



# Online Restrictions

The fine line between exemption  
and hardcore restriction



International Distribution Institute

# The Panel's Chair & Speakers



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# VBER 2022 – What's new?

## Hardcore restriction Article 4(e)

### – Preventing effective use of internet

*„a vertical agreement which, directly or indirectly, in isolation or in combination with other factors controlled by the parties, has the **object of preventing the effective use of the internet** by the buyer or its customers to sell the contract goods or services to particular territories or customers is a hardcore restriction. A vertical agreement containing one or more **restrictions of online sales or online advertising which de facto prohibit the buyer from using the internet to sell** the contract goods or services has at the very least the object of restricting passive sales to end users wishing to purchase online and located outside the buyer's physical trading area.” [para. 203 VGL]*

### – Preventing use of entire online advertising channel

*“**prohibiting** the buyer from using **an entire online advertising channel**, such as search engines or price comparison services, or restrictions which **indirectly prohibit the use of an entire online advertising channel**, such as an obligation not to use the supplier's trademarks or brand names for bidding to be referenced in search engines, or a restriction on providing price-related information to price comparison services. Such restrictions **have the object of preventing the effective use of the internet** by the buyer to sell the contract goods or services to particular territories or customers, as they limit the buyer's ability to target customers beyond its physical trading area, inform them about its offers and attract them to its online store or other sales channels. Prohibiting the use of **particular price comparison services or search engines** is generally **not a hardcore restriction**, as the buyer may use other online advertising services to raise awareness of its online sales activities. However, prohibiting the use of the **most widely used advertising services** in the particular online advertising channel **may amount** to a hardcore restriction, if the remaining services in that advertising channel are de facto not capable of attracting customers to the buyer's online store. “  
[para. 206 (g) VGL]*

# Case Study on Online Sales

- Supplier intends to restructure its distribution setup: Where is the line?
  - Total internet sales ban
  - Pure internet players
  - Platform sales
  - Webshop quality criteria (display, languages, content)
  - Online advertising (search engines, price comparison tools, social media, influencers, trademarks, brands)
  - Dual pricing



Super Di, an Italian distributor in Emilia-Romagna, is looking to diversify its business and expand into luxury brands. It therefore contacted 2XE4U company with a view to joining its selective distribution network.

To this end, the legal department of 2XE4U, your client, has drafted the following clause.

What's your opinion?



1.1. SuperDi is free to determine the resale prices of the Products, whether they are sold via online intermediation services or on its website. However, SuperDi shall take into account the positioning of the products as luxury brand when setting its resale prices.

1.2. SuperDi shall not sell the Contract Products through online marketplaces. Exceptions to this rule may only be made with the express written consent of 2XE4U, upon request of SuperDi.



2. In order to preserve 2XE4U's selective distribution system, and in order to preserve the high-end image of the Brand, SuperDi shall sell through online sale channels provided that the following criteria are met:

a) Super Di undertakes not to offer, either directly or indirectly – in particular by means of hypertext links – products for sale via URLs of:

i. auction sales and/or mail order sales, or

ii. sales platforms, or

iii. online marketplaces, such as eBay or Amazon

c) online resellers shall be specialised in the sale of high-end accessories; and

d) online resellers shall sell through their online shops accessories of such brands of the same level as 2XE4U (i.e. Look@me, Beautifulbags, Princess Accessories).

3. SuperDi undertakes to communicate to 2XE4U every six months the online investments plan, the business rationale, and the performance marketing activity plan in respect to its online sales activities.



4. SuperDi may sell the Products on the Internet if the SuperDi also operates at least one brick-and-mortar shop. Such shop shall be located in a High Street of Bologna.

SuperDi must sell Products of at least €250,000 per contract year through its shop(s).

5. SuperDi, as specialised distributor, shall refrain from any sale of the products referred to in this contract through its website without providing assistance in handling the customer of the said product sold.





6. SuperDi shall set up its webshop in the official languages of all European Member States (Bulgarian, Croatian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Irish, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish and Swedish).

7. SuperDi may actively sell the Products on the Internet only within the contract territory. Direct advertising to customers outside the contract territory is not permitted if 2XE4U has reserved to itself or allocated to another distributor.

Advertising is therefore only permitted in the official language of the contract territory and in English as world language; direct advertising directed outside the contract territory, such as mass e-mails, territory-specific advertising on third-party websites and search engines, is in particular not permitted.