



Reports of Cases

Case C-230/16

**Coty Germany GmbH
v
Parfümerie Akzente GmbH**

(Reference for a preliminary ruling from the Oberlandesgericht Frankfurt am Main)

(Reference for a preliminary ruling — Competition — Agreements, decisions and concerted practices — Article 101(1) TFEU — Selective distribution of luxury cosmetics products — Clause prohibiting distributors from making use of a non-authorised third party in the context of internet sales — Regulation (EU) No 330/2010 — Article 4(b) and (c))

Overview — Judgment of the Court (First Chamber), 6 December 2017

1. *Agreements, decisions and concerted practices — Adverse effect on competition — Selective distribution system — Selective distribution of luxury cosmetics products — Lawfulness — Conditions*

(Art. 101(1) TFEU)

2. *Agreements, decisions and concerted practices — Adverse effect on competition — Selective distribution system — Selective distribution of luxury cosmetics products — Contractual clause prohibiting distributors from making use of a non-authorised third party in the context of internet sales — Lawfulness — Conditions*

(Art. 101(1) TFEU)

3. *Agreements, decisions and concerted practices — Prohibition — Block exemption — Vertical agreements — Regulation No 330/2010 — Selective distribution of luxury cosmetics products — Contractual clause prohibiting distributors from making use of a non-authorised third party in the context of internet sales — No restriction of customers — No restriction of passive sales to end users*

(Art. 101(3) TFEU; Commission Regulation No 330/2010, Arts 4 and 4(c))

1. Article 101(1) TFEU must be interpreted as meaning that a selective distribution system for luxury goods designed, primarily, to preserve the luxury image of those goods complies with that provision to the extent that resellers are chosen on the basis of objective criteria of a qualitative nature that are laid down uniformly for all potential resellers and applied in a non-discriminatory fashion and that the criteria laid down do not go beyond what is necessary.

(see para. 36, operative part 1)

2. Article 101(1) TFEU must be interpreted as not precluding a contractual clause, such as that at issue in the main proceedings, which prohibits authorised distributors in a selective distribution system for luxury goods designed, primarily, to preserve the luxury image of those goods from using, in a discernible manner, third-party platforms for the internet sale of the contract goods, on condition that that clause has the objective of preserving the luxury image of those goods, that it is laid down uniformly and not applied in a discriminatory fashion, and that it is proportionate in the light of the objective pursued, these being matters to be determined by the referring court.

(see para. 58, operative part 2)

3. Article 4 of 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 must be interpreted as meaning that, in circumstances such as those at issue in the main proceedings, the prohibition imposed on the members of a selective distribution system for luxury goods, which operate as distributors at the retail level of trade, of making use, in a discernible manner, of third-party undertakings for internet sales does not constitute a restriction of customers, within the meaning of Article 4(b) of that regulation, or a restriction of passive sales to end users, within the meaning of Article 4(c) of that regulation.

(see para. 69, operative part 3)