

Alert | Antitrust Litigation & Competition Regulation



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Frankfurt Court Approves Online Marketplace Restriction for Luxury Perfumes

The Higher Regional Court of Frankfurt ruled on 12 July 2018 that manufacturers of luxury products are permitted to restrict authorised resellers from reselling on online marketplaces.

The marketplace restriction at issue was imposed by Coty Germany on Parfümerie Akzente, one of its authorised distributors, to prohibit it from distributing Coty perfumes on a third-party online marketplace. The Frankfurt court confirmed that the restriction is justifiable as it is aimed at preserving the luxury image of Coty's products. It also found that the restriction, which did not affect the ability of Parfümerie Akzente to maintain its own online shop, did not go further than necessary to achieve this aim. As part of a wider selective distribution system that was administered based on objective, qualitative criteria and uniformly applied in a non-discriminatory manner, the marketplace restriction also fell within the safe harbour under the EU Vertical Block Exemption Regulation.

The decision of the Frankfurt court follows the preliminary ruling of the European Court of Justice (CJEU) issued in December 2017, which we previously wrote about [here](#). It confirms that within a selective distribution system, manufacturers of luxury goods can protect their brand image by imposing certain restrictions on unsuitable sales channels. Any such restriction should, however, be carefully constructed to avoid going beyond what is necessary to preserve an "aura of luxury". Although this is a member state decision, its interpretation of the CJEU ruling will be of persuasive value.

As the CJEU's ruling formally relates to selective distribution systems for luxury products, it will be interesting to see how competition authorities and courts will now approach similar restrictions on the resale of quasi-luxury or even non-luxury goods, for which the brand protection justification will likely be

weaker. One of the areas which may be of particular interest is technologically advanced products, which may engage different (but equally legitimate) justifications for resale restrictions, such as the need to provide better customer service during and after sales to properly instruct customers and ensure correct usage.

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