

# Courts give further guidance on selective distribution restrictions

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To safeguard their high quality standards, luxury brand owners often rely on selective distribution networks for the supply of their products. The Amsterdam District Court recently ruled that it is possible for suppliers within a selective distribution network to ban online sales via unauthorised third-party platforms. This ruling pre-empts the ECJ's ruling in the [Coty](#) case regarding online sales restrictions, which is due on 6 December 2017. In addition, a recent General Court ruling confirms that a selective distribution system, and, by analogy, a selective repair system, raises no competition concerns if it is objectively justified, non-discriminatory and proportionate. In those circumstances, it is not necessary to verify whether the selective distribution network has the effect of eliminating all competition. This is good news for luxury brands; companies operating in this sector are advised to keep themselves updated on these developments.

The Amsterdam District Court [upheld](#) Nike's ban on selling its products via non-authorised online third-party platform Amazon. According to the court, this ban was not anti-competitive, since Nike's selective distribution policy was based on objective, qualitative criteria applicable in a uniform and non-discriminatory manner. In addition, the court found that Nike products are luxury products whose brand image the policy aimed to preserve. The court subsequently referred to Advocate General Wahl's [opinion](#) in the Coty case to rule that the ban on selling via non-authorised online third-party platforms was justified by the need to preserve Nike's brand image. The court found that AG Wahl's arguments were so convincing that there was no need to request a preliminary ruling or await the ECJ's ruling in the Coty case. This applied even more because, contrary to the Coty case, Nike had not imposed an outright ban on selling via online third-party platforms, but a ban on selling via non-authorised online third-party platforms.

The General Court recently had to [rule](#) on a complaint against a number of Swiss luxury watch manufacturers regarding their refusal to supply spare parts outside their networks of authorised watch repairers. The General Court reiterated that the organisation of a selective distribution network, and by analogy a selective repair system, is not prohibited by the cartel prohibition laid down in Article 101 TFEU if:

- resellers are selected on the basis of objective criteria of a qualitative nature,
- these criteria do not go beyond what is necessary,
- these criteria are applied in an uniform and non-discriminatory fashion, and
- the product's characteristics necessitate such a network in order to preserve the product's quality and ensure its proper use.

If a selective distribution network fulfils these conditions, it is no longer necessary to verify whether such a network has the effect of eliminating all competition. According to the General Court, the luxury watchmakers' selective repair system met these conditions. The selective repair systems at issue were open to all repairers meeting the qualitative criteria and were justified by the need to take account of the increased complexity of prestige watch models, maintain high and uniform quality repair services, and prevent counterfeiting.

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