Distribution Law Center
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Liebherr

Online sales restrictions

1. CASE SUMMARY

A. Summary of facts

In Germany, Liebherr sells its household appliances through Liebherr-Hausgeräte Vertriebs- und Service GmbH. Most products are sold through authorized retailers in a selective distribution system. The company has a particularly important market position in the sector of freezers and refrigerated wine cabinets.

In early 2021, Liebherr introduced a new sales contract including a new rebate scheme, referred to as the 'Liebherr-Performance-Rabatt'. In response to complaints from market participants, the FCO examined the performance criteria retailers had to fulfil in order to obtain such rebates.

B. Legal analysis

The FCO's investigation showed that the criteria applicable to online sales are significantly stricter than those for offline sales. For instance, online shops had to ensure that staff could be contacted between 9am and 8pm on Sundays and holidays, guarantee a specific delivery period for products that customers had ordered but that were not in stock at the retailer, and offer certain modes of payment. According to the FCO's preliminary assessment, these rules not only disadvantaged retailers that only sold online, but also hybrid retailers that operated both a brick-and-mortar shop and an online shop. This last category of retailers had to fulfil all of the criteria to obtain a rebate, i.e. those applicable to offline and online shops.

The FCO took the view that linking a performance rebate that is applicable to all forms of distribution (i.e. offline, online and hybrid) to special conditions to be met in case of online distribution may hinder online distribution itself or even cause some retailers to cease their online activities altogether.

No objective justification for such direct or indirect obstruction of online and dual distribution was given by Liebherr.

Liebherr undertook to adjust these performance criteria to those applicable to brick-and-mortar outlets and to make availability times more flexible on a weekly basis. This dispelled the competition concerns and caused the FCO to discontinue the proceedings.

2. RELEVANT LEGISLATION

- Article 101 TFEU
- Section 1 and 2 ARC (Act against Restraints of Competition)
- Regulation 330/2010

3. PRACTICAL SIGNIFICANCE

This case demonstrates the FCO's view that distinct online and offline selection criteria can only be imposed on authorized retailers provided that such distinction is necessary due to the specificity of the distribution channel, and it is not a way to dissuade authorized retailers from using the internet.