

Manufacturer's strategies to deal with the coexistence of online and offline
distribution channels

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February 2019



VILLANUEVA
CENTRO UNIVERSITARIO

| Manufacturer's strategies to deal with the coexistence of online and offline distribution channels |

TRAINING OF NATIONAL JUDGES IN EU COMPETITION LAW (DEFCOMCOURT3)

Valencia, 21-23 de febrero de 2019

Dr. Fernando Díez Estella

1. Punto de partida: ¿de dónde salimos?
2. Algunos acontecimientos recientes
3. Estrategias alternativas para la distribución física y *on-line*
4. Estrategias anticompetitivas frente a la distribución *on-line*
5. Conclusiones

1. Punto de partida

(i) Horizontal vs. Vertical agreements



1. Pun

(i) Hor

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PUBLIC CONSULTATION

EU competition rules on vertical agreements – evaluation

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About this consultation

Target audience

Why we are consulting

Responding to the questionnaire

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About this consultation

Feedback period	4 February 2019 - 27 May 2019
Topic	Competition

Target audience

The Commission has conducted a mapping exercise relying on the Commission's experience with enforcing Article 101 of the Treaty, the information gathered through the E-commerce Sector Enquiry and the feedback received on the Roadmap for the Evaluation of the Vertical Block Exemption Regulation. The outcome of the mapping exercise

1. Punto de partida

(i) Horizontal vs. Vertical agreements

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Pioneer

1. Punto de partida

(ii) Normal goods vs. Luxury brands



1. Punto de partida

(ii) Normal goods vs. Luxury brands... or others!

- STJUE de 6.12.17, As. C-230/16 *Coty Germany GmbH v. Parfümerie Akzente GmbH*
- STJUE de 13.10.11 , As. C-439/09 *Pierre Fabre Dermo-Cosmétique*
- Sentencia Audiencia Provincial de Zaragoza (Sección 4ª), núm. 558/2003, de 20.10.03, *Perfumes Clarins c. SABECO*
- Décision Autorité de la Concurrence, n° 18-D-23 du 24.10.18, *Stihl*
- Decision of Federal Court of Justice, KVZ 41/17, de 12.12.17, confirms Bundeskartellamt's decision on AS/CS
- CNMC incoa Expte (22.11.18) Asunto S/DC/0631/18, *ADIDAS*

1. Punto de partida

(iii) Off-line vs. On-line distribution channels



1. Punto de partida

(iii) Off-line vs. On-line distribution channels



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 European Commission | COMPETITION #EUcompdigit

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MV opening speech

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Commissioner Margrethe Vestager

On 17 January 2019, Margrethe Vestager, Commissioner for Competition, hosted a one-day conference featuring a keynote speech by Nobel laureate Professor Jean Tirole, in Brussels on

2. Algunos acontecimientos recientes



2. Algunos acontecimientos recientes: el caso COTY

E-commerce after Coty



Pablo Ibáñez-Colomo, 27.04.18

I was really pleased that [Denis Waelbroeck](#) invited me to speak in the context of

the
of

20

Article
Where do we stand after Coty?
Yves Botteman and Daniel Barrio Barrio*

Abstract: An area of uncertainty, and with differences of approach between brand owners can prevent distributors from reselling their products via e-commerce. This article considers the European Court of Justice's judgment in Coty arrangements, as regards both the application of Article 101 TFEU and the Regulation to selective distribution arrangements and restrictions on internet sales (goods) and the approach taken by national courts and competition authorities.

What does the Coty judgment mean for businesses that do business in Europe?



2018-01 | April 2018

Competition policy *brief*

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Occasional discussion papers by the Competition Directorate-General of the European Commission

EU competition rules and marketplace
bans: Where do we stand after the
Coty¹ judgment?

Introduction

Marketplace
encountered in the E-
commerce Sector Inquiry
range from absolute bans to
restrictions on selling on

In a nutshell

In its Coty judgment, the
Court of Justice confirmed
that selective distribution

2. Algunos acontecimientos recientes: el caso COTY

Proportion of retailers using different sales channels for selling online



2. Algunos acontecimientos recientes: el caso GUESS



3. Estrategias alternativas distribución física / on-line

1. No vender marcas de otros, sólo marcas propias
2. Salir de internet, sólo tiendas físicas
3. Sistemas de distribución selectiva



4. Estrategias anticompetitivas distribución *on-line*

- **Control por la marca/fabricante de la red de distribución**
- **Especialmente la venta a través de plataformas**
- **Límites en la distribución vertical... ¡restricción *por objeto!***
- **No se admiten justificaciones**
- **En definitiva: no limitar la posibilidades de elección de los consumidores**

4. Estrategias anticompetitivas distribución *on-line*

- Online sales ban
- Unjustified absolute territorial partitioning
- Cross-selling within the distribution network
- Resale Price maintenance
- Online advertising restriction



5. Conclusiones

1. El “aparato” antitrust está perfectamente equipado para aplicarse a los mercados on-line
2. ¿Una nueva era en la persecución y sanción de las restricciones verticales en la distribución comercial?
3. Absoluta licitud de los sistemas de distribución selectiva
4. ¿Miedo a la hipotética fragmentación del –inexistente- Mercado Único?
5. Un *over-enforcement* en la distribución on line... ¡reforzamiento de las posiciones de dominio de los *marketplaces*!

Muchas gracias por su atención

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