Rivista Italiana di Antitrust
Italian Antitrust Review
N. 2 (2017)
Articles

FROM *METRO* TO *COTY*: A STORY TO BE CONTINUED? THE CJEU'S JUDGMENT IN *COTY GERMANY GMBH V PARFÜMERIE AKZENTE GMBH*

Andrea Cicala, Kurt Haegeman, Rachel Cuff [1]

Keywords: Selective distribution, online sales, e-commerce, platform bans, Coty

Abstract: *This article examines the judgment of the CJEU in Coty Germany GmbH v Parfümerie Akzente GmbH. The Authors consider the Court's reconfirmation of EU case law on selective distribution systems and its clarification that third-party platform restrictions are not a hard-core restraint. They discuss the background to the Coty judgment and the divergence in national case law following the CJEU's ruling in Pierre Fabre, and question whether increased consistency across the EU is likely now to be achieved.*

1. INTRODUCTION

"Long-awaited" is an over-used phrase in the context of legal judgments, but in relation to the judgment of the Court of Justice of the European Union ("CJEU") in *Coty Germany*,[2] rendered on 6 December 2017, it is not hyperbole. The six years since the CJEU's ruling in *Pierre Fabre*[3] have seen increasingly divergent interpretation across the EU of the rules relating to online sales in general (and third-party platform ("TPP") bans in particular), and confusion as to the legitimacy of selective distribution systems ("SDSs"). Competition authorities, courts and practitioners across the EU eagerly awaited clarification.

In its judgment in *Coty Germany*, the CJEU confirmed that (i) its judgment in *Pierre Fabre* did not overrule existing case law on SDSs and that (ii) TPP restrictions are not a hard-core restraint.

The reconfirmation of the CJEU's case law on SDSs is to be welcomed, in light of the confusion that has reigned in commentary and in some national cases following *Pierre Fabre*. A qualitative SDS for luxury or technically complex goods falls outside EU competition law entirely if it meets the *Metro* criteria discussed below and contains no hard-core restrictions. For other SDSs, whether qualitative or quantitative in structure, the safe harbour under the EU block exemption regulation on vertical agreements

[1] Lawyers.

[2] *Coty Germany GmbH v Parfümerie Akzente GmbH*, Case C-230/16, judgment of 6 December 2017.

[3] *Pierre Fabre Dermo-Cosmétique SAS v Président de l'Autorité de la concurrence and Ministre de l'Économie, de l'Industrie et de l'Emploi*, Case C-439/09, judgment of 13 October 2011.

("VBER")[4] applies regardless of the nature of the product.[5]

Following the CJEU's ruling that TPP restrictions are not hard-core, suppliers of luxury goods may, in the context of SDSs and in order to preserve the image and "aura" of those goods, lawfully prohibit sales of those goods on TPPs. As consumer buying habits shift increasingly to the online sphere,[6] clarity and consistency in this fast-changing area can only be welcomed.

Curia locuta, causa finita? Perhaps not quite: as public statements by the German competition authority following the publication of the judgment show, some disagreement remains on the scope and interpretation of *Coty Germany*.

2. SETTING THE SCENE

2.1 The legal framework

The framework governing the relationship between SDSs and the EU competition rules has been established over decades, developing from case law into legislation and guidance. In *AEG-Telefunken v Commission,*[7] the CJEU stated that, although SDSs "*necessarily affect competition in the common market*", they constitute an element of competition that is in conformity with Article 101(1) TFEU in so far as they aim at the attainment of a legitimate goal "*such as the maintenance of a specialist trade capable of providing specific services as regards high-quality and high-technology products*".[8]

As far back as 1977, the CJEU set out what have become known as the *Metro* criteria, which were central to the *Coty Germany* judgment rendered 40 years later. An SDS will not be caught by Article 101(1) TFEU provided these conditions are met:

i) the *nature of the product* requires selective distribution to preserve its quality and ensure that it is correctly used;

ii) the resellers are chosen on the basis of *objective qualitative criteria* that are determined uniformly for all potential resellers and applied in a non-discriminatory way; and

iii) the criteria do *not go beyond what is necessary.*

When the European Commission ("Commission") adopted the first iteration of the VBER[9] and the guidelines on vertical

[4] *Commission Regulation No 330/2010 of 20 April 2010 on the application of Article 101(3) of the TFEU to categories of vertical agreements and concerted practices*, [2010] OJ L 102/1.

[5] Provided the SDS contains no hard-core restrictions and the market share of both the supplier and the buyer does not exceed 30%.

[6] 55% of people aged 16-74 in the EU ordered goods or services over the internet in 2016, and this figure has grown year-on-year since 2007 (European Commission's *Final report on the e-commerce sector inquiry* (COM(2017) 229 final), published 10 May 2017, at para. 3).

[7] *Allgemeine Elektrizitäts-Gesellschaft AEG-Telefunken AG v Commission of the European Communities*, Case 107/82, judgment of 25 October 1983.

[8] *Ibid.*, para. 33.

[9] *Commission Regulation No 2790/1999 of 22 December 1999 on the application of Article 81(3) of the Treaty to categories of vertical agreements and concerted practices*, [1999] OJ L 336/21, subsequently updated in 2010 (see fn. 4 above).

restraints ("Guidelines")[10] in 1999, it went a step further: all qualitative and quantitative SDSs, regardless of the nature of the product concerned (i.e., not only the "luxury" goods that were the subject of the debate around *Coty Germany*) and regardless of the nature of the selection criteria, were declared exempt from the ambit of Article 101(1) TFEU, provided that the market share of both the supplier and the buyer does not exceed 30% and that the SDS does not contain any of the "hard-core restrictions" listed in Article 4 of the VBER.

As technology developed, and along with it the ways in which goods and services are sold and consumers shop, case law and legislation tried to keep up. The advent of online sales was one of the key developments reflected in the 2010 update of the VBER and the Guidelines.[11] The Commission provided guidance as to the restrictions that might be placed on the use of the internet by distributors. As a matter of principle, the Commission took the view that online sales are a form of passive sales, which can therefore not normally be restricted. However, the Commission also noted that a supplier "*may require quality standards for the use of the internet site to resell its goods*" and that this was likely to be especially relevant in relation to selective distribution.[12] The Guidelines specifically addressed the use of TPPs by distributors, stating that suppliers may legitimately require their distributors to use TPPs only in accordance with agreed standards and conditions, such as a requirement that access to a distributor's website hosted by a TPP not be through a site carrying the name or logo of the TPP.[13] The Commission's views on the legitimacy of TPP restraints were therefore clear at a very early stage. However, since these views were only incorporated in the Guidelines, and not in the VBER, they were not binding on national competition authorities and courts - nor on the CJEU.

2.2 The spanner in the works: *Pierre Fabre*

Once the Commission had set out its stall in legislative terms in both the VBER and the Guidelines, it took little to no further action in the verticals arena. It considered the law, the policy and their application to be clear. However, in *Pierre Fabre* (a preliminary ruling made in October 2011 on reference from the Paris court of appeal) the CJEU brought SDSs and online sales restrictions into the spotlight in a judgment that arguably raised more questions than it answered.

In *Pierre Fabre*, the CJEU was asked to determine whether an absolute ban on internet sales in the context of a selective distribution network amounted to a hard-core restriction within the meaning of Article 4(c) VBER. The CJEU concluded that an absolute ban on internet sales was indeed a hard-core restriction because it has as its object the restriction of passive sales to end users wishing to purchase

[10] *Commission Notice - Guidelines on vertical restraints*, [2000] OJ C 291/1.

[11] *Commission Notice - Guidelines on vertical restraints*, [2010] OJ C 130/01.

[12] *Ibid.*, para. 54.

[13] *Ibid.*, para. 54.

online and located outside the physical trading area of a member of the SDS.

So far, so clear. However, in the context of its analysis of the absolute online sales ban, when assessing whether there was an objective justification for the restriction in question, the Court made the observation that the "*aim of maintaining a prestigious image is not a legitimate aim for restricting competition*" and cannot be used to justify a restrictive clause.[14]

This one sentence, uttered as an *obiter dictum* in the judgment, was read by some as setting aside long-standing CJEU case law on SDSs, and triggered a whole new debate across the EU on the legitimacy of SDSs under EU competition law.

2.3 Divergent paths: the *Pierre Fabre* schism

The years following the *Pierre Fabre* judgment saw divergent national interpretation of the rules relating to platform bans and the assessment of SDSs, leading to inconsistent enforcement between, and sometimes even within, EU Member States.

The German and French competition authorities decided to close an investigation into Adidas, but only after the sporting goods manufacturer agreed to drop a TPP restriction from its agreements with retailers. In its proceedings against Asics Deutschland, the German Federal Cartel Office ("FCO") was very critical of a similar TPP ban, but stopped short of declaring it illegal.[15] The view of the French and German courts has been anything but consistent. In a number of cases, courts have rejected platform bans as anti-competitive,[16] while other courts have considered them justified. For example, in proceedings involving the online distribution of functional backpacks by Deuter Sport, the Higher Regional Court of Frankfurt accepted a platform ban, acknowledging that sales via a TPP would not meet the manufacturer's criterion of offering proper sales advice.[17]

As regards whether the *Pierre Fabre* judgment altered the well-established EU rule that protection of a brand's luxury image might justify imposing qualitative criteria in an SDS, the FCO has taken the view that the ruling did indeed overturn the existing case law and send it in a new direction. In *Asics*, it considered with reference to *Pierre Fabre* that suppliers could no longer rely on the aim of protecting their brand or luxury image in order to justify an SDS or any related qualitative restrictions. However, not all German courts have agreed. In *Deuter Sport*, the Frankfurt court considered that the ruling in *Pierre Fabre* did not overturn

[14] *Pierre Fabre* (see fn. 3 above), para. 46.

[15] Federal Cartel Office decision B2-98/11 of 26 August 2015, confirmed by the Higher Regional Court of Düsseldorf in VI-Kart 13/15.

16 For example, Berlin Court of Appeal, judgment of September 19, 2013 (Case 2 U 8/09 Kart), and Schleswig-Holstein Court of Appeal, judgment of June 5 2014 (Case 16 U 154/13). Note that the courts differed as to whether the platform ban in question constituted a hard-core restriction under the VBER.

[17] Decision of December 22 2015 (Case 11 U 84/14, Kart).

the existing case law, but was limited to clarifying that an absolute ban on internet sales could not be justified by the aim of maintaining the luxury image of the goods concerned.

3. ASSESSING THE DIVERGENCE: THE EU E-COMMERCE SECTOR INQUIRY

Aware of the increasing divergence in approach between Member States as to the assessment of online sales restrictions, the Commission launched a sector inquiry into e-commerce in May 2015, as part of its wider "Digital Single Market" strategy. Launching the inquiry, Commissioner Vestager made clear that one of the key aims of the inquiry was to "*strengthen and make more uniform the action that the Commission and Europe's national competition authorities take against restrictions of online sales*".[18] Two years later, following evidence from nearly 1,900 companies and analysis of some 8,000 distribution contracts, and with the reference in *Coty Germany* now pending before the CJEU, the Commission published its Final Report on the E-commerce Sector Inquiry ("Final Report").[19]

The Final Report confirmed the Commission's continued stance on SDSs. It said that results of the inquiry did "*not call for a change to the Commission's general approach to qualitative and quantitative SDS*" as set out in the VBER. The Final Report did, however, acknowledge that the use of SDSs might facilitate the implementation and monitoring of certain vertical restraints that might "*raise competition concerns and require scrutiny*".[20]

As regards restrictions on the use of online marketplaces, the Final Report was at pains to highlight the disparity in approach by Member States, and the consequent inequality for companies and consumers. The Commission's findings showed that, on average, 18% of retailers across the EU reported having agreements with their suppliers that contain platform bans, whereas in Germany that figure was 32%. It noted that "*the importance of marketplaces as a sales channel varies significantly depending on the size of the retailers, the Member States concerned, and that the potential justifications and efficiencies reported varied from product to product*".[21]

The Final Report concluded that absolute platform bans are not hard-core restrictions of the EU competition rules (within the meaning of Articles 4(b) and (c) of the VBER).[22] The Commission's view was that "*marketplace bans do not generally amount to a de facto prohibition on selling online or restrict the effective use of the internet as a sales channel irrespective of the markets concerned*".

[18] *Competition policy for the Digital Single Market: Focus on e-commerce,* Margrethe Vestager - Commissioner for Competition, Speech at the Bundeskartellamt International Conference on Competition, Berlin, 26 March 2015.

[19] The Commission also published an issues paper on geo-blocking in March 2016 and a preliminary report on the sector inquiry in September 2016.

[20] *E-commerce final report* (see fn. 6 above), para. 25.

[21] *Ibid.*, para. 41.

[22] *Ibid.*, paras. 41-42.

Such clauses do not have as their object (i) a restriction of the territory or the customers to whom the retailer in question may sell or (ii) the restriction of active or passive sales to end users. They are not aimed at segmenting markets in the internal market based on territory or customers; they concern the question of *how* the distributor can sell the products over the internet and do not have the object of restricting *where* or *to whom* distributors can sell the products.

However, the Commission also stated that this did not mean that absolute platform bans are always compatible with the EU competition rules, and that the Commission or a national competition authority may decide to withdraw the VBER in particular cases where this is justified by the market situation. Obviously, the Commission stressed that its views were without prejudice to the outcome of the pending *Coty Germany* preliminary reference.

4. GETTING BACK ON TRACK? THE *COTY GERMANY* JUDGMENT

Following the Commission's Final Report, stakeholders anxiously awaited the outcome of the Court's ruling in *Coty Germany*, in order to find out whether the Commission's or the German FCO's positions would be upheld, developed or rejected.

4.1 Background to *Coty Germany*

The reference to the CJEU arose in the context of a dispute between Coty Germany and its authorised distributor Parfümerie Akzente. Coty distributes its high-end cosmetics brands in Germany through selective distribution agreements, and Parfümerie Akzente sold Coty products both in its brick-and-mortar locations and over the internet. The internet sales were carried out both in Parfümerie Akzente's own online store and via a TPP.

In 2012, Coty chose to alter its distribution agreements to expressly prohibit the use of a different business name or "*the recognizable engagement of a third-party undertaking which is not an authorized retailer of Coty*" - i.e., TPPs/marketplaces which are apparent to the customer. Internet sales were still permitted as long as they were conducted (i) via an "electronic shop window" (i.e., the webpage) of the authorised retailer and "*the luxury character of the products is preserved*" or (ii) in a non-discernible manner via a TPP. The Frankfurt regional court[23] held that such a restriction amounted to a hard-core restriction of competition. It referred to *Pierre Fabre* and concluded that the objective of maintaining a prestigious image of a brand could no longer justify the introduction of an SDS which, by definition, restricted competition.

On appeal, the Higher Regional Court of Frankfurt am Main (*Oberlandesgericht Frankfurt am Main*) stayed the proceedings and referred several questions to the CJEU for a preliminary ruling.[24] In essence, the Court asked:

[23] Regional Court of Frankfurt am Main, judgment of 31 July 2014 (Case 2-03 O 128/13, Kart).

[24] Higher Regional Court of Frankfurt am Main, judgment of 19 April 2016 (Case 11 U 96/14, Kart).

i) whether an SDS for luxury goods designed primarily to preserve the luxury image of those goods can comply with Article 101(1) TFEU;

ii) whether a ban on using TPPs in a selective distribution agreement may be compatible with Article 101(1) TFEU; and

iii) whether such a TPP ban constitutes a hard-core restriction within the meaning of Articles 4(b) and (c) of the VBER.

The importance of the *Coty* case was underlined by the fact that, in addition to the interested parties Coty Germany and Parfümerie Akzente and the Commission, seven EU Member States[25] submitted observations to the CJEU. As AG Wahl noted: "*In essence, two opposite approaches are taken*".[26]

The Luxembourg and German governments contended that the correct reading of *Pierre Fabre* was that all SDSs fall within the scope of Article 101(1) TFEU, and that TPPs are a hard-core restriction.

The arguments presented by the German and Luxembourg governments to support this view included the following:

i) Platform bans limit innovation in e-commerce.

ii) Platform bans restrict competition to the detriment of the consumer.

iii) In the context of an SDS, hard-core restrictions must always be construed in an extensive sense otherwise a Court should always apply the exemption without assessing the underlying selective system.

iv) Platform bans limit distribution of goods to consumers and are therefore hard-core restrictions.

v) Platform bans may constitute a *de facto* restriction of online sales for SMEs (small and medium-sized enterprises).

In contrast, the Austrian, French, Italian, Netherlands and Swedish governments, as well as the Commission, contended that *Pierre Fabre* did not overturn existing precedent on SDSs and that the use of SDSs to protect the luxury image of goods was legitimate. In addition, an absolute ban on sales via TPPs should not be considered tantamount to a total online sales ban, and can therefore not be considered a hard-core restriction.

The arguments presented by the Commission and five Member States to support this view included the following:

i) The *Metro* case law is still valid, and to oblige brand owners to justify their SDSs beyond application of the *Metro* criteria reduces legal certainty and is unjustifiable.

ii) The restriction of price-based intra-brand competition which may result from a platform ban is justified by the general increase in quality-based intra-brand competition.

iii) Platform bans are not equivalent to absolute bans of online sales.

---

[25] Austria, France, Germany, Italy, Luxembourg, the Netherlands and Sweden.

[26] Opinion of AG Wahl, delivered on 26 July 2017, in *Coty Germany GmbH v Parfümerie Akzente GmbH*, Case C-230/16, para. 60.

iv) The list of hard-core restrictions must be clear and foreseeable, and any extension of the hard-core concept leads to legal uncertainty.

v) The absence of a contractual relationship between brand owners and TPPs means that brand owners cannot control aspects such as product presentation or the offer of product-related services.

4.2 The outcome

4.2.1 AG Wahl's Opinion

Advocate General Wahl delivered his Opinion in the *Coty Germany* case in July 2017.

Commenting on SDSs generally, AG Wahl noted that it is now accepted that "*such systems generally have positive effects from the aspect of competition*"[27] and held the view that "*the head of a selective distribution network must be able to enjoy great freedom in defining the methods whereby those products can be distributed; these are all factors designed to stimulate innovation and the quality of the services provided to customers that are capable of having pro-competitive effects*".[28] As regards *Pierre Fabre*, he considered that this judgment "*must not be interpreted as overturning the previous case-law*" on SDSs and that the "analytical framework" set out in the *Metro* case "*was not called into question by the judgment in Pierre Fabre*".[29] For AG Wahl, in that case the Court was dealing with a specific set of facts and "*the selective distribution system in its entirety was not at issue*".[30] He therefore concluded that an SDS for the distribution of luxury and prestige products aimed mainly at preserving that luxury image is compatible with Article 101(1) provided that the *Metro* criteria are satisfied.[31]

As regards the restriction on authorised dealers from selling via visible online platforms, AG Wahl considered that this was "*wholly incapable of being classified as a 'restriction by object […] given that concept must be interpreted restrictively*"'.[32] In contrast to an absolute ban on internet sales, AG Wahl considered that a prohibition on the use of TPPs "*does not — at least at this stage of the development of e-commerce, which may undergo changes in the shorter or longer term — have such a degree of harm to competition*".[33] AG Wahl concludes that a platform ban does not restrict to whom retailers may sell, nor their ability to passively sell to consumers. It limits only one method of selling products online.

Accordingly, for AG Wahl, a platform ban cannot be compared to the absolute ban on internet sales which the CJEU found to be a hard-core restriction in its *Pierre Fabre* ruling.

4.2.2 The CJEU's ruling

Following AG Wahl, the Court confirmed that *Pierre Fabre* was not intended to alter the settled case law in relation to SDSs.

[27] *Ibid.*, para. 40.

[28] *Ibid.*, para. 138.

[29] *Ibid.*, para. 97.

[30] *Ibid.*, para. 79.

[31] *Ibid.*, para. 91.

[32] *Ibid.*, para. 117.

[33] *Ibid.*, para. 118.

The CJEU cited its 2009 judgment in *Copad*[34] in reference to its approach to SDSs for luxury goods, and reaffirmed that "*having regard to their characteristics and their nature, luxury goods may require the implementation of a selective distribution system in order to preserve the quality of those goods and to ensure that they are used properly*". Consequently, an SDS designed primarily to preserve the luxury image of those goods is compatible with Article 101(1) TFEU providing the *Metro* criteria are applied.[35]

Proceeding to consider the platform ban imposed by Coty, which prohibited authorised distributors from using TPPs in a discernible manner, the CJEU measured it against the *Metro* criteria and found them to be satisfied. The restriction had the *objective* of preserving the image of luxury and prestige of the goods. It was *appropriate* "*to preserve the luxury image of those goods*",[36] in particular given that:

i) the ban provided Coty with a guarantee that the goods would only be associated with its authorised distributors;

ii) there was no contractual relationship between Coty and the TPPs enabling Coty to ensure quality conditions; and

iii) the fact that luxury goods are not sold via TPPs, which sell "goods of all kinds", contributes to that luxury image and helps to preserve it.

Further, the restriction was proportionate as it contained no absolute prohibition of internet sales - authorised distributors could sell the contract goods online via their own electronic shop windows and via unauthorised TPPs if such platforms were not discernible to consumers.

The importance of the Commission's work on its e-commerce sector inquiry, the results of which it submitted to the CJEU, was underlined by the Court's reliance on it as evidence of the continued importance of distributors' own online shops as "*the main distribution channel*" for online sales.[37]

Finally, the CJEU considered whether the platform ban in question constituted a hard-core restriction under Articles 4(b) (restriction of customers) or 4(c) (passive sales restriction) of the VBER, thereby excluding the regulation's application. In the Court's view, it was not a hard-core restriction "*even if it restricts a specific kind of internet sale*"[38] because:

i) there was no outright ban on internet sales;

ii) there was no customer restriction as "*it does not appear possible to circumscribe, within the group of online purchasers, third-party platform customers*";[39] and

iii) customers could usually find the online offer of authorized distributors through online search engines and advertisements on the third-party platforms.

[34] *Copad SA v Christian Dior couture SA, Vincent Gladel and Société industrielle lingerie (SIL)*, Case C-59/08, judgment of 23 April 2009.

[35] *Coty Germany* (see fn 2 above), paras. 28-29.

[36] *Ibid.*, para. 51.

[37] *Ibid.*, para. 54.

[38] *Ibid.*, para. 68.

[39] *Ibid.*, para. 66.

5. IS THE DEBATE OVER?

The Commission has welcomed the judgment in *Coty Germany*, stating that it provides "*more clarity and legal certainty to market participants*" and facilitates "*a uniform application of competition rules across the EU*".[40]

However, public statements by the German competition authority indicate a different view, and do not appear to bode well for hopes of a more "uniform" approach, at least in the immediate future. FCO President Andreas Mundt made clear in a statement shortly after the judgment that the FCO sees *Coty Germany* as limited in scope and certainly not a "carte blanche" for the use of platform bans:

"*Prima facie we see […] only limited impacts on our decision practice. The [CJEU] obviously made great efforts to limit its statements to the area of real prestige products where the aura of luxury is the essential part of the product itself. The FCO in its decision practice so far dealt with manufacturers of branded goods outside the luxury area. Such manufacturers according to our first assessment still do not have carte blanche for per se restrictions of their dealers with respect to the use of sales platforms*".

Consequently, although the law in this area was already clear and has now been restated, the scene appears to be set for a continued discussion on the legitimacy of TPP bans and of SDSs for goods "outside the luxury area", and on the relevance of the "nature of the goods" in this context.

This is certainly not the outcome which many, including the Commission, had hoped for. Indeed, increased consistency across the EU in this area is a key action item in the Commission's e-commerce Final Report. In its policy conclusions, the Commission stated that it will broaden the dialogue with national competition authorities within the ECN "*to contribute to a consistent application of the EU competition rules as regards e-commerce-related business practices*".[41]

It remains to be seen whether dialogue and consultation within the ECN will be sufficient to close the gap between the views of the Commission and those of the FCO, or whether the Commission will have to engage its procedural powers to ensure that consistency.[42]

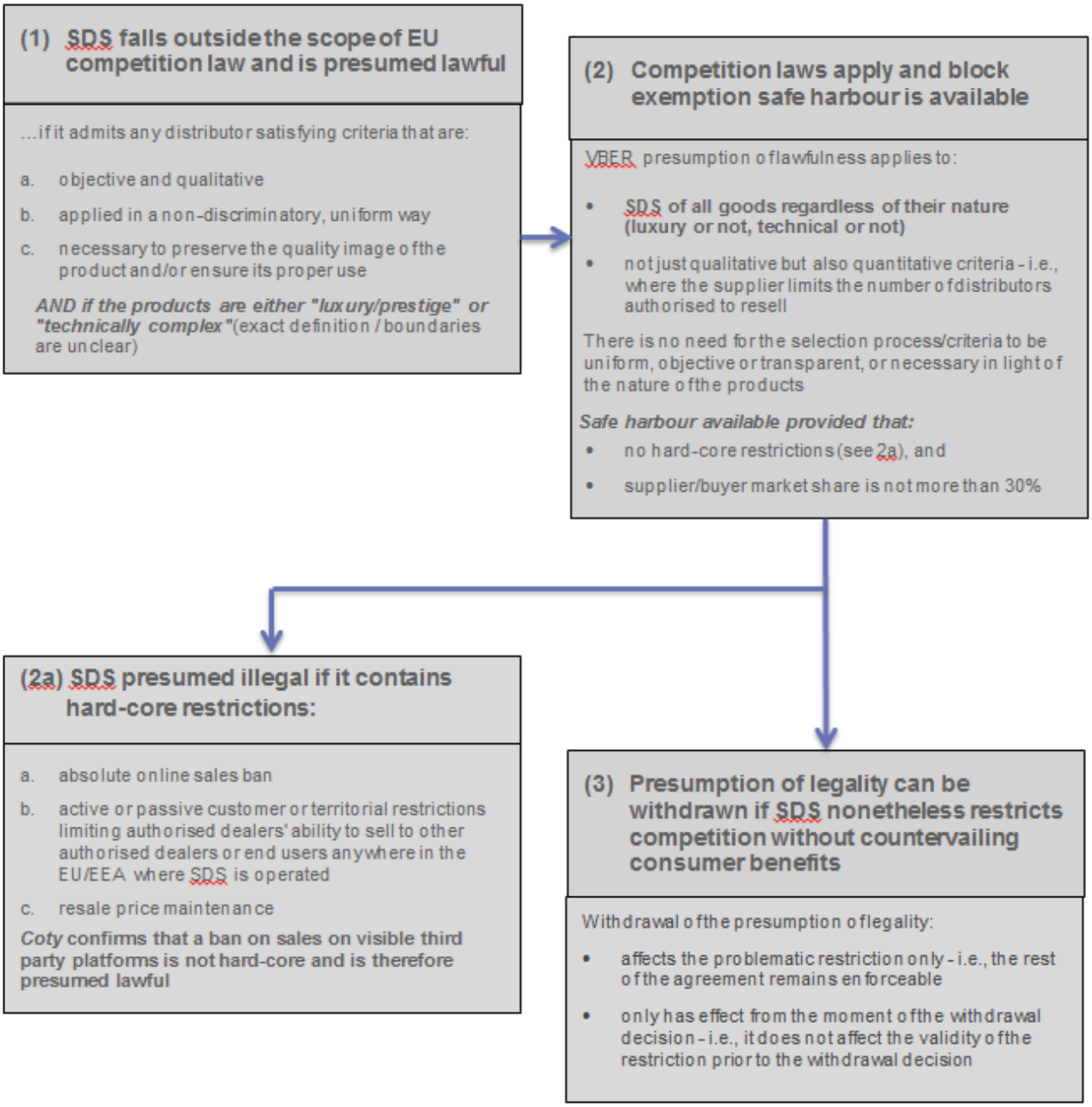
Against this background, there remains a risk of divergent interpretation at national court level that may culminate in yet another request for a preliminary ruling to the CJEU - this time to clarify the true meaning of Coty Germany. Further legal uncertainty comes at a cost; the CJEU's ruling ought to have resolved the controversy.

[40] Commission statement of 8 December 2017, available at http://ec.europa.eu/newsroom/index.cfm?service_id=221.

[41] *E-commerce final report* (see fn. 6 above), para. 75.

[42] Such procedural powers include, for example, Article 11(6) of Regulation 1/2003 which enables the Commission to relieve a national competition authority from applying Article 101 TFEU in a specific case.

How to Assess an SDS



6. REFERENCES

Berlin Court of Appeal (*Kammergericht Berlin*), 2 U 8/09 Kart, 19 September 2013 - *Scout school bags*;

CARLONI, MEGREGIAN AND BRUNEAU, *The E-Commerce Sector Inquiry: Can It Stop National Competition Authorities from Adopting an Overly Restrictive Approach?*, (2015) Journal of European Competition Law & Practice, Vol. 6, No. 9, p. 639–651;

Court of Justice of the European Union, 107/82, *Allgemeine Elektrizitäts-Gesellschaft AEG-Telefunken AG v Commission of the European Communities*, 25 October 1983;

Court of Justice of the European Union, C-59/08, *Copad SA v Christian Dior couture SA, Vincent Gladel and Société industrielle lingerie (SIL)*, 23 April 2009;

Court of Justice of the European Union, C-230/16, *Coty Germany GmbH v Parfümerie Akzente GmbH*, Opinion of AG Wahl, 26 July 2017;

Court of Justice of the European Union, C-230/16, *Coty Germany GmbH v Parfümerie Akzente GmbH*, 6 December 2017;

Court of Justice of the European Union, C-439/09, *Pierre Fabre Dermo-Cosmétique SAS v Président de l'Autorité de la concurrence and Ministre de l'Économie, de l'Industrie et de l'Emploi*, 13 October 2011;

DE FAVERI, *The Assessment of Selective Distribution Systems Post-Pierre Fabre*, (2014) ICC Global Antitrust Review, Issue 7, p.163;

A. DIAS PEREIRA, *Vertical Restraints on Internet Sales in EU Competition Law*, European Competition Law Review 2017, Vol. 38(10), p.478-482;

European Commission, *Final report on the e-commerce sector inquiry*, COM(2017) 229 final, 10 May 2017;

European Commission, *Geo-blocking practices in e-commerce - Issues paper presenting initial findings of the e-commerce sector inquiry conducted by the Directorate-General for Competition*, SWD(2016) 70 final, 18 March 2016;

European Commission, *Preliminary report on the e-commerce sector inquiry*, SWD(2016) 312 final, 15 September 2016;

European Commission, speech of Commissioner Vestager, *Competition policy for the Digital Single Market: Focus on e-commerce*, Bundeskartellamt International Conference on Competition, Berlin, 26 March 2015;

Federal Cartel Office (Germany) (*Bundeskartellamt*), B2-98/11, 26 August 2015 - *Asics, online sales of sports attire*;

Higher Regional Court of Dusseldorf (*Oberlandesgericht Düsseldorf*), VI-Kart 13/15, 5 April 2017 – *Asics, online sales of sports attire*;

Higher Regional Court of Frankfurt (*Oberlandesgericht Frankfurt am Main*), 11 U 84/14 (Kart), 22 December 2015 – *Deuter, online sales of backpacks*;

Higher Regional Court of Frankfurt (*Oberlandesgericht Frankfurt am Main*), 11 U 96/14 (Kart), 19 April 2016 – *Coty, online sales of cosmetic products*;

KINSELLA and CONNOLLY, *Selective Distribution: An Overview of EU and National Case Law*, (2011) e-Competitions, No. 39750 (see www.concurrences.com);

G. MONTI, *Restraints on Selective Distribution Agreements*, (2013) World Competition, Vol. 36, No. 4, p.489-511;

L. PEEPERKORN, *Revised EU Competition Rules for Supply and Distribution Agreements*, (2011) Finnish Competition Law Yearbook, available at http://ec.europa.eu/competition/speeches/text/sp2011_10_en.pdf;

PEEPERKORN and HEDERSTRÖM, *Vertical Restraints in On-line Sales: Comments on Some Recent Developments*, (2016) Journal of European Competition Law & Practice, Vol. 7, No. 1, p. 10–23;

Regional Court of Frankfurt (*Landgericht Frankfurt am Main*), 2-03 O 128/13 (Kart), 31 July 2014 – *Coty, online sales of cosmetic products*;

Schleswig-Holstein Court of Appeal (*Schleswig-Holsteinisches Oberlandesgericht*), 16 U 154/13 (Kart), 5 June 2014 – *Casio, online sales of cameras*.

TUYTSCHAEVER and WIJCKMANS, *Vertical Agreements in EU Competition Law*, (2018) Oxford University press, 3 ed.;

L. VOGEL, *EU Competition Law Applicable to Distribution Agreements: Review of 2011 and Outlook for 2012*, (2012) Journal of European Competition Law & Practice, Vol. 3, No. 3, p 271–286;

A. WITT, *Restrictions on the Use of Third-Party Platforms in Selective Distribution Agreements for Luxury Goods*, (2016) European Competition Journal, Vol. 12(2-3), p.435-461.