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French Competition Authority fines Rolex for preventing its authorised retailers to sell its products online

In its decision no. 23-D-13 of 19 December 2023, the French Competition Authority imposed a fine of 91.6 million EUR on Rolex France SAS and three parent companies (Rolex Holding SA, Foundation Hans Wilsdorf and Rolex SA) for enforcing a complete ban on online sales by its authorised resellers within its selective distribution network. This decision marks the highest sanction imposed to date by the French Competition Authority for such practice.

Initiation of procedure

The case was brought to the French Competition Authority by the Union de la Bijouterie Horlogerie, a professional organisation representing companies in the jewellery and watchmaking trade, and Pellegrin & Fils, a former authorised reseller whose distribution agreement with Rolex France SAS was terminated in 2013.

Anticompetitive practice: prohibition on online sales

The French Competition Authority found that Rolex had included in its selective distribution agreements a clause explicitly prohibiting online sales. The clause stated that “the sale of the Rolex products is exclusively reserved to the end consumer in the point of sale indicated in article 1.2. In particular, the following are prohibited (…) b) any sale outside the sales outlet or by mail order”. The Authority concluded that this practice, in effect for over ten years (from October 2011 to March 2022), constituted an anticompetitive vertical agreement between Rolex and its authorised resellers.

The Authority rejected Rolex's argument that the online sales ban was necessary to combat counterfeiting and parallel illegal supply chains, noting that alternative means less restrictive of competition could achieve the same objective. The Authority highlighted that Rolex’s main competitors, facing similar risks, allowed online sales of their products under specific conditions.

The Authority also pointed out that Rolex had already developed tools and standards to ensure the protection of the brand’s image on authorised distributors’ websites and a system enabling online purchases of second-hand watches with guaranteed authenticity by Rolex. According to the Authority, this demonstrated that online sales of

such products were compatible with Rolex's objectives. The Authority dismissed Rolex's attempt to justify this practice by referencing the luxury image attached to its products.

Referring to the *Coty* case (CJEU, 6 December 2017, *Coty Germany GmbH*, C-230/16), the Authority considered Rolex's behaviour a restriction of competition by object.

Dismissed practice: RPM

The investigation lasted almost seven years, during which the Authority's investigation teams notified Rolex of two grievances, ultimately retaining only one infringement. The Authority rejected the grievance of resale price maintenance ('RPM'). It considered that the evidence did not prove that Rolex France SAS had restricted the pricing freedom of its authorised retailers.

Reference to the new competition legal framework

The decision made reference to the new vertical block exemption regulation ('VBER') that came into force on 1 June 2022. Although not applicable to the Rolex case, the Authority considered it a "useful guideline".

Additionally, the Authority determined the sanction by applying the new article L.464-2 of the French Commercial Code, resulting from "Ordonnance no. 2021-649 of 26 May 2021" transposing Directive (EU) 2019/1 of 11 December 2018 (known as 'ECN+'), and the methodology outlined in its procedural notice on fines of 30 July 2021. The Authority rejected Rolex's objection to their application, arguing that it would infringe the principle of non-retroactivity of criminal law.

Rolex has the option to appeal the decision to the Paris Court of Appeal.