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Amsterdam District Court dismisses competition law challenge to HP's selective distribution system

On 11 February 2026, the Amsterdam District Court delivered its final judgment in the dispute between printer and cartridge seller 123inkt and manufacturer HP concerning HP's selective distribution system for printers and cartridges.

In a notable departure from its interlocutory judgment of 18 December 2024, discussed earlier on this website, the Court dismissed all claims. It held that 123inkt had failed to establish that HP's selective distribution system infringes Article 101(1) TFEU. As a result, the Court did not proceed to examine a potential individual exemption under Article 101(3) TFEU, despite having indicated in its earlier ruling that it would do so.

The interlocutory judgment (December 2024)

In its interlocutory judgment, the Court had adopted a critical position. It found that HP's cartridges did not meet the Metro criteria as developed by the Court of Justice. Cartridges were not considered luxury or high-technology goods, nor products for which selective distribution appeared objectively necessary. The Court observed that such products had long been marketed without selective distribution, which made it difficult to see why such a system would now be indispensable.

The Court further concluded that the Vertical Block Exemption Regulation ('VBER') did not apply, as HP's market share for cartridges exceeded the 30% threshold.

The analysis then appeared to shift towards Article 101(3) TFEU. The Court provisionally indicated that HP's system might be capable of satisfying the cumulative conditions for individual exemption but expressed doubts about the indispensability and proportionality of certain qualitative requirements. The parties were invited to comment further. At that stage, the dispute seemed destined to turn on Article 101(3).

The final judgment: back to first principles under Article 101(1) TFEU

In its final ruling, the Court reconsidered its analytical starting point. It acknowledged that even if a selective distribution system does not satisfy the Metro criteria, this does not automatically mean that it restricts competition within the meaning of Article 101(1) TFEU. The decisive question remains whether the agreement has as its object or effect the prevention, restriction or distortion of competition.

In other words, failure to pass the Metro test does not relieve a claimant of the burden of demonstrating an infringement under the ordinary object/effect framework.

123inkt had argued that the mere fact that non-authorised resellers were excluded from the network amounted to a restriction by object. Relying on Coty and Pierre Fabre, it contended that selective distribution systems inherently pursue a restrictive aim and therefore qualify as object restrictions without further analysis.

The Court rejected that reading of the case law. It drew a clear distinction between the proposition that selective distribution systems inevitably influence competitive conditions and the much stronger claim that they automatically have the object of restricting competition. According to the Court, the latter does not follow from the jurisprudence of the Court of Justice.

Referring to the analytical approach articulated by the UK Competition Appeal Tribunal in Up & Running v Deckers, and consistent with the structured methodology confirmed by the Court of Justice in Super Bock Bebidas, the Court emphasised that classification as a “by object” restriction requires a sufficiently serious degree of harm to competition, assessed in light of the content, objectives and economic and legal context of the agreement.

Against that background, the Court found no indication that HP’s system revealed such inherent harm. It considered relevant in this respect that:

- access to the network was open and based on objective criteria;
- the qualitative conditions were not particularly onerous; and
- there was no evidence of market-wide foreclosure or cumulative anti-competitive effects.

Nor had 123inkt substantiated a restriction by effect. The claimant had not put forward a concrete effects analysis, nor defined a counterfactual scenario against which the system’s market impact could be assessed. In the Court’s view, such arguments should have been presented in the writ of summons. In private enforcement proceedings, the burden of proving an infringement of Article 101(1) TFEU rests with the claimant.

In the absence of a demonstrated object or effect restriction, Article 101(1) TFEU was not infringed. The Court therefore did not examine Article 101(3) TFEU. All claims were dismissed.

Commentary

The judgment is noteworthy in that the Court explicitly corrected its earlier analytical course. The Metro criteria provide a recognised route to compatibility within Article 101(1), but they are not a binary legality test. Failing to satisfy Metro does not automatically render a selective distribution system unlawful. The agreement must still be

assessed under the ordinary object/effect framework.

The ruling also confirms that selective distribution systems are not presumptively “hardcore” restrictions. Consistent with the Court of Justice’s case law, including Super Bock Bebidas, only agreements that reveal a sufficient degree of harm by their very nature qualify as object restrictions. A contextual assessment remains indispensable.

Finally, the case highlights the importance of evidentiary substantiation in private litigation. Where a claimant cannot rely on a by-object characterisation, a structured and economically grounded effects analysis is required. Bare assertions will not suffice.

Because the Court did not reach Article 101(3), its earlier questions regarding indispensability and proportionality of certain qualitative criteria remain unanswered. Those issues may well resurface in future disputes, particularly where selective systems are more restrictive or access conditions less open.

For manufacturers operating selective distribution systems across the EU, the judgment offers measured reassurance. It underscores that non-luxury products can, in principle, be distributed selectively, and that open and proportionate systems are unlikely to be characterised as restrictive by object absent concrete evidence of anti-competitive harm. At the same time, once market shares exceed the VBER threshold, careful self-assessment under Article 101 TFEU remains essential.

An appeal to the Amsterdam Court of Appeal remains open. At the time of writing, it is not yet known whether 123inkt will make use of that possibility.