

COMMITMENTS

Commitments: Case COMP/AT.40.153 E-Book MFNs and related matters

In accordance with Article 9 of Regulation 1/2003, Amazon.com, Inc. offers the following voluntary commitments (the “Commitments”).

Nothing in these Commitments may be construed as implying that Amazon agrees with any concerns preliminarily expressed by the Commission in Case COMP/AT.40153.

Consistent with Article 9 of Regulation 1/2003, these Commitments are given on the understanding that the Commission will confirm that there are no grounds for further action and will close the proceedings opened on 11 June 2015 under Case COMP/AT.40153.

These Commitments are intended to ensure that no Business Model Parity, Agency Commission Parity, Agency Price Parity, Features Parity, Promotions Parity, Selection Parity, Wholesale Price Parity, Notification Provision is included or enforced in eBook Agreements between Amazon and eBook Suppliers for the Sale of eBooks to consumers in the EEA from the Effective Date.

These Commitments are without prejudice to Amazon's position should the Commission or any other party conduct proceedings or commence other legal action against Amazon.

I. DEFINITIONS

“**Agency Agreement**” means an agreement between an eBook Supplier and an eBook Retailer under which the eBook Supplier Sells eBooks to consumers through an eBook Retailer acting as an agent of the eBook Supplier with the eBook Retailer being paid an Agency Commission in connection with the Sale of one or more of the eBook Supplier's eBooks.

“**Agency Commission**” means the percentage of the relevant Agency Price of an eBook received by the eBook Retailer under an Agency Agreement in connection with the Sale of an eBook.

“**Agency Commission Parity**” means a term in an Agency Agreement that contractually obligates the eBook Supplier to provide to Amazon an Agency Commission that depends in any way on the Agency Commission the eBook Supplier provides to any eBook Retailer other than Amazon under an Agency Agreement.

“**Agency Price**” means the price set by an eBook Supplier or, if discounting is permitted, the discounted price charged by an eBook Retailer for the Sale of an eBook to a consumer under an Agency Agreement.

“**Agency Price Parity**” means a term in an Agency Agreement that contractually obligates the eBook Supplier to set an Agency Price on Amazon that depends in any way on the Agency Price set by the eBook Supplier (or charged by an eBook Retailer) on any eBook Retailer other than Amazon, or the Reseller Prices charged to consumers by eBook Retailers other than Amazon.

“**Amazon**” means Amazon.com, Inc. and its successors and assigns, its connected undertakings, subsidiaries, divisions and groups.

“**Business Model Parity**” means a term in an eBook Agreement that contractually obligates the eBook Supplier to offer to Amazon terms for the distribution of eBooks under a given business model as a result of the eBook Supplier's distribution of eBooks under that business model (e.g. reseller, subscription, rental,

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bundling with physical books or book clubs, by download, partial downloads (e.g. per page), streaming or any other form of digital distribution) through any eBook Retailer other than Amazon.

"Commitment Decision" means a decision adopted by the European Commission in Case COMP/AT.40153 pursuant to Article 9(1) of Regulation 1/2003.

"Discount Pool Provision" means a term in an Agency Agreement between Amazon and an eBook Supplier through which the eBook Supplier funds a pool, calculated based on the differences between the Agency Prices set by the eBook Supplier for its eBooks on Amazon and the Agency Prices or Reseller Prices for those eBooks available through other eBook Retailers, that Amazon may use at its discretion to discount Agency Prices for any eBooks supplied by that eBook Supplier on Amazon.

"eBook" means an electronically formatted book designed to be read on a computer, a handheld device, or other electronic devices capable of visually displaying eBooks. For the avoidance of doubt, this definition includes an electronically formatted book that contains additional interactive/multimedia material (including e.g., video, audio, interactive maps, PDFs, etc.) or functionality (including e.g. voting, quizzes, links, etc.) beyond the text and images found in the physical book. For purposes of these Commitments, the term "eBook" does not include (i) an audio book, even if delivered and stored digitally; (ii) a standalone specialized software application or "app" sold through an "app store" rather than through an eBook store and not designed to be executed or read through a dedicated eBook reading device; (iii) eBooks that are published through Amazon's self-publishing programs; (iv) electronic versions of comic books and graphic novels from publishers for which Amazon provides significant non-standard services (provision of white label store or responsibility for creating certain supplier applications) pursuant to an agreement in place as of the Effective Date; (v) electronically formatted books that are sold through educational and/or library channels, including educational and scholarly titles that are sold by the eBook Supplier directly to students.

"eBook Agreement" means (1) an Agency Agreement, (2) a Reseller Agreement, or (3) any other agreement between an eBook Supplier and Amazon under which the eBook Supplier authorizes Amazon to Sell eBooks, including amendments or side letters to existing agreements.

"eBook Supplier" means any person or entity that, by virtue of a contract or other relationship with an eBook's author, other rights holder or publisher, licenses, owns or controls the necessary copyright or other authority (or asserts such ownership or control) over any eBook sufficient to distribute the eBook within one or more countries in the EEA to consumers or to eBook Retailers and to permit eBook Retailers to Sell the eBook to consumers in those countries in the EEA.

"eBook Retailer" means any person or entity that lawfully Sells (or seeks to lawfully Sell) eBooks to consumers in one or more countries in the EEA, or through which an eBook Supplier, under an Agency Agreement, Sells eBooks to consumers in one or more countries in the EEA. Amazon is an eBook Retailer. An eBook Supplier is an eBook Retailer to the extent that the eBook Supplier Sells eBooks directly to consumers or Sells eBooks through an agent under an Agency Agreement.

"EEA" means those countries participating in the European Economic Area as of the date of the Effective Date of these Commitments and at any time thereafter during the term of these Commitments.

"Effective Date" means the date upon which Amazon receives formal notification of a Commitment Decision by which the Commission makes the Commitments binding on Amazon.

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"Features Parity" means a term in an eBook Agreement that contractually obligates the eBook Supplier to make available any feature, functionality, usage rule, element or content for one or more eBooks as a result of the eBook Supplier making that feature, functionality, usage rule, element or content available for that eBook through an eBook Retailer other than Amazon.

"New eBook Agreement" means any eBook Agreement which enters into force on or after the Effective Date, and any extension or renewal of an eBook Agreement beyond its original expiration date.

"Notification Provision" means a term in an eBook Agreement that contractually obligates the eBook Supplier to notify Amazon if: (1) the Agency Commission the eBook Supplier provides to Amazon is less than the Agency Commission the eBook Supplier provides to an eBook Retailer other than Amazon; (2) the Agency Price set by the eBook Supplier on Amazon is higher than the Agency Price set by the eBook Supplier (or charged by an eBook Retailer) on an eBook Retailer other than Amazon, or the Reseller Price charged to consumers by eBook Retailers other than Amazon; (3) the eBook Supplier is distributing eBooks under a given business model with an eBook Retailer other than Amazon; (4) the eBook Supplier makes available a particular feature, functionality, usage rule, element or content for a particular eBook for an eBook Retailer that the eBook Supplier does not also make available for Amazon; (5) the eBook Supplier offers any promotional Agency Price or promotional content to an eBook Retailer that the eBook Supplier does not also offer to Amazon; (6) the eBook Supplier makes a given eBook available for Sale through an eBook Retailer and either does not also make such eBook available for Sale through Amazon or makes it available through Amazon at a different date or time; or (7) the Wholesale Price the eBook Supplier provides to Amazon is greater than the Agency Price the eBook Supplier provides to (or is charged by) an eBook Retailer other than Amazon, or the Wholesale Price the eBook Supplier provides to an eBook Retailer other than Amazon.

"Promotion Parity" means a term in an eBook Agreement that contractually obligates the eBook Supplier to offer to Amazon any promotional Agency Price, promotional Wholesale Price, or promotional content as a result of the eBook Supplier offering promotional Agency Prices, promotional Wholesale Prices, or promotional content through an eBook Retailer other than Amazon.

"Reseller Agreement" means an agreement between an eBook Supplier and an eBook Retailer under which the eBook Supplier grants to the eBook Retailer, as reseller, the right to Sell eBooks to consumers in exchange for the eBook Retailer's payment of a Wholesale Price to the eBook Supplier in connection with the Sale of one or more of the eBook Supplier's eBooks.

"Reseller Price" means the price charged by an eBook Retailer for the Sale of an eBook to a consumer under a Reseller Agreement.

"Sale" means delivery of access to a consumer to read one or more eBooks (purchased alone or in combination with other goods or services) in exchange for payment or for free; **"Sell"** and **"Sold"** means to make or have made a Sale of an eBook to a consumer. For the avoidance of doubt "Sale" encompasses subscription, rental, bundling with physical books, or book clubs, by download, partial downloads (e.g. streaming) or any other form of digital distribution of an eBook by an eBook Supplier to a consumer.

"Selection Parity" means a term in an eBook Agreement that contractually obligates the eBook Supplier to make available for Sale through Amazon a given eBook within a particular territory and/or at a particular

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date and time as a result of the eBook Supplier's distribution of that eBook through any eBook Retailer other than Amazon.

"Wholesale Price" means the net amount that an eBook Retailer pays to an eBook Supplier for an eBook that the eBook Retailer Sells to a consumer under a Reseller Agreement.

"Wholesale Price Parity" means a term in a Reseller Agreement that contractually obligates the eBook Supplier to provide to Amazon a Wholesale Price that depends in any way on the Wholesale Price or Agency Price the eBook Supplier provides to any eBook Retailer other than Amazon, or the Reseller Price charged to consumers by any eBook Retailer other than Amazon under a Reseller Agreement.

II. CONDUCT

1. As of the Effective Date, Amazon will cease to enforce or otherwise rely upon any Business Model Parity, Agency Commission Parity, Agency Price Parity, Features Parity, Promotions Parity, Selection Parity, Wholesale Price Parity or Notification Provision contained in an eBook Agreement between Amazon and eBook Suppliers for the Sale of eBooks to consumers in the EEA. At the latest within 7 days after the Effective Date, Amazon will notify each of these eBook Suppliers that it will no longer enforce such provisions, and Amazon will notify each eBook Supplier whose eBook Agreement for the Sale of eBooks to consumers in the EEA contains a Discount Pool Provision currently in effect that the eBook Supplier may terminate the eBook Agreement for any reason upon 120 days' advance written notice.
2. As of the Effective Date, Amazon will not include in any New eBook Agreement with any eBook Supplier for the Sale of eBooks to consumers in the EEA any Agency Commission Parity, Agency Price Parity, Business Model Parity, Features Parity, Promotions Parity, Selection Parity, Wholesale Price Parity, Notification Provision, or Discount Pool Provision.

III. SCOPE AND DURATION

3. These Commitments comprise the entire extent of Amazon's commitments to the Commission with respect to Case COMP/AT.40153. Without prejudice to the application of EU competition law, in particular Article 102 TFEU thereof, and except as specifically set forth herein in relation to the provisions mentioned in Section II, these Commitments do not affect Amazon's rights and obligations under any eBook Agreement or Amazon's vendor services or merchandising policies and do not obligate Amazon to contract for or to Sell any eBook.
4. The term of these Commitments is five years from the Effective Date.

IV. REVIEW

5. Without prejudice to the general provision of Article 9(2) of Regulation 1/2003, Amazon may request that the Commission reopen proceedings with a view to modifying these Commitments where there has been a material change in any of the facts or circumstances on which the Commitment Decision is based.

V. NON-CIRCUMVENTION

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6. Amazon shall not circumvent or attempt to circumvent these Commitments either directly or indirectly by any act or omission.

VI. MONITORING TRUSTEE

7. Amazon shall appoint a monitoring trustee (the "**Monitoring Trustee**") to monitor Amazon's compliance with these Commitments, for a period of five years from the Effective Date. The Monitoring Trustee shall be independent of Amazon (and any other undertaking affiliated with Amazon). The Monitoring Trustee will be remunerated by Amazon in a way that does not influence or impede the independent and effective fulfillment of its mandate. The Monitoring Trustee should possess the qualifications, experience and competence necessary to carry out its mandate. The Monitoring Trustee shall neither have nor become exposed to a conflict of interest.

Proposal by Amazon

8. No later than one month after the Effective Date, Amazon shall submit a list of at least two (2) persons whom Amazon proposes to appoint as the Monitoring Trustee to the Commission for approval. The proposal shall contain sufficient information for the Commission to verify that proposed Monitoring Trustees fulfill the requirements set out in Clause 7 above and shall include:
 - a. the full terms of the proposed mandate, which shall include all provisions necessary to enable the Monitoring Trustee to fulfill its duties under these Commitments
 - b. the outline of a plan which describes how the Monitoring Trustee intends to carry out its assigned tasks.

Approval or rejection by the Commission

9. The Commission shall have the discretion to approve or reject the proposed Monitoring Trustees and to approve the proposed mandate subject to any modifications it deems necessary for the Monitoring Trustee to fulfill its obligations. The Commission shall give reasons in case of rejection of a proposed Monitoring Trustee and reasons supporting the need for any modifications. If only one person is approved, Amazon shall appoint or cause to be appointed, the individual concerned as Monitoring Trustee, in accordance with the mandate approved by the Commission. If more than one name is approved, Amazon shall be free to choose the Monitoring Trustee to be appointed from among the persons approved. The Monitoring Trustee shall be appointed within two (2) week(s) of the Commission's approval, in accordance with the mandate approved by the Commission.

New proposal(s) by Amazon

10. If all the proposed Monitoring Trustees are rejected, Amazon shall submit the names of at least two (2) more persons within one (1) month of being informed of the rejection(s), in accordance with the requirements and the procedure set out in Clauses 8 and 9 above.

Monitoring Trustee nominated by the Commission

11. If all further proposed Monitoring Trustees are rejected by the Commission, the Commission shall nominate a Monitoring Trustee, whom Amazon shall appoint, or cause to be appointed, in accordance with a trustee mandate approved by the Commission.

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Replacement, discharge and reappointment of the Monitoring Trustee

12. If the Monitoring Trustee ceases to perform its functions under these Commitments or for any other good cause, including the exposure of the Monitoring Trustee to a conflict of interest:
 - a. the Commission may, after hearing the Monitoring Trustee, require Amazon to replace the Monitoring Trustee; or
 - b. Amazon, with the prior approval of the Commission, may replace the Monitoring Trustee.
13. If the Monitoring Trustee is removed, the Monitoring Trustee may be required to continue in its function until a new Monitoring Trustee is in place to whom the former Monitoring Trustee has effected a full hand-over of all relevant information. The new Monitoring Trustee shall be appointed in accordance with the procedure referred to in Clauses 8 to 10 above.
14. The Monitoring Trustee shall cease to act as Monitoring Trustee only upon the expiration of these Commitments or after the Commission has discharged it from its duties.

Duties and obligations of the Monitoring Trustee

15. The Monitoring Trustee shall:
 - a. provide to the Commission, sending Amazon a non-confidential copy at the same time, a written report on Amazon's compliance with these Commitments by the anniversary of the Effective Date each year after the Effective Date so that the Commission can assess whether Amazon is in compliance with these Commitments; and
 - b. promptly report in writing to the Commission, sending Amazon a non-confidential copy at the same time, if it concludes on reasonable grounds that Amazon is failing to comply with the Commitments; and
 - c. reply to clarifying questions from the Commission regarding any report provided to the Commission pursuant to Clause 15(a) or 15(b).
16. The Monitoring Trustee shall not:
 - a. participate in any contract negotiations between Amazon and any eBook Supplier;
 - b. have access to Amazon's books, records, documents, management or other personnel, facilities, sites and technical information or internal documents except the documents provided by Amazon in accordance with Clause 17;
 - c. have any decision-making powers or powers of investigation of the kind vested in the Commission pursuant to Regulation 1/2003;
 - d. undertake any work not covered by its mandate; and
 - e. disclose any confidential information to anyone other than the Commission. Any confidential information obtained by the Monitoring Trustee in performance of the duties and obligations specified in these Commitments shall be kept in the strictest confidence and shall be used solely for the purpose of performing the duties and obligations specified in the Commitments. The

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Monitoring Trustee shall ensure that adequate safeguards are established and adhered to in taking delivery of, tracking the dissemination of, monitoring the use of, protecting against the disclosure of and determining the safe disposal of confidential information. These safeguards must be effective to protect the confidential information, but shall not be such as to prevent the Monitoring Trustee from effectively fulfilling its duties and obligations specified in these Commitments. The Monitoring Trustee shall not make any public statements relating to the performance of its functions in relation with these Commitments. The Monitoring Trustee shall sign confidentiality undertakings warranting its knowledge of and compliance with its duties and obligations specified in these Commitments. The Monitoring Trustee shall abide by the obligations of non-disclosure imposed in Article 28(2) of Regulation 1/2003 with regard to any information acquired in its performance or from the Commission, even after the term of its mandate.

Duties and obligations of Amazon

17. Amazon shall provide the Monitoring Trustee with:

- a. one (1) complete copy of the notice given pursuant to Clause 1, within 10 working days of the later of (i) the date of each such notice, and (ii) appointment of the Monitoring Trustee;
- b. one (1) complete copy of the eBook Agreements Amazon enters into after the Effective Date, within 20 working days of the later of (i) the date such eBook Agreement is executed, and (ii) appointment of the Monitoring Trustee;

and shall confirm by no later than the anniversary of the Effective Date each year that Amazon has complied with these Commitments.

18. The Monitoring Trustee may ask Amazon for explanations relating to matters covered by Clause 17. Amazon may comply with any such informational request made by the Monitoring Trustee at its sole discretion. The Commission reserves the right to exercise its powers of investigation set out in Section V of Regulation 1/2003 should Amazon decline such a request made by the Monitoring Trustee.

DATE: January 13, 2017



Aaron McGrath

Vice President & Associate General Counsel