



International Distribution Institute

Controlling Distributors' On-Line Sales

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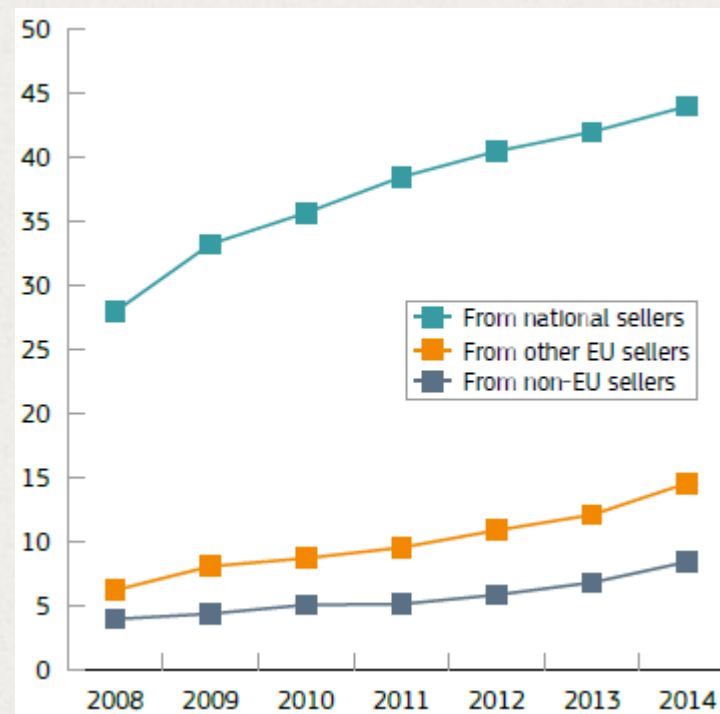
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Agenda

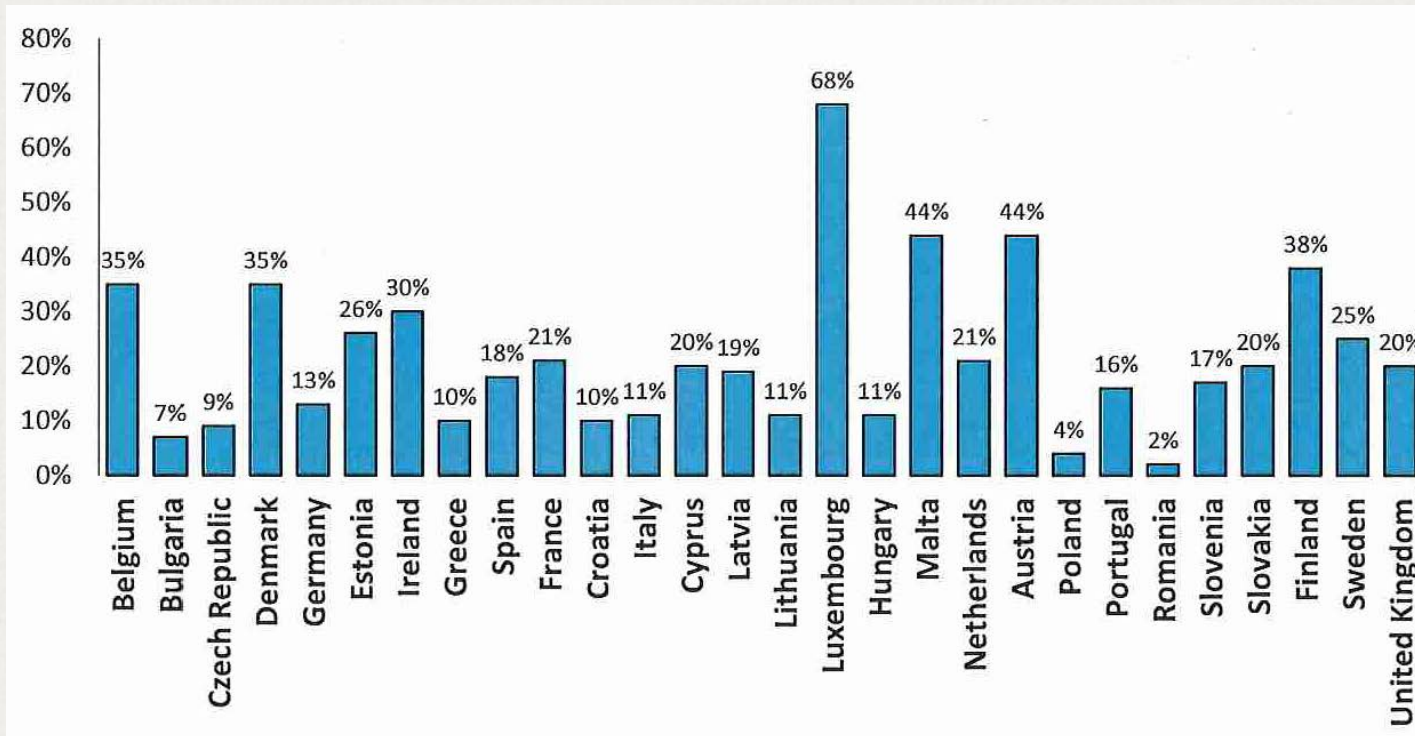
- The Distributor's Website
 - Commission's Guidelines
 - Qualitative Requirements
- Administration of the Network
 - Consistency
 - Pricing
 - Parallel trade, geoblocking & geofiltering

Domestic and cross-Border online shopping %, EU28, 2008-14



Eurostat, quoted in Commission Working Document on Geoblocking SWD(2016) 70 final

Cross-border internet purchases (% of total individuals) – 2015



Eurostat, quoted in Commission Working Document on Geoblocking SWD(2016) 70 final

The Distributor's Website Commission Guidelines (1)

“...requiring, without limiting the online sales of the distributor, that the buyer sells at least a certain absolute amount (in value or volume) of the products offline to ensure an efficient operation of its brick and mortar shop (physical point of sales)”

Guidelines on Vertical Restraints (2010/C 130/01) Para 52(c)



The Distributor's Website Commission Guidelines (2)

“... making sure that the online activity of the distributor remains consistent with the supplier's distribution model ...”

Guidelines on Vertical Restraints (2010/C 130/01) Para 52(c)

The Distributor's Website Commission Guidelines (3)

“... the supplier may require quality standards for the use of the internet site to resell its goods, just as the supplier may require quality standards for a shop or for selling by catalogue or for advertising and promotion in general. This may be relevant **in particular** for selective distribution. ...”

Guidelines on Vertical Restraints (2010/C 130/01) Para 54 (emphasis added)

The Distributor's Website Qualitative Requirements (1)

- Brand Adjacencies
 - Number of adjacencies
 - Category of products
 - As authorised reseller only
 - In the same area

The Distributor's Website Qualitative Requirements (2)

- Other Products
 - Relative importance
 - Nature of products, presentation, assortment
 - Not depreciative to brand
- Range
 - SKUs
 - Models/sizes

The Distributor's Website Qualitative Requirements (3)

- Visual Merchandising/Appearance
 - Name
 - Look & feel
 - Ease of navigation
 - Images used
 - Resolution, ability to zoom, etc
 - Product descriptions, information, advice
 - Advertising of site

The Distributor's Website Qualitative Requirements (4)

- Operational Criteria
 - Data privacy, appropriate Ts & Cs
 - Use of links
 - Search facility
 - General performance
 - Availability
 - Payment, delivery, returns
 - Restriction on sales/Max quantity per SKU



Administration of the Network Consistency

- Consistency with bricks & mortar/other SDCs
- Non-discrimination
- French Concurrence/Samsung case

Administration of the Network Pricing (1)

- “Unilateral behaviour by non-dominant companies falls outside the scope of the EU competition rules” (Commission Working Doc on Geoblocking para 192)
- ECJ judgment in Bayer (6 Jan 2004)
- Supporting distributors
- Discriminatory pricing

Administration of the Network

Pricing (2) – Resale price maintenance

[1] where a manufacturer introduces a new product, RPM may be helpful during the introductory period of expanding demand to induce distributors to better take into account the manufacturer's interest to promote the product.

[2] ... fixed resale prices ... may be necessary to organise in a franchise system or similar distribution system applying a uniform distribution format a coordinated short term low price campaign (2 to 6 weeks in most cases)

[3] In some situations, the extra margin provided by RPM may allow retailers to provide (additional) pre-sales services, in particular in case of experience or complex products. ... RPM may help to prevent ... free-riding at the distribution level.

Administration of the Network Geoblocking – Examples (1)

[U]ser located in Paris, wants to buy a certain product via a German website and is prevented from accessing the German website because it has been blocked on the basis of the French IP address (as the website is not accessible for users located outside of Germany)

Administration of the Network Geoblocking – Examples (2)

[U]ser located in Paris is not blocked from accessing the German website, but – based on its location – directly re-routed to the company's French website without the possibility to revert to its initial choice

Commission Working Doc on Geoblocking para 34, second bullet

Administration of the Network Geoblocking – Examples (3)

[U]ser located in Paris [is] able to access the German website, but ...the payment [is] refused because the credit card used for payment is linked to an address in France, or the delivery to France [is] denied based on the user's location

Administration of the Network Geofiltering – Example

[U]ser located in Paris is able to buy the product it wants to buy on the German website, but has to pay a higher price than a user located in Germany

Commission Working Doc on Geoblocking para 34, fourth bullet



Administration of the Network Draft Regulation on Geoblocking (1)

- Published 25.05.16
- Expected to be in force 2017 – no implementation necessary
- Applies to consumers and businesses
- Extra territorial



Administration of the Network Draft Regulation on Geoblocking (2)

- No general prohibition
- Does not apply to purchasers for resale
- Can block or redirect with consent

Administration of the Network Draft Regulation on Geoblocking (3)

- Does not prohibit price discrimination where seller delivers
- Applies to services provided on site – eg car rental, hotel rooms
- Applies to electronic services from July 2018 – copyright dealt with separately
- Refusal to supply?

Conclusions

- ✓ Requiring bricks & mortar
- ✓ Imposing qualitative requirements, even outside selective distribution
- ✓ Unilateral off line discriminatory pricing if not dominant
- ▲ Unilateral geoblocking and geofiltering if not dominant