



# The Digital Single Market and Competition Law

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



# Digital Single Market Strategy

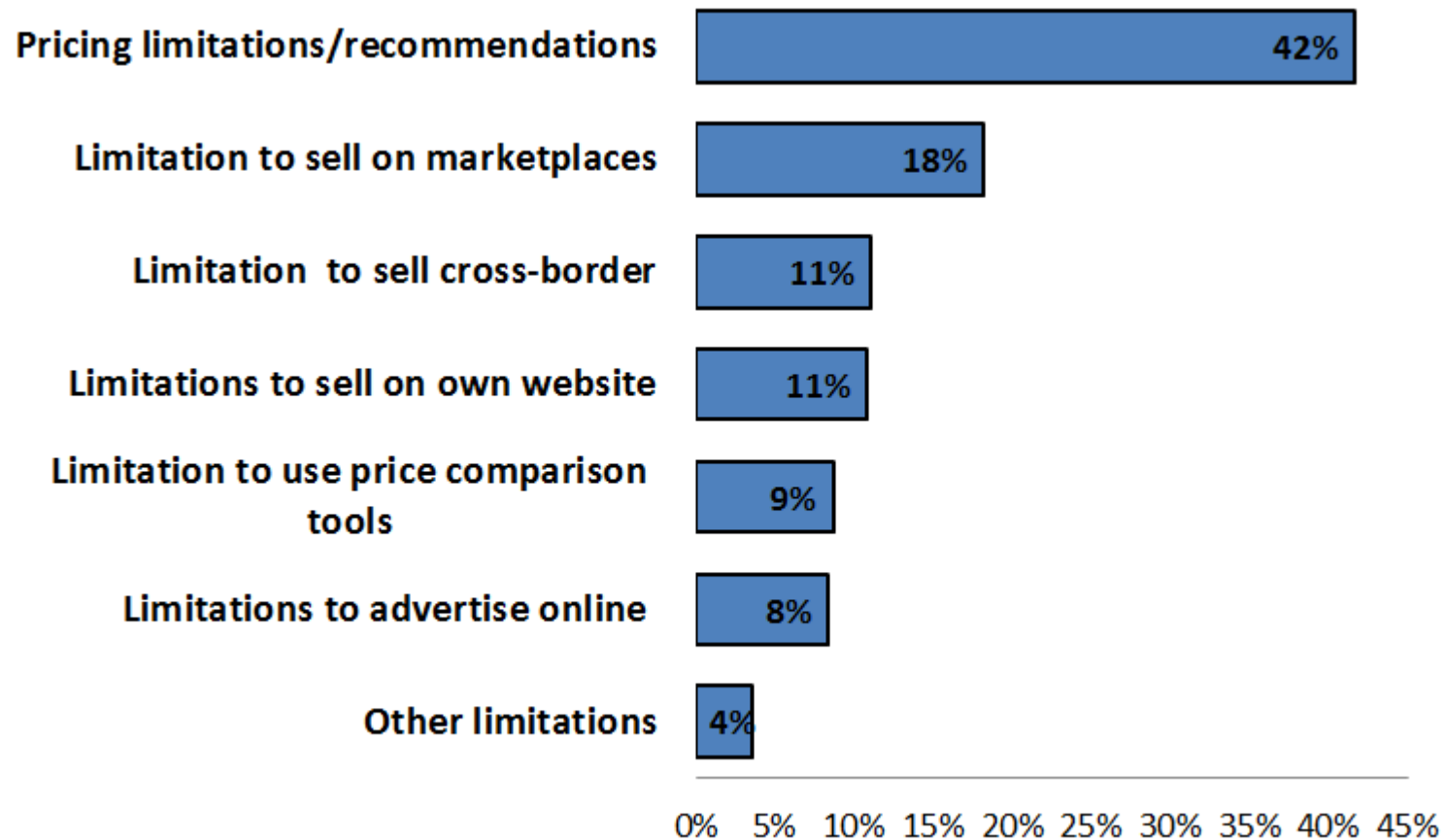
- ❖ Political priority of the Commission, adopted on 6 May 2015
- ❖ Aim: Better access for consumers and businesses to online goods and services across Europe - Remove unjustified barriers
- ❖ Actions:
  - Legislative actions → public or regulatory barriers
  - **Complemented by Sector Inquiry → private or company erected barriers**



# 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
  - Territorial restrictions
  - Online sales restrictions

# Contractual Restrictions



**B. 35: Proportion of retailers having contractual restrictions, per type of restriction**

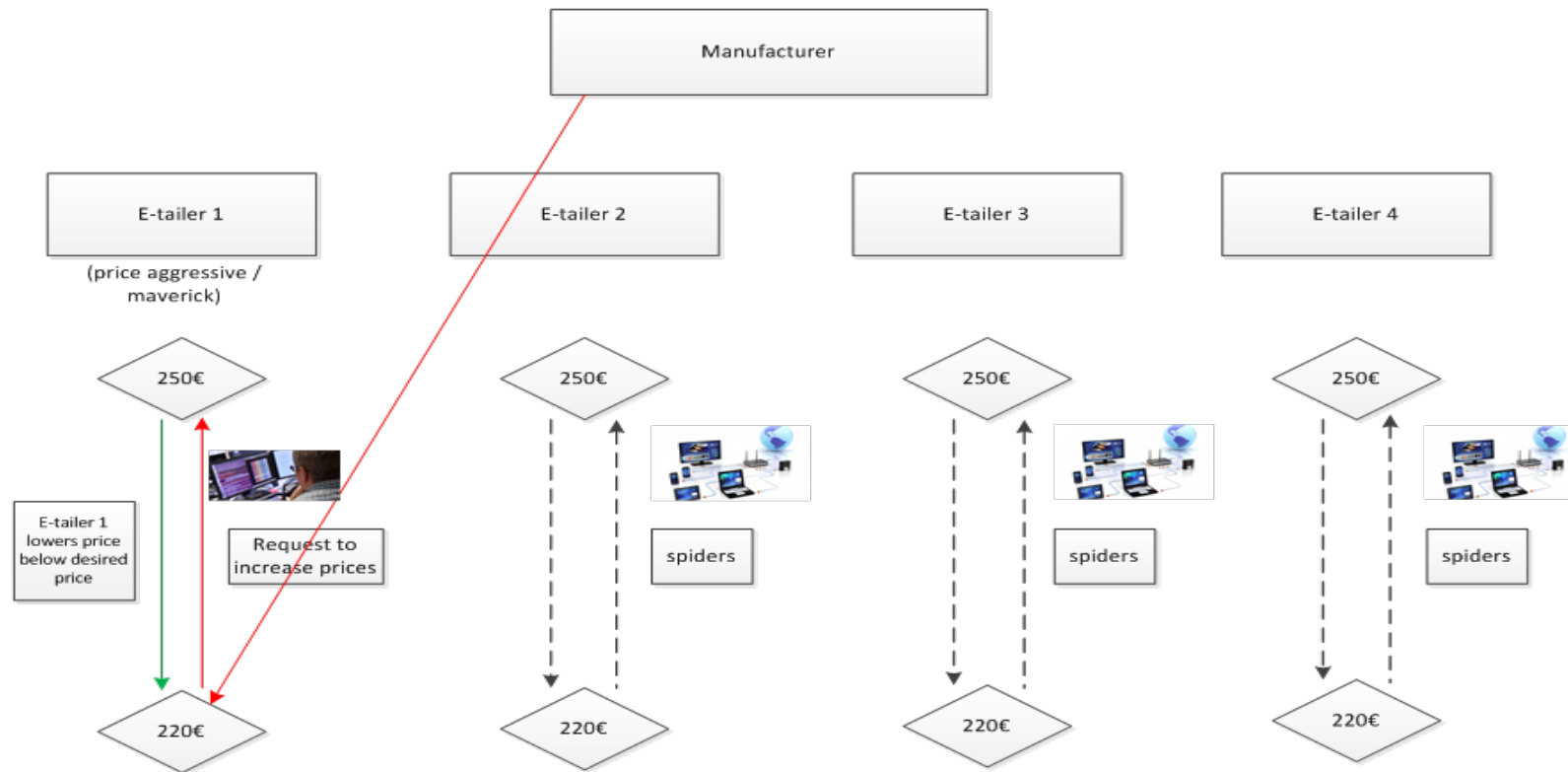


# Enforcement

- ❖ Increased **focus on vertical restrictions**
  
- ❖ **Resale price maintenance** cases (RPM)
  - No enforcement action of Commission for 15 years
  - Separate cases opened in February 2017 against 4 manufacturers of consumer electronics (Philips, Pioneer, Asus, Denon & Marantz)
  - RPM appears to be widespread
  - Partially coupled with territorial restrictions
  - E-commerce increases incentives to engage in RPM (pressure on prices; monitoring possibilities)
  - Use of pricing software



# 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.



# Enforcement

## ❖ **Territorial restrictions**

- Geoblocking practices of PC video games (February 2017)
- Holiday pricing - Discrimination based on nationality/residence in hotel agreements (February 2017)
- Licensing and distribution practices of Nike, Sanrio and Universal Studios (June 2017)
- Selective distribution practices of Guess (June 2017)



# Geo-blocking Regulation

- ❖ Traders shall not block or reroute customers.
- ❖ Traders shall not apply different general conditions of access to their goods or services, for reasons related to the nationality, place of residence or place of establishment for:
  - Sale of goods without physical delivery
  - Sale of electronically supplied services
  - Sale of services provided in a specific physical location
- ❖ Provisions of agreements imposing on traders obligations in respect of passive sales to act in violation of the prohibitions in the Regulation shall be automatically void.





# Conclusions

- ❖ No need to review the current competition law framework before 2022
- ❖ The Commission is stepping up enforcement in e-commerce with respect to the restrictions identified during the sector inquiry
- ❖ The geo-blocking regulation will impact distribution contracts