

ON-LINE SALES AND (EU) COMPETITION RULES – SOME SPECIFIC ISSUES

BRNO

12 NOVEMBER 2014

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COMPETITION RULES AND ON-LINE SALES: INTRODUCTION

Basic approach of the EU competition rules:

every distributor should be free to use the internet to sell products.

Views of brand owners:

restrictions on on-line sales should be permitted because, in particular :

- Risk of damage to brand reputation;
- Free-riding on bricks and mortar distributors.

LIMITING OF ON-LINE SALES UNDER EU COMPETITION RULES: OUTRIGHT BAN

- Likely to be very hard to justify.
- Under the EU Vertical Guidelines:
 - objective justification (by reason of the nature of the product; e.g. ban on selling dangerous substances to certain customers for reasons of safety or health); and/or
 - efficiency defence.
- The *Pierre Fabre* judgment of the Court of Justice (13 October 2011): the need to provide individual advice to the customer (for non-prescription items) or to maintain the prestigious image of the products do not constitute legitimate aims for restricting competition.

ACCEPTABLE RESTRICTIONS ON ON-LINE SALES

- **Quality standards** (the supplier can set quality standards for the use of the internet site to resell its products or require that the internet reseller hold an adequate stock to ensure satisfactory delivery deadlines) → the quality standards must be the *equivalent* of those imposed in brick and mortar outlets and must be *proportionate*.
- **One or more brick and mortar outlets** – the most powerful restriction (distributors may be required to have one or more brick and mortar shops or showrooms as a condition for becoming a member of the distribution network) → pure on-line retailers can be kept outside the distribution network.
- **A minimum turnover in brick and mortar shops** (the supplier can require that the distributor sells at least a certain absolute amount, in value or volume, of the products off-line to ensure efficient operation of the off-line channel).

UNACCEPTABLE RESTRICTIONS ON ON-LINE SALES

- **Limiting the proportion of overall sales the distributor may make on-line** (this does not prevent the supplier requiring that the distributor sells a certain amount of products off-line).
- **Dual pricing** (meaning that the distributor must pay a higher price for products intended for on-line sales than for products intended to be sold off-line)

HOWEVER, dual pricing may be justified if on-line sales lead to substantially higher costs for the supplier, e.g. due to increased guarantee claims;

MOREOVER, a fixed fee may be agreed to support the distributor's off-line sales effort.

CONCLUSION

- Competition rules are (and should be) fundamentally the same for off-line and on-line sales.
- However, the rules should be flexible enough to take specific features of on-line sales into account.

THANK YOU FOR YOUR KIND ATTENTION

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