

The CNMC fines Apple and Amazon €194 million for restricting competition on Amazon's website in Spain

- Both companies agreed to include a series of clauses in the contracts regulating Amazon's conditions as an Apple reseller that affected the sale of Apple products and other brands on Amazon's website in Spain (www.amazon.es).
- On the one hand, they unreasonably restricted the number of resellers of Apple products on Amazon's website in Spain.
- On the other hand, they limited advertising space for products competing with Apple on Amazon's website in Spain.
- Finally, they limited the possibility for Amazon to target marketing campaigns to customers who had bought Apple products on its website in Spain with competing products from other brands.

Madrid, 18 July 2023.- The CNMC has fined several companies of the Amazon and Apple groups a total of €194,150,000 for agreeing upon and implementing certain restrictions of competition in Amazon's online marketplace (www.amazon.es), which affect third-party resellers of Apple products and products competing with Apple. ([S/0013/21/AMAZON/APPLE BRANDGATING](#))

Contracts and restrictions

On 31 October 2018, Amazon and Apple signed two contracts updating Amazon's terms and conditions as an authorised Apple reseller. They included several anti-competitive clauses affecting the online retailing of electronic products in Spain.

Brand gating clauses

Both companies agreed that **only a number of resellers appointed by Apple could sell Apple-branded products on Amazon's website in Spain.**

As a result of the implementation of these clauses:

- **More than 90% of the resellers that had been using Amazon's website to sell Apple products were excluded** from the main online marketplace in Spain;

- **Sellers who were not authorised by Apple to sell its products on Amazon's website lost an important sales channel**, insofar as this website is the main online shopping channel for electronic products in Spain;
- **Amazon concentrated most sales of Apple-branded products in its online marketplace**, drastically reducing competition among resellers;
- Sales of Apple products via Amazon's website in Spain by sellers based in other EU countries were reduced, **thereby limiting trade between Member States**; and
- There was an **increase in the relative prices paid by consumers for the purchase of Apple products on the online marketplace** in Spain.

This clause particularly affected Apple's non-authorised resellers, which are generally small operators that do not have a direct business relationship with Apple but sell its products with its consent. They were the most active resellers on Amazon's website in Spain and, therefore, the ones that exerted the most competitive pressure on prices on that website.

Advertising clauses and marketing limitation clauses

By means of the **advertising clauses**, Amazon and Apple limited the possibility for competing brands to purchase advertising space on Amazon's website in Spain to advertise their products in certain searches for Apple products, as well as during the purchase process of such products (*see example at the end of the press release*).

The **marketing limitation clauses** state that Amazon may not, without Apple's consent, conduct marketing and advertising campaigns that specifically target customers who have purchased Apple products on Amazon's website in Spain and encourage those consumers to switch from an Apple product to a competitor's product.

The above clauses reduce the competitive pressure on Apple from competitors' advertisements on Amazon's website in Spain, and from Amazon's marketing campaigns, which the rest of the brands do have to bear. Furthermore, these limitations are directly detrimental to consumers as they (i) limit their ability to discover new brands and/or alternative products to Apple's; (ii) increase their search costs and (iii) reduce their ability to switch.

Infringement attributed to Apple and Amazon and fines imposed

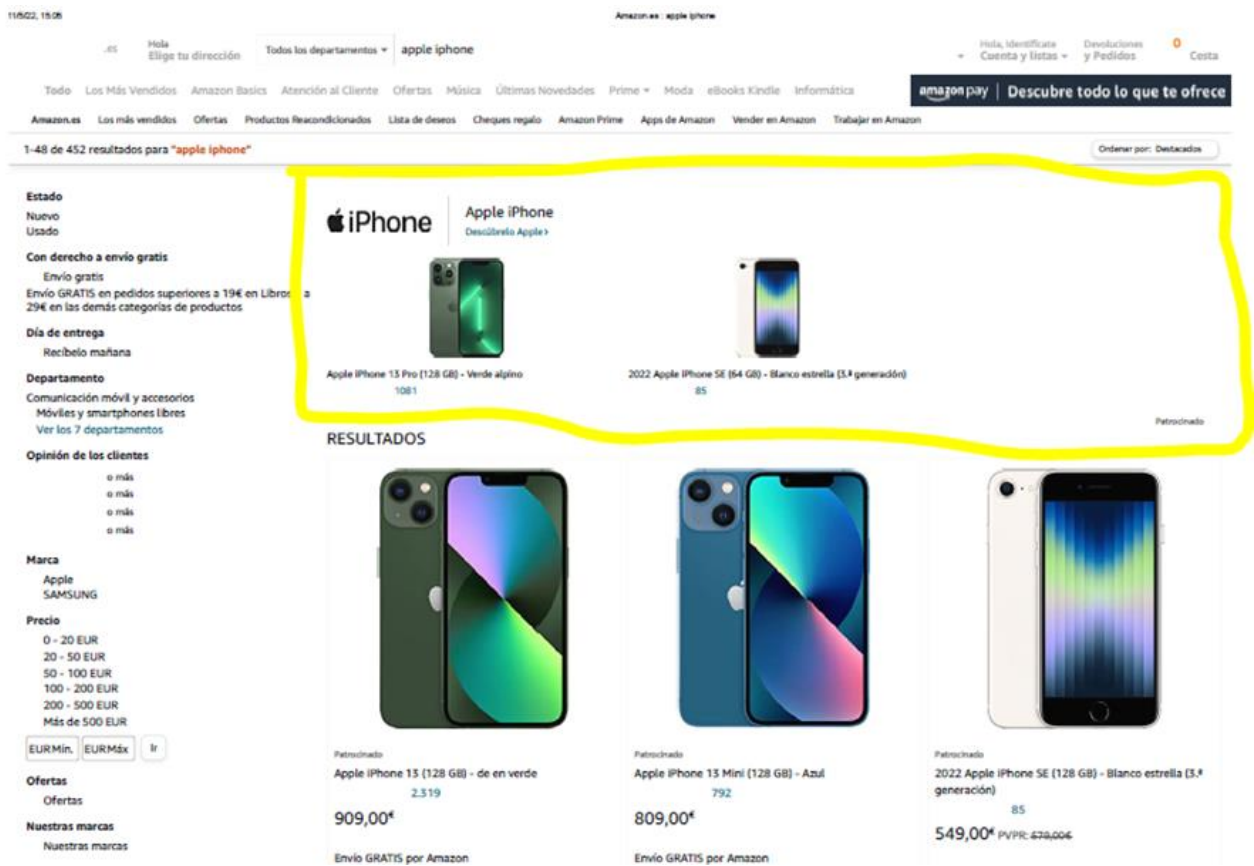
The CNMC considers that these clauses, which contribute to changing the dynamics of the sale of Apple products on Amazon's website in Spain, restrict intra-brand and inter-brand competition and constitute a single, continuous infringement of Article 1 of the Spanish Competition Act and Article 101 of the Treaty on the Functioning of the European Union (TFEU), which began when the clauses were introduced in October 2018.

The CNMC ordered the termination of the infringing conduct and fined the concerned companies of the Apple Group €143,640,000 and the concerned companies of the Amazon Group €50,510,000.

The CNMC would like to point out that an administrative appeal may be lodged directly with the Spanish National High Court against this decision within two months from the day following its notification.

Example of search results on Amazon's website as a result of the implementation of advertising clauses

When searching for “Apple iPhone”, only Apple products appear on the first page of results:



When searching for “Samsung Galaxy s22”, competitors of the Samsung brand do appear on the first page of results:

23/5/22, 18:19

Amazon.es : samsung galaxy s22

The screenshot shows the Amazon.es search results page for 'samsung galaxy s22'. The search bar at the top contains 'samsung galaxy s22'. Below the search bar, there are navigation links for 'Todo', 'Los Más Vendidos', 'Amazon Basics', and 'Atención al Cliente'. A yellow highlight is drawn around an advertisement for Oppo products, which includes the text 'El poder de tus selfies' and images of the Oppo Reno7, OPPO Watch, and Find X5 Lite. Below the advertisement, the search results for Samsung Galaxy S22 are displayed, including the Samsung Galaxy S22 5G + Cargador, Samsung Galaxy S22 5G Teléfono Móvil, and Samsung Galaxy S22 Ultra 5G. The results show prices and delivery dates for each product.

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- [Press release](#) (1/07/2021): The CNMC initiates disciplinary proceedings against Apple and Amazon for possible anti-competitive practices