

4th Yearly Update on Verticals

16 October 2025

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Q&A

This Q&A contains an answer to the questions which the Distribution Law Center received in the Q&A and chat functions during the 4th Yearly Update on Verticals which took place on 16 October 2025.

We received questions regarding the following five topics: RPM, customer restrictions, selective distribution, the “parallel imposition requirement” in exclusive distribution and fulfilment contracts. The Q&A below is structured per topic.

If you have questions or want more information from any of the contributors, please contact the contributor directly or send us an email via dlc@contrast.law.

1. RPM

QUESTION 1

- **Question.** *Have you ever seen a case where a so-called "recommended price" was actually found to be just that and not a disguised form of RPM? What would differentiate a recommendation – which could spontaneously be followed by certain resellers – and an RPM scheme?*
- **Answer.** If the recommended resale price ('RRP') is not somehow imposed on the buyers, there is no RPM and competition authorities are unlikely to start an investigation. As a result, there are likely to be few examples of decisions where a competition authority concludes that RRP are indeed just that and not disguised RPM. Instead, there may be examples of cases where a competition authority concluded that there was RPM, but this conclusion was censured on appeal. We will circulate the question within the DLC and post examples if there are any.

QUESTION 2

- **Question.** *In the case of a supplier having multiple buyers, could the demonstration that certain buyers did not follow the pricing policy be sufficient to overturn an RPM accusation? Or simply that a "general" vertical restraint is not qualified?*
- **Answer.** Proof that certain buyers did not follow the pricing policy is unlikely in itself to be sufficient to overturn an RPM accusation, if other buyers did. Rather, it would indeed simply mean that there is no what is referred to as a "general" vertical restraint. In line with the CJEU case law, there could still be RPM if other buyers complied with or otherwise agreed to the supplier's prices (see, e.g., CJEU in *Super Bock*, paragraph 57).

QUESTION 3

- **Question.** *There are limited exemptions for RPM based on circumstances that can be objectively justified. Do you have some examples (case law), please?*
- **Answer.** There are indeed 4 exemptions stated in the Vertical Guidelines, paragraph 197, for example fixed resale prices that may be necessary to organise a coordinated short-term low-price campaign (of 2 to 6 weeks in most cases), in particular in a distribution system where the supplier applies a uniform distribution format, such as a franchise system.

We note that all 4 exemptions are exemptions following an efficiency defence based on Article 101(3) TFEU. So, the examples are not exempt in the sense that they would be outside the scope of Article 101(1) TFEU. Rather, they are placed immediately in the context of Article 101(3) TFEU. This may be the reason why we have not come across relevant case law.

2. Customer restrictions

QUESTION 4

- **Question.** *How can I protect my brand if I am not allowed to restrict my resellers from selling to discounters/jobbers?*
- **Answer.** Most suppliers wanting to protect their brand do so by putting a selective distribution system in place, and by not selecting discounters/jobbers to join. In a

selective distribution system, the supplier undertakes to sell the contract goods or services, either directly or indirectly, only to distributors selected on the basis of specified criteria and “*these distributors undertake not to sell such goods or services to unauthorised distributors within the territory reserved by the supplier to operate that system*” (Article 1(1)(g) VBER). Accordingly, the supplier and the authorised resellers may not in a selective distribution system sell to unauthorised resellers (e.g., discounters).

3. Selective distribution

QUESTION 5

- **Question.** *In relation to the Pierre Cardin case, it was mentioned that the Commission took the view that Pierre Cardin's brand wasn't sufficiently prestigious to justify the use of a selective distribution system. That seems to set a quite high bar for the use of selective distribution. Did the Commission give any indication of why it reached this conclusion; and therefore of the standards it will apply in determining whether a selective distribution system would be justified for a particular brand?*
- **Answer.** There may be a misunderstanding here. In *Pierre Cardin*, the Commission did not consider that the Pierre Cardin brand was not prestigious enough to justify selective distribution. Selective distribution generally benefits from the VBER if it complies with its conditions (market share limits, no hardcore restrictions, etc.), “*regardless of the nature of the products concerned*” (Vertical Guidelines, paragraph 151). Rather, Pierre Cardin had not put a selective distribution system in place, but used exclusive distributors; restricting the ability of such a distributor to sell to specific customers is considered to be a hardcore restriction, if the supplier has neither exclusively allocated the customers in question to other distributors, nor exclusively reserved them for itself (*Pierre Cardin*, paragraph 425).

4. “Parallel imposition requirement” in exclusive distribution

The CJEU confirmed in *Beevers Kaas* that an active sales restriction towards an exclusively allocated territory is only covered by the VBER for the period for which it is shown that there is acquiescence by all the supplier’s buyers to the supplier’s invitation not to make active sales into that territory. The mere finding that buyers do not engage in active sales is not sufficient to establish the existence of such an agreement without proof of a preceding explicit invitation from the supplier.

QUESTION 6

- **Question.** *Would an exclusive distribution set-up (i.e., contracts containing restrictions of active sales) not backed by an appropriate parallel imposition requirement to all other distributors constitute a market partitioning agreement? What if no enforcement of the active sales restriction is sought by the supplier?*
- **Answer.** The active sales restriction would in such a case qualify as a hardcore restriction under the VBER. As per the CJEU's judgement in *Super Bock*, this does not necessarily imply that it would be a by object restriction under Article 101(1) TFEU. However, the Commission and national competition authorities take the view that they generally do qualify as a by object restriction. In such a case, effects must not be demonstrated, so the lack of enforcement is irrelevant. Even if the active sales restriction would be qualified as a restriction by effect, the mere existence of the active sales restriction in the agreement – even if not enforced – may have led the buyer to comply with the restriction. Depending on the profile of the buyer, that potential effect may have been appreciable.

QUESTION 7

- **Question.** *What if there are some buyers that do not accept the active exclusive distribution restriction, but all others do?*
- **Answer.** The judgement of the CJEU in *Beevers Kaas* confirms that, as long as you have one or more buyers that do not agree to the active sales restriction, the active sales restrictions on the buyers that have accepted it, qualify as a hardcore restriction under the VBER.

QUESTION 8

- **Question.** *Do you have any examples of a case regarding the following issue: whether the distributors have been obliged to verify whether the supplier has indeed introduced a "parallel" prohibition of active sales in exclusive distribution systems?*
- **Answer.** We have not come across such a case.

QUESTION 9

- **Question.** *Would a restriction on the Dutch customer's place of establishment have worked in the Beevers Kaas case? I.e., could the supplier have required that Albert Heijn only sell the cheese from its stores in the Netherlands?*
- **Answer.** The VBER indeed allows a supplier to restrict the place of establishment of the buyer (irrespective of the nature of the distribution system). This is referred to as a location clause. This means that the supplier may require the buyer to restrict its distribution outlets and warehouses to a particular address, place or territory. For the avoidance of doubt, the establishment and use of an online store by the buyer is not equivalent to the opening of a physical outlet and thus cannot be restricted. In the case at hand, an agreement between the supplier and Albert Heijn that the products could only be sold from its stores located in the Netherlands would have been covered under the VBER. It cannot be excluded that, in such a case, the Commission (or, as the case may be, national competition authorities) may withdraw the benefit of the VBER. To our knowledge, this has not yet happened.

QUESTION 10

- **Question.** *If you have several distributors in several EU countries, selling one or more of your products but not having all the same product 'basket' and only the exclusive distributor having a minimum purchase obligation. Can some be exclusive distributors and some non-exclusive distributors or not (vs the parallel imposition requirement)?*
- **Answer.** Yes, this is now clearly endorsed by the VBER. A supplier can combine exclusive and non-exclusive distribution in the EEA, but not within one and the same territory. For example, it is possible for a supplier to appoint an exclusive distributor for Poland and protect such distributor against active sales from all its distributors, including its distributor in Germany who is not appointed exclusively and its distributor in France where the supplier applies selective distribution.

QUESTION 11

- **Question.** *Does the Beevers Kaas case require imposing restrictions on active sales into exclusive territories on all buyers, even when they are active in a territory where the supplier applies free distribution?*
- **Answer.** Yes, it does. All that matters is that the distributor the supplier aims to protect against active sales from others, is appointed on an exclusive basis. The status of the distributors in the remainder of the EEA is irrelevant: the supplier can and must impose

the active sales restriction on them, irrespective of whether they are appointed on an exclusive, non-exclusive or even selective basis.

5. Fulfilment contracts

QUESTION 12

- **Question.** *Do you have any update regarding the fulfilment contract concept (practice, case law)?*
- **Answer.** As far as we know, there have been no recent developments in terms of case law. Accordingly, some of the main takeaways from our informal contacts with DG COMP on fulfilment contracts remain to be as follows:
 - The fulfilment service provider ('FSP') may be one of the supplier's usual distributors. If a supplier uses one of its usual distributors as FSP, he obviously will have to bear in mind the theory of harm with respect to fulfilment contracts, namely resale price maintenance ('RPM'). If a supplier involved a usual distributor as FSP, the imposition of a resale price must be limited to the fulfilment contract, and the distributor must otherwise remain free to determine its resale prices.
 - The word "previously" in paragraph 193 of the Vertical Guidelines (which reads that "*under a fulfilment contract, the supplier enters into a vertical agreement with a buyer for the purpose of executing (fulfilling) a supply agreement concluded previously between the supplier and a specific customer*") is not material. A supplier and customer may conclude a supply agreement and agree who will be the FSP for the agreement. In this case, there is no longer competition for the provision of fulfilment services and no RPM when the FSP is imposed a resale price.