



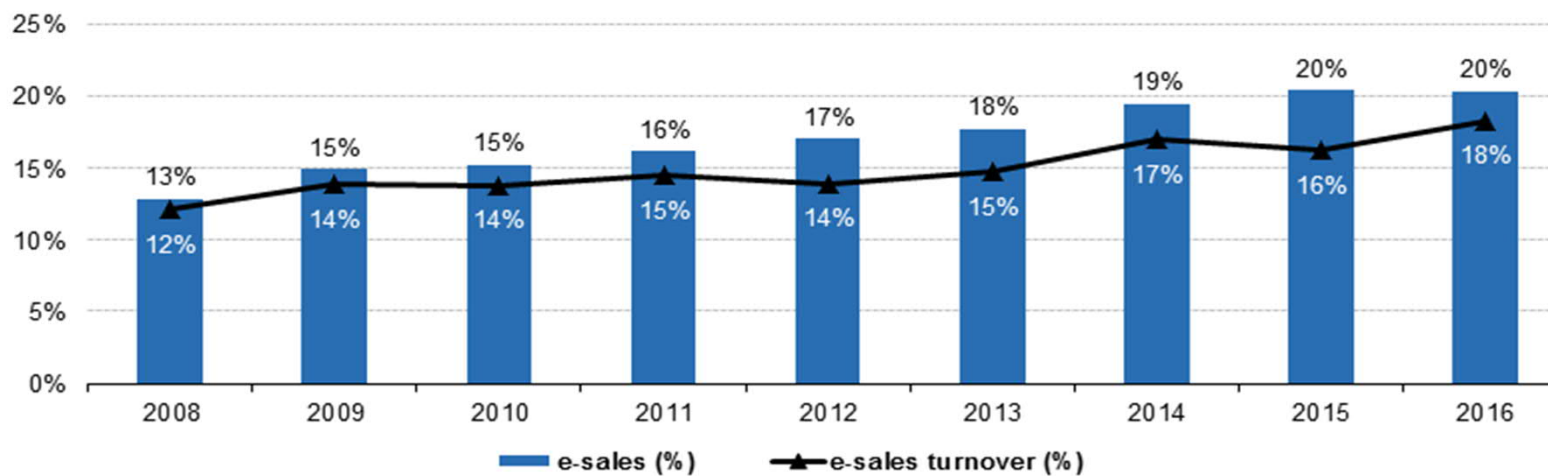
E-commerce

A game changer ?

Thomas Kramler
DG Competition

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

E-commerce

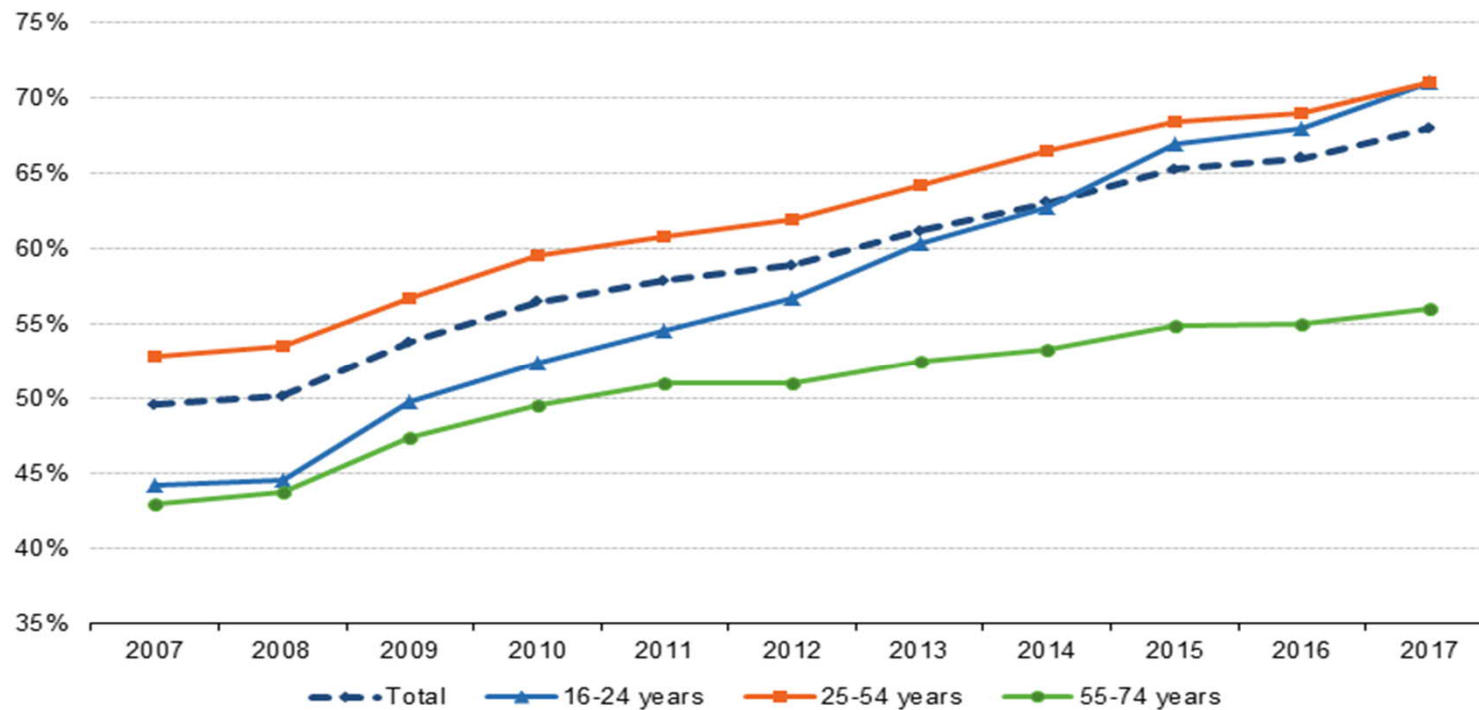


Note: 2008 data without enterprises in the NACE Rev 2 group 95.1 referring to 'Repair of computers and communication equipment'.

Source: Eurostat



E-commerce



Source: Eurostat

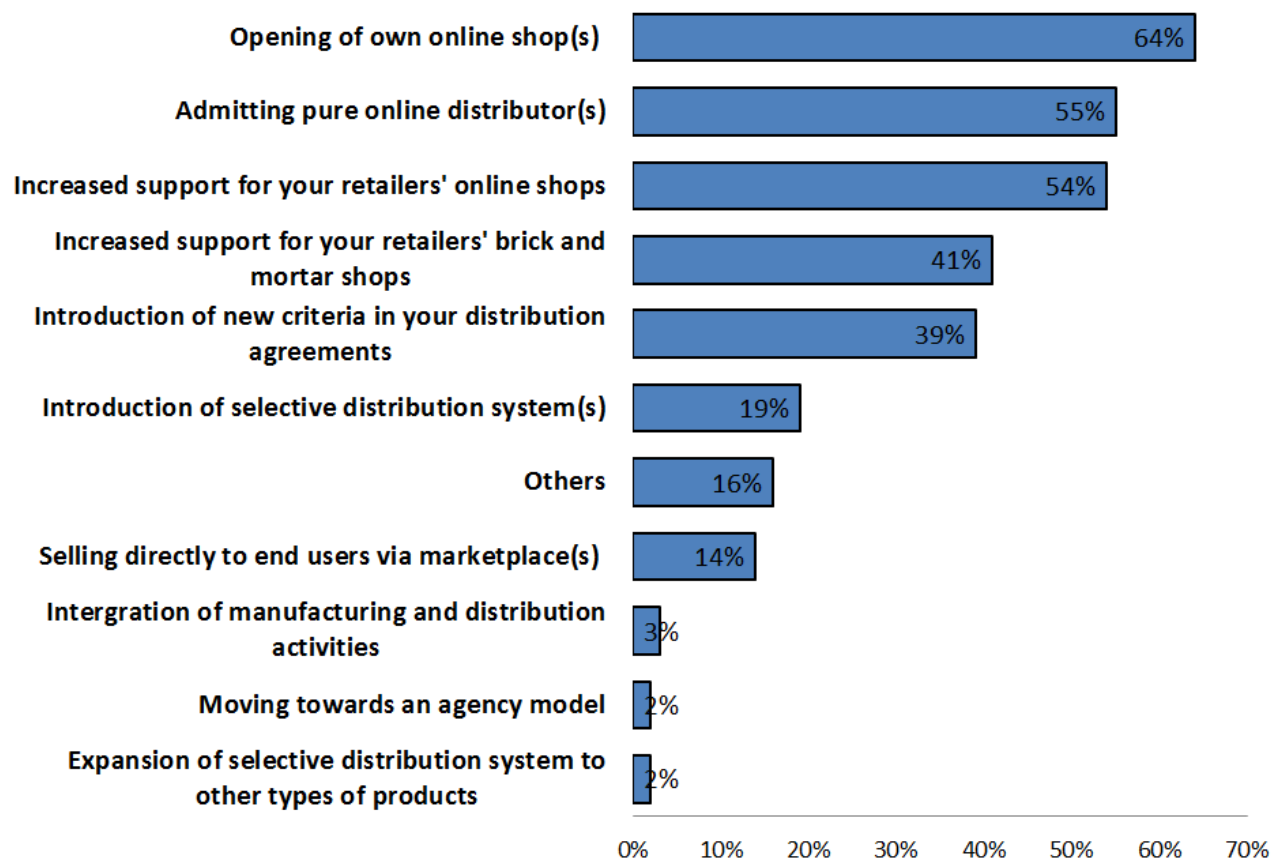


Sector Inquiry- Key Findings

- ❖ 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



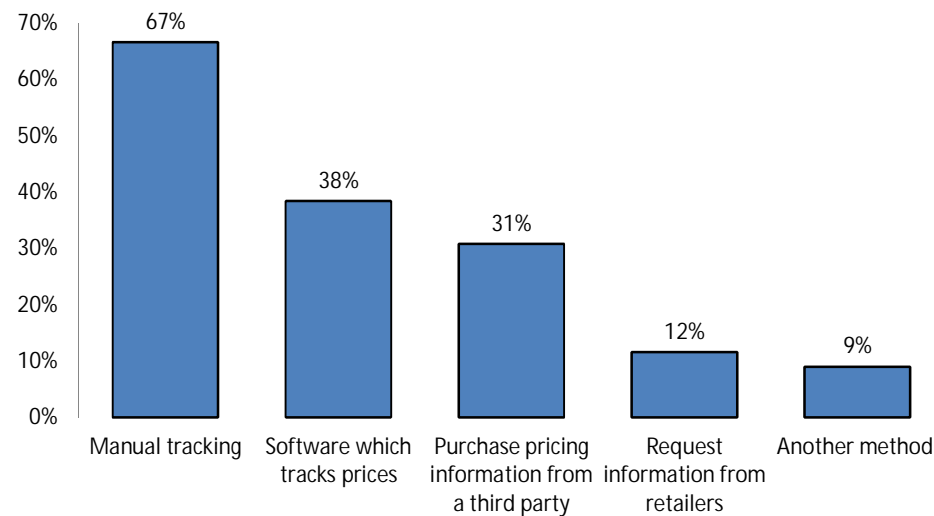
B. 23: Measures taken by manufacturers in the last 10 years to react to the growth of e-commerce

Competition



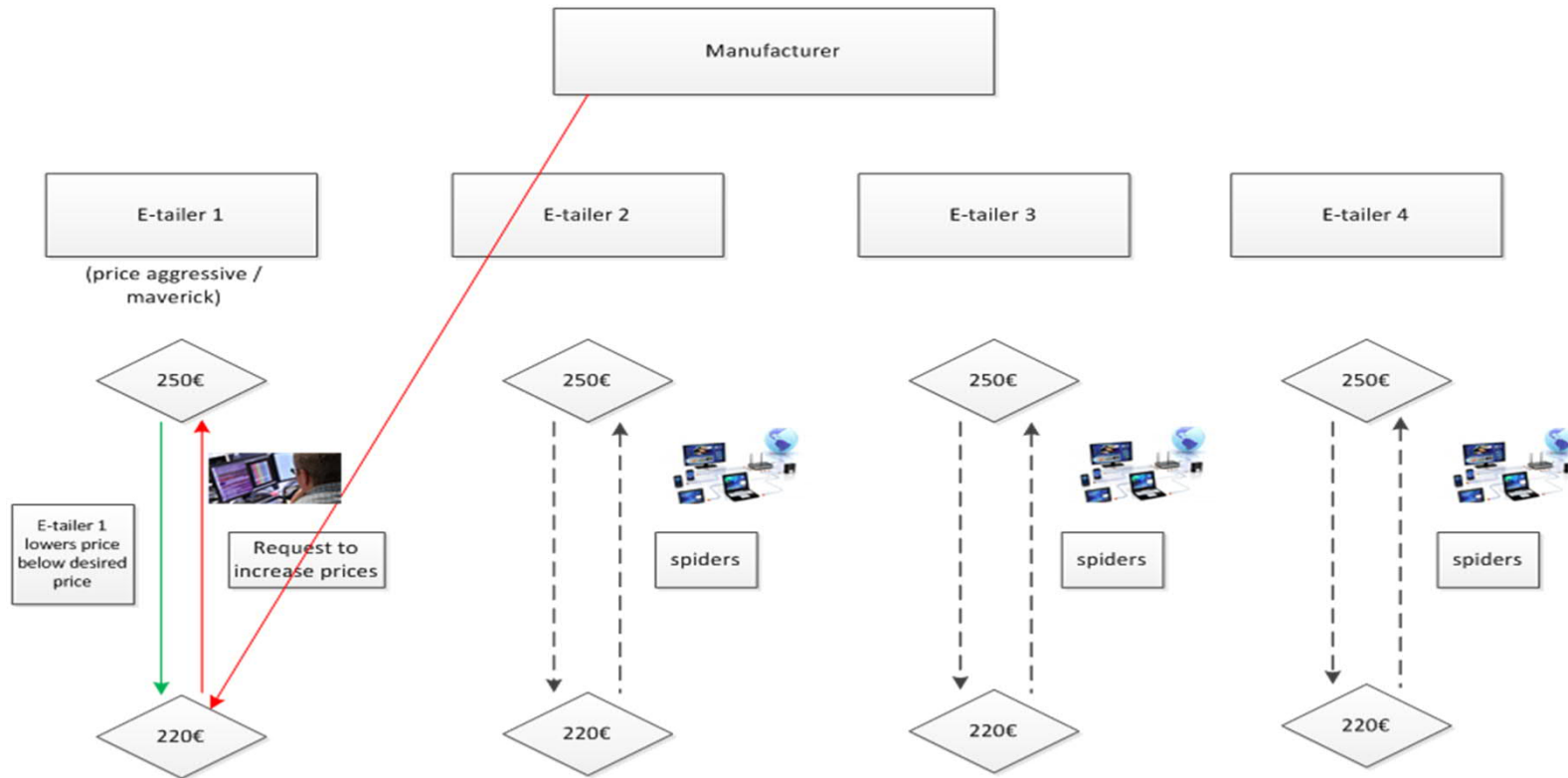
Online Prices: Increased Monitoring

- ❖ ~ 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



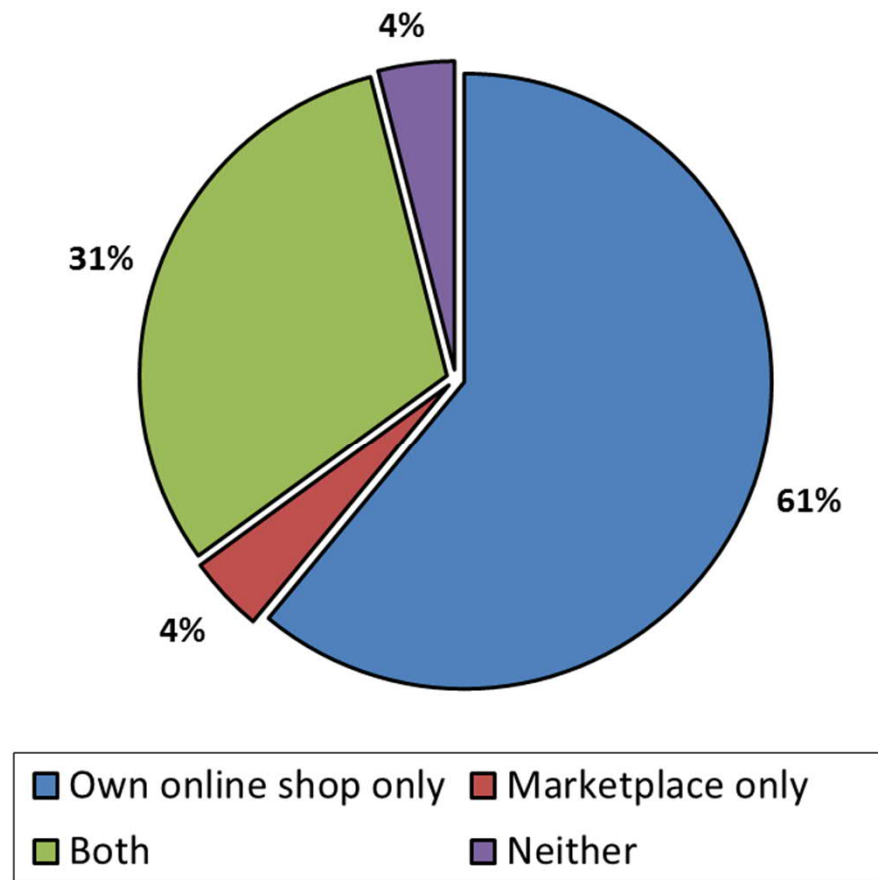


RPM



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.

Relevance of Marketplaces



B. 54: Proportion of retailers using different sales channels for selling online

Relevance of Marketplaces

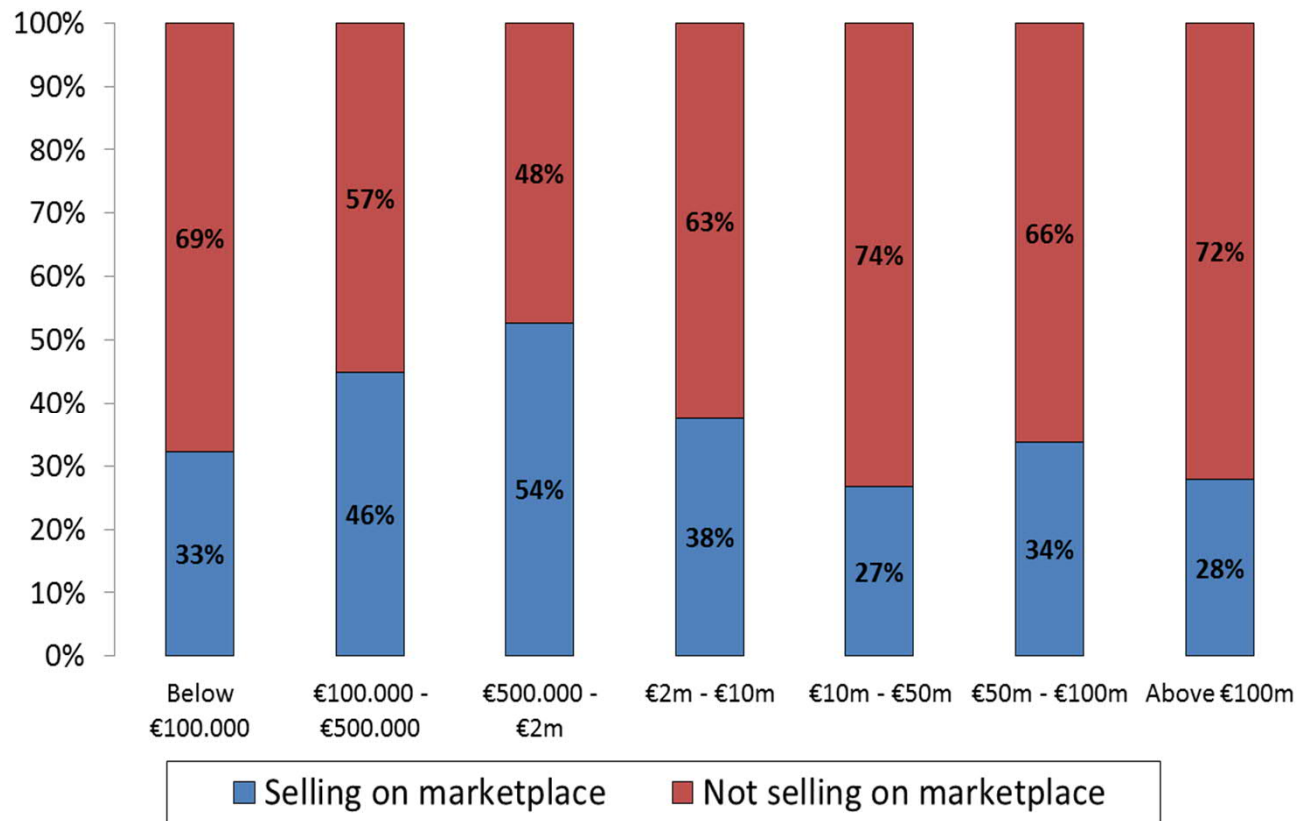


Figure B. 55: Proportion of retailers in each turnover category that sell on marketplaces



Coty Judgment

(marketplace bans under Article 101)

- ❖ The Metro criteria apply to a specific contractual clause designed to preserve the luxury image (Coty, paragraph 40).
- ❖ Marketplace ban is appropriate (Coty, paragraphs 42-51):
 - Goods will be exclusively associated with the authorised distributors
 - No contractual link with marketplace to ensure quality conditions
 - Liable to harm the luxury image
- ❖ Marketplace ban is proportionate (Coty, paragraphs 52-57):
 - No absolute internet sales prohibition
 - Pre-defined quality conditions are not as effective



Internet sales restrictions and VBER

- ❖ Not all contractual provisions that (negatively) affect internet sales are "hardcore" restrictions (Article 4 VBER: "object of market partitioning", "to whom and where to sell")
- ❖ Absolute internet sales bans (Pierre Fabre)
 - Hardcore restriction under Article 4 b) and 4 c) VBER
- ❖ Marketplace bans (Coty, paragraphs 65-68)
 - No de facto prohibition of internet sales
 - Only restricts specific kind of internet sale, advertising for own website remains possible
 - No customer group restriction (Article 4 b) VBER)
 - No passive sales restriction (Article 4 c) VBER)



Conclusions

- ❖ "Renaissance" of vertical restraints in online markets
- ❖ The Commission is stepping up enforcement with respect to the restrictions identified during the e-commerce sector inquiry