

# Brand owners get more headroom for limiting online third-party platforms

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The European Court of Justice has finally confirmed that luxury brand owners can prevent their selective distributors from using online third-party platforms such as Amazon and eBay for the sale of their brands. This is surely good news for luxury brand owners, but possibly also for other brand owners with market shares below 30%. In other cases, a case-by-case analysis of the necessity of these platforms under the cartel prohibition will still be necessary.

Coty Germany, a seller of luxury cosmetic goods in Germany, brought proceedings in Germany against one of its authorised selective distributors, Parfümerie Akzente, to prevent it from selling its products via Amazon. The German court asked the ECJ for a preliminary ruling on the lawfulness of this ban under the prohibition on anti-competitive agreements, otherwise known as the cartel prohibition.

The ECJ [reiterated](#) that a selective distribution network is not subject to the cartel prohibition if:

- resellers are chosen on the basis of objective and uniform criteria and applied in a non-discriminatory manner,
- the characteristics of the product necessitate such a network to preserve its quality and proper use. For luxury goods, this not only relates to their material characteristics, but also to the allure and prestigious image which give them an aura of luxury, and
- the criteria laid down do not go beyond what is necessary.

As a result, the ECJ concludes that a selective distribution system designed primarily to preserve the luxury image of goods is compatible with the cartel prohibition if it fulfils these three criteria. According to the ECJ, a contractual clause (such as the third-party platform ban) will therefore also not be subject to the cartel prohibition. A ban on selective distributors for using, in a discernible manner, third-party platforms provides the supplier with the guarantee that its goods are exclusively associated with the authorised distributors. In addition, it enables the supplier to check compliance with the qualitative conditions under which its goods are sold online. This is something the supplier would not be able to do for third-party platforms, given the absence of any contractual relationship between the supplier and that platform.

The ECJ furthermore ruled that a third-party platform ban does not fall within the list of hardcore restrictions laid down in Article 4 of the [Block Exemption](#) on vertical restraints. As a result, even if the referring German court concluded that Coty's selective distribution network was caught by the cartel prohibition (for example, because it did not meet the criteria set out above), the

third-party platform ban could be exempted under the Block Exemption; that is, if the 30% market share threshold laid down in Article 3 was fulfilled.

The ECJ's ruling provides at least luxury brand owners with the safeguard that third-party platform bans are not subject to the cartel prohibition. Suppliers of non-luxury products with market shares below 30% may benefit from the Block Exemption when imposing such bans. It is only above this market share threshold that a case-by-case analysis of the necessity of this ban will need to be made to determine whether it is subject to the cartel prohibition.