

Summary of Commission Decision**of 17 December 2018****relating to a proceeding under Article 101 of the Treaty on the Functioning of the European Union
and Article 53 of the Agreement on the European Economic Area****(Case AT.40428 — Guess)***(notified under document C(2018) 8455)***(Only the English text is authentic)**

(2019/C 47/04)

On 17 December 2018, the Commission adopted a decision relating to a proceeding under Article 101 of the Treaty on the Functioning of the European Union and Article 53 of the Agreement on the European Economic Area. In accordance with the provisions of Article 30 of Council Regulation (EC) No 1/2003⁽¹⁾, the Commission herewith publishes the names of the parties and the main content of the decision, including any penalties imposed, having regard to the legitimate interest of undertakings in the protection of their business secrets.

1. INTRODUCTION

- (1) The Decision is addressed to Guess?, Inc., Guess? Europe, B.V. and Guess Europe Sagl (collectively 'Guess'). Guess?, Inc. is a USA-based company, incorporated in Delaware and listed at the New York Stock Exchange. It designs, markets, distributes and licenses contemporary apparel and accessories. Guess?, Inc. indirectly owns Guess? Europe, B.V. (incorporated in the Netherlands in 1996). In turn, Guess? Europe, B.V. controls Guess Europe Sagl incorporated in Switzerland. Guess? Europe, B.V. is the 100 % parent company (directly or indirectly) of the Guess subsidiaries within the European Economic Area ('EEA').
- (2) The Decision relates to a single and continuous infringement of Article 101 of the Treaty on the Functioning of the European Union ('TFEU') and Article 53 of the Agreement on the European Economic Area ('EEA Agreement'). In violation of Article 101 TFEU and Article 53 EEA Agreement Guess implemented practices aimed at restricting intra-brand competition from authorised distributors in its selective distribution network.

2. CASE DESCRIPTION**2.1. Procedure**

- (3) The Commission's investigation started as a follow-up to the e-commerce sector inquiry⁽²⁾.
- (4) The Decision concerns a series of vertical restraints applied by Guess vis-à-vis its authorised wholesalers and retailers in its selective distribution system in relation to a large part of its apparel and accessory products sold in the EEA.
- (5) On 6 June 2017, the Commission opened proceedings with a view to taking a decision under Chapter III of Council Regulation (EC) No 1/2003.
- (6) After the initiation of proceedings, Guess indicated its interest to cooperate with the Commission and submitted further evidence regarding the relevant conduct.
- (7) Subsequently, Guess submitted a formal offer to cooperate in view of the adoption of a decision pursuant to Article 7 and Article 23 of Council Regulation (EC) No 1/2003.
- (8) On 12 November 2018, the Commission adopted a Statement of Objections addressed to Guess. On 21 November 2018, Guess submitted its reply to the Statement of Objections.
- (9) The Advisory Committee on Restrictive Practices and Dominant Positions issued a favourable opinion on 10 December 2018.

⁽¹⁾ OJ L 1, 4.1.2003, p. 1.

⁽²⁾ http://ec.europa.eu/competition/antitrust/sector_inquiries_e_commerce.html

(10) The Commission adopted the Decision on 17 December 2018.

2.2. Addressees and duration

(11) The following undertakings have infringed Article 101 TFEU and Article 53 EEA Agreement by directly participating, during the periods indicated below, in anti-competitive practices:

Undertaking	Duration
Guess?, Inc., Guess? Europe, B.V. and Guess Europe Sagl	1 January 2014 until 31 October 2017

2.3. Summary of the infringements

The restrictive provisions and practices implemented by Guess formed part of an overall company strategy that was aimed at diverting online sales of Guess products towards Guess's own web site and restricting intra-brand competition among authorised distributors. Guess restricted authorised distributors in its selective distribution system from doing the following:

- (a) using the Guess brand names and trademarks for the purposes of online search advertising;
- (b) selling online without first obtaining from Guess a specific authorisation which Guess had full discretion to either grant or refuse and where no quality criteria had been specified for deciding whether or not to grant an authorisation;
- (c) selling to end users located outside the authorised distributors' allocated territory;
- (d) cross-selling among authorised wholesalers and retailers;
- (e) determining their resale prices independently.

2.4. Remedies

(12) The Decision applies the 2006 Guidelines on Fines ⁽³⁾.

2.4.1. Basic amount of the fine

(13) In setting the fines, the Commission took into account the value of sales in the financial year 2017 (running from 31 January 2016 to 28 January 2017), which was the last full business year of Guess' participation in the infringement.

(14) The Commission took into account the fact that each of the different restrictions, by their very nature, restricts competition within the meaning of Article 101(1) TFEU and Article 53 EEA Agreement and that vertical agreements and concerted practices such as those at issue are, by their nature, often less damaging to competition than horizontal agreements. Taking into account these factors and in light of the specific circumstances of the case the proportion of the values of sales taken into account was set at 7 %.

(15) The Commission took into account the duration of the single and continuous infringement, as mentioned above.

2.4.2. Adjustments to the basic amount

(16) There are no aggravating or mitigating circumstances in this case.

2.4.3. Application of the 10 % turnover limit

(17) The calculated fine does not exceed 10 % of Guess' worldwide turnover.

2.4.4. Reduction of the fine in view of cooperation

(18) The Commission concluded that, in order to reflect that Guess has effectively cooperated with the Commission beyond its legal obligation to do so, the fine that would otherwise have been imposed should, pursuant to point 37 of the Guidelines on Fines, be reduced by 50 %.

⁽³⁾ OJ C 210, 1.9.2006, p. 2.

3. CONCLUSION

- (19) In light of the above, the final amount of the fine imposed on Guess pursuant to Article 23(2)(a) of Regulation (EC) No 1/2003 for the single and continuous infringement amounts to EUR 39 821 000.
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