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5th Yearly Update on Verticals

8 October 2026

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Q&A

This Q&A brings together questions raised by participants during the fifth Yearly Update on Verticals, held on 8 October 2026, and the contributors' answers. It covers resale price maintenance, online sales and advertising restrictions, selective distribution, and other notable developments.

For further information, please email dlc@contrast.law.

1. Resale price maintenance

QUESTION 1

Would the assessment in an indirect resale price maintenance ('RPM') case where the initiative does not come from the supplier be different if the arrangement concerned a short rebate campaign?

Answer. Potentially, yes. The Commission indicates in paragraph 197 of the Vertical Guidelines that RPM may generate efficiencies, particularly where it is initiated by the supplier. However, it remains a hardcore restriction and undertakings relying on an efficiency defence must provide concrete evidence and demonstrate that all the conditions of Article 101(3) TFEU are satisfied in the individual case.

Fixed resale prices may be necessary to organise a coordinated low-price campaign of limited duration, generally two to six weeks, particularly where the supplier operates a uniform distribution format, such as a franchise system. Given its temporary nature, such a campaign may, on balance, be pro-competitive.

QUESTION 2

In the *Morellato* case, one of the practices considered to infringe competition law involved a supplier prohibiting its distributors from using certain online marketplaces while continuing to

use those marketplaces itself. The Vertical Guidelines also state that, where a supplier itself uses a particular online marketplace but prohibits its distributors from doing so, such a restriction is unlikely to satisfy the requirements of appropriateness and proportionality. Is it therefore correct to conclude that such a restriction becomes problematic where the VBER does not apply and the parties must rely on an exemption under Article 101(3) TFEU and/or the Metro criteria, whereas the restriction would remain permissible where the VBER does apply, for example because the parties' market shares remain below the applicable threshold?

Answer. In *Morellato*, the VBER did not apply because the RPM finding removed the safe harbour from the agreement as a whole. The marketplace ban therefore had to be assessed individually. The Authority stated that its conclusion applied "*irrespective of whether the restriction on the use of the marketplace is classified as a hardcore restriction*". It therefore left open the possibility that a marketplace ban with those features could itself constitute a hardcore restriction. If so, the ban would fall outside the VBER even where the parties' market shares remain below 30%. Such a viewpoint would nonetheless go against the Vertical Guidelines (paragraph 208(c)), where the Commission states that a direct or indirect ban on the use of online marketplaces can benefit from the safe harbour of the VBER.

QUESTION 3

Why were the retailers not included as addressees of the infringement decisions in the *Gucci*, *Chloé* and *Loewe* cases, although their conduct helped establish the agreements and they may have benefited from them?

Answer. In the Commission's cases, the retailers' conduct was important in establishing the existence of an agreement. However, while tacit acquiescence may be sufficient to establish an agreement for the purposes of Article 101 TFEU, it does not automatically mean that the Commission has sufficient evidence to hold individual retailers liable as participants in the infringement. The degree of involvement is important.

In some cases, authorities have also fined dealers that went beyond mere compliance and played a more active role in implementing a restrictive arrangement, as in the *Yamaha* case in the United Kingdom and the *Claas* case in Poland.

The Commission's cases also concerned a very large number of retailers across the EEA, making enforcement proceedings against individual retailers considerably more complex and resource intensive. It is therefore not surprising that the Commission focused its enforcement on the luxury brands that designed, monitored and enforced the pricing policies, particularly given the deterrent effect of imposing substantial fines on such well-known companies.

2. Online sales and advertising restrictions

QUESTION 4

Does the reasoning in the Bundeskartellamt's February 2026 *Amazon* pricing decision extend beyond dominant platforms to hybrid platforms more generally? In particular, to what extent do the restrictions identified by the Bundeskartellamt apply to hybrid platforms that are not dominant?

Answer. The Bundeskartellamt (the German Competition Authority) relied on several legal bases:

- Sections 19(1) and (2) No. 1 of the German Act against Restraints of Competition ('ARC')
- Article 102 TFEU
- Section 19a ARC, and
- Regulation 2019/1150 (the 'P2B Regulation').

Of those provisions, only the P2B Regulation applies to platforms generally. The other provisions apply only to dominant platforms or to platforms with paramount significance for competition across markets (digital ecosystems).

QUESTION 5

Has Amazon appealed the German Bundeskartellamt's decision, and is the appeal publicly available?

Answer. Amazon's appeal is pending before the German Federal Court of Justice under file number KVB 13/26. The appeal is not publicly available.

3. Selective distribution

QUESTION 6

In the decision of the Competition Appeal Tribunal ('CAT') in *Deckers*, it appeared that Deckers' selective distribution system was not properly implemented, hadn't been communicated, monitored or enforced properly. Did the Court of Appeal address this point or

just proceed from the assumption that Deckers was operating a proper selective distribution system?

Answer. No. The Court of Appeal did not revisit the CAT's findings concerning the operation of Deckers' selective distribution system, taking the facts as found by the CAT. Deckers also did not appeal the CAT's finding that the arrangements fell outside the Metro safe harbour.

4. Other notable developments

QUESTION 7

If transactional conditions may not be varied based on the location of the customer, is it nevertheless permissible to reward investments made by a distributor in relation to its allocated market? If not, how can the risk of free riding in that market be addressed?

Answer. Assuming that the allocated market is an exclusive territory within an exclusive distribution system, the supplier may, as a general rule, reward the distributor's investments in its territory. However, the supplier may not link the distributor's purchase conditions to where, or to whom, the distributor resells.

In an exclusive distribution system, protection against free riding is primarily achieved by restricting active sales into the exclusive territory. To preserve the exclusive distributor's investment incentives, the supplier must restrict its other distributors (and possibly its direct customers) from actively selling into that territory (Vertical Guidelines, paragraph 219). That protection is not absolute. Passive sales into exclusive territories or customer groups may not be restricted (Vertical Guidelines, paragraph 222).

A supplier may support the distributor's investments, for example by contributing to promotional activities or to the costs of showrooms or demonstration machines. Such support must not, however, directly or indirectly discourage passive sales outside the territory. For example, the supplier may not refuse or reduce bonuses or discounts, or charge a higher price, for products sold to customers outside the territory (Vertical Guidelines, paragraphs 204(b) and (f), read together with paragraph 202).

Alternatively, if there is selective distribution in the allocated market, the authorised resellers' investments are protected by the closed nature of the distribution network. If the supplier does not apply selective distribution in the whole EU, it is allowed to prohibit active and passive sales by non-selective distributors and their customers to unauthorised distributors located in the territory where the supplier operates a selective distribution system.