



Bundeskartellamt



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Consumer rights and online user reviews: Need for action

Series of papers on „Competition and Consumer Protection in the Digital Economy“

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Contact

Bundeskartellamt
G6 – Digital Economy
Kaiser-Friedrich-Straße 16
53113 Bonn
poststelle@bundeskartellamt.bund.de
www.bundeskartellamt.de

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A. Introduction

Online user reviews are very important to consumers. A number of consumer surveys and studies have shown that the majority of consumers read user reviews online and that such reviews are, besides the price, the most important criterion for making a buying decision. However, reviews can mislead consumers into making wrong buying decisions if the circumstances under which they are written are not what consumers expect. This applies in particular to systematic biases, which go largely unnoticed by consumers. For several years, fake reviews have been repeatedly debated in public and in courts up to the Federal Court of Justice. Court decisions show that according to current legislation fake reviews in most cases violate the rules on unfair commercial practices. This, however, does not seem to be sufficient to tackle the issue in practice. Legislative bodies are also increasingly focusing on user reviews, for example the EU Commission in its “New Deal for Consumers” with which some of the regulations on user reviews were included in the UCP Directive, and in its considerations on platforms’ responsibility in the context of its proposal for a “Digital Services Act”.

The Bundeskartellamt thus carried out a sector inquiry focussing on the consumer rights aspects of this issue.¹ The most important part of the inquiry was a comprehensive written survey of 66 websites displaying user reviews for products, companies or apps from as many as 16 different industries. The websites include major platforms, review sites, search engines and online shops like Amazon, Booking, Check24, eBay, Google, Jameda, TripAdvisor, etc. The survey focused on how review systems work. The Bundeskartellamt also asked various companies offering intermediary services for reviews or product tests to comment and conducted a number of talks with further market players, associations and authorities. In addition, the Bundeskartellamt evaluated numerous studies and court proceedings.

Based on the results of the website survey (see section B.) and the other inquiries the Bundeskartellamt identified the gap between supply and demand as the main cause of the fake review issue. There are various categories of fake reviews (see section C.). The Bundeskartellamt’s view is that it is mainly the websites’ responsibility to do more to combat the issues identified through various measures (see section D.). As there is no consumer protection authority in Germany, the suggested solutions can only be implemented on a voluntary basis or in civil-law proceedings (see section E.).

B. How review systems work

As part of its sector inquiry into online user reviews the Bundeskartellamt conducted a survey on how review systems work. As survey participants, the Bundeskartellamt selected German websites with a large number of users and reviews and added some industry specialists for which user reviews are particularly important.

¹ Bundeskartellamt, sector inquiry on user reviews, available at https://www.bundeskartellamt.de/SharedDocs/Publikation/DE/Sektoruntersuchungen/Sektoruntersuchung_Nutzerbewertungen_Bericht.html [in German only].

The companies surveyed included websites whose core business revolves around reviews, such as the physician rating and review site Jameda, and a large number of websites relating to the travel sector where reviews are also highly important. TripAdvisor is a large platform in this industry. It started as a pure rating platform but now offers intermediary services, too. Review systems are also increasingly considered indispensable in online trading. By now, every major online seller has introduced such a system on its website, sometimes supported by an external service provider. The US-based company Bazaarvoice is one of the internationally leading service providers in this area. It operates the review systems of a number of brand manufacturers and online sellers and facilitates sharing reviews (syndication) within its network, meaning that product reviews left on a manufacturer's website may also be displayed on the websites of online sellers of the respective product. However, the majority of websites surveyed operate their own review systems and do not share reviews with other websites.

With regard to the **collection** of reviews, the survey has shown that efforts to make writing reviews easy are a central aspect and visible throughout the survey results. Many websites try to "nudge" users to write a review: For example, they (repeatedly) send e-mails or push notifications reminding users to write a review. In individual cases, the nudging system has an asymmetrical component making it easier for satisfied customers to write a review. Many websites are sceptical about monetary incentives to write reviews since monetary incentives that are too high quickly raise the suspicion they manipulate users with regard to their reviews. In their review guidelines most websites therefore explicitly rule out product tests, i.e. reviews written based on products that were either given to the user for free or at a reduced price. A handful of websites offer product tests themselves, albeit just selectively for certain products and a limited period of time. In these cases, websites cooperate with manufacturers. At present, the biggest product test programme is "Amazon Vine". Some websites also reward users for leaving reviews with a low-value voucher or the participation in a raffle. Gamification is another non-monetary incentive for writing reviews: Some platforms offer users virtual rewards for leaving reviews, like titles or awards.

Prior to publication, reviews have to undergo a **filtering** process. A number of websites, including larger ones, filter these reviews manually, which means that they read each review before they approve its publication. However, normally reviews are pre-filtered automatically. The simplest type of filter is a pure word filter identifying reviews that contain certain words or expressions. It is somewhat more complicated to detect real names or other pieces of information that could identify the author and are therefore not to be published. However, these procedures are not able to detect inauthentic or other kinds of fake reviews. This is why a few websites use even more complex filters analysing meta data associated with a review (time, location, device) and combining information from different sources (all reviews by the same user, all reviews for one product), sometimes based on machine learning. Suspicious reviews identified by such filters may be double-checked manually. In single cases, this type of filtering can also involve an asymmetrical component if websites check ratings with few stars in more detail than ratings with many stars.

In addition to filtering reviews before publication, reviews may be checked and removed after publication as well: On many websites, users have an option to report reviews as critical. Yet, subsequent checks initiated by rated providers are in practice even more relevant. On physician rating and review sites in particular, rated providers (i.e. physicians) report a significant number of negative reviews as critical. These reports trigger a

“notice-and-take-down” review process. As part of this process, reviewers are sometimes repeatedly asked to provide evidence for the claims made in their reviews. Negative reviews are very often deleted as a result of this process. As positive reviews are far less likely to initiate a notice-and-take-down process, the process makes it considerably more likely that positive rather than negative reviews remain permanently displayed.

The **presentation** of reviews takes place in a two-fold manner: First, websites usually display an average star rating prominently right next to an offer listed on a general search results page. The actual content of the review text is irrelevant for this type of placement. Second, websites usually display the individual ratings consisting of stars and a written review on the product detail page.

The survey has shown that there are significant differences between websites when it comes to the details of the review systems. Some websites already apply methods allowing them to uncover systematic abuse in many cases, for example by combining manual and automatic filtering measures. However, most websites do not use the technical verification and filtering options to a sufficient extent, so that fake reviews might not be identified.

C. Problem description

An important cause of the problems associated with reviews and review systems is the systematic **supply gap** that exists for traditional reviews: Most consumers pay attention to reviews and often base their buying decision on whether an offer has many and positive reviews. For smaller and less known sellers or sellers offering new products reviews are of particular importance. They are one of the most important marketing instruments to attract the attention of potential customers. However, only few consumers are willing to write reviews for free. For this reason, the number of reviews generated this way is too small.

Some sellers thus try to increase the number of reviews they receive. They are willing to pay for reviews and hire service providers, co called review managers, to recruit users for writing reviews. In recent years, however, this kind of review management has lost its significance. An increasing number of websites explicitly rule out monetary incentives for writing reviews in their review guidelines, and they remove reviews obtained in such a way if they contain an indication to that effect. Some websites, including Amazon, take legal action against review agents and are successful in most cases. However, the demand for reviews has not decreased: some suppliers now use review managers acting covertly, either in another country or anonymously via groups in social networks like Facebook, Telegram or WhatsApp.

Not all reviews obtained through these or other measures are equally critical. The following illustration shows different kinds of reviews based on the way in which they are generated.

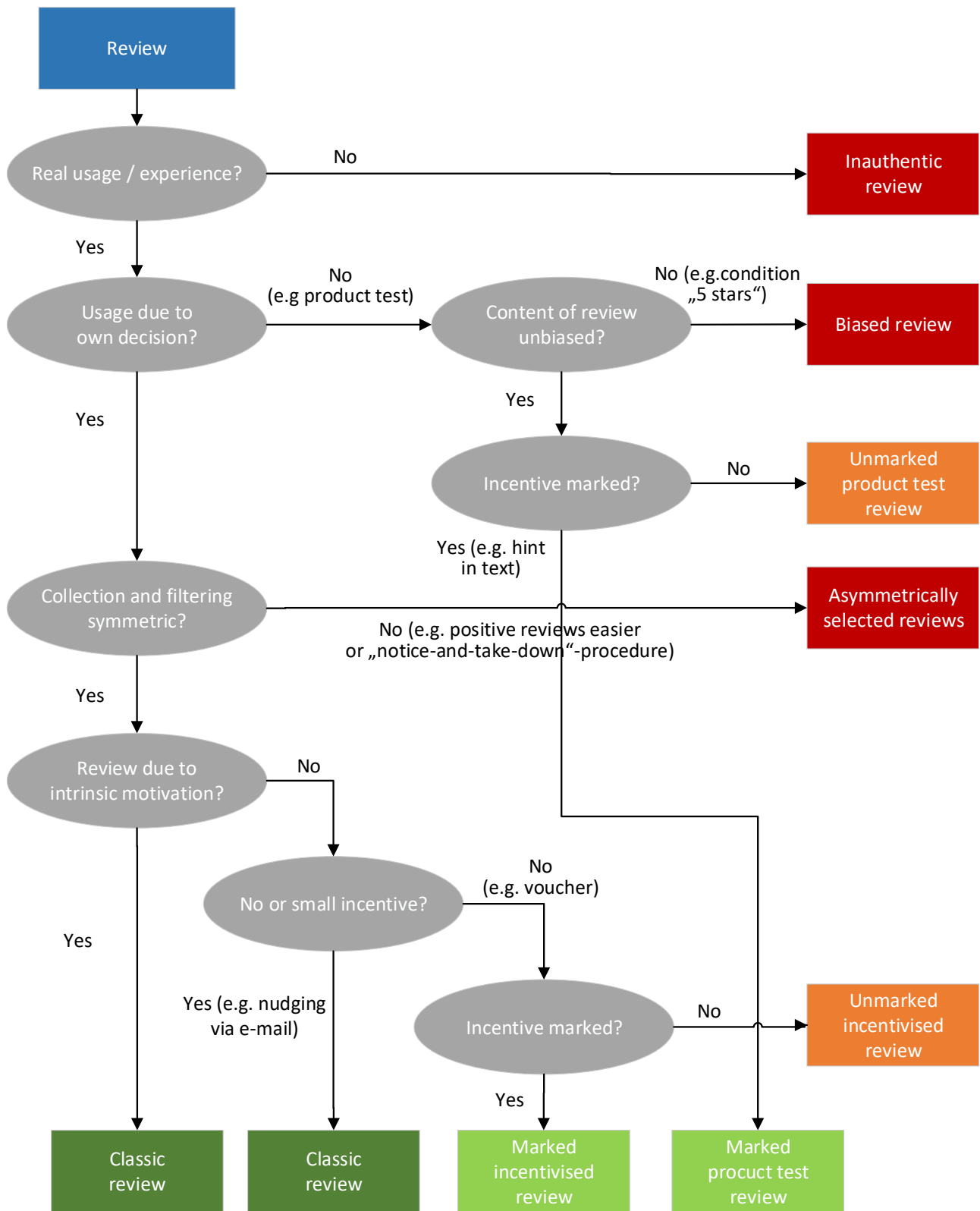


Illustration 1: Classification of reviews in review systems

A **classic review** is a review written by users who have actually used a product or service based on their own decision. The users are intrinsically motivated to write a review, possibly after being nudged or given a low-value incentive. If users review an offer they have not used themselves, either as a favour or against payment, the review is **inauthentic**. For example, there are reviews on hotels and restaurants posted by reviewers who have never visited these places and who in some cases received the texts and pictures for their review from

the provider. Sometimes reviewers get products free of charge or at a considerably reduced price in exchange for a review on a particular platform. Depending on whether the review contains a corresponding note, we classify such reviews as **marked** or **unmarked product test reviews**. A review is **biased** if users are expressly influenced in writing a review, for example when being asked to leave a 5-star review. Sellers or platforms may also motivate consumers who have decided themselves to buy a particular product to write a review by providing an incentive such as a voucher. Depending on whether the review is marked, we classify this as a **marked** or **unmarked incentivised review**.

Asymmetrically selected reviews belong to an extra category: In this case, the system used by the platform may for example be far more likely to systematically filter and remove certain types of reviews (usually the critical ones) than other types (for example the positive ones). Even if every single review displayed is alright, the overall image conveyed by the reviews is nevertheless (positively) distorted.

D. Assessment and approaches to solving the issue

Incentivised reviews and product tests may generally help to generate more helpful reviews and thus to close the supply gap. Nevertheless, it has to be clear to the consumer that the reviews were incentivised or commissioned. Otherwise, they violate the rules on unfair commercial practices. The websites are in charge of providing means to mark reviews as product tests. In contrast, biased or inauthentic reviews are harmful from an economic perspective and constitute a violation of the rules on unfair commercial practices. Websites have to take measures to filter, identify and remove such reviews. The problem of asymmetry, which arises when reviews are written, filtered or subsequently checked and which results in a distorted positive impression of a product can also be solved only by adjusting the review system accordingly. Based on its sector inquiry the Bundeskartellamt considers websites to be responsible for combatting manipulated and inauthentic reviews while avoiding asymmetries. Based on the way in which their systems are designed websites have a major influence on the trustworthiness of the reviews which are ultimately displayed.

I. Avoid asymmetries

It is obviously the websites' responsibility to avoid asymmetries with regard to reviews due to filters with stricter settings for certain types of reviews, normally negative ones. Such settings may be efficient, because certain problem categories appear more frequently with negative reviews, for example the use of inappropriate language. However, inauthentic or biased reviews tend to be positive and are thus systematically overlooked in unilateral checks.

Some rating and review websites for physicians, dentists or lawyers have to carry out subsequent notice-and-take-down checks for a significant part of the negative reviews on their websites, because the reviewed individuals question the authenticity of the negative reviews relating to them. Websites often have to remove such negative reviews only because the authors of the reviews are not interested in extensively proving the authenticity of their review.

II. Admit marked product tests

The problem of fake reviews is due to the review supply gap: Sellers are willing to pay for more reviews because reviews increase their turnover. Users, however, are only to a very limited extent willing to write reviews without being paid. It therefore seems obvious to balance supply and demand by permitting payments for reviews. Under consumer law, such payments are permissible if reviews are not biased and clearly marked as paid for or as incentivised.

Yet, websites have so far been reluctant to enable marked product tests on their sites. Only very few online sellers offer product tests, normally in cooperation with a manufacturer. Amazon, which is the platform most affected by unmarked product tests in Germany, has in principle opened up its Amazon Vine product test programme for third-party sellers on the platform.² At the same time, Amazon widely restricts competition in the area of services associated with product tests by ruling out product tests by external review management platforms.

Websites should offer the possibility for reviewers to mark product tests and incentivised reviews as needed in order to comply with consumer law. Correspondingly, they have to mark the average star rating, so that consumers can see what kinds of reviews are included. While review managers have to ensure that those who commission a product test cannot influence the content of the review, websites have to ensure that reviews written by product testers are subject to the same filter criteria as all other reviews.

Such a regime could generate additional reviews, which would benefit consumers. It could also reduce the number of manipulated reviews since it would give review managers the possibility to act in a legal and transparent manner and thus promote mechanisms that as far as possible ensure that testers are not manipulated.

III. Use smart filters

Providing options to mark reviews as product tests will not eliminate fake reviews. Service providers in particular may continue to commission inauthentic reviews. Websites should therefore use more automatic data analysis to identify such reviews. In combination with manual checks, automatic data analysis allows to analyse metadata and establish connections between different reviews. For example, various reviews written by a single reviewer are examined for suspicious patterns. Options to carry out such analyses with reasonable effort have improved considerably over the last few years. This aspect should also be taken into account in jurisprudence. In legal disputes, courts have so far focussed on the platforms' responsibility if a website gains knowledge of potential irregularities. Especially with regard to cases of mass abuse jurisprudence should go

² Bundeskartellamt, Bundeskartellamt obtains far-reaching improvements in the terms of business for sellers on Amazon's online marketplaces, press release dated 17 July 2019, available at https://www.bundeskartellamt.de/SharedDocs/Publikation/EN/Pressemitteilungen/2019/17_07_2019_Amazon.html?nn=3600108.

forward to the effect that in the event of suspected abuse websites are required to check the reviews on their platform for violations of consumer law as part of their general filtering measures before publication.

E. Conclusion

In public debate, the problem of fake reviews is often associated with reviews written by computer programs (“bots”) or review managers. The Bundeskartellamt's sector inquiry has shown that this generalisation does not reflect the actual tensions arising from the various interests and the platforms' various business models. Reputable review managers for example can contribute to the generation of reviews. The key rather is to provide transparency for consumers as to the circumstances under which a review was written.

The Bundeskartellamt's sector inquiry has uncovered some deficits associated with user reviews violating the rules on unfair commercial practices. Since the Bundeskartellamt has investigative powers in the area of consumer protection but lacks corresponding enforcement powers, these deficits have to be remedied either by the market players themselves or via civil law proceedings. Websites operating the review systems are prone to take action against the deficits outlined above and should assume a significantly greater level of responsibility for the reviews they display.