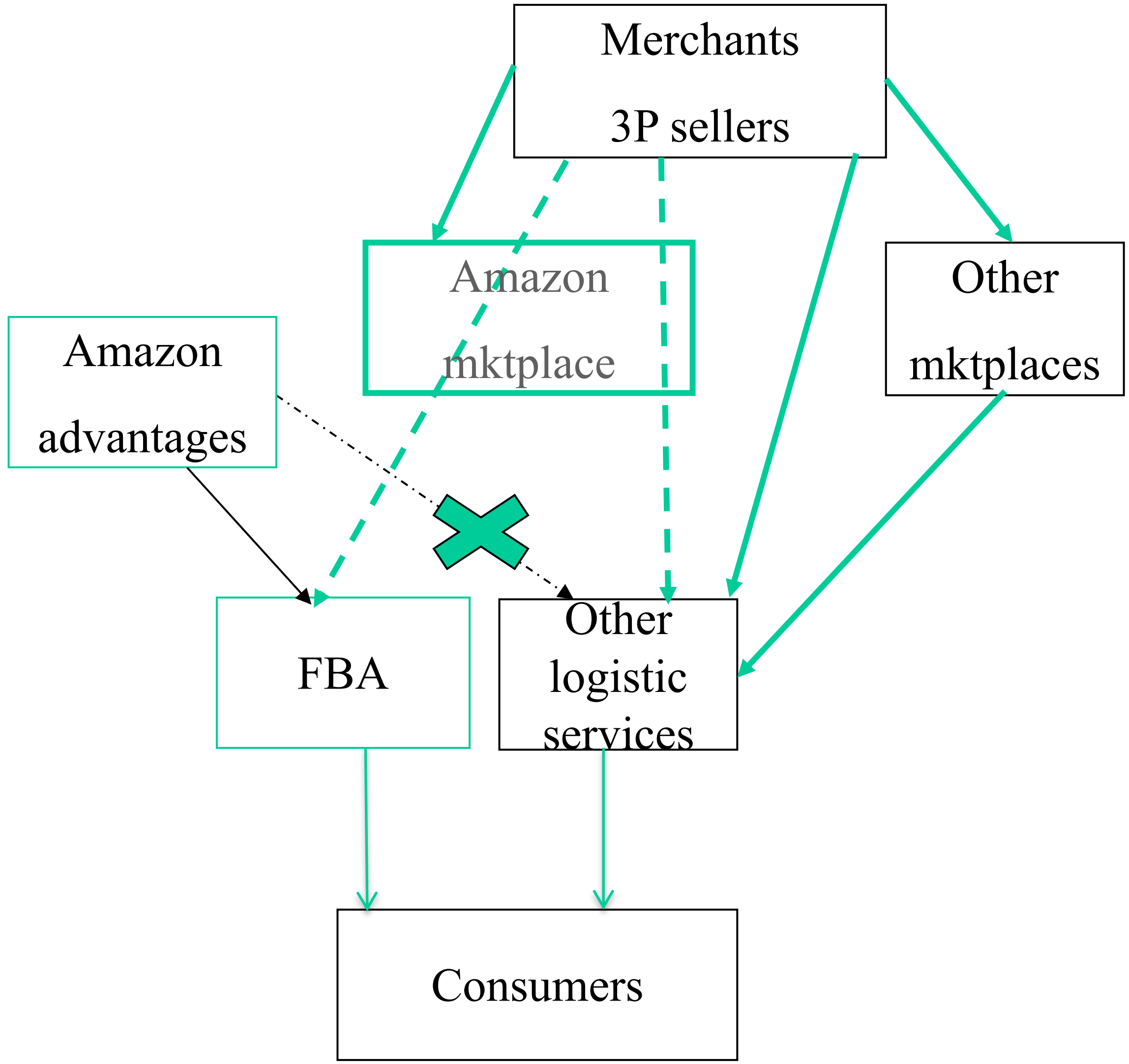


Amazon Marketplace (Italy)

AGCM: 3P sellers granted exclusive advantages on Amazon's Marketplace only if adopting FBA, thus putting non-FBA 3P sellers at a disadvantage => self-preferencing of its own logistic service over competing ones

Only FBA-sellers get:

- no "enforcement" of performance metrics
- eligibility to Prime & access to Prime customers (over 7M in Italy)
- higher likelihood of winning the BuyBox (occurring > 75% of total sales) -
- exclusive access to promotional events - Black Friday, Back to School, Prime Day…
- preferential access to non-Prime customers - eligible for Free Shipping by AZ



Relevant markets and dominance

- Market for intermediation services on e-commerce platforms
  - Both hybrid (like Amazon) and traditional (like eBay)
  - Other retail channels (brick&mortar sales, merchant websites, price comaprson services etc.) not good substitutes or even complements
  - Amazon super-dominant: increase with both users (around 80% in 2019) and 3P sellers; rivals marginalised (eBay from 25-30% in 2016 to 10-15% in 2019); high barriers to entry (network effects, stickiness of preferences, brand reputation…)
- Market for logistics services for e-commerce
  - Order fulfilment, warehouse management, delivery, returns, customer service
  - Marked difference between B2C logistics for e-commerce (multiple small orders) and B2B logistics (fewer bigger orders) where established companies exist
  - Some old companies (and new entrants) in B2C logistics for e-commerce

The conduct, according to the AGCM

- Leveraging of dominance from intermediation to logistics markets, owing to advantages (see above) given only if choosing FBA
- Negative effects on actual and potential logistics rivals
  - For 3P sellers, using rival logistics services would imply losing advantages, esp. losing access to Prime customers, who account for 80-90% of total value of purchases on Amazon.it
  - Multi-homing (already unattractive because of costs of operating multiple warehouses) further discouraged by the conduct
  - Amazon has also significantly reduced contracting of postal services and couriers for its own deliveries
- Negative effects also for alternative e-commerce marketplaces
- Negative effects for 3P sellers and consumers

Amazon’s defence

- Amazon gives advantages only to FBA subscribers (at least initially) because Amazon logistics superior
- Amazon needs to guarantee quality of the services in the Marketplace to avoid negative externalities that other logistics providers may ignore
- ➢ Amazon legitimately wants to place performance criteria on third-party logistics operators

- AGCM: Nobody wants to prevent Amazon from guaranteeing high quality of logistics services, but it can do that by using objective criteria and enforce them on itself and others
- if Amazon cares about quality, why FBA retailers receive more lenient treatment and their negative performance is not taken into account?
- Logistics rivals less efficient? Some retailers testified to the contrary. Also, when Amazon launched SFP in 2021, it approved some logistics companies (hence, they cannot be that bad…)

Amazon Marketplace: AGCM's sanctions

Amazon has abused its dominant position in intermediation services

- Imposition of **€ 1,1 billion fine**
- **Cease and desist order**
- **Behavioural remedies** in order to restore competitive conditions in the relevant markets:

• Sales benefits and visibility on Amazon.it must be granted to all 3P sellers which are able to comply with fair and non-discriminatory fulfilment standards, in line with the level of service that Amazon intends to guarantee to Prime consumers

• Those standards must be made public

• Amazon must refrain from negotiating - on behalf of sellers - rates and other contractual terms concerning the logistics of sellers' orders on Amazon.it with carriers and/or competing logistics operators, outside FBA

Amazon Logistics: Another possible theory of harm?

- Logistic services account for about 50% of Amazon's revenue in Italy
- Since logistics revenues matter, possible that this exclusionary strategy was aimed at increasing profits in that market?
  - Consumers decide purchases mostly on the basis of product prices; additional cost of delivery likely not central (small payment; not/less visible)
  - Amazon logistics revenues mostly from 3P sellers
    - (see e.g., https://www.ecomengine.com/blog/amazon-fba-fees)
  - 3P sellers, not consumers, choose logistics suppliers. The conduct at issue push 3P sellers to choose FBA over rivals, thus allowing Amazon to monetise more
- Usually with complements, dominant component used to extract rents; but here:
    - no safe monopoly as in the Chicago School: although dominant, Amazon is constrained by brick and mortar and retailers
    - consumers look at product price more than delivery cost (and logistics chosen by retailers)

    ➢ rents extraction may well take place via the complementary (logistics) component

Length of the abusive conduct: SFP

- Does the abusive conduct continues after the introduction of the Seller Fulfilled Prime (SFP) programme in 2021?
  - Amazon invited some logistics companies to qualify as providing Amazon-approved delivery services
  - Amazon also negotiated terms of trade with those companies (on behalf of the 3P sellers)
  - Retailers which use those approved services have access to the same advantages as those using FBA
- This development seems to be similar in spirit as the ICA's remedy, but the ICA maintains is still part of the abusive conduct
  - SFP targets a particular class of 3P sellers with low turnover rate and that FBA finds it difficult to attract (high long-term storage tariffs and high standardi-sation of FBA services which discourage retailers which need some flexibility)
  - Amazon decides contractual terms between approved logistics firms and SFP retailers, hence this programme does not allow the emergence of rivals which are independent of Amazon

Thanks for your attention!