

With Amazon Probe, EU Takes Cue From Past Antitrust Actions

David McLaughlin Natalia Drozdiak

(Bloomberg) -- The European Union's antitrust cop has taken an aggressive lead in regulating U.S. tech giants in recent years. But with its latest [query](#) into Amazon.com Inc., the EU is echoing the views of a 29-year-old legal scholar across the Atlantic.

EU Competition Commissioner Margrethe Vestager said Wednesday she had begun a preliminary probe into whether data the e-commerce giant collects from retailers that sell on its site gives Amazon an edge in marketing its own products to customers and squeezing out more sales as a result.

Vestager said the EU was looking into the issue because it came up in a broad e-commerce sector investigation concluded last year, but also because "this is also what a lot of people are talking about by now, so we do the follow-up."

And to a large degree, [Lina Khan](#), an academic fellow at Columbia University Law School, helped shape that debate.

As a student at Yale Law School, Khan wrote a [paper](#) for the Yale Law Journal called "Amazon's Antitrust Paradox," which argues that the current antitrust enforcement framework is ill-equipped to tackle Amazon's dominance and the potential harm it poses to competition. Her work was cited by the head of the Justice

Department's antitrust division, Makan Delrahim, in a [speech](#) in April as an example of fresh thinking on digital platforms.

Khan has highlighted what the EU cited Wednesday as a preliminary concern: that Amazon can exploit information it collects about third-party sellers to better compete against them. At a press conference in Brussels, Vestager noted Amazon's dual role as a platform for retailers to sell their goods as well as a merchant in its own right. That position makes Amazon privy to data about the customers of retailers it competes with.

Amazon declined to comment on Vestager's remarks.

"The question here is about the data" Amazon collects from smaller merchants on its site, Vestager said. "Do you then also use this data to do your own calculations, as to what is the new big thing, what is it that people want, what kind of offers do they like to receive, what makes them buy things? That has made us start a preliminary" investigation, she said.

Khan's ideas on Amazon fit into a broader movement -- mockingly dubbed "[hipster antitrust](#)" by critics -- that is led by a small group of policy wonks who are encouraging tougher competition enforcement by the U.S. They argue the current playbook for policing mergers and anti-competitive conduct has fallen short and want to return antitrust policy to its early 20th-century roots -- when regulators went after monopolies in railroads and oil -- to take on new corporate giants, particularly in the tech sector.

It's a message that is gaining attention in Washington. Its proponents, who call themselves "New Brandeis" after the Supreme Court justice, have sparked debate at academic and professional conferences. This month, the Federal Trade Commission, which shares antitrust enforcement jurisdiction with the Justice Department, [opened](#) a series of hearings to consider whether the existing framework needs a revamp. One of the [panels](#) will consider looking at conduct by tech platforms that may be harming competition.

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Similar to Vestager's concerns, Khan says Amazon's current business structure presents a conflict of interest that stems from how it competes with the same companies that depend on its platform to reach consumers. That dynamic allows Amazon to solidify dominance and thwart competition, she said.

"Amazon uses its marketplace as a petri dish to identify which independent sellers' goods are doing well and then rolls out direct replicas," Khan said in an interview Wednesday. That lets Amazon appropriate rewards from the risks that independent sellers take on, she added.

In a [forthcoming paper](#) in the Columbia Law Review, Khan argues for separating Amazon's business of selling its own products and its business as a platform used by other retailers.

Such a structural fix isn't radical, she insists, and has been used in other industries.

"We should recover this principle for dominant tech platforms that serve as critical intermediaries," she said.

Khan is part of an influential group of new voices that are pushing for a rethinking on antitrust and the dominance of technology platforms, said [Maurice Stucke](#), a law professor at the University of Tennessee, who has written about big data and competition policy. Their movement is resonating due to the dominance of technology firms and evidence that markets are more concentrated and less competitive, said Stucke, who welcomes the EU inquiry into Amazon.

"You see this evolution in thinking around and how data can provide a competitive advantage," said Stucke.

While Vestager and the EU in general have long taken a more aggressive approach to regulating data and tech companies more broadly, the new chairman of the FTC, Joe Simons, has said one of his key goals is to examine the online economy and whether tech giants including Google, Facebook Inc. and Amazon are undermining competition.

The debate surrounding antitrust scrutiny for Amazon has also picked up steam because the company has come under fire in recent months from U.S. President Donald Trump, who has accused the company of crushing small businesses, violating anti-monopoly laws, dodging taxes and taking advantage of the

U.S. Postal Service. On the opposite end of the political spectrum, Vermont Senator Bernie Sanders has taken aim at Amazon for underpaying its warehouse workers and treating them poorly.

Amazon has said Sanders has made “inaccurate and misleading [accusations](#)” about wages and benefits and has said the postal service makes money from its packages because the company does most of the processing itself.

Amazon has already been in the powerful EU antitrust regulator’s crosshairs but has so far come out relatively unscathed.

The EU ordered the Seattle-based company in 2017 to repay [Luxembourg](#) 250 million euros (\$294 million at the time) in allegedly unpaid taxes, a pittance compared to the 13 billion euros the regulator [ordered](#) Apple Inc. to pay back. Amazon also escaped fines in a 2016 EU settlement over e-book contracts with publishers. By contrast, search powerhouse Google, has been mired in antitrust investigations in Europe for almost 10 years and has been hit with [record fines](#) of 4.3 billion euros.