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Hoi [REDACTED],

Hierbij mijn idee voor agency.

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Clarity on whether online platforms qualify as agents

Online platforms raise new questions in relation to the application of the EU competition rules. One specific question is whether online platforms qualify as genuine agents and, as a result, Article 101(1) TFEU does not apply to agreements between online platforms and undertakings which sell via these platforms. This question came up when ACM looked into the market of e-books in the Netherlands, where publishers act as principals and platforms, like Amazon, Google and Apple, act as their agents. These agency models may well harm intra-brand competition on price between platforms.

ACM doubts whether online platforms in the e-books sector qualify as genuine agents, based on the following arguments:

- Online platforms may bear more than insignificant risks, especially in the area of market-specific investments, that are not necessarily covered by sales-based commissions.
- Online platforms seem to have a strong influence on the commercial strategy of the publishers, given the contracts that ACM has requested. Platforms are significantly bigger in size than the publishers and have strong bargaining power.
- It seems that the traditional concept of agency is not meant for online platforms, which are much bigger and have different business models than traditional agents. Nevertheless, online platforms use the agency model in a significant number of sectors and across the EU member states.

Therefore, the VBER review seems a good opportunity to provide more clarity on the legal concept of agency and specifically on the question whether (and, if yes, under what conditions) online platforms can qualify as genuine agents.