

- **In distribution network, distributors must be chosen on the basis of certain criteria laid down by the supplier.**
- Article 101-1 TFUE does not apply when *“the choice of resellers is made on the basis of objective qualitative criteria, regarding the business qualifications of the reseller, its employees and premises, and these conditions are established uniformly for all potential resellers and applied in a non discriminatory manner”* (CJCE oct. 25, 1977, Metro, Rec. CJCE p. 1875).
- When these criteria or the supplier’s requirements go beyond what is strictly necessary to ensure the marketing of the products under proper conditions, article 101-1 will not be applicable, but article 101-3 will allow the EU Commission, and also national competition authorities, and national jurisdictions to waive, for the benefit of anti-competitive arrangements that satisfy its conditions, the prohibition contained in article 101-1.

The exemption is granted on a case by case basis or by application of BER 330-2010 if the market share of supplier and distributor each separately do not exceed 30%.

In any case the selection criteria must be applied in a no discriminatory way.

- **The selection criteria and the conditions of marketing must be applied by the supplier in his own retail outlets.**

For example:

- Installation of a repair shop imposed on the distributors by the supplier but not carried out in the supplier's stores is illegal.

Cass. com., oct. 26, 1993

- Obligation to advise and assist the consumer imposed on the distributors but not applied by the supplier who develops mail orders selling without any advice is illegal.

Limoges, nov. 25, 1991

- **Except for justification related to the role of the supplier.**

For example:

- Franchisor tries out new conditions which could be then applied by the franchisees at a later date.
- Supplier who reserves for himself on-line sales (?)

- **The selection criteria and the condition of marketing must be applied in a uniform way by the supplier to all distributors.**

For example:

- A clause imposing a specific presentation of the products on a particular distributor but not on the others is illegal.

Paris, july 8, 1991

- A clause imposing a minimal surface of sale on some distributors but not all distributors is illegal.

Toulouse, march 15, 1993

➤ **Except for objective and proportionate justification.**

For example:

- Supplier can distribute through two different distribution networks.

Commission CE dec. 2, 1988, Charles Jourdan

➤ So imprecise criteria are illegal:

For example:

- Limitation of the number of distributor “*in function of local potentiality of sales*”

Paris, apr. 9, 1997

- Different sales goal according to the localization of the distributor; the agreement provided that sales goal was decided: “*according to the competing situation and the commercial specificity*”

Cass. com., sept. 23, 2008

- **The supplier must check that the selection criteria are applied by distributors.**

For example:

- The supplier is responsible if he tolerates distribution which does not respect a specific condition of presentation of the products laid down by the supplier.

Cass. com., oct. 21, 1997

- Particularly if he tolerates sales to a non selected distributor outside the network.

Versailles, jan. 12, 1980

Paris, feb. 8, 1990

➤ **A distributor of the network can act as unfair competition against another distributor of the network which does not respect the selection criteria.**

For example:

- Sanction were imposed on the distributor who did not apply contractual condition of marketing of cosmetic products, at the request of another distributor inside the network.

Cass. com., july 1, 2003