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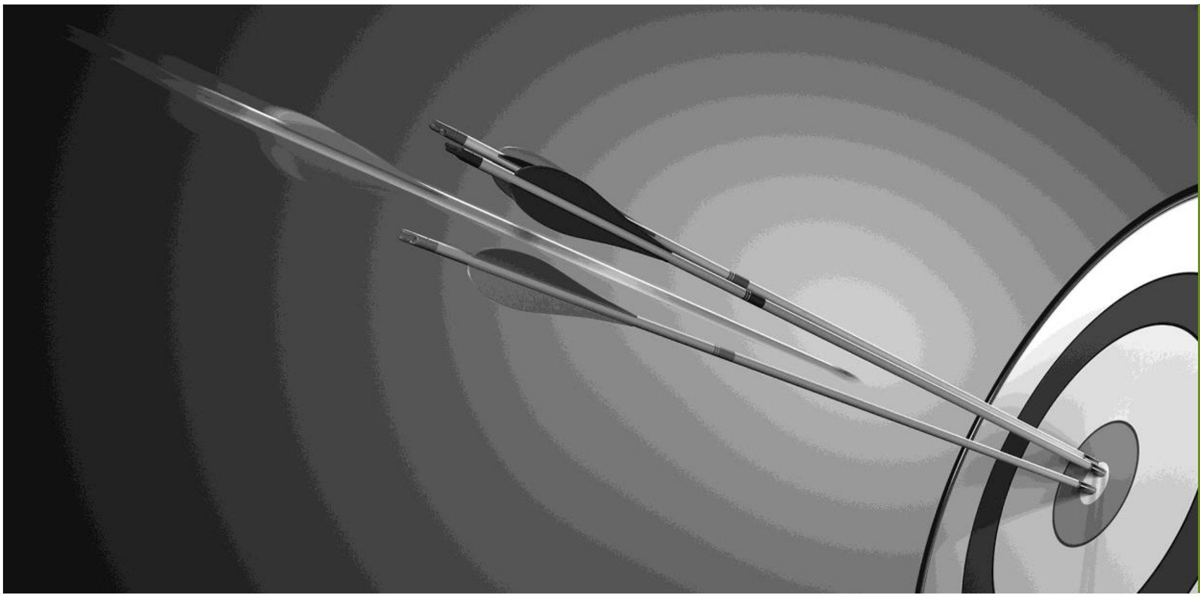
Quickguides

# Selective distribution: EU law



# Selective distribution: EU law

**Quickguide overview**

This Quickguide considers the treatment of selective distribution arrangements under EU competition law. Topics covered include:

- How to structure a selective distribution system so that it falls outside competition law altogether
- When selective distribution arrangements will be caught by competition law
- The application of the block exemption on vertical agreements to selective distribution, including so-called *"hard-core"* restrictions (such as resale price maintenance, territorial restrictions and restrictions of online sales) and other less serious but still prohibited restrictions on competition
- The application of the competition rules to sales made over the internet
- The issues of enforceability of, and liability for, competition law breaches

For further information on any of these areas, please speak to one of the contacts listed on the final page of this Quickguide, or your usual Ashurst contact.

**Brexit**

The UK left the EU on 31 January 2020 and the Brexit Transition Period ended on 31 December 2020. On 1 January 2021, the UK and EU became two fully distinct regulatory, legal and customs territories, whose relationship is governed by the Trade and Cooperation Agreement (TCA).

This Quickguide considers selective distribution in the EU. It does not consider the impact of the TCA on selective distribution agreements between the EU and the UK. Businesses should seek legal advice in relation to selective distribution agreements between the EU and the UK.

# 1. Introduction

A selective distribution arrangement will typically be used by a supplier to maintain greater control over the resale of its products. In such a system, the supplier agrees to supply only those distributors who meet certain minimum criteria. The distributors, in return, agree to supply only other distributors who are within the approved selective distribution system or end-users. The selection criteria used will typically require that the products are sold only through outlets that convey a particular image or that the distributor undertakes specific obligations such as staff training or after-sales services. Selective distribution arrangements are essentially about achieving a consistent standard and quality of service in the outlets where the products are sold.

Selective distribution systems are most often used by suppliers of products in one of two categories:

- **Complex or technical consumer products** which require a high degree of pre-sales advice and post-sales service. This category includes products such as personal computers, home stereo systems, televisions and mobile phones.
- **Luxury products** sold under prestigious brand names which are heavily promoted to create an exclusive brand image. Suppliers of luxury products choose selective distribution in order to protect and further promote the brand image. Products which fall under this heading include perfumes and cosmetics, watches and jewellery.

Since 1 May 2004, parties have been required to draw their own conclusions about the compatibility of their commercial agreements with EU competition law. Although many selective distribution arrangements are considered to be unobjectionable for competition law purposes, there are strict conditions which must be met and the terms and conditions of such arrangements must be individually reviewed on a case-by-case basis.

Since 1 June 2000, selective distribution has been covered by an EU block exemption regulation. On 20 April 2010, the European Commission published its latest version of the block exemption covering distribution agreements, Commission Regulation (EU) 330/2010 and accompanying guidelines.[1] This Quickguide provides an overview of how selective distribution agreements are assessed for EU competition law purposes, particularly in light of the block exemption regulation and guidelines, and recent case law.

# 2. Selective distribution systems and competition law

### Distribution systems generally

Article 101(1) of the Treaty on the Functioning of the European Union (TFEU) prohibits agreements, decisions by associations of undertakings and concerted practices that have as their object or effect the prevention, restriction or distortion of competition. Under Article 101(2) TFEU all such anti-competitive restrictions are void. Under Article 101(3) TFEU, prima facie anti-competitive restrictions may be exempted from the prohibition, where it can be shown that, on balance, the consumer benefits

[1] Block exemptions for distribution arrangements have been in place since the 1960s. The latest version replaces Commission Regulation (EC) 2790/1999. The new version came into force on 1 June 2010 and will be valid until 31 May 2022.

and efficiencies flowing from the restriction outweigh the anti-competitive effects. In particular, Article 101(3) will apply where the agreement:

> "*contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and which does not:*
>
> *(a) impose on the undertakings concerned restrictions which are not indispensable to the attainment of those objectives;*
>
> *(b) afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question*".

In general, parties are required to make their own analysis of whether their agreements benefit from Article 101(3), but the European Commission has also issued so-called "block exemption regulations" in relation to certain common types of commercial agreement, which set out clear rules as to the conditions which must be met and the terms and conditions which can be included in an agreement for Article 101(3) to apply. The block exemption dealing with distribution (known as the Vertical Agreements Block Exemption (VABER)) is one of the most significant of the EU competition law block exemption regulations in terms of the number of agreements to which it applies (distribution and other supply agreements being commonplace).

A "distribution agreement" may be defined as a contractual arrangement (normally in writing) between two independent parties at different levels of trade under which one party (the "supplier" and typically the manufacturer) contracts to sell goods (or services) to another party (the "distributor" and typically a non-manufacturer/intermediary) with a view to their resale by the distributor. A distribution agreement is an example of a "vertical" agreement, being an agreement between parties operating at different levels of the chain of supply.

Under an exclusive distribution agreement, the distributor will enjoy an exclusive sales territory within which it is protected from competing sales by the supplier and/or distributors appointed in other territories. Slightly less commonly, and either alone or in combination with an exclusive sales territory, the distributor may enjoy the allocation of an exclusive category of customers, again with protection from competing sales by the supplier/other distributors.

A selective distribution agreement typically has no element of territorial exclusivity (or customer exclusivity) but is characterised instead by a restriction on the resale of contract goods to third party resellers who are not party to the selective distribution system. The supplier in practice limits resale to end-users and a "selected" group of distributors who satisfy a set of objective criteria. This group is then free to sell to all end-users, wherever they are situated.

## Constructing a selective distribution system which avoids competition law issues altogether

Some selective distribution arrangements fall outside competition law altogether. Case law has confirmed that the Article 101(1) prohibition on anti-competitive agreements will generally not apply to a selective distribution system where four conditions are satisfied:[2]

- **the nature of the goods in question means that such a system is a legitimate requirement**: the European Commission generally accepts that suppliers may require distributors to have suitable premises, adequately trained staff and other service requirements in respect of the two categories of products identified above (i.e. complex consumer products and luxury products), where such

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2 Case T-19/92 *Groupement d'achat Édouard Leclerc v the European Commission* [1996] ECR II-1961 at para 112 (known as the YSL case).

requirements are necessary to preserve quality of service around the products, to ensure their proper use or to preserve the prestigious character of luxury goods;

- **the distributors are selected solely on the basis of non-discriminatory, qualitative criteria which are applied consistently, relating to their technical ability to handle the goods and the suitability of their premises**: quantitative criteria (such as a control of the number of distributors in an area, a requirement to order a minimum amount of stock or to achieve a particular level of sales of the supplier's product), on the other hand, will be subject to Article 101(1), albeit they may be exempted under the VABER (see below);
- the selection criteria **do not go beyond what is necessary**; and
- **the aim of the selective distribution system should be to enhance other forms of competition and off-set the distortion of price competition caused by the use of a selective distribution system**: for example, the system should enhance non-price competition, e.g. in relation to customer service levels, as a compensation for any loss of price competition between the products.

Any refusal to approve distributors which meet the qualitative criteria would be likely to be considered an unlawful restriction of competition.

## The economic and commercial logic of selective distribution

Three main grounds have been identified as the rationale behind the decision to use a selective distribution system; and these grounds underlie the conditions for finding that a selective distribution system is compatible with EU competition law. The three broad grounds are as follows:

- **Preventing free-riding by other retailers or distributors**: where a retailer invests in its premises and in training to provide enhanced customer services in order to promote the manufacturer's product(s) and brand image, there is a danger that discount retailers who have not made any such investment may "free-ride" on these investments. The concern is essentially that customers may visit a premium retailer in order to benefit from the high quality of service offered, but then carry out their actual purchase at a discount (or online) retailer who does not provide such services and so can offer a lower price.  Should this become a pattern, the result would be a move towards discount retailers with a lower level of service and a less attractive retail experience. This in turn would lead to the exclusive brand image being damaged.
- **Maintaining brand image**: a luxurious environment and sense of exclusivity enhances the image and desirability of certain products, thereby promoting the brands stocked in such an environment. On the other hand, if the brands were to be sold in a less well presented outlet, this could damage the brand and lead to reduced demand.
- **Creating retailers' incentives**: retailers are often primarily interested in competing on price with the aim of winning a greater number of customers through lower prices. Suppliers, on the other hand, may have different incentives, such as competing on customer service and experience to attract new customers to their products and to enhance their brand image. From a supplier's perspective it may be necessary to impose quality standards to achieve these goals.

# 3. The Vertical Agreements Block Exemption Regulation (VABER)

The VABER automatically exempts from the general Article 101 prohibition, vertical agreements:

- between a supplier and a buyer where each has a market share of less than 30 percent;
- that do not contain any so-called "hardcore" restrictions of competition.

The 30 percent "safe harbour" applies both to the supplier and the distributor.[3] Normal market definition principles apply to establishing market shares. It will be necessary to determine:

- the relevant product market (i.e. a group containing the contract products and those similar products with which they compete) and the relevant geographic market (i.e. the territorial area within which conditions of competition are essentially the same);
- the supplier's share of the market in which it sells the contract goods;[4] and
- the distributor's share of the market in which it buys the contract goods[5] (i.e. its share of purchases on the upstream wholesale market and not its share of sales on the downstream retail market).

Where possible, market shares should be calculated on the basis of value rather than volume of sales, based on the preceding calendar year.

A vertical agreement may fall outside, and therefore not benefit from, the block exemption because, for example:

- one or both market share thresholds is exceeded; or
- the agreement contains hardcore restrictions (considered in section 4 below).

In such cases, the parties will need to assess for themselves whether the agreement falls within Article 101(1) and, if so, whether it meets the criteria for exemption under Article 101(3).

The benefit of the VABER is not generally available to distribution arrangements entered into by actual or potential competitors. A potential competitor in this instance is a party that could, and would be likely to, enter the market quickly (within around 12 months) in response to a small but permanent price rise. There is one important qualification to the exclusion of competing parties under the block exemption. The block exemption will apply where competitors enter into a non-reciprocal distribution arrangement (i.e. only one party distributes for the other) and:

- the supplier is both a manufacturer and a distributor of the contract goods and the distributor is just a distributor of the contract goods (but not a manufacturer) – i.e. they are competitors at the retail level but not the wholesale/supply level; or
- the supplier provides services at several levels of the supply chain, whilst the buyer purchases its services at the retail level and does not compete upstream.

# 4. Hardcore restrictions

The VABER contains a list of serious (so-called "hardcore") restrictions of competition which, if included, will remove the benefit of the block exemption from the agreement in its entirety. This does not necessarily mean that the agreement or the relevant restrictions will be unenforceable under

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3 This is a change from the 1999 vertical agreements block exemption, where the 30 per cent rule applied only to the supplier.
4 For retail branded groups, the geographic market will normally be national.
5 Also typically national.

Article 101(2). There are two sets of circumstances where this will not be the case, but both are, in practice, difficult to apply:

- even a hardcore restriction is, in theory, capable of individual exemption under Article 101(3) (though examples are rare and there is a presumption of infringement). This would require a specific justification for the restriction in the context of the particular arrangement and it would be necessary to meet all the requirements under Article 101(3) (discussed in section 2 above) to show that the provision is, on balance, pro-competitive and benefits consumers;
- it may be possible to sever (or cut) the offending hardcore restriction from the agreement. The ability to modify the distribution agreement in this way will be governed by national law. Moreover, removing the clause must not deprive the contract of the consideration on which it is based[6] and must not fundamentally alter the nature of the contract and the bargain reached by the parties, so that it is no longer the type of agreement into which the parties intended to enter. There is always a possibility that a hardcore restriction will be a key term of the contract which cannot be removed without fundamentally changing the contract's balance and character. If severance is not possible then the whole agreement fails. Express severance provisions written into the contract cannot be relied on to save the agreement if severance cannot be carried out on the basis of these principles.

The hardcore restrictions most relevant to a selective distribution arrangement include:

- **resale price maintenance** - restricting the distributor's freedom to determine its resale price;
- **territorial or customer restrictions** - restrictions on the territories into which, or the customers to whom, a distributor may sell the contract goods or services; and
- **restrictions of online sales** - restrictions of active and passive online sales.

Each is considered in turn below.

## Resale price maintenance

In the context of a selective distribution arrangement, it is essential to note that whilst the supplier can impose high standards of quality and service, it cannot seek to control the retail prices charged by its distributors.

Imposing a fixed or minimum resale price upon a buyer is (in principle) not allowed. A recommended or a maximum price is, in principle, allowable. However, there is always a danger that a "price recommendation" or a "maximum price" becomes a de facto minimum or fixed resale price which will be prohibited. Resale price maintenance also covers any commercial strategies or pressure which has the effect of controlling retail prices. The following would therefore also be likely to be found to constitute resale price maintenance:

- fixing the distributor's margin;
- setting a maximum discount which a distributor must apply;
- making rebates or promotional costs (or other supply benefits) conditional upon adherence to a given price level;
- linking the resale price to that of competitors' products;

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6 At its simplest, consideration is what the two parties gain from the agreement. In a distribution contract, typically one party will gain goods and the other party will gain remuneration, usually money. However, terms which are directly relevant to the consideration may also form part of it – for example, a purchaser may be prepared to pay a higher price for goods if it is also being given exclusivity.

- using threats, intimidation or warnings to coerce a buyer to comply with the supplier's recommended resale prices;
- indirect pressure linked to mechanisms to identify or monitor instances of discounting; and
- obliging retailers to report other distributors deviating from the "recommended" price level.

The European Commission's 2010 guidelines (at paragraph 225) show some softening of the traditional strict stance on this subject, recognising that resale price maintenance may, in some circumstances, lead to economic efficiencies and therefore meet the test for exemption under Article 101(3). The guidelines comment that resale price maintenance may be justifiable during an initial product launch period, or for short-run co-ordinated promotions across a franchise or distribution network. Of particular interest in the selective distribution context, given the "free-riding" concern discussed above, are comments that resale price maintenance may be justifiable to eliminate free-riding, on the basis that retailers which invest in additional customer services may cut back on such services if they are undercut on price by retailers which do not provide such services. However, there will be a high burden of proof to justify these tentative exceptions under Article 101(3) and caution is essential.

## Territorial restrictions

Selective distribution agreements which aim to restrict distributors from entering into cross-border sales will not be permitted. The VABER contains two territorial hardcore restrictions specific to selective distribution.

- The first of these restrictions is found in Article 4(b) of the VABER, which prohibits selective distribution agreements which have as their object:

  "*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*".

  Nevertheless, Article 4(b)(iii) allows suppliers to prohibit sales by its distributors to unauthorised distributors in the geographic areas within which the selective distribution system is operated or in areas where the supplier does not yet sell the products. These provisions, in essence, mean that the distributor must be free to sell nationally or cross-border to two customer categories (another authorised distributor or an end-user).

  While, therefore, in principle, a supplier can ensure that only authorised distributors can handle the products, the terms of Article 4(b)(iii) can cause difficulties if the supplier uses different distribution models in different EU countries (say selective distribution in Germany but not in France). Under Article 4(b)(iii) the supplier will not be able to control sales to unauthorised distributors in France because although he sells the products there, he does not use the selective distribution model. The supplier will then face the problem of preventing its distributors in the non-selective distribution market (France) from reselling to unauthorised distributors in Germany, where it does use a system of selective distribution, thereby undermining the workings of the German selective distribution network.

- The second such restriction dedicated to selective distribution is found in Article 4(d) of the VABER, which prohibits:

  "*the restriction of cross supplies between distributors within a selective distribution system, including between distributors operating at different levels of trade*".

  This provision requires that all authorised distributors in a selective distribution system (including wholesalers) be free to sell to and purchase from each other, including on a cross-border basis.

  This provision is meant to promote trade between authorised distributors (i.e. intra-brand competition), so that if, for example, a distributor in one country faces higher prices than a distributor in another country, there will be scope for the distributor facing higher prices to purchase cross-border at lower prices. Moreover, appointed wholesalers cannot be restricted as to the authorised distributors they can supply, and similarly authorised distributors cannot be restricted in relation to the authorised wholesalers from whom they buy. Again, in theory, there is potential for arbitrage between low and high cost territories/wholesalers. For example, an appointed wholesaler in one EU country cannot be prevented from actively selling to authorised distributors elsewhere in the EU.

## Restriction on sales to end-users and the use of the internet

Within a selective distribution system, authorised distributors must be free to sell to all end-users, and cannot be restricted in terms of either active or passive sales. Accordingly, a provision limiting or otherwise acting as a disincentive to a distributor's use of the internet for resale will amount to a restriction of active or passive sales, and therefore a hardcore restriction of competition.

"Active" sales are where the seller takes steps to attract customers, for example through advertising or sales promotions; "passive" sales are where the seller has not taken any such steps but the purchaser has found the seller and requested the products.

In the context of selective distribution, the VABER (at Article 4(c)) states that the following amounts to a hardcore restriction:

> "*the restriction of active or passive sales to end-users by members of a selective distribution system operating at the retail level of trade, without prejudice to the possibility of prohibiting a member of the system from operating out of an unauthorised place of establishment*".

This means that members of a selective distribution system cannot be restricted in the customers to whom they sell. The guidelines (at paragraph 52) elaborate on this in the context of e-commerce, stating that any requirement on a distributor to prevent customers located in another territory from viewing its website and purchasing its goods will be considered a hardcore restriction. Case law has also established that a ban on selling via the internet is not equivalent to a prohibition on "*operating out of an unauthorised place of establishment*".[7]

Examples of such hardcore restrictions of passive selling, identified in the guidelines, are as follows:

- a requirement automatically to redirect customers to another distributor's or the manufacturer's website, where the website in question is located in a different territory[8] to the customer;
- a requirement to terminate the customer's order once the credit card details reveal an address which is outside the distributor's home territory;[9]
- a requirement that the distributor will pay higher prices for goods which are intended for resale online, than for those intended for sale offline;
- a requirement that the distributor limit the proportion of its overall sales made online. However, requiring a distributor to achieve a certain value of sales (in monetary terms) through "bricks and mortar" outlets is permissible.[10]

The European Commission also indicates that any criteria imposed on an authorised distributor in relation to online sales which are not equivalent to the criteria imposed on sales through a "bricks and

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7 Judgment of the Court of Justice of 13 October 2011 in Case C-439/09 *Pierre Fabre Dermo-Cosmetique SAS, para. 58*.

8 For the purposes of selective distribution, where distributors are not allocated a "territory" as such, this is likely to catch any attempt to stop an authorised distributor selling to an end-user.

9 See footnote 8.

10 VABER guidelines, paragraph 52.

mortar" shop constitute a hardcore restriction, as they are likely to prevent dealers from using the internet to reach more customers.[11] Internet sales are considered further in Section 6 below.

# 5. Other non-hardcore but prohibited restrictions

Article 5 of the VABER lists some less serious (or non-hardcore) offending restrictions of competition. The inclusion of these restrictions will not generally disapply the application of the block exemption to the rest of the agreement, but the specific provision will not be exempted and will therefore be unenforceable (unless, as discussed above, it can be individually justified under Article 101(3)). The VABER lists the following such restrictions:

- any direct or indirect non-compete obligation, the duration of which is indefinite or exceeds five years;
- any direct or indirect obligation causing the buyer, after termination of the agreement, not to manufacture, purchase, sell or resell goods or services;
- any direct or indirect obligation causing the members of a selective distribution system not to sell the brands of particular competing suppliers.

Clearly, the last of these restrictions is particularly relevant to selective distribution. Under the VABER, it is possible to prohibit authorised distributors from reselling any competing brands at all, but any obligation to boycott the products of a specific supplier will not benefit from the exemption. This provision is designed to prevent a situation whereby a number of suppliers using the same selective distributors are able to prevent specific competitors from using these distributors, thereby potentially foreclosing the market to those suppliers.

# 6. Internet sales

The current guidelines state that: "*In principle, every distributor must be allowed to use the internet to sell products*".[12]

Internet sales have been the subject of much discussion in relation to distribution agreements, as they threaten the notion of exclusive territories and allow for the possibility of "free-riding". Furthermore, in the context of luxury goods in particular, there is a fear amongst suppliers that the prestige of the brand may be lost if it is not accompanied by personal customer service and care in an appropriate environment, which add to the aura of luxury, prestige and exclusivity.

The VABER itself does not refer specifically to internet sales; however, the associated guidelines do attempt to provide some clarification on the European Commission's approach to internet sales with specific reference to selective distribution systems.

The guidelines sought to update the definitions of active and passive selling in the light of the growth of e-commerce. They state that the use of the internet is generally considered to constitute passive selling. More specifically, the guidelines state that the use of a website is considered passive selling so long as it is not targeted at certain customers through the use, for example, of online advertising banners and unsolicited emails to customers. These practices will be considered to be active selling.[13] This distinction is less relevant in the context of selective distribution systems, as both active and passive selling to end customers (and other authorised distributors) must be permitted.

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[11] VABER guidelines, paragraph 56.
[12] VABER guidelines, paragraph 52.
[13] VABER guidelines, paragraphs 52 and 53.

While, as noted above, many restrictions on the use of the internet will constitute hardcore restrictions, a distributor may impose quality standards:

- requiring dealers to have one or more bricks and mortar shops/outlets in order to be a member of the distribution system (i.e. the dealer may be prevented from selling **solely** via the internet);[14]
- requiring that third party platforms on the internet may only be used in accordance with the quality standards agreed between the supplier and its distributors. The guidelines give one example of a permitted restriction, namely a requirement that customers do not visit the distributor's online shop through a third party platform carrying a name or logo from a third party platform.[15]

The guidelines also recognise that certain quality requirements may need to be tailored specifically to reflect the characteristics of distribution over the internet. This is illustrated by reference to the possibility of a requirement upon an authorised distributor to limit the quantity of goods sold to each end-user in order to prevent sales to unauthorised distributors. If internet platforms make it easier for unauthorised distributors to obtain large quantities of products, the quality standards for online sales may need to be stricter to take this into account.

The European Court of Justice (ECJ) found in *Pierre Fabre* [16] that a clause in a selective distribution agreement which effectively prohibited distributors from selling its products via the internet amounted to a restriction of competition "by object". Whilst not expressly prohibiting sales via the internet, the agreement stipulated that sales be made exclusively from a physical space in which a qualified pharmacist was present. The ECJ found that the clause had as its object at the very least the restriction of passive sales to end-users wishing to purchase online, and it could not therefore benefit from the VABER.

However, the ECJ has also confirmed[17] that a clause, which prohibits authorised distributors in a selective distribution system from using "*in a discernible manner*" third party platforms for internet sales of the relevant goods, may be compatible with the VABER, provided that certain criteria are met, and in particular that the clause:

- has the objective of preserving the luxury image of the goods;
- is applied uniformly and not in a discriminatory manner; and
- is proportionate.[18]

In this case, the authorised distributors were permitted under the agreement to engage in online sales through their own electronic shop windows, or through third-party platforms provided that the use of such platforms was "*not discernible to the consumer*".

# 7. Enforcement/liability for breaches of EU distribution law

A provision in an agreement which infringes Article 101(1) and cannot be exempted automatically under the VABER or individually under Article 101(3) is void and unenforceable. The entire agreement will fail if the particular infringing provision **cannot** be severed. The European Commission is able to impose fines for breaches of Article 101(1) and third parties may sue for civil damages in national courts for losses arising out of the infringing provision/agreement. Third parties may also use

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14 VABER guidelines, paragraph 54.
15 VABER guidelines, paragraph 54.
16 Judgment of the Court of Justice of 13 October 2011 in Case C-439/09 *Pierre Fabre Dermo-Cosmetique SAS*.
17 Judgment of the Court of Justice of 6 December 2017 in Case C-230/16, *Coty Germany GmbH v Parfumerie Akzente GmbH*.
18 Essentially, the criteria identified in paragraph 2.2 above.

infringements as a "sword" or a "shield", in order to seek to avoid obligations under a distribution arrangement or as a defence against a breach of contract claim.

It is true that there has been relatively little enforcement relating to selective distribution or other vertical agreements in recent years by the European Commission, and activity has tended to focus on horizontal cartels between competitors. However, there have been recent cases relating to territorial restrictions, online customers and resale price maintenance.

Moreover, enforcement at the national (Member State) level (employing Article 101 and/or national law equivalents) has in many instances been greater. For example, levels of regulatory activity in relation to distribution are relatively high in France and Germany. In addition, many national court cases in relation to competition law concern vertical arrangements (including selective distribution arrangements). Further, there has been a particular focus in recent years on the role of the internet as an effective distribution medium, and regulators have actively pursued cases where suppliers have sought to limit the role of the internet in distribution.

Thus, although selective distribution has been less of a priority for the European Commission in recent years, it is the subject of national level scrutiny and generally it is strongly recommended that compliance with the VABER, in particular in relation to hardcore restrictions and restrictions on the use of the internet, is taken very seriously. This is an area of law, given its long history and the extensive precedents and guidance which are available, which all companies will be expected to get right, and any serious infraction that does come to light can expect to be dealt with firmly.

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