



International Distribution Institute

DISCUSSION PANEL

Coordinating online sales and traditional offline distribution channels (II): complying with antitrust rules on dual distribution

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THE BACKGROUND

Dual distribution has been common practice for years, through direct sales of the supplier to important clients or sales to end customers by the subsidiaries or branches of the supplier or by the internet platform of the supplier, in parallel to the sales of the distributors.

How do you explain the new and strict approach of the Commission towards dual distribution although this kind of distribution has been common practice for decades and seems to have given rise to only one case (the Danish Hugo Boss case) ?

THE EVOLUTION BETWEEN THE COMMISSION'S DRAFT AND THE FINAL TEXT

The first draft of the Commission submitted the block exemption of dual distribution systems to strict conditions: a double threshold of 10% and 30% with a different scope of the exemption, the absence of any restriction by object and the absence of an hybrid platform. These conditions have been abandoned in the final text. Is the new regime satisfactory for distribution networks ?

THE NEW TEST

The BER and the guidelines admit information that is directly related to the implementation of the vertical agreement between the supplier and the buyer and information that is necessary for the improvement of the production or distribution of the contract goods or services ? Is it necessary/relevant to make such a distinction?

What information should probably never be exchanged between the supplier and the buyer or what information presents the highest degree of risk? In practice, how can companies distinguish between information on maximum recommended prices (which can be communicated according to paragraph 99 of the guidelines) and information on future resale prices (which should not meet the requirements set forth in the new regulation pursuant to paragraph 100 of the guidelines)?

THE IMPLEMENTATION OF THE NEW RULES

What precautionary measures should companies take to comply with the new rules on information exchange in a dual distribution scheme? What requirements should Chinese walls put in place to limit the exchange of information between suppliers and buyers meet? Should such a Chinese wall be put in place both within the supplier's company and within the buyer's company? For example, in the case described in the precedent panel.

In the event of an inspection by the Commission, will account be taken of the measures put in place within the company to limit exchanges of information which do not meet the conditions laid down in Article 2(4) and (5) of the new regulation if, despite these measures, an exchange of information has nevertheless taken place?