



*14th EU-China Competition Week:
Analytical framework for investigating
non-price vertical agreements*

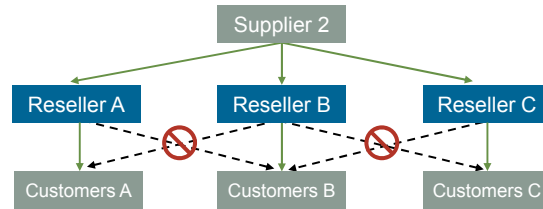
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Key issues related to Non-Price Vertical Restraints



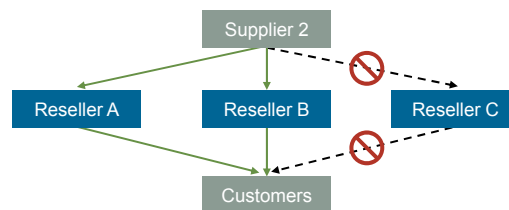
- Typical non-price vertical restraints (outside of dominance cases)
- Elements impacting the antitrust assessment of vertical restraints
- Impact of e-commerce on non-price vertical restraints
- Anticompetitive attempts to reduce e-commerce

Exclusive Distribution System



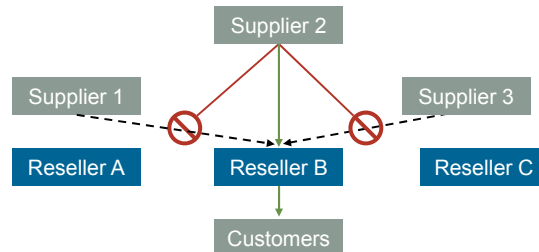
Definition	Pro-competitive goals; "efficiencies"
One distributor per geographic zone or per types of clients	<ul style="list-style-type: none"> - Ensure investment by resellers - Reduction of free-riding
Theories of Harm	
<ul style="list-style-type: none"> - Reduction of intra-brand competition (risk of price discrimination) - Restriction of "passive" (unsolicited) sales to customers – hard-core restriction - Reduction of inter-brand competition (if all suppliers behave similarly) 	

Selective Distribution System



Definition	Pro-competitive goals; "efficiencies"
<ul style="list-style-type: none"> - Resellers selected by the supplier - Their number is limited - Tightness of system 	<ul style="list-style-type: none"> - Ensure investment, a service of excellence by resellers - Brand protection - Reduction of free-riding
Theories of Harm	
<ul style="list-style-type: none"> - Reduction of intra-brand competition - Usage of selection unjustified by the nature of the product, the need of services of quality - Absence, discriminatory use, or subjectivity of selective distribution criteria - Reduction of inter-brand competition (if all suppliers behave similarly) 	

Single Branding



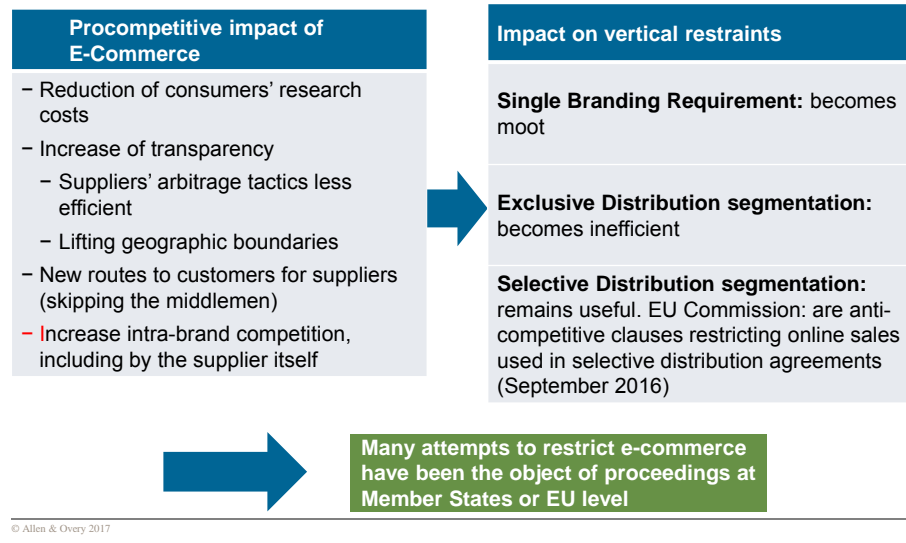
Definition	Pro-competitive goals; "efficiencies"
Only one brand resold by the reseller (e.g., through a non-compete obligation covering 80% or more of the reseller's need or through quantity-forcing clauses)	<ul style="list-style-type: none"> – Ensure investment by resellers – Brand protection
Theories of Harm	
Reduction of inter-brand competition	

Elements impacting the antitrust assessment of vertical restraints



- Supplier market shares (safe harbour in the EU: 30%)
- Distributor market shares (safe harbour in the EU: 30%)
- Absence of hard-core restraints
- Period of time (non-compete clause, ≥5 years, automatically renewable, potentially anticompetitive)
- Degree of maturity of the market
- Network effect (all suppliers apply the same restraints; "market practice")
- Entry barriers
- Resellers' bargaining power
- Level of trade: wholesaler (lower risk of foreclosure) v. final retailer (higher risk of foreclosure)

Impact of e-commerce on traditional non-price vertical restraints



Anticompetitive attempts to reduce e-commerce (examples)

Country	Cases	Description
EU	Asus, Denon & Marantz, Philips and Pioneer (consumer electronics products such as household appliances, notebooks and hi-fi products)	<ul style="list-style-type: none"> - Restricting the ability of online retailers to set their own prices - Use by many online retailers of pricing software that automatically adapts retail prices to those of leading competitors. As a result, the alleged behaviour may have had a broader impact on overall online prices for the respective consumer electronics products
Denmark	2016: Canett Furniture (furniture)	- Prohibition of passive sales in Norway/germany does not restrict competition in Denmark (although the case was based on Art 101)
Germany	2015: Asic (sport shoes)	- Restriction of online trade and of use of price-comparison websites
	2014: Adidas (sport shoes)	<ul style="list-style-type: none"> - Ban on selected distributors to sell via online market places (eBay and Amazon) - "Manufacturers can select their distributors according to certain quality requirements. However, both under European and German competition law they are prohibited from largely eliminating a principal distribution channel such as the web" - Commitment offered
	2013: Bosch Siemens Hausgeräte (Household appliance) 2013: Gardena (garden products)	<ul style="list-style-type: none"> - Hybrid dealers (selling household appliances both in a brick-and-mortar shop and via a webshop) at a disadvantage: the more turnover hybrid dealers generated via their webshop, the less rebates they received (commitment to discontinue and information of all dealers) - "In structuring his distribution system a manufacturer may well take account of the different conditions in the different distribution channels. Nonetheless, he should always be well aware of the fact that he cannot simply eliminate or discriminate against online sales" (GARDENA)

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Attempts to reduce e-commerce (examples)

Country	Cases	Description
France	2013: Pierre Fabre (cosmetics) 2012: Bang & Olufsen (hi-fi products)	Complete ban of e-commerce sales of PF and B&O's products by their selected distributors: "not indispensable to ensure a quality consumer service"
France	2016: Coty (perfume)	Anticompetitive prohibition to sell to unauthorized online distributors, while the selective distribution system contains other hard-core restraints rendering it anticompetitive
UK	2014: Pride Mobility Products ("Mobility Scooter")	<ul style="list-style-type: none"> - Prohibition of online advertising by certain retailers of below certain resale prices - Manufacturer of mobility scooters and some of its retailers unlawfully entered into anti-competitive agreements that prevented retailers from advertising their prices online.

Questions?



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