

**Question for written answer E-005151/2014  
to the Commission  
Rule 117  
Andreas Schwab (PPE)**

Subject: Guidelines on Vertical Restraints: prohibition of the use of certain platforms (eBay, Amazon and the like)

Many manufacturers of branded goods place restrictions on sales via the Internet by prohibiting their distributors from using independent marketplace platforms (e.g. eBay, Amazon). In particular brands which use selective distribution take advantage of this prohibition to protect the image of their branded products against dilution, in the interests of customers and distributors.

In its Guidelines on Vertical Restraints, the Commission made it clear that brands may require that customers do not visit the distributor's website through a website carrying the name or logo of a platform, as is generally the case with such marketplaces (paragraph 54 of the Guidelines).

However, there is currently a lack of legal clarity in relation this passage of the Guidelines. For instance, in its background paper '*Vertikale Beschränkungen in der Internetökonomie*' ('Vertical restrictions in the Internet economy'), the German Federal Cartel Office recently called into question what the Vertical Guidelines say about the prohibition of market platforms. It is stated in the paper: 'However, the case law of the ECJ in the *Pierre Fabre* case, which takes a critical view of the restrictions on competition for the purposes of the protection of any brand image, calls into question the statements made in the Guidelines'. The Office further states in this background paper that the prohibition on market platforms is not consistent with Article 101(3) TFEU. The case law relating to the prohibition of market platforms is also inconsistent.

There are no known decisions by other national competition authorities or courts in other Member States which might alleviate this legal uncertainty.

For many manufacturers of branded products, these inconsistent statements have led to great uncertainty in a key sector for the European internal market – Internet marketing. It would seem that the uniform application of EU competition law is in jeopardy.

Does the Commission not consider it necessary to restore legal clarity by declaring that the Vertical Guidelines have binding effect and, in particular, clarifying the situation with regard to the use of market platforms?

In view of the Internet market being an extremely dynamic one, does the Commission not consider that it is necessary to restore this legal clarity as soon as possible?