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5th Yearly Update on Verticals

8 October 2026

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NEWS

The Patent and Market Court of Appeal overturns the Swedish Competition Authority's RPM case against Tapwell

The Patent and Market Court of Appeal has overturned the Patent and Market Court's decision upholding the fines imposed on...

By CEDERQUIST | [📄](#) [🔍](#) [📌](#)



NEWS

Bundeskartellamt fines tyre distributors 11.9 million EUR for resale price maintenance

Background
The Bundeskartellamt has imposed fines totalling 11.9 million EUR on Maxxis International GmbH ("Maxxis")...

By ARNECKE SIBETH DABELSTEIN | [📄](#) [🔍](#) [📌](#)



NEWS

Anti-competitive agreement in the Romanian automotive spare parts market

The Romanian Competition Council ("RCC") sanctioned Euro Parts Distribution SRL and 15 franchisees operating within the...

By MUSAT & ASSOCIATE | [📄](#) [🔍](#) [📌](#)



NEWS

French Supreme Court confirms Apple's liability for allocation of products and customers and abuse of economic dependence within its distribution network of electronic products

On 13 May 2026, the French Supreme Court delivered a highly significant decision in the Apple distribution practices case...

By VERTICE | [📄](#) [🔍](#) [📌](#)



EVENT PROGRAMME

12:00 – 12:10 PM	Welcome and introduction
12:10 – 13:40 PM	Developments in distribution law in 2025-2026
13:40 – 14:00 PM	Q&A from the audience



PRACTICALITIES

- The presentations will be as practical as possible and about 10 minutes per speaker.
- Do ask questions via the Q&A.
- We will answer questions after the presentations, if there is time. Otherwise, we will answer all questions in a Q&A which we will circulate afterwards and make available on www.distributionlawcenter.com.
- We will also make the slide deck available on our website.



YEARLY UPDATE ON VERTICALS

RESALE PRICE MAINTENANCE

Gucci, Chloé & Loewe (EU)
Public Retail (Greece)
Morellato (Italy)

ONLINE SALES AND ADVERTISING RESTRICTIONS

Amazon (Germany)
Thelios (Romania)

SELECTIVE DISTRIBUTION

Deckers (UK)

OTHER NOTABLE DEVELOPMENTS

Samsung (The Netherlands)
Claas and CNH (Poland)

RESALE PRICE MAINTENANCE

Gucci, Chloé & Loewe (EU)

by

Lise Ryckaert

contrast (Belgium)

GUCCI, CHLOE AND LOEWE



?

Where does luxury retail strategy end and RPM begin?

BACKGROUND = DUAL DISTRIBUTION

- **Dual distribution is on the rise**
 - Supplier sells to independent retailers (B2B); and
 - Supplier also sells directly to end customers through own boutiques and web shops (B2C).
- **Conflict of interest:** Supplier competes with independent retailers on the downstream market and may want to influence the distributors' commercial behaviour to protect or optimise the performance of its own retail business.
- **Objective in Gucci, Chloé and Loewe:** The brands sought to ensure that retailers applied the same prices and sales conditions as their own direct channels.

EC POLICES 'PRICING ARCHITECTURE', NOT JUST 'PRICES'

- **Considered problematic:**
 - mandatory adherence to RRP;
 - maximum discount levels;
 - prescribed sales periods;
 - markdown policies; and
 - "no markdown" arrangements.
- Extensive **monitoring** systems and **enforcement**.
- Retailers complain about other retailers and ask for instructions; however, **no retailer was fined**.

BRAND IMAGE EXPLAINS RPM, IT DOES NOT JUSTIFY RPM

- Particularly relevant for **luxury goods** manufacturers who frequently issue elaborate markdown calendars and sale guidelines.
- Luxury and brand image are not a defence, rather treated as **incriminating evidence**:
 - Chloé (§22): *“Chloé aimed to enhance the brand image by achieving and maintaining a uniform and high retail price level ...”.*
- Reinforced by evidence of **illegality awareness**:
 - Gucci (§32): *“Gucci intervened with the deviating retailer. Such interventions occurred via email, WhatsApp or – most frequently – via phone or in in-person meetings, as Gucci was aware of the potential illegality of such interventions and wanted to avoid written records”.*

KEY TAKEAWAYS FOR BUSINESS



Dual distribution is a compliance risk indicator.



Markdown policies can be RPM just as much as fixing prices.



Luxury status and brand image provide no special antitrust immunity.

RESALE PRICE MAINTENANCE

Public Retail (Greece)

by

Victoria Mertikopoulou

Kyriakides Georgopoulos (Greece)

PUBLIC RETAIL



Can a retailer-driven price-protection clause amount to (indirect) RPM, even if it does not expressly fix resale prices?

PUBLIC RETAIL IN A NUTSHELL

Indirect RPM through “price protection” clause in contracts with suppliers

- *“Price Protection: It is also agreed that price protection shall be provided by the SUPPLIER in the event of a reduction in the COMPANY’s list prices in response to any reduced prices offered by the COMPANY’s competitors for the same goods, in respect of purchases made by the COMPANY from the SUPPLIER during the last 90 calendar days.”*

HCC Preliminary Assessment

- RPM may be achieved indirectly, e.g. by conditioning discounts on complying with a set price level or linking resale prices to competitors' prices.
- RPM can be made more effective with measures aimed at identifying price-cutting distributors (price monitoring /measures discouraging price reductions).
- A retailer's requirement to be compensated for unmet revenue expectations (margin compensation) is not in itself evidence of an unlawful price agreement if not implemented, but it exerts strong pressure on suppliers to monitor retail prices and engage in RPM.
- Although not RPM stricto sensu, the clause may potentially amount to RPM.

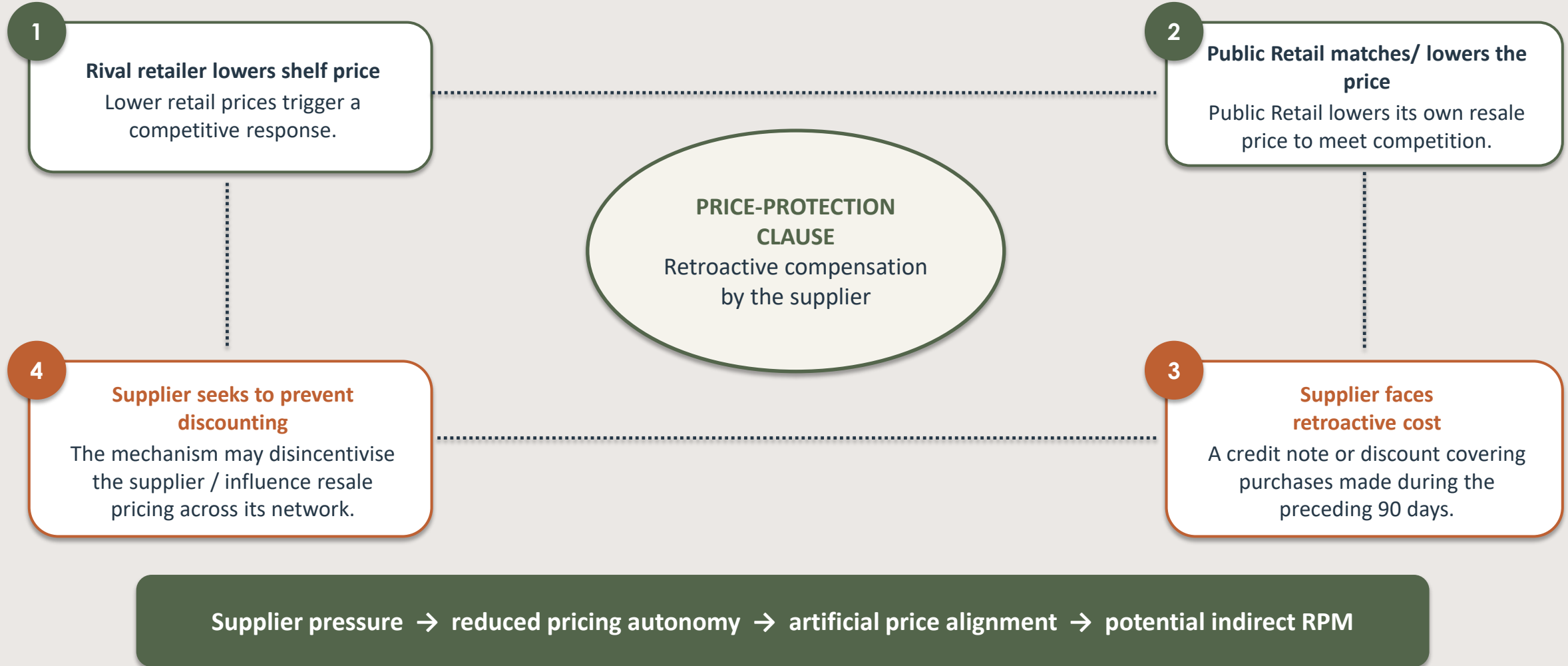
Ref: German Haribo / B-10-40-14 and AB InBev / B-10-20-15 'price management' cases; Vertical Guidelines §196 et seq.

- Concerns - The term at issue may:

• Lead to artificial price alignment among retailers	• Deter dynamic competitive conduct in the market and suppress intra-brand competition
• Restrict the contracting supplier’s pricing freedom	• Induce suppliers to restrict retailers’ freedom to determine their pricing policy

THE PRICE-PROTECTION FEEDBACK LOOP

How a retailer-driven clause may create pressure capable of inducing the supplier to impose RPM across its retail network



KEY TAKEAWAYS FOR BUSINESSES

- **Look beyond labels:** price-protection, margin-support and reimbursement clauses may raise indirect RPM concerns where they influence downstream pricing incentives.
- **Buyer-driven restraints are also a risk:** competition scrutiny is not limited to supplier-imposed RPM. Clauses initiated by a powerful retailer may create pressure on suppliers to influence pricing across their wider distribution network.
- Review both **contracts** and **commercial practices:** businesses should assess not only the wording of their agreements, but also related monitoring, reporting, rebate and compensation mechanisms (measures capable of discouraging the counterparty from reducing resale prices).

Commitments remain exceptional:

- Early cooperation, restoring effective competition and rapid removal of the problematic mechanism may support a pragmatic resolution here, but businesses should not assume that (indirect) RPM-related concerns will ordinarily be resolved without an infringement finding or fines.
- Fact-sensitive approach: in this case, particular nature of restriction; no express fixed resale price; no implementation; limited legal precedents. *Cf. C-211/22 - Super Bock Bebidas*

RESALE PRICE MAINTENANCE

Morellato (Italy)

by

Maria Rosaria Raspanti

Pavia e Ansaldo (Italy)

MORELLATO

?

When does a “pricing policy” cross the line into RPM?

MORELLATO'S CONDUCT IN A NUTSHELL

- **Morellato S.p.A.:** Italian mid-range jewellery/watches manufacturer with a wide selective distribution network (stores, online, third-party marketplaces)
- **Italian NCA decision:** Article 101 TFEU infringement found; total fine **EUR 25.9 million:**
 - **RPM infringement:** restriction of buyers' ability to determine the resale price, by imposing maximum discounts levels
 - **Marketplace ban:** distributors banned from marketplaces which Morellato itself used
 - percentage of the fine calculated only in relation to RPM, due to the 'novelty' of the findings concerning the marketplace ban

MORELLATO'S CONDUCT IN A NUTSHELL

The RPM infringement: a system of maximum discounts to be applied to online sales, assisted by monitoring and retaliatory measures for non-compliance

- **Internet policies:** maximum online discounts differentiated by product category (new products 0%, catalogue products up to 10%, out-of-catalogue products 30-50%)
- **Monitoring:** software "*Competitoor*" monitored distributors' online prices and deviations from the Internet policies. The monitoring service was structured around periodic checks and reports.
- **Penalty mechanism to enforce the policy:** Warnings and requests to realign prices + order blocking and commercial pressure + threats of termination → any deviation from the policy resulted in penalties.

THE ICA'S RPM ASSESSMENT

Article 4(a) VBER

- Maximum discount from a prescribed price can operate as indirect minimum resale price
- Hardcore restriction → loss of the block exemption for the entire agreement

Article 101(1) TFEU

- The hardcore restriction was qualified as a by object infringement (however, for fines setting, account was taken of the fact that the conduct concerned online activities only) → «*the conduct aimed at reducing intra-brand competition*»
- The following factors were used by Italian NCA to support its decision:
 - **Content of the agreement and its (price-alignment) objectives**
 - “Internet policy” pricing rules with discount levels
 - Internal legal communications acknowledging the antitrust risks associated with the pricing policy
 - **Monitoring and enforcement architecture**
 - **Indicators of “common will” and distributors acquiescence**
 - Regular transmission of pricing rules and thresholds to distributors
 - Distributors realigned their behaviour to obtain order unblocking and requests for guidance on the “Internet policy”
 - **Economic and legal context**
 - Economic importance of online channels
 - Lack of pro-competitive justifications
 - Continuous practice for over 7 years

KEY TAKEAWAYS FOR BUSINESS

- **Look at the economic reality, not the label.** Calling a measure an “Internet policy”, “guidance” or a “recommended discount” does not determine its antitrust treatment. What matters is how the policy operates in practice.
- **Price monitoring is only part of the story.** Monitoring retailers’ online prices is not itself the decisive issue.
- **Commercial pressure can make guidance binding.** Warnings, requests to realign prices, order or supply blocks and termination threats may turn apparently non-binding pricing guidance into an effective restriction of retailers’ pricing freedom.
- **Internal communications matter.** E-mails referring to price “alignment”, discount thresholds or action against non-compliant retailers can become important evidence of how a pricing policy was intended to operate.



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ONLINE SALES AND ADVERTISING RESTRICTIONS

Amazon (Germany)

by

Moritz Lorenz

Arnecke Sibeth Dabelstein (Germany)

AMAZON PRICE CONTROLS



Are dominant hybrid platforms allowed to control the prices offered by third-party sellers?

WHAT HAPPENED IN AMAZON PRICE CONTROLS?

(BUNDESKARTELLAMT CASE NO. B2-73/20)

The German NCA ordered Amazon to stop certain price control practices. At the same time, the NCA confiscated the gains made with these anti-competitive practices (EUR 59 million).



Amazon marketplace
market share
Germany: 60%

Amazon as a hybrid platform

PROCEEDINGS AGAINST AMAZON THE AMAZON SYSTEM



WHAT HAPPENED IN AMAZON PRICE CONTROLS?

amazon.de

Delivering to Berlin 14109

Update location

All

adidas sneaker herren

Q

EN

Hello, sign in

Account & Lists

Returns & Orders

Shopping Basket

All

Amazon Haul

Knuspr

Best Sellers

Amazon Basics

New Releases

Today's Deals

Prime

Shopper Toolkit

Fashion

Gift Cards

Books

Kindle Books

Home & Kitchen

Electronics & Photo

Toys & Games

Computers

Sports & Outdoors

Home Improvement

Drugstore & Body Care

PC & Video Games

Car & Motorbike

Pet Supplies

Amazon Fashion

NEW

WOMEN

MEN

KIDS & BABY

LUGGAGE

BRANDS

SALE

Defeat the elements

 Shop adidas Terrex

Fashion > Men > Shoes > Fashion & Athletic Trainers > Sports & Outdoor Shoes > Running Shoes > Road Running Shoes



View in 3D

Visit the adidas Store

Adidas Men's Runfalcon 5 Running Shoes

4.4 (10,434)

#1 Best Seller in Men's Road Running Shoes

300+ bought in past month

-30% €42¹⁴

RRP: €60.00

FREE Returns

Prices for items sold by Amazon include VAT. Depending on your delivery address, VAT may vary at Checkout. For other items, please see details.

Colour: Core Black Cloud White Core Black



€42.14

€60.00



€53.93

€60.00



€44.91

€60.00



€44.99

€60.00



€49.99

€60.00



€49.99

€60.00



€56.58

€60.00



€62.52

€60.00



€69.68

€60.00



See 3 options with featured offers

Size:

44 EU

Size chart

Top Brand

adidas

FREE Returns

FREE delivery Thursday, 28 May on eligible first order

Or fastest delivery Tomorrow, 27 May. Order within 8 hrs 35 mins

Delivering to Berlin 14109 – Update location

In stock

Quantity: 1

Add to basket

Buy Now

Shipper / Seller Amazon

Returns Returnable within 30 days of receipt

Gift options Available at checkout

Payment Secure transaction

See more

Add to List

Other sellers on Amazon

New (11) from €42¹⁴ FREE Delivery on eligible first order to Germany and Austria. Select this option at checkout.

Featured Offer or Buy Box

70 – 90% of sales

No other criteria than price

WHAT HAPPENED IN AMAZON PRICE CONTROLS?



Adidas Men's Running Shoe
★★★★☆ 10,434 ratings
New
-30% €42¹⁴
RRP: €60.00 ⓘ
FREE delivery **Thursday, 28 May** on eligible first order
[See more](#)

10 other options
sorted by price + delivery: low to high [Filter](#)

New
-12% €52⁹⁹
RRP: €60.00 ⓘ
FREE delivery **Monday, 1 June.**
[Details](#)
Add to Basket

Dispatches from
Sold by
TradeINN
TradeINN
★★★★☆ (20419 ratings)
51% positive over last 12 months
[Return policy](#)

New
-18% €49²⁹
RRP: €60.00 ⓘ
€3.99 delivery **28 - 29 May.** Order within 2 hrs 49 mins. [Details](#)
Add to Basket

Dispatches from
Sold by
CORTEXPOWER
CORTEXPOWER
★★★★☆ (215048 ratings)
77% positive over last 12 months
[Return policy](#)

New
-10% €54⁰⁰
RRP: €60.00 ⓘ
FREE delivery **Saturday, 30 May.**
[Details](#)
Add to Basket

Dispatches from
Sold by
adidas AG
adidas AG
★★★★☆ (1689 ratings)
81% positive over last 12 months
[Return policy](#)

New
-7% €56⁰⁵
RRP: €60.00 ⓘ
FREE delivery **3 - 4 June.** [Details](#)
Add to Basket

Dispatches from
Sold by
e-joker
e-joker
★★★★☆ (183161 ratings)
89% positive over last 12 months
[Return policy](#)

PRACTICES CHALLENGED BY THE AUTHORITY

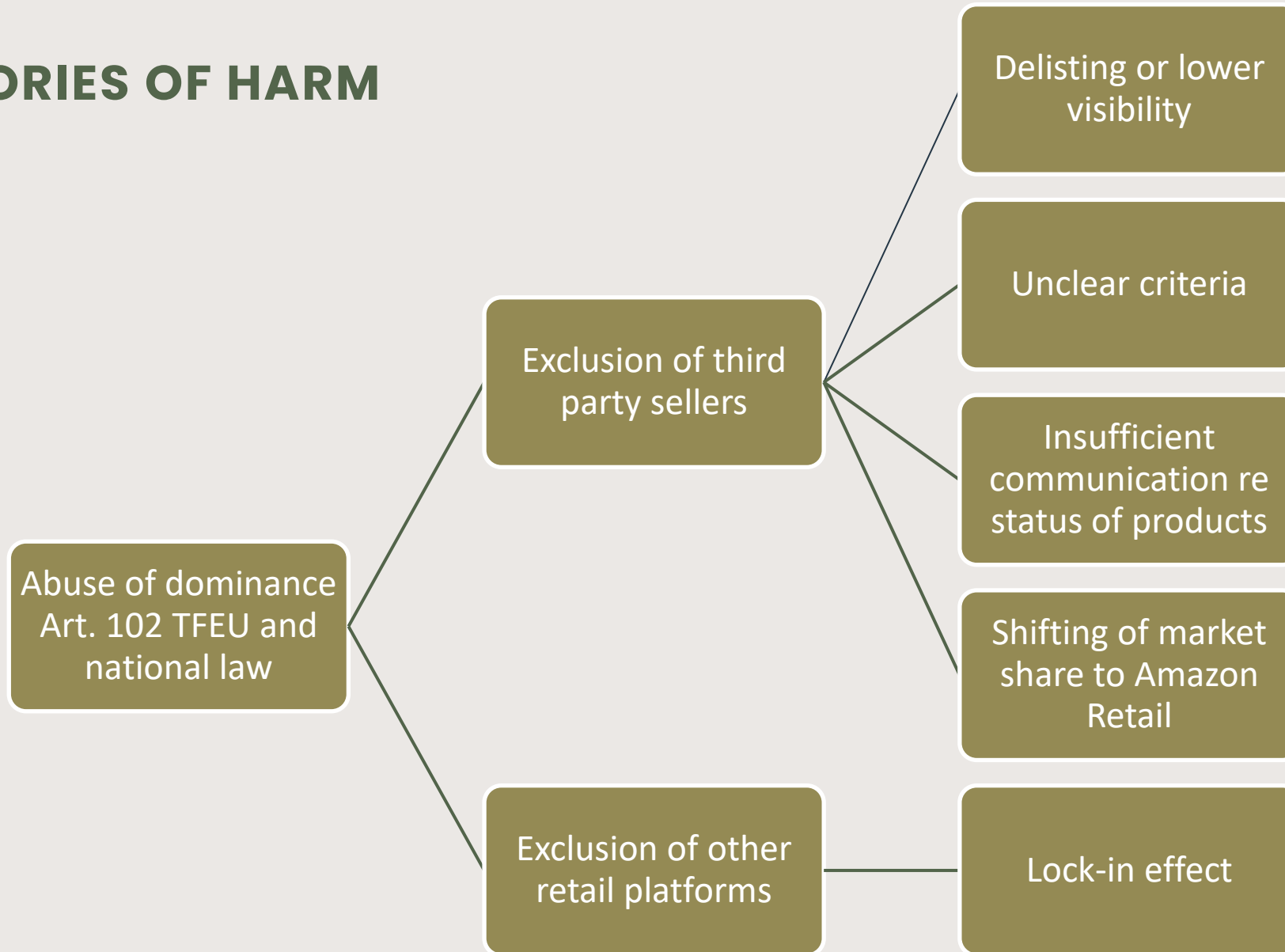
Mechanism 1 applies to all prices classified as excessive, and therefore potentially erroneous, according to a statistical model developed by Amazon.

Mechanism 2 is triggered by a price that is classified as “too high”. Amazon does not disclose the circumstances in which it deactivates the seller offer using the Mechanism 1, or the circumstances in which it only disqualifies the offer using Mechanism 2. The statistical model used to calculate the price caps is not disclosed either.

Mechanism 3 only applies to items that are currently also offered in other online shops or on other online marketplaces. Amazon continuously compares the prices with those of other online retailers. In this way, it identifies a “competitive price”, which is the lowest price currently offered by other online retailers.



THEORIES OF HARM



KEY TAKEAWAYS FOR BUSINESS

- **Conclusions for dominant hybrid platforms:**
 - Clear criteria for delisting or lower visibility
 - Clear communication re status of products
 - No shift of market share to own offerings
 - No systematic undercutting of prices on smaller platforms

Main message: Dominant hybrid platforms must be careful not to expand market share to the detriment of third-party sellers and to avoid lock-in effects to the detriment of smaller platforms.

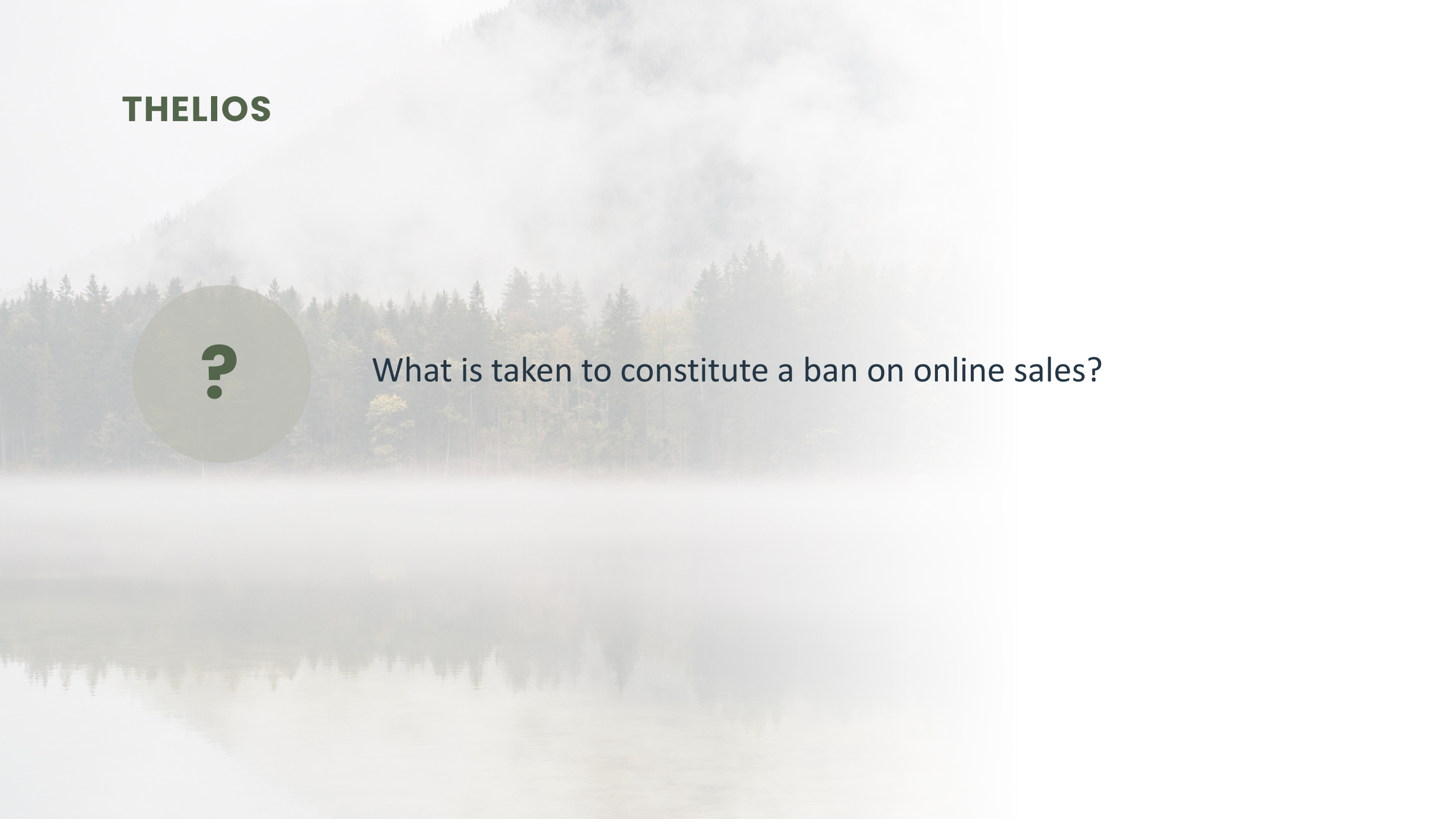
ONLINE SALES AND ADVERTISING RESTRICTIONS

Thelios (Romania)

by

Paul Buta

Muşat & Asociații (Romania)

The background of the slide is a misty, foggy landscape featuring a calm lake in the foreground, a dense forest of evergreen trees in the middle ground, and a mountain peak shrouded in fog in the background. The scene is reflected in the water. On the left side, there is a semi-transparent dark green circle containing a white question mark.

THELIOS



What is taken to constitute a ban on online sales?

THELIOS IN A NUTSHELL

- **Thelios S.p.A.** is part of the LVMH group of companies. It is the designer, manufacturer and exclusive distributor of luxury sunglasses bearing some of the famous fashion trademarks of the LVMH group.
- Thelios operates a selective distribution system for the sunglasses.
- **Shades Originators** is a Romanian retailer operating one shop situated in the commercial gallery of a hotel in Bucharest.
- The parties had a (tacit) agreement for the authorised offline distribution of Dior sunglasses in Romania through Shades' physical store in Bucharest. Shades was not authorised to sell the Dior sunglasses online.

THELIOS IN A NUTSHELL

- Shades insisted that it be allowed to sell online, it advertised some Dior sunglasses for sale online (on a marketplace) and said that Thelios' practice of restricting online sales went against competition rules.
- Thelios replied that Shades was not authorised to make online sales, that the authorisation process for online selling was undertaken by a different team than the offline team, that the evaluation was stringent and, eventually, that an evaluation of Shades' website had been made and that the score had been significantly lower than the minimum needed to be authorised for selling online.
- Thelios eventually terminates the commercial relationship.

ROMANIAN NCA AND ONLINE SALES BAN

- Thelios and Shades were found to have been party to an **agreement restricting all online sales** of Shades, including those on its own website.
- The ban was not outside Article 101 TFEU because it did not meet the ***Metro* criteria**:
 - No objective and non-discriminatory criteria: the criteria were not made available to Shades, which made them discretionary, and they were not uniformly applied (uniformity unverifiable)
 - Not proportionate, because full ban.
- The ban was a restriction of passive sales, which is a **hardcore restriction** of competition, so it did not benefit from the safe harbour of the **VBER**.
- The ban was a **by object restriction** because it created market partitioning against the TFEU objective.
- The ban did not qualify for an **individual exemption** because it was not indispensable for a selective distribution.

KEY TAKEAWAYS FOR BUSINESS

- Online selective distribution does not permit any and all quantitative and qualitative criteria.
- While criteria for online selective distribution must no longer mirror the offline selective criteria, the online approach need not amount to ban on online sales.
- Suppliers must give some guidance to interested/serious candidates who want to understand how they can fulfil the criteria for the selective distribution.
 - The selective criteria need not be made public (in the sense of indiscriminately to the general public) but they need to be transmitted to interested/serious candidates.
- Careful wording in the agreement can be turned on its head due to communication on other channels (e.g. WhatsApp or internal e-mails). It is impossible to control every channel every time: prevention is key.



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SELECTIVE DISTRIBUTION

Deckers (United Kingdom)

by

Annabel Borg

Eversheds Sutherland (United Kingdom)

DECKERS UK LIMITED V UP & RUNNING (U&R)



When can a supplier restrict the sales channels used by retailers in a selective distribution system?

DECKERS IN A NUTSHELL

- Deckers operated a selective distribution system for HOKA running shoes, supplying authorised retailers and selling through its own website
- Deckers' terms required retailers to obtain approval for online sales and to use approved websites linked to their brand
- U&R wanted to launch a separate, unbranded website to sell excess stock at a discount. Deckers refused permission and terminated the supply relationship after U&R launched the website
- U&R brought a damages claim before the UK Competition Appeal Tribunal (CAT) for breach of competition law

WHAT DID THE CAT DECIDE?

- The CAT found that Deckers' conduct was a restriction of competition "by object" because:
 - it restricted U&R's ability to use certain online sales channels; and
 - it reduced discounting and price competition by preventing U&R's use of the clearance website
- The CAT therefore found that the conduct infringed competition law and could not benefit from the block exemption

THE COURT OF APPEAL OVERTURNED THE CAT'S DECISION

- The CAT focused too much on the aim of the restriction
- A restriction is not automatically "by object" because it may reduce discounting
- The assessment must consider the content of the restriction and its legal and economic context
- On the facts, the arrangements were not a "by object" restriction and the block exemption applied

Selective distribution restrictions should be assessed in their full context and are not automatically unlawful merely because they may limit discounting

KEY TAKEAWAYS FOR BUSINESS

The “by object” test requires a context-based assessment. Anti-competitive intent or a “hardcore” label is not enough on its own

Restrictions in a selective distribution system may be justified where they protect brand positioning, quality or the integrity of the network

However, RPM and restrictions on passive sales remain high risk

Businesses should document the reasons for restrictions, apply them consistently and check whether the VBER applies



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OTHER NOTABLE DEVELOPMENTS

Samsung (The Netherlands)

by

Iris Graumans

Banning (The Netherlands)

SAMSUNG

?

Must inter-brand harm also be examined to establish a vertical restriction by object?

SAMSUNG IN A NUTSHELL

Fine decision of the Dutch NCA:

- On 14 September 2021, the Dutch NCA fined Samsung Electronics Benelux B.V. over EUR 39 million for RPM in the online retail market for televisions.
- Samsung issued recommended retail prices, but monitored actual prices and discounts, and repeatedly pressured retailers (via WhatsApp/e-mail) to adhere to those recommendations.
- The retailers complied and even asked Samsung to confront other retailers that used too low prices.
- The Dutch NCA concluded that this conduct exceeded lawful price recommendations, harmed consumers, and violated EU and Dutch competition law.

SAMSUNG IN A NUTSHELL

Samsung challenged the fine decision through a series of proceedings:

- Both the ACM and the Dutch administrative Court of Rotterdam rejected the objections and appeal of Samsung.
- Samsung further appealed to the Trade and Industry Appeals Tribunal (CBb). On 3 February 2026, the CBb issued an interim judgement.
- In its interim judgement the CBb referred preliminary questions to the CJEU on whether inter-brand competition must be assessed when establishing a vertical restriction by object in the context of RPM.

principal fine EUR 39 million
September 2021



principle decision upheld
November 2022



principle decision upheld
by the court
November 2023



interim judgement of CBb
February 2026



WHAT ARE THE CONSIDERATIONS OF THE CBB?

Trade and Industry Appeals Tribunal 3 February 2026:

- The CBb confirmed that Samsung's vertical price coordination was sufficiently harmful to intra-brand competition (competition between different sales channels for the Samsung brand) but said that it could not conclude that this constitutes a restriction by object without guidance from the CJEU.
- Samsung argues that the Dutch NCA should also have examined inter-brand competition (Samsung versus other brands) as part of the economic context.
- The CBb referred to EU case law such as *Visma* and *Super Bock*, as well as to the **Vertical Guidelines**, and concluded that these sources are not fully clear on whether inter-brand competition must be assessed in a by-object analysis.

WHAT ABOUT VISMA AND THE VERTICAL GUIDELINES?

Visma Enterprise:

“(78) Moreover, as the Commission has argued, in essence, vertical agreements are, in principle, likely to be less harmful to competition than horizontal agreements. Thus, a restriction of intra-brand competition is, in principle, problematic only if inter-brand competition on the market in question is reduced.”

Vertical Guidelines §21:

A reduction of intra-brand competition (i.e. competition between distributors of the goods or services of the same supplier) is by itself unlikely to lead to negative effects for consumers if inter-brand competition (i.e. competition between distributors of the goods or services of different suppliers) is strong

THE CBB'S PRELIMINARY QUESTIONS

Question 1: *Must Article 101(1) TFEU be interpreted as requiring that, when establishing a vertical restriction by object, the assessment of the economic and legal context must cover not only whether the agreement or concerted practice is sufficiently harmful to intra-brand competition, but also, in principle, whether it is sufficiently harmful to inter-brand competition?*

Question 2: *If so:*

- (a) must inter-brand harm always be examined, or does this not apply to certain categories of cases, such as hardcore restrictions; and*
- (b) may that examination be limited to, for example, the brand's market share and its development during the infringement period, or must it extend to other competition parameters depending on the circumstances?*

KEY TAKEAWAY FOR BUSINESS

- Watch out for the CJEU's judgement!
- The CJEU may give more room for interpretation of the actual harm, for the inter-brand competition, of RPM which could mean a fundamental change in way RPM is perceived by the competition authorities.

OTHER NOTABLE DEVELOPMENTS

Claas and CNH (Poland)

by

Irena Gajewska

Modzelewska & Paśnik (Poland)

CLAAS AND CNH IN A NUTSHELL

- In November and December 2025, the Polish NCA fined two importers of agricultural machinery, **Claas** and **CNH** (Case New Holland) and 12 dealers approx. EUR 120 million. Two managers were also fined. The decisions are not final.
- **The contracts were not the issue:** Claas used selective distribution allowing sales to any end user which is exempted under the VBER; CNH's distribution contracts were also not challenged by the Polish NCA.
- **But according to the NCA :** customers were allocated to dealers according to their location:
 - The customer's location was checked; customers were referred to the "competent" dealer or received no offer.
 - Customers from other areas were offered less favourable prices.
- **Market sharing and price fixing, both by object;** a **single and continuous infringement** of 11 years and 4 months for every party, regardless of when the evidence on a given dealer starts or ends.
- **Supplier's role:** "coordinator" (Claas, adjustment in the fine calculation -15%) and "leader" (CNH, adjustment +25%). The dealers were fined as well.
- The evidence consisted mainly of emails seized during dawn raids in 2023.



Can a supplier give dealers special rebates for sales to customers in their territory?

WHAT DID THE POLISH NCA SAY IN *CNH*?

- **What the NCA found:** some incentive programs and sales support covered only machines sold to customers in the dealer's own area. Support could be withdrawn after a sale into another dealer's area.
- The conditions did not distinguish between active and passive sales.
- **Assessment:** an indirect restriction of passive sales, and one of the reasons CNH was found to be the "leader" (fine +25%).
- **Legal framework:**
 - Reduced bonuses or discounts are an indirect restriction of passive sales (Vertical Guidelines).



Can compliance training serve as evidence that the practice has ceased?

WHAT DID THE POLISH NCA SAY IN CLAAS?

- **Facts:** in 2021–2022, the supplier organised competition law training for dealers and then sent all dealers a letter stressing the need to comply with competition law.
- **A dealer's argument:** it forwarded the importer's post-training letter to its staff with a reminder to comply and argued that it had stopped the practice.
- **The NCA's response:** the NCA found that this was a general declaration of the need to comply, not effective and real cessation. The company bears the burden of proving that the practice has ceased.
- **Instead, the training was used against the parties:** according to the NCA, it showed that they knew the rules, so the infringement was **intentional**, an aggravating factor for all parties. It was not treated as a mitigating factor.
- **Further, in CNH:** the NCA stated that a participant must distance itself openly and unequivocally and inform the other participants that it no longer takes part.

KEY TAKEAWAYS FOR BUSINESS

- **Rebates, bonuses and sales support should reward the dealer's performance, not the customer's location.** Granting them only for sales within the dealer's own area penalises passive sales into other areas (CNH).
- **Training and internal reminders are not enough.** Internal steps do not show cessation on their own (Claas); a participant must distance itself openly toward the other participants (CNH).
- **Dealers are liable alongside the supplier, for the whole duration of the infringement,** regardless of the evidence on the individual dealer (UOKiK's approach).



Q&A

QUESTIONS FROM THE AUDIENCE

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