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Hi DLC, I have a question about using fulfilment service providers (FSPs) to execute our agreements with end customers.

Sure, tell me more!



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We're a company based in one EU Member State and sell our products via independent distributors.



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Some global customers want to agree prices centrally with our HQ, but buy locally from our FSPs.

So you would sign a supply agreement with the customer, and a separate agreement with an FSP to fulfil that agreement?



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Exactly.

After selecting one or more local FSPs, we want to instruct them which resale price to charge the customer concerned.



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We wonder if this allowed?



As you know, restricting an independent distributor's freedom to determine its resale prices is normally considered resale price maintenance, a hardcore restriction of competition.

However, fulfilment contracts are an exception.



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How does that exception work?

You need two things.

First, a supply agreement with your customer, with the agreed price for the contract products. Second, a contract with an FSP which you (not the customer) selected.

This way, the resale price imposed on the FSP does not restrict competition for the supply of the contract products or for the supply of the fulfilment services.



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Understood. Anything else we should keep in mind?



last seen today at 10:47

Yes. Please know that while the Commission's guidelines suggest the supply contract should be concluded before the fulfilment contract, this isn't considered a material condition by the Commission.

You can still agree in the contract where the customer will take delivery of the contract products and who will be the FSP.



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Okay, and if the customer insists on choosing the FSP?

If so, imposing a resale price on that distributor may qualify as resale price maintenance. In this case, you better impose a maximum price on the FSP, as this is not a hardcore restriction.



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Thanks DLC. This helps us serve global customers without expanding our physical presence. Great news!

Always happy to help. Until next time!



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