



Press and Information

Court of Justice of the European Union

**PRESS RELEASE No 89/17**

Luxembourg, 26 July 2017

Advocate General's Opinion in Case C-230/16  
Coty Germany GmbH v Parfümerie Akzente GmbH

**According to Advocate General Wahl, a supplier of luxury goods may prohibit its authorised retailers from selling its products on third-party platforms such as Amazon or eBay**

*Such a prohibition, which seeks to preserve the luxury image of the products concerned, is not, under certain conditions, caught by the prohibition of agreements, as it is likely to improve competition based on qualitative criteria*

Coty Germany is one of Germany's leading suppliers of luxury cosmetics. In order to preserve the luxury image of some of its brands, it markets them through a selective distribution network, namely authorised retailers. The shops of those retailers must meet a number of requirements in terms of environment, décor and furnishing. Authorised retailers are also entitled to offer and sell the contract goods on the internet. In that regard, the distribution contracts state, following a reorganisation in 2012, that the authorisation is valid provided that this sales activity is conducted through an 'electronic shop window' of the authorised shop and that the luxury character of the goods is preserved. Furthermore, it is stated that it is forbidden for the authorised retailer to make discernible use of unauthorised third parties for internet sales of the contract goods.

Parfümerie Akzente has been distributing Coty Germany products for many years as an authorised retailer both in its shops and on the internet. Internet sales are made partly through its own on-line store and partly via the platform 'amazon.de'. As Parfümerie Akzente refused to approve the amendments to the distribution contract introduced in 2012, Coty brought an action before the German courts seeking an order prohibiting Parfümerie Akzente from distributing the contract goods via the platform 'amazon.de'.

In that context, the Oberlandesgericht Frankfurt am Main (Supreme Regional Court, Frankfurt am Main) seeks a ruling from the Court of Justice in order to determine whether the prohibition in question is compatible with EU competition law.

In his Opinion today, Advocate General Nils Wahl points out, first of all, that the Court has already held that, in view of their characteristics and 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 properly used.

According to case-law<sup>1</sup> that is still valid<sup>2</sup>, **selective distribution systems relating to the distribution of luxury and prestige products, and mainly intended to preserve the 'luxury image' of those products – such as the Coty Germany system – are not necessarily caught by the prohibition of agreements<sup>3</sup>, where they meet three criteria:** (1) the resellers are chosen on the basis of objective criteria of a qualitative nature which are determined uniformly for all and applied in a non-discriminatory manner for all potential resellers, (2) the nature of the product in question, including the prestige image, requires selective distribution in order to preserve the

<sup>1</sup> Case: [26/76 Metro SB-Großmärkte v Commission](#).

<sup>2</sup> The Advocate General rejects the argument that that case-law was called into question by the Court's judgment of 13 October 2011, [C-439/09 Pierre Fabre Dermo-Cosmétique](#), See also Press Release No. [110/11](#).

<sup>3</sup> Set out in Article 101(1) TFEU.

quality of the product and to ensure that it is correctly used, and (3) the criteria established do not go beyond what is necessary.

Furthermore, **and with regard more specifically to the contested provision according to which Coty Germany prohibits its authorised retailers from using in a discernible manner third party platforms for internet sales of the contract goods, the opinion of the Advocate General is that such a clause is not necessarily caught by the prohibition of agreements where** (1) it is dependent on the nature of the product, (2) it is determined in a uniform fashion and applied without distinction and (3) it does not go beyond what is necessary. It will ultimately be for the Oberlandesgericht to examine whether this is the case.

**The Advocate General observes that,** subject to the verifications to be carried out by the Oberlandesgericht, **the contested clause does not appear to be caught by the prohibition of agreements.**

**As regards, in particular, the legitimacy of that clause,** the Advocate General considers that the prohibition which that clause establishes is likely to improve competition based on qualitative criteria. That prohibition is likely to improve the luxury image of the products concerned in various respects: not only does it ensure that those products are sold in an environment that meets the qualitative requirements imposed by the head of the distribution network, but it also makes it possible to guard against the phenomena of parasitism, by ensuring that the investments and efforts made by the supplier and by other authorised distributors to improve the quality and image of the products concerned do not benefit other undertakings.

The Advocate General emphasises that, far from imposing an absolute prohibition on online sales, Coty Germany only required its authorised distributors not to sell the contract products via third party platforms, since, according to the network head, such platforms are not required to comply with the qualitative requirements which it imposes on its authorised distributors. The clause at issue in the main proceedings still allows authorised distributors to distribute the contract products via their own internet sites. Likewise, it does not prohibit those distributors from making use of third party platforms in a non-discernible manner in order to distribute those contract goods.

Moreover, it is apparent that, at this stage in the development of e-commerce, distributors' own online stores are the preferred distribution channel for distribution via the internet. Thus, notwithstanding the increasing significance of third party platforms in the marketing of retailers' products, the fact that authorised distributors are prohibited from making use in a discernible manner of those platforms cannot, in the present state of development of e-commerce, be assimilated to an outright ban on or a substantial restriction of internet sales.

**As regards proportionality,** the Advocate General does not see any aspect which would lead to the conclusion that, at present, the prohibition in question must be generally regarded as disproportionate to the objective pursued. He observes, in particular, that compliance with the qualitative requirements which may be lawfully imposed in the context of a selective distribution system can be effectively ensured only if the internet sales environment is devised by authorised resellers, who are contractually linked with the supplier/head of the distribution network, and not by a third party operator, whose practices escape the influence of that supplier.

In the event that the restrictions at issue are found, in principle, to be caught by the prohibition of agreements and are, moreover, restrictive of competition, the Advocate General has also examined whether or not they are likely to benefit from an exemption<sup>4</sup>, and in particular from a block exemption under Regulation No 330/2010<sup>5</sup>.

In that regard, the Advocate General considers that the contested prohibition does not constitute a serious restriction within the meaning of that regulation, so that it is not automatically excluded

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<sup>4</sup>Under Article 101(3) TFEU.

<sup>5</sup>Commission Regulation (EU) No 330/2010 of 20 April 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices (OJ 2010 L 102, p. 1). (3)

from the benefit of a block exemption. In his view, the prohibition at issue does not constitute a restriction of the retailer's<sup>6</sup> customers or a restriction of passive sales to end users<sup>7</sup>.

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**NOTE:** The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

**NOTE:** A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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*The [full text](#) of the Opinion is published on the CURIA website on the day of delivery.*

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*Pictures of the delivery of the Opinion are available from "[Europe by Satellite](#)" ☎ (+32) 2 2964106*

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<sup>6</sup>Within the meaning of Article 4(b) of Regulation No 330/2010.

<sup>7</sup>Within the meaning of Article 4(c) of Regulation No 330/2010.