

Vertical Restraints & Distribution Agreements

2nd FEB – IEJE Competition Day



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Changes regarding selective distribution and internal market considerations

EC proposed amendment to the Regulation

Article 4

Hardcore restrictions

The exemption provided for in Article 2 shall not apply to vertical agreements which, directly or indirectly, in isolation or in combination with other factors under the control of the parties, have as their object:

[.....]

(b) the restriction of the territory into which, or of the customers to whom, a buyer party to the agreement may sell the contract goods or services, except:

- the restriction of active sales into the exclusive territory or to an exclusive customer group reserved to the supplier or allocated by the supplier to another buyer, where such a restriction does not limit sales by the customers of the buyer,
- the restriction of sales to end users by a buyer operating at the wholesale level of trade,
- the restriction of sales to ~~unauthorised distributors~~ by the members of a selective distribution system to unauthorised distributors in markets where such a system is operated, and [.....]

The new hard-core restriction related to web rerouting

EC proposed amendment to the Guidelines:

(52) [...] The Commission regards for instance the following as hardcore restrictions of passive selling:

- requiring a (exclusive) distributor to prevent customers located in another (exclusive) territory from viewing its website or requiring the distributor to put on its website automatic re-routing of customers to the manufacturer's or other (exclusive) distributors' websites;

The new hard-core restriction related to limiting the proportion of offline and online sales

EC proposed amendment to the Guidelines

(52) [...] The Commission regards for instance the following as hardcore restrictions of passive selling:

[...]

- requiring a distributor to limit the proportion of overall sales made over the Internet²⁹.

²⁹ This does not exclude the supplier requiring, without limiting the online sales of the distributor, that the buyer sells at least a certain absolute amount (in value or volume) of the products off-line to ensure an efficient operation of its brick and mortar shop, nor does it preclude the supplier from making sure that the online activity of the distributor remains consistent with the supplier's distribution model (see paragraphs 54 and 57). This absolute amount of required off-line sales can be the same for all buyers, or determined individually for each buyer on the basis of objective criteria, such as the buyer's size in the network or its geographic location.

The new hard-core restriction related to dual pricing

EC proposed amendment to the Guidelines:

(52) [...] The Commission regards for instance the following as hardcore restrictions of passive selling:

[...]

- requiring a distributor to pay a higher price for products intended to be resold by the distributor online than for products intended to be resold off-line.³⁰

[...]

³⁰ This does not exclude the supplier offering the buyer a fixed fee to support its off-line or online sales efforts.

Changes to the supplier's right to determine the sale location

EC proposed amendment to the Guidelines:

(58) This also means that selective distribution may not be combined with exclusive distribution if that would lead to a restriction of active or passive selling by the dealers, with the exception that restrictions can be imposed on the dealer's ability to determine the location of his business premises. Selected dealers may be prevented from running their business from different premises or from opening a new outlet in a different location. In this context, the use of the Internet cannot be assimilated to the opening of a new outlet in a different location [...]

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