COMPETITION LAW IN THE DIGITAL AGE

MARCH 2019

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QUICK LINKS

E-COMMERCE AT THE CORE OF EU REVIEW OF COMPETITION RULES ON VERTICAL AGREEMENTS

How to assess vertical agreements in the digital era will be at the core of the European Commission's evaluation of the Vertical Block Exemption Regulation and associated Guidelines (VBER), which exempt certain agreements and practices from the EU's competition rules and will expire on 31 May 2022.

As part of the evaluation, the Commission has opened a public consultation to gather information from businesses, interest organisations, academics and other stakeholders on the key competition issues arising in vertical relationships, to decide whether to allow the VBER to lapse, or whether to prolong or revise it. The increased importance of online sales and emergence of new players such as online platforms are expected to be key considerations.

The digital battle continues

The evaluation of the VBER is likely to reignite a continuing tension between manufacturers and online platforms, such as eBay and Amazon, over the competition rules for online sales.

The VBER currently gives manufacturers some scope to restrict the way their goods are sold online. For example, if a distributor's website is hosted by a third party platform, the manufacturer may legitimately prevent traffic to the distributor's website via a site carrying the name or logo of that platform.

In addition, whilst prohibiting online sales is a hard-core restriction that cannot benefit from the VBER, following the 2017 judgment of the European Court of Justice (ECJ) in Coty, prohibiting an authorised retailer from reselling goods through third-party platforms is permitted where such a restriction is designed to preserve the quality and proper use of the goods sold. In that case, the prohibition served to enable a manufacturer to check compliance with the qualitative conditions under which its goods were sold online as part of a qualitative selective distribution system. As a result, the ECJ held that the arrangement fell outside of the scope of Article 101(1) TFEU, and thus the VBER exemption (which automatically assumes pro-competitive effects to counter anti-competitive effects) was not required to justify the arrangement. Other types of restriction (such as quantitative restrictions within a selective distribution framework) may fall within Article 101(1) TFEU but may benefit from an exemption under the VBER if all relevant criteria are met (such as ensuring justifiable and transparent criteria, and falling under the 30% market share threshold).

Interestingly, in 2017 the Commission flagged provisional competition concerns on methods that manufacturers were using in response to the growth of e-commerce in its E-commerce sector inquiry. More specifically, the Commission identified an increased recourse to vertical restraints, such as pricing restrictions, marketplace (platform) bans, restrictions on the use of price comparison tools and the exclusion of pure online players from distribution networks. Since this inquiry, the Commission has initiated a number of specific investigations regarding online vertical restraints, namely on territorial restrictions (such as the use of geo-blocking to disrupt progress towards a single digital market) and resale price maintenance. The recent fine imposed by the Commission on Guess highlights the importance of aligning online behaviour with the limits of the law, including in novel areas such as bidding restrictions in online search advertising auctions.

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The consultation on the VBER is likely to illicit conflicting views on the current state of the legislation. On the one hand, online platforms may argue that the rules are overly accommodating of restraints to online activity and that the VBER's successor should be less tolerant. Manufacturers, on the other hand, may outline that some restrictions are necessary to protect aspects of competition outside of pricing, such as quality, customer service and incentives to invest and innovate. Manufacturers may also argue the importance of restrictions which relate to retaining the quality of brands and ensuring positive customer experience, such as requiring online retailers to have one or more brick and mortar shops.

In addition, the dual role of online platforms (which offer their services to retailers as a marketplaces whilst also selling products through their own marketplace in competition with the retailers) will be a topic for discussion. This dual role is already being considered in the Commission's Amazon probe (which concerns Amazon's use of third party sellers' data) and will likely also play an important part in discussions surrounding the consultation on the VBER. Moreover, the distribution landscape is further complicated by manufacturers increasingly choosing to adopt dual roles as both producers and retailers by setting up their own webshops to sell directly to customers.

Next steps

The Commission's public consultation is open until 27 May 2019, following which it will publish a report summarising its findings. In addition, an open stakeholder workshop will be organised in late 2019 on areas of particular interest, while the Commission will also engage with national competition authorities through the framework of the European Competition Network. The Commission intends to complete its review of the VBER in the second quarter of 2020.

ONLINE ADVERTISING: BROADENING THE SCOPE OF ILLEGAL RESTRICTIONS?

Further to several sector inquiries by national competition agencies (NCAs) into online advertising (including, for example, in Germany), a number of recent cases have seen the European Commission (the Commission) and NCAs further consider, and take action against, practices in the sector. These cases suggest that the scope of conduct which may be deemed illegal is broad, encompassing bidding restrictions in online search advertising auctions, suspension of accounts on online advertising platforms, and restrictions in ad-blocking agreements; each of which are discussed below.

Keywords in online search advertising auctions

In December 2018, the Commission fined the clothing company Guess €40 million for restricting retailers from online advertising and selling cross-border to consumers in other EU Member States, in violation of Article 101 TFEU.

Importantly, this is the first time online search advertising restrictions have resulted in an infringement decision from the Commission under Article 101 TFEU. The decision does, however, echo the German *Bundeskartellamt's* finding in 2015 that Asics' selective distribution system breached Article 101 TFEU for, among other things, banning authorised retailers from using the Asics brand name as a keyword in Google's online advertising platform, Google Ads.

Search engines employ algorithms to match the text of a user's search query with webpages that may contain relevant content. Links to webpages deemed potentially responsive to the user's search are ranked and presented on a search engine results page (SERP).

A typical SERP displays two sorts of search results: "organic" and "sponsored" links. Sponsored links are typically displayed above, below, or to the side of the organic links and often appear in a coloured box labelled "Ad". Advertisers bid and pay for "keywords", which are words or phrases that trigger the display of ads when they are determined to match a user's search.

The Commission found that Guess restricted competition by preventing authorised retailers of its selective distribution network from: (i) bidding on Guess brand names and trademarks as keywords in online search advertising auctions, (ii) selling online absent a prior authorisation from Guess, (iii) selling to consumers located outside their territories, (iv) cross-selling among authorised wholesalers and retailers, and (v) setting independent retail prices for Guess products.

With respect to the first of these restrictions (the Search Advertising Restriction), the Commission made clear that an absolute ban on the use of trademarks and brand names for online sales advertising amounts to a restriction of competition "by object", and is therefore prima facie illegal.

The Commission rejected the application of the European Court of Justice's judgment in *Coty* - which established that restrictions on online sales may be justified in certain circumstances, including that the restriction pursues a legitimate object - and took the view that the Search Advertising Restriction was not intended to protect Guess' brand image. Rather, it had the object of: (i) reducing the competitive pressure exercised by authorised retailers on Guess' own online retail activities, and (ii) keeping down Guess' own advertising costs. It could not, therefore, be objectively justified.

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The Commission went on to assess whether the online search advertising restriction could be regarded as a restriction "by object". In the Commission's view, the ban on the use of Guess' brand names and trademarks for online sales advertising had the object of reducing the ability of authorised retailers to advertise and ultimately sell products to customers, in particular outside their contractual territories or areas of activity. Accordingly, the Commission concluded that the Search Advertising Restriction revealed a sufficient degree of harm to competition to be regarded as a restriction "by object".

This case has similarities to a recent finding by the US Federal Trade Commission (the FTC) in November 2018 that 1-800 Contacts, the largest US online retailer of contact lenses, unlawfully entered into trademark litigation settlements with other contact lens retailers which resulted in anticompetitive agreements.

1-800 Contacts had filed a series of complaints against competitors because their sponsored ads appeared in response to consumers' internet queries involving the 1-800 Contacts trademarks. In nearly all cases, the litigation settled before trial. The resulting settlement agreements required the parties, when bidding at search engine advertising auctions, to take measures ensuring their ads did not appear in response to searches for the other party's trademark terms.

The FTC held that these agreements were not a *per se* (analogous to "by object") prohibition, but had to be analysed under the *rule of reason* (analogous to an "effects-based" analysis).

According to the FTC, the agreements at stake had anticompetitive effects not only for 1-800 Contacts' online rivals, but also for web users and search engines. Plausible justifications (such as avoiding litigation costs and trademark protection) were not deemed to have a basis in the case, and accordingly the FTC concluded that the trademark settlements harmed competition and were illegal.

Potentially abusive suspension of Google Ads accounts

Preventing users from accessing online advertising platforms may also constitute abusive behaviour where a company is dominant. In January 2019, the French Competition Authority (FCA) adopted a decision ordering Google to clarify the rules of Google Ads, following a complaint lodged by Amadeus, a company that operates a directory enquiry service. The alleged conduct was that Google had suspended several of Amadeus' accounts with the advertising service, AdWords (now Google Ads), and refused most of Amadeus' ad proposals since January 2018.

The FCA considered that Google's practices towards Amadeus were likely to characterise a sudden termination of commercial relationships under conditions that are neither objective nor transparent. It held that these practices can amount to an abuse of dominance if they are discriminatory and not objectively justified.

In this respect, the FCA noted that Google has a pre-eminent position in France as it accounts for 90% of all online searches in France. The FCA emphasised that the suspension of Amadeus' accounts took place without warning or clear mention of the alleged breaches, even though in the present case Google's sales team had been closely involved in the development of Amadeus' advertising campaigns as part of a special partnership. In addition, the FCA noted that competitors of Amadeus had been able to broadcast ads identical to those which were refused in the present case.

In view of the significant effects of these practices on Amadeus' business – it suffered a sudden loss of turnover (dropping by 90% between 2017 and 2018) - the FCA issued interim measures ordering, in particular, Google to (i) clarify Google Ads rules that apply to electronic paid information services, to make them more accurate and intelligible, and (ii) review Amadeus' situation under these new rules with a view to giving it access, if necessary, to the Google Ads service again if these ads comply with them.

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Restrictions in ad-blocking agreements

Finally, NCAs have also considered ad-blocking, and when restrictions in ad-blocking agreements between software developers and online advertising platforms may be illegal. In 2013, after receiving several complaints on German company Eyeo's "Adblock Plus" software, the Austrian competition authority launched an investigation into a whitelisting contract concluded between Google and Eyeo. "Adblock Plus" software allows users to block adverts from websites they visit. The company then offers advertisers a so-called "whitelisting contract", which permits certain types of non-intrusive ads to be shown to website viewers. Eyeo charges large advertisers, including Google, for this whitelisting service.

The German *Bundeskartellamt* subsequently launched a similar probe in collaboration with the Austrian competition authority, and their joint proceedings concluded on 21 January 2019 after Google and Eyeo changed the terms of their agreement.

Although the initial provisions of the agreement are not publicly available, the *Bundeskartellamt* explained that the investigation did not focus on the whitelisting agreement itself (which the German Federal Court of Justice ruled to be legal), but on clauses that allegedly restricted Eyeo's ability to expand, invest or further develop its products.

Speaking about the case, the President of the *Bundeskartellamt*, Andreas Mundt, said that: "…*the offer of ad blockers is an integral part of the competitive process in online advertising services. Regulation in contracts aimed at restricting the offer of ad blockers are therefore anticompetitive and hence unacceptable*".

Conclusion

Given the range of conduct relating to online advertising which is drawing interest, online retailers and platforms should keep a close eye on how competition authorities' practice and courts' jurisprudence develops in this area, as the scope of potentially illegal conduct is tested.

INNOVATION AND COMPETITION IN ELECTRONIC PAYMENT SERVICES TAKE FLIGHT

Protecting and fostering innovation and competition in electronic payment services and systems has been a topic of interest for several years, as authorities seek to ensure that the banking sector develops in a way which benefits consumers and businesses. In the EU, the Payment Services Directive (PSD2) was adopted in 2015 to support innovation and competition within payment services and systems, and has now been implemented in almost all EU Member States (for more information, see the March 2018 newsletter). PSD2 obliges banks to give third parties access to technical infrastructure for payment systems and – with customer approval – bank account information. Parts of PSD2 are enforced by national consumer and competition authorities.

There have also been examples of national level initiatives to meet similar objectives: for example, in the UK the Payment Systems Regulator was established in 2015, with its purpose being, among others, to promote effective competition in the sector.

Given the range of players which offer and operate payment services and systems – including, increasingly, small start-ups, tech-companies (like Apple and Samsung), and even Google (which was recently granted an electronic money institution license for the whole of the EU in Lithuania) – the dynamic nature of the sector means that authorities must consider how competition rules can be applied effectively, and aware of the potential for tension between 'incumbent' banks and newcomers.

Indeed, there have been a number of recent competition investigations where the conduct of banks and other payment service providers have been considered. For example, in 2016 the German Bundeskartellamt decided that some banks' general terms and conditions were restricting competition in Germany because personal identification numbers and transaction authentication numbers could not be used by customers to allow payment initiation services (by which a third party can make a payment on behalf of the customer to, e.g., an online retailer).

In November 2018, the Swiss Competition Commission (COMCO) launched an investigation into five financial institutions suspected of reaching an agreement to boycott mobile payment solutions of providers such as Apple Pay and Samsung Pay to the benefit of their joint mobile payment app, TWINT. COMCO suspects them of jointly refusing to allow their credit cards to be used with the rival mobile payments apps.

Not only 'incumbent' banks have come under scrutiny. In parallel to this investigation, COMCO also looked into separate potentially discriminatory behaviour by Apple towards TWINT.
That investigation concerned Apple Pay, a mobile payment solution for Apple products including the iPhone and Apple Watch. Apple devices and their applications were configured to automatically start Apple Pay when they were near a contactless payment terminal, to allow payment with Apple Pay. Accordingly, when a customer wanted to make a payment with TWINT using an Apple device, the Apple Pay application would start automatically, interrupting the TWINT payment process TWINT complained that Apple was making their app impossible to use.
In response, in December 2018 Apple committed to offer a technical solution that will prevent Apple Pay from automatically starting during a payment process using TWINT, leading COMCO to close its investigation.
These recent cases indicate that electronic payments services and systems will remain a topic of discussion in the coming years, as this dynamic sector continues to develop.

ONLINE PLATFORMS: INCREASED ENFORCEMENT UNDER CONSUMER PROTECTION POWERS

In the March 2018 newsletter we covered the increasing use by national competition authorities (NCAs) of their consumer protection powers to address potential issues raised by online platforms. The particular focus on travel sites stems from the 2016 "sweep" by the EU Consumer Protection Cooperation (CPC) Network focussing on potentially misleading information on travel booking websites. Following this, several NCAs activated their national enforcement procedures to investigate online hotel booking sites and review potentially misleading practices that authorities consider breach consumer law.

In parallel, the CPC Network itself pursued coordinated action against AirBnB, which concluded in September 2018 when AirBnB provided commitments to improve price transparency and remove one-sided terms from their terms and conditions.

UK

On 6 February 2019 the CMA secured formal undertakings from six online hotel booking sites to change certain practices on their websites that were causing the CMA concern under consumer protection legislation. The CMA investigation began in October 2017 and proceeded to enforcement action in June 2018.

The CMA press release clarifies that each of the sites under investigation cooperated with the CMA's investigation and voluntarily agreed to:

- Search results: make it clear to the consumer when the ranking of search results has been affected by payments, including standard commission earned per booking or click;
- Pressure selling: not give an incorrect impression of the availability or popularity of a hotel or rush consumers into making a booking decision based on incomplete information;
- Discount claims: be clearer about discounts and only promote deals that are actually available at that time (for example, not comparing a weekend rate with a weekday tariff or comparing the price of a luxury suite with a standard room); and
- Hidden charges: display all compulsory charges such as taxes, booking or resort fees in the headline price to ensure there are no "hidden charges".

On 26 February 2019 the CMA also published Principles for businesses in online hotel bookings (the Principles), which recap the theories of harm pursued by the CMA in its formal investigation, provide principles for compliance for other players, and mandate that all online travel agents, metasearch sites, hotel chains and individual hotels that provide services to UK consumers are required to abide by the same principles as agreed by the six sites that gave formal undertakings.

The deadline for all online hotel booking companies to ensure they are compliant with consumer law (as outlined in the Principles) is 1 September 2019, after which they may face enforcement action by the CMA.

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Indeed, a variety of online businesses have been the focus of the CMA's attention. For example, the CMA recently secured a court order against Viagogo, a secondary ticketing website. Viagogo had refused to comply with undertakings that other secondary ticketing websites had agreed to roll out following enforcement action by the CMA in November 2017, relating to concerns that consumer laws were being breached by their business models.

Online operators in areas outside hotel booking should therefore also carefully review the Principles, as the CMA clearly considers a breach of those standards to be breaches of current consumer protection laws – it's not just a call-out to hotel sites.

What next?

While the CMA's focus is on UK consumers, it remains to be seen whether any precedents or guidance produced by them will become the "new normal" across the EU, as other NCAs progress their own reviews of online hotel booking sites (or, indeed, of other online businesses).

Given the national focus of these investigations, and the CMA's use of voluntary commitments to resolve its online hotel booking investigation, it is also possible that differing standards of compliance will be agreed or imposed by NCAs, which could raise questions as to the implications for business in the EU's digital single market going forward.

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Online sales bans:

restriction on selling products/services online

- (EU) Google
  (July 2016, ongoing investigation)
  - (EU) Google
    (June 2017, Infringement decision)
- (EU) Guess
  (June 2017, Opening of proceedings)
  - (EU) Guess
    (June 2017, Press release)
  - - UPDATE: (EU) Guess
    (December 2018,Opinion of the Advisory Committee)
  - - UPDATE: (EU) Guess
    (December 2018, Report of the Hearing Officer)
  - - UPDATE: (EU) Guess
    (December 2018, Press Release)
  - - UPDATE: (EU) Guess
    (December 2018, infringement decision)
- (EU) Licensed merchandise
  (Opening of proceedings)
  - (EU) Sanrio
    (June 2017, Opening of proceedings)
  - (EU) Universal Studios
    (June 2017, Opening of proceedings)
  - (EU) Nike
    (June 2017, Opening of proceedings)
- (EU) Consumer electronics
  (December 2013 Inspections)
  - (EU) Asus
    (February 2017, Opening of proceedings)
  - (EU) Asus
    (July 2018, Opinion of the Advisory committee)
  - (EU) Asus
    (July 2018, Report of the Hearing officer)
  - (EU) Asus
    (July 2018, Press release)
  - (EU) Asus
    (July 2018, Infringement decision)
  - (EU) Asus
    (October 2018, Closure of proceedings)
- (EU) Pioneer
  (February 2017, Opening of proceedings)
  - (EU) Pioneer
    (July 2018, Opinion of the advisory committee)
  - (EU) Pioneer
    (July 2018, Report of the hearing officer)
  - (EU) Pioneer
    (July 2018, Press release)
  - (EU) Pioneer
    (July 2018, infringement decision)
  - (EU) Pioneer
    (October 2018, closure of proceedings)
- (EU) Philips
  (February 2017, Opening of proceedings)
  - (EU) Philips
    (July 2018, Opinion of the advisory committee)
  - (EU) Philips
    (July 2018, Report of the Hearing Officer)
  - (EU) Philips
    (July 2018, Press release)
  - (EU) Philips
    (July 2018, Infringement decision)
  - (EU) Philips
    (October 2018, Closure of proceedings)
- (EU) Denon & Marantz
  (February 2017, Opening of proceedings)
  - (EU) Denon & Marantz
    (July 2018, Opinion of the advisory committee)
  - (EU) Denon & Marantz
    (July 2018, Report of the hearing officer)
  - (EU) Denon & Marantz
    (July 2018, Press release)
  - (EU) Denon & Marantz
    (July 2018, Infringement decision)

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(F) Bang & Olufsen
(March 2014 Paris Court of Appeal judgment)
(PL) Roland Polska
(May-June 2016, Poland Court of Appeal judgment)
(UK) Sports & entertainment merchandise
(August 2016 Infringement decision)
- (UK) Trod / GB eye
- (UK) Trod / GB eye
(December 2016, Director disqualification)
- (UK) Ping Europe Limited
(August 2016, Statement of objections)
- (UK) Ping Europe Limited
(August 2017, Infringement decision)
- (UK) Ping Europe Limited
(December 2017, Non-confidential decision)
- (UK) Ping Europe Limited
(October 2017, Appeal)
- (UK) Ping Europe Limited
(March 2017, Interlocutory decision)
- (UK) Ping Europe Limited
(September 2018, CAT appeal judgment)

NEW: (ES) Adidas (November 2018, opening of proceedings)
- NEW: (ES) Adidas (November 2018, press release)

Resale price maintenance:
obligation to use fixed or minimum resale prices

(D) Portable navigation devices
(May 2015, Infringement decision)
(D) CIBA Vision
(December 2009, Infringement decision)
(I) Enervit
(July 2014, Commitments)
(UK) Ultra Finishing
(May 2016, Infringement decision)
(UK) ITW
(May 2016, Infringement decision)
(UK) Mobility Scooters
(October 2014, Infringement decision)

NEW: (NL) Consumer goods (December 2018, press release)

MFNs/Price Parity Clauses:
guarantee to an online platform that supplier will treat the platform as favourably as the supplier's most-favoured-customer

(EU) Amazon e-books
(June 2015 Opening of proceedings)
- (EU) Amazon e-books
(December 2016, Opening of proceedings)
- (EU) Amazon e-books
(January 2017, Market Test Notice Art. 27(4))
- (EU) Amazon e-books
(January 2017, Proposed Commitments)
- (EU) Amazon e-books
(May 2017, Commitments accepted)
- (EU) Amazon e-books
(August 2017, Decision concerning the Trustees)

(EU) E-books
(July 2013 Commitments)

Hotel bookings:
(D) HRS
(January 2015 Düsseldorf Higher Regional Court judgment)
(D) booking.com
(Dec 2015 Infringement decision)
(F) booking.com
(Apr 2015 Commitments)
- (F) booking.com
(October 2015, Decision Court of Appeal Paris)
- (F) booking.com
(November 2016, Decision Business Court Paris)
- (F) booking.com
(February 2017, Assessment of commitments made by booking.com)

(I) booking.com
(Apr 2015 Commitments)

(SE) booking.com

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(Apr 2015 Commitments)
(SE) booking.com
(July 2018, Stockholm Patent andMarkets Court ruling)
(EU) Holiday Pricing
(February 2017, Opening of proceedings)
(EU) REWE/DER
(August 2017, Opening of proceedings)
(EU) TUI
(August 2017, Opening of proceedings)
(EU) Thomas Cook
(August 2017, Opening of proceedings)
(EU) Kuoni
(August 2017, Opening of proceedings)
(EU) Melia
(August 2017, Opening of proceedings)
NEW: (UK) CompareTheMarket (September 2017, Opening of proceedings)
NEW: (UK) CompareTheMarket (November 2018, Statement of objections)

(EU) Report on ECN monitoring exercise in the online hotel booking sector (April 2017)

Exclusivity clauses:
preventing access to platforms by competitors

(I) TicketOne
(September 2018, Press release)
(EU) Amadeus & Sabre
(November 2018, Press release)
- UPDATE: (EU) Amadeus (November 2018, Opening of proceedings)
- UPDATE: (EU) Sabre (November 2018, Opening of proceedings)

Geo-blocking:
preventing online cross-border shoppers from purchasing consumer goods or accessing digital content services
(EU) Pay-TV
(April 2016, Commitments)
(EU) Cross-border access to pay-TV
(July 2017, Commitments)
(EU) Cross-border access to pay-TV
(July 2017, Decision concerning the Trustees)
(EU) Cross-border access to pay-TV
(January 2018, Opening of proceedings)
(EU) Cross-border access to pay-TV
(October 2018, Proposed commitments)
(EU) Cross-border access to pay-TV
(October 2018, Press release)
(EU) Cross-border access to pay-TV
(November 2018, Market test notice Art. 27(4))
- UPDATE: (EU) Cross-border access to pay-TV (December 2018, NBCUniversal Proposed commitments)
- UPDATE: (EU) Cross-border access to pay-TV (December 2018, Sony Pictures Proposed Commitments)
- UPDATE: (EU) Cross-border access to pay-TV (December 2018, Sky Proposed commitments)
- UPDATE: (EU) Cross-border access to pay-TV (December 2018, Warner Proposed commitments)
- UPDATE: (EU): Cross-border access to pay-TV (December 2018, Press release)
- UPDATE: (EU): Cross-border access to pay-TV (December 2018, Market Test Notice (Art. 27(4))
- UPDATE: (EU): Cross-border access to pay-TV (December 2018, Market Test Notice (Art. 27(4))

(EU) Video games
(March 2016, Investigation)
(EU) Capcom
(February 2017, Opening of proceedings)
(EU) Bandai Namco

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(February 2017, Opening of proceedings)
(EU) Focus Home
(February 2017, Opening of proceedings)
(EU) Koch Media
(February 2017, Opening of proceedings)
(EU) Zenimax
(February 2017, Opening of proceedings)

Dual pricing:
charging different prices for the same product/service when sold online.

(D) LEGO
(July 2016, Commitments)
(D) Gardena
(November 2013, Commitments)
(D) Bosch Siemens Hausgeräte
(December 2013, Commitments)
(D) Bathroom fittings
(December 2011, Commitments)
(UK) Fridge and bathroom suppliers
(May 2016, Infringement decision)

Third party platform ban:
restriction on using third-party online market places

(D) Adidas
(July 2015, Commitments)
(D) Sennheiser
(December 2013, Commitments)
(D) Asics
(August 2015, Infringement decision)
(D) Asics
(April 2017, Higher Regional Court of Düsseldorf)
(D) Asics
(December 2017, Federal Court of Justice ruling)
(D) Deuter
(December 2015, Frankfurt Higher Regional Court, appeal pending)
(D) Coty
(April 2016, request for a preliminary ruling)
(EU) Coty
(March 2017, Hearing)
(EU) Coty
(July 2017, Opinion)
(EU) Coty
(December 2017, Judgment)
(F) Caudalie
(February 2016, Paris Court of Appeal judgment)
(F) Caudalie
(September 2017, French Supreme Court judgment)
(F) Caudalie
(March 2018, dawn raid)
(F) Adidas
(November 2015, Commitments)
(F) Samsung & Amazon
(November 2015, request for a preliminary ruling)
(EU) Samsung & Amazon
(December 2016, preliminary ruling)
(NL) Shure Distribution Benelux
(May 2016, Gelderland district court ruling)
(UK) BMW
(January 2017, BMW changes policy)
(UK) L'Óréal
(March 2018, High Court London)
(NL) Nike
(October 2017, Amsterdam Court Judgment)
(UK) Google (April 2018, Injunction)
(May 2018, Interim relief)
(NL) Size Zero
(October 2018, Amsterdam Court Judgment)
(F) Stihl
(October 2018, Infringement decision)
NEW: (UK) OnTheMarket (July 2017, Competition Appeal Tribunal Judgment)
NEW: (UK) OnTheMarket (January 2019, Court of Appeal Judgment)

CASE TRACKER: OVERVIEW OF PENDING AND RECENT RELEVANT ONLINE DISTRIBUTION CASES

NEW: Unfair trading practices by online platform:

Use-of-platform clauses which are anticompetitive

NEW: (FR) Google (January 2019, decision concerning interim measures)

NEW: (EU) Amazon (September 2018, preliminary investigation)

NEW: (D) Amazon (November 2018, opening of proceedings)

NEW: (AT) Amazon (February 2019, opening of proceedings)

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