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NEWS | 26 January 2023

Abusive conduct by distributors may be imputed to dominant producer according to Court of Justice

In its decision of 31 October 2017 the Italian Competition Authority (Italian Competition and Markets Authority, 'AGCM') found that Unilever abused its dominant position on the Italian market for the sale of individually packaged ice cream for consumption at sales outlets.

Not Unilever, but its independent distributors committed the abuse by imposing exclusivity clauses on the operators of the sales outlets. These clauses limited the possibility for competing operators to compete. The AGCM imposed a fine of 60,668,580 EUR on Unilever for abuse of its dominant position.

By way of a preliminary ruling of 19 January 2023 the Court of Justice of the European Union ('Court of Justice') confirmed that abusive conduct by independent distributors of a dominant producer may be imputed to that producer, if it is established that that conduct forms part of a policy decided unilaterally by that producer and implemented through those distributors.

According to the Court of Justice, the distributors and, consequently, the distribution network which those distributors form with the dominant company must be regarded as merely an instrument of territorial implementation of the commercial policy of that company and, on that basis, as being the instrument by which the exclusionary practice was implemented.

That applies in particular where, as in the present case, the distributors of a producer in a dominant position are required to have operators of sales outlets sign standard contracts which are supplied by that producer and contain exclusivity clauses for the benefit of its products.

Read the full decision on the Court of Justice's website.