Fashion and luxury goods

Sara Citterio, Italy
Maria Ostashenko, Russia
Joseph Vogel, France

Rocío Belda de Mergelina, Spain

© 2026, IDI Project s.r.l. - www.idiproject.com

Fashion and luxury goods

- Discuss contractual and other legal and business strategies in the light of current legal framework in our jurisdictions

- Focus on:
  - Specific issues in applicable legal framework
  - National relevant national competition cases
  - The EU Commission recent decisions on the luxury fashion brands sector (Gucci, Loewe and Chloé)

© 2026, IDI Project s.r.l. - www.idiproject.com

- Spotlight:
  - **Territory and channel control**
  - **IP Protection**
  - **Pricing**

© 2026, IDI Project s.r.l. - www.idiproject.com

1. TERRITORY AND CHANNEL CONTROL

How should the clause defining the territory be drafted in licence agreements within the EU?

***Directive 2015/2436*, to approximate the laws of the Member States relating to trade marks, article 25, 1** *"A trade mark may be licensed for some or all of the goods or services for which it is registered and for the whole or part of the Member State concerned."*	***CASE AT.40642 – Pierre Cardin*** *"Cardin's license agreements with [*eight Cardin licensees*], contained clauses that restricted out-of-territory passive sales by these licensees. In particular, these agreements included (i) clauses that limited the rights granted by the agreement in question (including the right to sell the licensed products) only to the licensed territory, without distinguishing between active and passive sales; (ii) clauses that banned all out-of-territory sales…."*

1. TERRITORY AND CHANNEL CONTROL

Can online sales be prohibited within the EU?

CASE AT.40642 – Pierre Cardin

"Cardin's licence agreements…contained clauses that restricted out-of-territory passive sales by these licensees. In particular, these agreements included…(iii) clauses that restricted online sales in various ways, including total bans on online sales, limitations of such sales to the licensed territory and/or clauses making such sales conditional upon Cardin's prior authorization."

© 2026, IDI Project s.r.l. - www.idiproject.com

1. TERRITORY AND CHANNEL CONTROL

Can online sales be subject to conditions ?

Conditions that are generally acceptable under Russian law

- Website quality standards, brand presentation, product descriptions, complaint handling, returns process, and secure payment requirements.
- Requirements to maintain offline support infrastructure, such as showrooms, warranty service, or customer service capability.
- Franchise-format controls, including store location, appearance, and business concept consistency.
- Objective omnichannel rules, provided they do not eliminate e-commerce as a channel.

Conditions that are high-risk or prohibited

- A total ban on online sales.
- A clause requiring the distributor to reject website orders from other regions.
- “Recommended” online prices backed by approval rights, sanctions, or other pressure, because this may become unlawful resale price maintenance.
- In franchise agreements, a clause that limits sales only to customers residing in the territory.

© 2026, IDI Project s.r.l. - www.idiproject.com

1. TERRITORY AND CHANNEL CONTROL

Can online sales on marketplaces be prohibited?

The Italian Antitrust Authority issues its first ever fine for online retail price maintenance and clarifies the contours of illegal online marketplace bans

Morellato faced two charges:

- Inclusion, in its selective distribution system contracts, of a clause prohibiting the resale of Morellato products on any online marketplace and third-party websites. However, Morellato continued to use such channels, in some cases even allowing certain online marketplace to operate as actual distributors.

- Adoption of an 'Internet Policy', preventing distributors from applying discounts higher than certain thresholds for their online sales (which was considered equivalent to the imposition of minimum resale prices); Morellato used a software to monitor prices of all distributors online, and any violation of such policy was followed by "warning letters" and in case of continuous non-compliance by retaliatory measures

© 2026, IDI Project s.r.l. - www.idiproject.com

The online marketplace ban was deemed a vertical restriction of competition.

While the Italian Antitrust Authority acknowledged that it is possible, pursuant to the case law in Case C-230/16 -Coty and under specific circumstances, and in particular for selective distribution systems, to impose certain restrictions on the use of online marketplaces, it nevertheless concluded that **these conditions were not met in this case**.

The online marketplace ban was judged **discriminatory** and **not justifiable** neither under the Coty case law nor under Art. 101(3) TFEU (the restriction was not deemed proportionate and necessary), it was considered capable of restricting intra-brand competition, this was sufficient to constitute a breach of Article 101(1) TFEU.

Rather than efficiency objectives aimed at preserving the quality and correct use of the products or, as stated by the defendant, to prevent counterfeiting, evidence in the case file showed that Morellato's sole intention was to **control its distributors' commercial policy**.

© 2026, IDI Project s.r.l. - www.idiproject.com

Key takeaways

- if a hard-core restriction is present (RPM in this case), the agreement falls outside the VBER safe harbour and the stricter Metro criteria apply, overriding restrictions which might otherwise be legitimate (i.e. marketplace limitations)
- Selective distribution does not mean having virtually free rein over the management of one's distribution network
- Beware of digital tools allowing extra control over distribution

. for my in-house fellows: be aware that our communications are not covered by legal privilege!

© 2026, IDI Project s.r.l. - www.idiproject.com

1. TERRITORY AND CHANNEL CONTROL

Can online sales on marketplaces be prohibited ?

Russian perspective

- A blanket prohibition on marketplace sales is risky if it functions as a *de facto* online-sales ban.
- The safer approach is not “no marketplaces at all,” but “marketplaces only if objective standards are met.” Such standards may cover authenticity controls, content quality, customer service, returns, logistics, and brand presentation.
- If the clause removes the distributor’s practical ability to compete online, unfair competition risk increases materially.

Platform economy context

- Russian regulation increasingly treats marketplaces as a distinct platform environment subject to antitrust and platform-governance scrutiny.
- The platform economy law is expected to take effect from 1 October 2026.
- Key risk areas include opaque ranking, discriminatory access conditions, forced promotions, unilateral rule changes, and platform control over pricing mechanics.

© 2026, IDI Project s.r.l. - www.idiproject.com

2. PRICING

What type of clauses are considered to restrict the distributor's freedom to set prices and what types of clauses are deemed legitimate to protect the brand image ?

Eyewear brands (*Chanel, Dolce & Galbana, Armani, Prada, etc.)* FCA, 22 July 2021 Paris court of appeal, 17 December 2024	X *prohibition on implementing a loss-leader price policy or promotional discounts that would be inconsistent with the brand's image.* X *an obligation to obtain prior authorization for "all advertising and communication campaigns," which must be "consistent with the image of the products and the Brand," where "the control exercised by the supplier over commercial activities focused on discounted prices and using the brand's logo or visuals is such as to limit the supplier's pricing freedom."* ✓ *ban on "bundle" sales (such as "buy one, get one free," "free second Chanel item," "second pair for one euro," "buy one pair of designer glasses, get one free—any brand")*
"It cannot be accepted that the freedom of retailers to set their prices—and even to offer significant price reductions as part of promotional campaigns—is sufficient to damage a brand's image. In this regard, the European Commission has already held that "the disparaging nature of a point of sale, or its signage, cannot […] be attributed to the distributor's usual pricing policy" (Commission, July 24, 1992, Selective Distribution System of Parfums Givenchy, 92/428/EEC, para. 5)"	

© 2026, IDI Project s.r.l. - www.idiproject.com

2. PRICING

Can the brand restrict the freedom to set prices?

Russian Perspective

Under Federal Law No. 135-FZ (Federal law on competition), resale price maintenance in vertical agreements (including distribution agreement) is generally prohibited, but maximum resale prices are expressly permitted, and franchise structures have a special statutory regime.

Franchise exception

- Under Article 1033 of the Civil Code, the right holder may determine the resale price of goods, works, or services, or set upper or lower price limits for the user.
- Even so, restrictive franchise clauses may still be challenged by the antimonopoly authority if, given market conditions and the parties' economic position, they contradict antimonopoly law.

Safe harbor and exceptions

- The law also treats intra-group agreements differently, so certain pricing arrangements within one corporate group may fall outside the usual resale-price prohibition.
- Where the parties exceed safe-harbor thresholds or use restrictive clauses with significant market impact, they may need to justify the arrangement under the broader admissibility criteria of competition law.

© 2026, IDI Project s.r.l. - www.idiproject.com

2. PRICING

What type of clauses are considered to restrict the distributor's freedom to set prices and what types of clauses are deemed legitimate to protect the brand image ?

Russian Perspective

FAS investigation into luxury pricing and online sales against major shopping mall

What is prohibited

- The supplier may not require the distributor to sell at a fixed resale price or not below a stated minimum price.
- The prohibition covers clauses that lead or may lead to the establishment of a resale price, so even indirect pricing mechanisms can create antitrust exposure.
- Informal understandings, side letters, commercial pressure, or coordinated discount policies may also be treated as unlawful if they effectively remove the distributor's pricing freedom.

What is allowed

- The right holder or supplier may set a maximum resale price for the distributor.
- The supplier may publish recommended resale prices, but only if the distributor remains genuinely free to deviate from them without sanctions or pressure.
- General brand, marketing, and presentation standards are usually permissible if they do not function as a disguised mechanism for controlling resale prices.

© 2026, IDI Project s.r.l. - www.idiproject.com

2. PRICING

Recent trends of RPM investigations at EU level in fashion

AT.40880 – Chloé:

Case analysis:

- Luxury ready-to-wear and accessories sector – Richemont group
- Chloé imposed fixed minimum resale prices (direct RPM) on authorised distributors via price lists and written communications
- Systematic monitoring mechanism: comparison of online and offline prices, with direct intervention in case of deviations
- Restrictions on online sales: de facto ban on selling below the recommended price on marketplaces and third-party platforms
- Tools: binding price lists, 'reminder' emails, threat of withdrawal of accreditation for non-compliant distributors

Findings and takeaways:

- Classification: 'hardcore' RPM under Regulation 330/2010 (prev. VBER), Article 4(a) – no applicable exemption
- Penalty: significant fine (not published in the final version) + behavioural commitments
- Takeaway: informal commercial pressure amounts to a vertical agreement; the form of communication is irrelevant

The Chloé case confirms the principle that systematic price monitoring combined with corrective measures constitutes hardcore RPM under Article 4(a) of the VBER – regardless of whether the agreement is in written or oral form.

© 2026, IDI Project s.r.l. - www.idiproject.com

2. PRICING

Recent trends of RPM investigations at EU level in fashion

AT.40881 – Loewe:

Case analysis:

- LVMH brand, leather goods/accessories segment; selective distribution network across the EU
- Indirect RPM: 'recommended' pricing policies combined with structured commercial pressure measures (withdrawal of orders, changes to supply terms)
- Monitoring software: use of price tracking tools to detect deviations and trigger prompt corrective action
- Active territorial restrictions: limitation of cross-border online sales, with an implicit ban on responding to purchase requests from customers outside the EU
- Selective distribution abused: qualitative criteria used as a cover for controlling the purchase price

Findings and takeaways:

- Double infringement: RPM (Article 4(a) of the VBER) + restriction on passive sales (Article 4(b) of the VBER) – accumulation of hardcore restrictions
- Aggravating factor: deliberate use of monitoring technology as a system for enforcing cartel pricing
- Settlement with structural commitments: review of distributor contracts, compliance training, triennial independent audit
- Takeaway: monitoring software is not neutral – its integration into commercial flows constitutes evidence of RPM enforcement is irrelevant

The use of price-tracking algorithms as a vertical enforcement infrastructure transforms the recommended retail price into a fixed price. A double dose of hardcore enforcement.

© 2026, IDI Project s.r.l. - www.idiproject.com

2. PRICING

Recent trends of RPM investigations at EU level in fashion

AT.40840 – Gucci:

Case analysis:

- Kering brand, top-tier luxury segment
- selective European distribution network with a mix of single-brand and multi-brand outlets
- Regional RPM: price differentiation by geographical area within the EU, enforced through contractual clauses and stock allocation policies
- Effective marketplace ban: contractual prohibition on selling on any third-party online platform, including generalist and luxury vertical platforms
- Restrictions on cross-border distribution: limitation of passive online sales through geo-blocking mechanisms and minimum order requirements per country Gucci-specific element: use of '*brand image justification*' to justify restrictions which the Commission has classified as spurious

Findings and takeaways:

- Marketplace ban: 'brand image defence' rejected: absolute restrictions on online platforms are a hardcore restriction by object (in line with the CJEU, C-230/16, Coty)
- Article 101(3): failed attempt at individual exemption – lack of proved efficiency and unproven indispensability
- Stricter treatment than in Chloé/Loewe: absence of a full settlement, formal procedure, in-depth examination of the distribution model & request of extensive structural commitments (restructuring of the entire distribution network, obligation to allow sales on certified selective platforms etc.)
- Takeaway: the brand image argument is insufficient to justify absolute restrictions; the Coty test requires proportionality and not absolute preclusion.

The Gucci case sets the limit of the 'luxury exception': protecting a brand's image is legitimate only if the restrictions are proportionate and do not completely rule out effective online distribution channels.

© 2026, IDI Project s.r.l. - www.idiproject.com

CHECKLIST CONTRACT COMPLIANCE	RED FLAGS
Distribution agreements do not contain price floors or fixed resale prices	Emails or communications to distributors commenting on their resale prices
Recommended prices are genuinely non-binding and lack any enforcement mechanism	Contractual clauses making supplies conditional on ‘pricing consistency with the brand image’
Software used to monitor distributors’ prices is not linked to commercial measures	A total ban on sales via Amazon, Farfetch or any other marketplace, with no alternative
Marketplace policies provide for qualitative selection (i.e. certified platforms), not total exclusion	Price parity clause requiring the distributor not to charge prices lower than those in the direct channel
Territorial restrictions do not limit passive online sales within the EU	Internal communications describing monitoring as a tool to ‘protect prices’
	Territorial policies preventing the fulfilment of orders from other EU Member States
	Contracts providing for price audits with a right of termination for ‘non-compliance’

© 2026, IDI Project s.r.l. - www.idiproject.com

3. PARALLEL MARKET AND IP PROTECTION

Can sales to parallel resellers be prohibited ? Does it depend on the nature of the network?

Russian perspective:

- Depending on the nature of the relations sales to parallel resellers can be prohibited.
- Sales is one of the ways of commercialization of a trademark, so license agreements can be required for authorized sales.
- Exhaustion of rights to be taken into account.

© 2026, IDI Project s.r.l. - www.idiproject.com

3. PARALLEL MARKET AND IP PROTECTION

Can sales to parallel resellers be prohibited ? Does it depend on the nature of the network?

French perspective: article L. 442-1 of the French commercial code

"Liability is incurred with the obligation to make good any damage by any person carrying out production, distribution or service activities who directly or indirectly participates in the violation of the prohibition of resale outside the network imposed on distributors bound by a selective or exclusive distribution agreement exempted under the applicable rules of competition law."

© 2026, IDI Project s.r.l. - www.idiproject.com

3. PARALLEL MARKET AND IP PROTECTION

Does trademark law allow for action against parallel resellers?

Russian perspective

Unauthorized sales (including parallel imports and sales in some cases) can be recognized as a trademark infringement

© 2026, IDI Project s.r.l. - www.idiproject.com

3. PARALLEL MARKET AND IP PROTECTION

Can IP protection and the need to combat parallel trade justify a ban on online selling ?

RETAIL

The Autorité de la concurrence fines Rolex €91,600,000 for prohibiting its authorised retailers from selling its watches online

Published on December 19, 2023 | Print the page

"The *Autorité* considers that the terms of the selective distribution agreement between Rolex France and its retailers constitute a vertical agreement that restricts competition. The *Autorité* rejected Rolex France's argument that the ban on online selling was justified by the need to combat counterfeiting and parallel trade. Finding in this respect that Rolex's main competitors, who face the same risks, authorise the online selling of their products under certain conditions, it considered that these objectives can be achieved by means that are less restrictive of competition"

© 2026, IDI Project s.r.l. - www.idiproject.com

Time for your questions

© 2026, IDI Project s.r.l. - www.idiproject.com