



SUPPLIER

Hi DLC, I have a question on the passing on of sales restrictions.

Sure, let's hear it!

D
L
C

DLC



SUPPLIER

Our business uses an exclusive distribution system, assigning one distributor per region and prohibiting each of our distributors in the EEA to actively sell into the territories allocated exclusively to others.

That's in line with the VBER, as long as these restrictions concern active sales and not passive sales, of course.

D
L
C

DLC



SUPPLIER

Right. But now we're wondering: can we oblige our distributors to pass on these active sales restrictions to their customers?

Good question. The short answer is: yes, under certain conditions.

D
L
C

DLC



SUPPLIER

Please, tell me more.

Under EU competition law, you can require your distributors to pass on a restriction of active sales into an exclusively allocated territory.

D
L
C

DLC

**SUPPLIER**

Good to hear. However, I recall that imposing such sales restrictions involves complex conditions. What specific conditions should we consider when requiring our distributors to pass on such restrictions?

First, distributors may only pass on active sales restrictions to their direct customers.

Second, these customers should be resellers, you can't restrict end customers. Finally, passing on passive sales restrictions to protect exclusive distributors is never allowed.

**DLC****SUPPLIER**

Okay, and how would that work in practice?

Each distributor must have agreed to refrain from actively selling into exclusively allocated territories.

To extend this to the buyers of your distributors, your distributors will also need to agree that they will require any reseller that they supply to adhere to the same restriction.

**DLC****SUPPLIER**

I see. So, it's a double layer of protection you need to implement.



Precisely. But beware: for the double layer of protection to work, it is necessary that your business monitors compliance with the active sales restrictions at both levels and can intervene decisively if necessary – as the case may be by requiring the distributor to act.

**DLC****SUPPLIER**

Understood. Should customer groups be allocated exclusively in the future, the same rules apply, I suppose?

Correct.

**DLC****SUPPLIER**

And, is the above also valid in selective distribution systems?

Not really.

In the case of selective distribution, the focus is on ensuring that products are only offered to end customers by resellers that meet certain criteria, rather than controlling where or to whom these selected (or authorised) distributors sell.

Therefore, it is essential that any authorised distributor in a selective distribution system can sell to any end customer, but also that it is prevented from selling to resellers that are not an authorised distributor.

**DLC**

**SUPPLIER**

So in this system, an authorised distributor enjoys full protection against sales from unauthorised resellers, but no protection against sales from authorised distributors?

Correct. This also means that the distinction between active and passive sales is not relevant here.

D
L
C**DLC****SUPPLIER**

And what if I combine selective and exclusive distribution systems?

Combining selective and exclusive distribution in Europe is possible, but both cannot co-exist within the same territory.

D
L
C**DLC****SUPPLIER**

Understood. And what about sales restrictions when I decide to operate selective distribution in one territory and exclusive distribution in another territory?

There are now clear rules on how you can protect distributors in one system against competition from resellers in the other system.

First, you can prohibit your authorised distributors from selling actively to the exclusively allocated territory and you can require them to pass on that prohibition to their direct customers.

D
L
C**DLC**



Distribution Talks



last seen today at 13:43

Second, you can prohibit your exclusive distributor and its (direct and indirect) customers from selling to unauthorised distributors located in the territory where you operate a selective distribution system.



DLC



SUPPLIER

Thanks, DLC. That clears things up.

Always happy to help. Until next time!



DLC

Our Distribution Talks are fictional conversations and not legal advice. If you have questions, please contact the Distribution Law Center. Our national contributors are happy to help you further.

Follow us!



Website



LinkedIn