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# Competition Law Aspects of Amazon’s Business Model<sup>2</sup>

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## Abstract

Digitisation is changing not only our society but also markets, strategies and business models, which has increased competition in many markets. At the same time, large companies with a digital business model, such as Amazon, in particular, are experiencing a rapid rise, which has triggered a debate about fair competitive conditions. However, it is not only the company’s significant market power that is a cause for concern. The increasing vertical integration of platform operators such as Amazon, which makes them direct competitors of their own platform users, also raises competition law issues. Against this backdrop, it is the aim of this article to analyse Amazon’s business model in more detail from a competition law perspective. The analysis aims to identify which parts of the company’s business model and the resulting strategies may be seen as problematic under competition law.

**Keywords:** business model, competition law, digitisation.

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# Aspekty prawa konkurencji dotyczące modelu biznesowego firmy Amazon<sup>3</sup>

## Streszczenie

Cyfryzacja zmienia nie tylko nasze społeczeństwo, ale również rynki, strategie i modele biznesowe, co zwiększa konkurencję na wielu rynkach. Jednocześnie duże firmy, takie jak zwłaszcza Amazon, które stosują cyfrowy model biznesowy, doświadczają szybkiego wzrostu, co wywołało dyskusję na temat sprawiedliwych warunków konkurencji. Jednak znacząca pozycja tej firmy na rynku to nie jedyny powód do obaw. Zwiększająca się integracja pionowa operatorów platform takich jak Amazon, czyniąca z nich bezpośrednich konkurentów użytkowników ich własnej platformy, także stawia pytania dotyczące prawa konkurencji. W tym kontekście celem niniejszego artykułu jest bardziej szczegółowe przeanalizowanie modelu biznesowego Amazonu z perspektywy prawa konkurencji. Analiza ta zmierza do zidentyfikowania tego, które elementy modelu biznesowego tej firmy i wynikające z nich strategie można na mocy prawa konkurencji uznać za problematyczne.

**Słowa kluczowe:** model biznesowy, prawo konkurencji, cyfryzacja.

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<sup>3</sup> Badania wykorzystane w artykule nie zostały sfinansowane przez żadną instytucję.

## Introduction

In this article, the business model of Amazon is analysed, with a special focus on aspects of competition law. In the following, a company portrait of Amazon is therefore first created in order to build up a basic understanding of the company. For this purpose, the history as well as the current importance of the company in society will be highlighted. Subsequently, the business model of the company will be elaborated in order to create a basis for the competition law analysis. The data was collected through in-depth document analysis and supported by scientific literature. Several scientific methods of knowledge have been used in the exploration and development of our paper. We applied the method of analysis. The synthesis will allow us to combine partial information into a single unit. By applying a comparative method, we also make a different view from the legal perspective. This allowed us to obtain reliable and valid conclusions and results.

### Amazon company profile

With the idea of creating the largest bookstore in the world, Jeffrey Bezos founded Amazon in 1994. Bezos' original idea was to revolutionise the retail industry by creating a website that would serve as an interface between customers and retailers, selling almost every product. However, this venture seemed too big for him to begin with, which is why he initially focused on book retailing so that he could then grow into other product categories if necessary. However, Amazon expanded into Europe and Asia and in 1998 bought the German company ABC-Bücherdienst, the market leader in online bookselling at the time, which owned the website Telebuch.de. This website was renamed Amazon.de in 1998. The group operates as Amazon.com, Inc., which is a corporation listed on the stock exchange. Jeffrey Bezos himself has acted as CEO since the company was founded, but as of 5 July 2021, Andy Jassy, his long-time deputy who has himself been employed by Amazon since 1997, took over the role of CEO. The corporate headquarter is located in Seattle, USA. The company has numerous subsidiaries that are responsible for various areas of the business model described below. The European headquarter is located in Luxembourg. The company operates on the European market in the retail sector under the name Amazon EU Sàrl as a *société à responsabilité limitée*. This is a limited liability company, which means that the liability of the shareholders

is limited to the amount of their contribution, so this form of company is comparable e.g. to a German limited liability company. In Europe, Amazon operates six websites, including Amazon.de, Amazon.co.uk, Amazon.fr, Amazon.it, Amazon.es and Amazon.nl, which shows the great importance of the company for the market in the European economic area.<sup>4</sup>

### Amazon business model

At the beginning, the company's offer only included trading in goods and even today this is still very important for the success of the company, so that this continues to be the core business. In the trading area, the business model essentially comprises two different elements: proprietary trading and the marketplace. Both proprietary trading and trading via the marketplace take place on Amazon's online platform without a clear separation.<sup>5</sup> In the case of proprietary trading, Amazon acts as a classic retailer and buys products from manufacturers or retailers for this purpose. The manufacturer, which Amazon designates as a vendor, does not act as a seller in this relationship. Amazon regularly takes over the entire logistics in relation to a vendor. The advantages of the vendor result from the sales potential, which goes hand in hand with the awareness and thus the reach of Amazon and its marketing offer. Since 1999, Amazon has also offered third parties the opportunity to offer their products on the platform's marketplace, the so-called Amazon Marketplace. These manufacturers and dealers, referred to as sellers by Amazon, sell their products to end customers themselves and are also responsible for pricing and product presentation. However, they are given very little room for maneuver on the marketplace. Amazon benefits from sellers on the one hand for each product sold in the form of a sales commission. This results from a percentage sales fee per product, with the amount depending on the product category. However, the company's business model no longer only includes online trading, but also other innovative areas with which Amazon maintains the loyalty of its customers and wants to further expand the company's success. Some of these services are presented below.

With Amazon Prime, Amazon offers a kind of premium membership, which offers members several advantages, whereby according to the advertising promise, 'there is something for everyone', with free premium shipping, which includes fast and free shipping of appropriately marked products. The consumer goods delivery services offered by Amazon can only be used with a Prime membership.

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<sup>4</sup> T. Peráček, *The Perspectives of European Society and the European Cooperative as a Form of Entrepreneurship in the Context of the Impact of European Economic Policy*, "Online Journal Modelling the New Europe" 2020, 34.

<sup>5</sup> P. Plavčan, R. Funta, *Some Economic Characteristics of Internet Platforms*, "Danube" 2020, 11.

With its consumer goods delivery services, Amazon took a step in the direction of the food sector. The corona pandemic has changed the purchasing behavior of many consumers.<sup>6</sup> The order volume and the share of consumers in online food retailing has increased. In the US, Amazon has ventured into brick-and-mortar retail with Amazon Books, Amazon 4-Star, Amazon Fresh, Amazon Go and Amazon Go Grocery. These contain the star rating that the book received on the Amazon website on their digital price tags. An innovation that is intended to influence a positive customer experience is therefore recognizable. With Amazon Pay, Amazon offers an online payment service that allows users to shop on external websites using the payment and shipping information stored in the Amazon account so that no customer account needs to be created on the external websites. In addition to the innovations that Amazon has made in the retail sector, it has also expanded into completely new business areas. These expansions have an impact on the company's value chain, because vertical integration is increasing, which means that the company itself is taking on more and more services that would otherwise have been provided by third parties.<sup>7</sup> This reduces the company's dependency on third parties, which is associated with a reduction in risk. In addition, particularly good quality of service can be ensured, which in turn has a positive effect on the goal of a positive customer experience. The aim is to create added value for customers from which they can benefit. The company's offering has been greatly expanded over time and includes numerous other formats in addition to proprietary trading and the marketplace. Ultimately, the goal of corporate growth is pursued with customer focus.

## Legal Framework

When designing a business model, all applicable legal framework conditions that are relevant to a business model must be observed. However, since the focus of the present paper is on aspects of competition law, the associated legal framework conditions are mainly discussed in the following part. No final and thus comprehensive consideration of all legal framework conditions relevant to a business model will be carried out.

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<sup>6</sup> M. Horvat, H. Magurová, M. Srebalová, *Protection of Consumers' Rights in Railway in the Slovak Republic*, "Yearbook of Antitrust and Regulatory Studies" 2017, 16.

<sup>7</sup> L. Vilčeková, B. Mucha, T. Peráček, L. Strážovská, *Selected Issues of Family Business in Selected Countries with Emphasis on the Slovak Republic*, Proceedings of the 31st International Business Information Management Association Conference, IBIMA 2018: Innovation Management and Education Excellence through Vision 2020, 2018.

## Treaty on the Functioning of the European Union

Cooperation with European authorities also takes place within the framework of the Treaty on the Functioning of the European Union (TFEU). The TFEU aims to remove barriers between the individual member states and also to prevent them from being re-established, thus following the principle of an open market economy with free competition (Article 119(1) TFEU in conjunction with Article 120(2) TFEU). According to Article 3(1) (b) TFEU, the Union has exclusive competence to lay down the competition rules necessary for the functioning of the internal market. The competition rules of the TFEU protect free competition through several channels. For the analysis of Amazon's business model, Article 101 as well as Article 102 TFEU are particularly relevant. While Article 101 TFEU contains a prohibition of restrictive agreements or decisions, Article 102 TFEU prohibits the abuse of a dominant position in the internal market. The two articles complement each other and together pursue the goal of restricting the economic freedom of action of companies in order to prevent restrictions of competition to the detriment of third parties. According to Article 101(2) TFEU, the general prohibition of anti-competitive agreements, decisions and concerted practices under Article 101(1) TFEU results in the legal consequence of nullity for these prohibited agreements or decisions.<sup>8</sup> The aim of this standard is to prevent distortions of competition in order to ensure the market participants' freedom of action<sup>9</sup> and decision-making and to be able to guarantee a minimum level of competition. The relationship between Articles 101 and 102 TFEU and the national competition rules is regulated in Regulation (EC) No. 1/2003. Accordingly, there is a parallel application of European and national competition rules, with Union law setting certain limits on national regulations.<sup>10</sup> However, conflicts of norms can generally only arise if a restriction of competition has both a domestic effect and is capable of affecting trade<sup>11</sup> between the Member States within the meaning of Articles 101 and 102 TFEU. It should be noted that the TFEU regulates also another forms of cooperation between Member States in

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<sup>8</sup> A. Osztovits, *Quantifying Harm in Action for Damages Based on Breaches of Article 101 or 102 of the Treaty on the Functioning of the European Union – Some Remarks on the Draft Guidance Paper of the European Commission*, [in:] idem (ed.), *Recent Developments in European and Hungarian Competition Law*, Budapest 2012.

<sup>9</sup> F. Hrmo, *The Progress of Reforms in a Financial Regulation in the European Union*, "Społeczeństwo i Edukacja" 2017, 24(1), 63–69.

<sup>10</sup> R. Plavčan, R. Funta, *Regulatory Concepts for Internet Platforms*, "Online Journal Modelling the New Europe" 2021, 35.

<sup>11</sup> V. Stehlík, O. Hamulák, M. Petr, *Právo Evropské unie: ústavní základy a vnitřní trh*, Praha 2017.

civil and public areas. An example, as regards judicial cooperation in criminal matters, is establishment of the European Public Prosecutor's Office.<sup>12</sup>

## P2B Regulation

An interesting case for digital business models<sup>13</sup> can also be the EU regulation to promote fairness and transparency for commercial users of online intermediary services (Regulation (EU) 2019/1150, or the P2B Regulation), which applies since 12 July 2020. The P2B Regulation is one of the first EU regulatory legislative measures for online platforms. In particular, it contains requirements for the design of general terms and conditions, including the obligation to disclose certain ranking mechanisms. The aim is to redress imbalances between providers and commercial users of online platforms, which should ultimately also be to the benefit of consumers.<sup>14</sup> This is to be implemented by means of special information obligations on the part of platform operators,<sup>15</sup> internal complaint management systems, and the possibility of taking legal action against abusive conduct by platform operators. Pursuant to Article 1(4) and (5) of the P2B Regulation, other European and Member State regulations, such as those relating to fair trading,<sup>16</sup> antitrust,<sup>17</sup> civil<sup>18</sup> and data protection law,<sup>19</sup> remain unaffected by the P2B Regulation. In particular, the P2B Regulation gives its addressees detailed specifications as to how and to what extent they must inform their commercial users about the parameters that are decisive for the ranking of offers or search results, or about the possibilities for users to

<sup>12</sup> M. Deset, L. Klimek, *What Do We Need to Resolve After Establishing the European Public Prosecutor's Office in the Slovak Republic?*, "Slovak Journal of Political Sciences" 2021, 1.

<sup>13</sup> R. Funta, *Economic and Legal Features of Digital Markets*, "Danube" 2019, 10; R. Funta, M. Horváth, *Digital Markets as a Challenge for Competition Policy*, Brno 2020; V. Šmejkal, *Concentrations in Digital Sector – A New EU Antitrust Standard for "Killer Acquisitions" Needed?*, "Intereulaweast" 2020, 2.

<sup>14</sup> T. Peráček, *E-commerce and Its Limits in the Context of the Consumer Protection: The Case of the Slovak Republic*, "Juridical Tribune" 2022, 12(1); L. Klimek, R. Funta, *Data and E-commerce: An Economic Relationship*, "Danube" 2021, 12.

<sup>15</sup> See research on electronic media and ICT in: R. Hrmo, K. Krpálková Krellová, E. Tóbblová, *Informačné a komunikačné technológie vo výučbe*, Trnava 2009.

<sup>16</sup> K. Nyman-Metcalf, P.K. Dutt, A. Chochia, *The Freedom to Conduct Business and the Right to Property: The EU Technology Transfer Block Exemption Regulation and the Relationship Between Intellectual Property and Competition Law*, [in:] T. Kerikmäe (ed.), *Protecting Human Rights in the EU*, Berlin–Heidelberg 2014.

<sup>17</sup> V. Šmejkal, *Výzvy pro evropský antitrust ve světě vícestranných online platformem*, "Antitrust: Revue soutěžního práva" 2016, 4.

<sup>18</sup> M. Horváth, *Digitálna éra ako výzva pre občianske a pracovné právo v kontexte personálneho manažmentu*, Tým nad Vltavou 2021; idem, *Princípy v občianskom súdnom konaní*, [in:] J. Chmelík (ed.), *Konsenzus v práve*, Banská Bystrica 2013.

<sup>19</sup> G. Karácsony, *Managing Personal Data in a Digital Environment – Did GDPR's Concept of Informed Consent Really Give Us Control?*, [in:] R. Funta (ed.), *Počítačové právo, UI, ochrana údajov a najnovšie technologické trendy*, Brno 2019.

change these parameters to influence. The same applies to information on whether and how the provider concerned grants users access to data, and which conditions apply to this. The P2B Regulation also applies completely independently of the concept of market dominance and does not require any official enforcement acts. The P2B Regulation contains comprehensive dispute resolution mechanisms and allows direct enforcement of the information obligations before the civil courts. As a result, regulating the identical information responsibilities again on an anti-trust basis would not add any value.

For the purpose of increased transparency, platform operators should formulate their terms and conditions clearly and unambiguously and these should be easily accessible. Furthermore, the P2B Regulation requires an obligation to justify the removal or blocking of a commercial user and a minimum notice period for such measures (Article 4 of the P2B Regulation). For instance, there are obligations to justify online platforms that, in addition to their brokerage activities, are also active as retailers (e.g. Amazon Marketplace), in particular with regard to their own and third-party offers. The P2B Regulation recognised this problem and entitled it under Article 7 P2B Regulation with 'differentiated obligation to justify', i.e. online services such as Amazon Marketplace must have a possible differentiated treatment of goods and services, between on the one hand those of the provider himself and those of business users under their control and, on the other hand, other business users. This applies in particular to personal data, rankings, direct or indirect payments.<sup>20</sup> Sure, each user should take into account the fact that there are, on the one hand, advantages of online payments, but on the other hand, disadvantages of online payments – particularly by cards.<sup>21</sup>

## Potential Abusive Practices

The rapid and ongoing growth of platforms like Amazon raises the question as to whether they promote competition and increase welfare or whether they promote market concentrations, which would be to the detriment of manufacturers and consumers. Findings that can contribute to answering this question should be developed through the following parts.

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<sup>20</sup> S. Fedushko, O. Mastykhay, Y. Syerov, T. Peráček, *Model of User Data Analysis Complex for the Management of Diverse Web Projects During Crises*, "Applied Sciences" 2020, 24.

<sup>21</sup> L. Klimek, *Misuse of Contactless Payment Cards with Radio-Frequency Identification*, "Masaryk University Journal of Law and Technology" 2020, 2.



## Amazon Marketplace as a transaction platform

The Amazon Marketplace is distinguished from 'regular' Amazon mostly by the retailers. Amazon Marketplace allows retailers to sell their products. Amazon's reach and service are available to retailers. For the Amazon user, there are no differences between the Marketplace or the Amazon platform. It is also billed via Amazon and, if the FBA service<sup>22</sup> has been activated, the shipping also runs via Amazon. However, Amazon does not allow retailers to advertise their goods for free. Amazon attracts retailers to offer goods through their reach. The Amazon Marketplace is classified as a transaction platform. Purchase and service contracts are concluded between the platform operator (e.g. Amazon) and the product provider directly on the platform itself. When using a transaction platform, the transactions are handled directly by the platform operators. One problem associated with transaction platforms is the so-called chicken and egg problem. In order for a two-sided market to work, both sides must also be active on the platform; but one side may have no incentive to join the platform without the other. This problem arises, for instance, with trading platforms, real estate platforms or hotel search engines. Originally only books were sold on Amazon (one-sided market). Today the range covers almost all consumer goods. In addition to the online platform, there is also consumer electronics (e.g. Kindle), Amazon produces films and series (Amazon Studios), publishes books (Amazon Publishing) and offers its own streaming service (Amazon Prime Video). Amazon's own business is clearly classified as a commercial transaction, because Amazon procures the goods itself and also offers them. Marketplace providers pay a fee to Amazon to use the platform, turning the one-sided market into a two-sided one. In this regard, it is necessary to differentiate between retail activities, because Amazon presents both segments as a uniformly integrated shop. As a result, there is no distinction between Amazon's own business and that of the marketplace retailers. Amazon also provides other models to businesses, such as the option of having the goods sent by Amazon or having Amazon manage returns. Amazon frequently collaborates with small and medium-sized businesses and has frequently encountered disputes owing to price parity restrictions, which limit them from offering their goods and services in other places. Retailers have frequently complained that Amazon participates in various business practices (for instance, account bans) for no apparent reason. The European Commission attempted to address this issue by releasing the P2B-Regulation.

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<sup>22</sup> Businesses can outsource their order fulfillment to Amazon through the Fulfillment by Amazon (FBA) programme.

## Amazon's tax approach

Amazon's tax approach<sup>23</sup> also has an influence on the company's competitive position. Amazon conducts its business in Europe through two Luxembourg-based companies, LuxSCS and its wholly owned subsidiary Amazon EU Sàrl. In principle, transfer pricing agreements are a regular part of tax rulings. They specify the prices that a subsidiary of a group must pay to another subsidiary of the same group for services rendered. They therefore have a major influence on how the group's taxable profit is allocated to the individual subsidiaries.<sup>24</sup> They can therefore be used in an abusive manner to keep the taxable profit of the company lower, in particular through royalties that do not correspond to the usual market prices. The European Commission sees such an approach in the case of Amazon and speaks of an inflation of fees in order to artificially reduce the profit of Amazon EU Sàrl. The ECJ 2021 declared the Commission's decision null and void at first instance on the grounds that there was insufficient evidence that the European Commission had unjustifiably reduced Amazon EU Sàrl's tax burden and that an advantage could therefore not be assumed. By its appeal, the European Commission seeks to have set aside the judgment of the General Court of 12 May 2021.<sup>25</sup> Basically, it can be stated that Amazon's tax practice should be viewed critically. Loss carry forwards will also reduce future profits as they are offset against the loss carried forward. Like many other companies, Amazon uses legal tax loopholes.

## Other strategies that may threaten free and open markets

Amazon uses a number of strategies that may threaten free and open markets, businesses and customers. The Amazon trading platform's enormous importance is reinforced by Amazon's own retail activities on the platform (a so-called hybrid structure). This goes hand in hand with the ability to make rules, which creates a lot of opportunities for influencing the operations and commercial success of other businesses. This means that Amazon, in fulfilling its dual role as a retailer and a marketplace, can regulate the access of other businesses to the sales and procurement markets. A highly interconnected digital ecosystem has been created by Amazon's diverse range of business operations. Amazon uses a number of strategies that may threaten free and open markets, businesses and customers.

<sup>23</sup> M. Štrkolec, L. Hrabčák, *Tax Fairness in the Context of the Digital (Industrial) Revolution 4.0*, "Studia Iuridica Lublinensia" 2022, 31.

<sup>24</sup> J. Kajanová, B. Mucha, P. Brestovanska, *Simple Company on Shares as Startup Support Tool*, "Acta Universitatis Agriculturae et Silviculturae Mendelianae Brunensis" 2018, 66(6).

<sup>25</sup> C-457/21 P, *European Commission v Amazon.com, Inc. and Amazon EU Sàrl*, ECLI:EU:C:2022:392.

Amazon exerts price pressure on independent retailers. Because Amazon Marketplace is a big buyer, it has great price control over the independent vendors who supply its platform and mandates that they abide by its fair pricing policy. According to this rule, the vendor must always provide Amazon the lowest price wherever. This means, that a seller who provides a product on Amazon Marketplace is not permitted to set a price lower on its website than on the Marketplace. Amazon appears to be pursuing predatory pricing as part of its anti-competitive activity. These are present when a company cuts prices below cost in an effort to drive competitors out of the market. Because predatory pricing seeks to acquire market share solely by financing losses with outside capital sources or cross-subsidising through other cash-generating divisions, it differs from aggressive price rivalry. The most prominent example of Amazon's predatory pricing strategy occurred in 2000 with rival retailer, Quidsi, which rejected an acquisition offer from Amazon. Amazon responded by lowering the cost of its baby products on Marketplace, as well as immediately adjusting the prices of its baby products to Diapers.com prices. Shareholders from Amazon understand that predatory tactics may initially cost them money but ultimately result in monopoly strength and profits in the long run.<sup>26</sup> While Amazon's predatory pricing issue has long been viewed as unsustainable by courts since the practice has been judged illogical,<sup>27</sup> current Amazon's business model reveals it may not be so irrational after all (even it seems still impossible to show that Amazon is selling products at a loss). Thus, the issue is not that Amazon may sell its products at a lower price than the original supplier (which could actually benefit customers). Instead of increasing consumer pricing as might be expected, Amazon passes these expenses forward to the marketplace vendors it works with. Amazon is encouraging vendors to join the Marketplace as third-party sellers, which lowers fulfillment costs. This provides a plausible way of compensation by shifting more expensive transactions to third-party vendors and appropriating less expensive transactions from suppliers for its own advantage. The worry may derive from the fact that Amazon can only provide such low costs because of the utilisation of third-party data. The data removes any risks connected with introducing a new product and makes it easier to match production size to actual demand. This is not because of predatory pricing, but rather because of the capacity to benefit from economies of scale and assortment as a result of an unlawfully obtained informational advantage. Competition authorities will have to prove

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<sup>26</sup> Plaintiffs in predatory pricing cases must demonstrate what is known as recoupment of losses. Plaintiffs must demonstrate that the respective company has reduced prices below cost and has intentions and a viable strategy to raise them again in order to recoup losses in the next period.

<sup>27</sup> *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.* 475 U.S. (1986).

(or deny) whether small and medium-sized retailers have grown so reliant on Amazon Marketplace to reach customers that they cannot just exit the site.

By connecting their marketplace to its Fulfillment by Amazon logistics network, third-party retailers claim that Amazon employs a tying and bundling strategy. Selling on Amazon means competing with other retailers, including Amazon, to get merchandise in front of customers when they decide to make a purchase. The 'Buy Box', which is a button on the right side of the page that sets the default retailers that a consumer will buy from when they add an item to their cart or select 'one-click ordering', is an important feature on the Amazon page. Although the mechanism that chooses who wins the shopping box is secret, we may say that it is based on a number of parameters, including speed, price, product rating, product appropriateness, and delivery reliability. Due to the fact that Amazon operates and competes on its own platform, it has a lot of leeway to prioritise its own products over more affordable or higher-rated items from independent sellers. It sets its own items as the default in the Alexa voice-activated software so that when a customer requests e.g. batteries, he receive batteries bearing the Amazon logo. Additionally, it favours its own products on Marketplace by placing them in the 'Buy Box'<sup>28</sup> on product pages, even when there are more affordable or equally priced alternatives. Amazon also lists its own branded private label products first in search results listings, in the top left corner of the page, where customers are most likely to click. Because many customers are unlikely to scroll further in search of a better deal, prominent positioning also enables Amazon to raise pricing. For product placement, Amazon normally charges businesses for this, although it does not charge itself. In order to promote its own products and achieve long-term market domination,<sup>29</sup> it is sacrificing advertising revenue. Thus, it is foregoing advertising money in order to promote its own products in the long run.

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<sup>28</sup> In December 2022, the European Commission declared that it approves the adjustments that Amazon has proposed to stop using the non-public data of sellers selling through its platform in order to comply with EU competition rules and avoid an unfair competition penalty. Amazon has committed to treat all sellers equally when making offers to customers and displaying a second offer, if there is a significant price or delivery advantage. To optimise the consumer experience, both offers will display the same descriptive information and provide the same buying experience. The time will show if the changes are successful in practice.

<sup>29</sup> P. Miskolczi-Bodnár, *Visszaélés gazdasági erőfölénnyel* [Abuse of Economic Dominance], [in:] A. Tóth, M. Juhász, J.D. Ruzshtiné (eds.), *Kommentár a tisztességtelen piaci magatartás és versenykorlátozás tilalmáról szóló 1996. évi LVII. törvényhez*, Gazdasági Versenyhivatal, Budapest 2014; V. Mulaj, *Protection of Competition from Abuse with Dominant Positions and Anticompetitive Agreements in the Kosovo Market*, "Studia Iuridica Lublinensia" 2022, 31.

Most Favored Nation (MFN), is another name for Amazon's pricing strategy.<sup>30</sup> The MFN platform places restrictions on the retailers and mandates them to refrain from providing its goods or services at lower costs elsewhere. Private litigation claimed that Amazon used MFN provisions to prevent competition amongst e-commerce platforms (Frame-Wilson v. Amazon).<sup>31</sup> Thus, the Amazon MFN and 'fair pricing' provisions may have a coordinated effect on other platforms as well. This can lead to the fact, that other platforms can look at Amazon's fees and charge the same fees and prices, which in turn may further limit competition between platforms.

## Concluding Remarks and Consequences

In summary, it was possible to establish in the course of this paper that digital business models entail challenges under competition law. This is because there is considerable potential for abuse, especially due to the ever-increasing vertical integration of marketplace operators such as Amazon. Amazon no longer merely follows its core business model as an online retailer and marketplace operator. The company has successfully entered many new markets through innovations in its core retail business model and expansions into new business areas. It was further noted that the company's focus is on long-term business growth rather than short-term profits. A well-coordinated business model can improve the competitive position of a company not only through individual measures, but it also represents a competitive advantage in itself. Furthermore, the legal framework on which business models are based was presented as part of the conceptual foundations. It was determined that the company's core business model, which consists of proprietary trading and the operation of the marketplace, could already contain content relevant under competition law. This is because the dual role of Amazon. It means that the company is in a direct competitive relationship with the retailers offering products on the marketplace. This position offers the company considerable potential for abuse.

According to the overview of Amazon's practices given above, the internet giant is not entirely adhering by antitrust fair play. Online market definition is difficult because of network effects and ongoing innovation. Online markets are dynamic, and technology companies work in a variety of complementary industries.

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<sup>30</sup> R. Funta, *Admissibility of the Most Favoured Clauses (MFNs) on Booking Platforms in Competition Law*, "Krytyka Prawa" 2016, 4.

<sup>31</sup> Amazon.com Inc., No. 2:2020cv00424 – Document 48, Frame-Wilson et al. (W.D. Wash. 2022).

It is crucial to consider the global competition, which includes all online retailers who sell goods in a particular region. Potential competition is the main element eroding Amazon's hegemony. Many international platforms are making investments in the European and other markets, and many traditional brick-and-mortar retailers are generating revenue online. Other major technology companies are vying for a piece of Amazon's pie. Facebook has already made investments in online retail, and Google dominates the market for comparison shopping research. The two IT behemoths are fighting with Amazon for the e-commerce market. They provide an alternate paradigm in which sales are generated through human conversation or internet research.

Thus, the conventional theory is insufficient to condemn Amazon. The essential facilities theory does not punish refusal to utilise an online platform on the same conditions as the platform owner; rather, it merely punishes refusal of access to a facility. A closer examination of the market reveals that Amazon's platform is not required for a competitor to enter and profit from e-commerce. There are already numerous platforms in operation. The interpretation that applies existing doctrine to online markets ignores the mobility on the market, the possibility for fierce rivalry, and the necessity of encouraging rather than discouraging innovation. In the long run, it would be dangerous to try and penalise Amazon's actions using the interpretation of the theory of predatory pricing. Amazon's profits in the e-book sector and many other product lines make it impossible to demonstrate that the technology business is selling at below-average variable costs under the existing paradigm. However, it is considerably trickier to demonstrate that Amazon can recoupe its losses. In this situation, it would appear that antitrust authorities are going in the wrong way by applying the predatory assumption to technology businesses every time prices fall below average variable costs.

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