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UK Court of Appeal clarifies "by object" analysis in selective distribution

Facts

Deckers UK Limited ('Deckers') operated a selective distribution system for HOKA running shoes. It supplied authorised retailers and sold products through its own website. Deckers' terms required retailers to obtain approval for online sales and to use approved websites linked to their brand. Up & Running ('U&R'), an authorised retailer, wanted to launch a separate, unbranded website to sell excess and discounted stock. Deckers refused permission and subsequently terminated the supply relationship after U&R proceeded to launch the website. U&R brought a damages claim before the UK Competition Appeal Tribunal ('CAT') for breach of competition law.

CAT judgment

The CAT characterised Deckers' conduct as a restriction "by object" on two bases:

- an online sales restriction, limiting U&R's ability to sell products via certain online channels; and
- a form of indirect resale price maintenance ('RPM'), on the basis that preventing the use of a clearance website restricted discounting and therefore limited price competition.

The CAT also concluded that the arrangements fell outside the conditions for lawful selective distribution and could not benefit from the Vertical Agreements Block Exemption Regulation ('VBER') (Commission Regulation (EU) No 330/2010, which applied in the UK at the relevant time).

Court of Appeal judgment

On 11 May 2026, the Court of Appeal set aside the CAT's judgment and clarified the legal test for identifying a restriction "by object". In particular, it emphasised that:

- a potentially anti-competitive objective is not sufficient on its own to establish a restriction "by object";
- the assessment must take into account the content, objective, and legal and economic context of the agreement; and

- the “by object” category must be interpreted restrictively, requiring a sufficiently high degree of likely harm to competition.

The Court also rejected any presumption that a “hardcore restriction” under the VBER is automatically a restriction “by object”.

On the facts, the Court concluded that the arrangements were not restrictive “by object” and could fall within the VBER safe harbour.

Commentary

The judgment provides important clarification on the boundary between permissible vertical restraints and restrictions that may be treated as inherently anti-competitive.

- It confirms that the “by object” category remains narrowly defined, requiring careful analysis of context rather than reliance on characterisation or perceived intent.
- It highlights that restrictions within a selective distribution system may be justified where they are necessary to preserve brand positioning or quality.
- At the same time, the judgment does not relax the treatment of genuinely anti-competitive vertical restraints, particularly RPM and restrictions affecting unsolicited customer demand, which remain high-risk.

Overall, the case reinforces a more structured and context-based approach to assessing vertical agreements under UK competition law.