

Alert | Antitrust Litigation & Competition Regulation



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Nike Fined €12.5 Million for Restricting Intra-EEA Sales

In a warning shot to businesses using intellectual property rights to restrict cross-border sales within the European Economic Area (EEA), on 25 March 2019 the **European Commission fined Nike €12.5 million** for banning traders of licenced football merchandise from selling to other EEA countries. The decision underscores the Commission's commitment to eliminating commercial practices that threaten the integrity of the internal market to the detriment of consumers.

The Commission investigation found that, as licence holder for merchandise of various well-known European football clubs and federations, Nike operated a network of licensing and distribution agreements which prevented sales between countries within the EEA.

The restrictions included contractual provisions that explicitly restricted out-of-territory sales, as well as indirect measures that penalised such sales.

By restricting cross-border sales, Nike was able to partition the Single Market and maintain different prices for the same products, or sell selections of products at higher prices in different countries. The tough stance on restrictions in distribution networks that seek to allocate customers and markets is a unique feature in the EEA, where the free movement of goods is guaranteed under the Single Market imperative.

The €12.5 million fine includes a 40 percent reduction to reflect a high level of cooperation by Nike in the investigation. According to the Commission's press release, Nike cooperated beyond its legal obligation to do so, provided evidence with significant added value, and expressly acknowledged the facts and infringements of EU competition rules. The European Commission is conducting at least two other ongoing investigations into similar licensing practices.

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