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## Trend: parallel trade and geo-blocking in the distribution chain scrutinised

**After the e-commerce sector inquiry, the European Commission has renewed its focus on the prevention of parallel trade, also referred to as “geo-blocking.” Illegal geo-blocking is found in licensing and distribution agreements alike, as recently demonstrated in *Guess*, *AB InBev*, *Nike*, *Sanrio* and *Sky UK* and the ongoing Commission investigation into films and video games. In addition to these competition law cases, the recent EU regulation on geo-blocking enables online customers to shop abroad by tackling unilateral geo-blocking. Although illegal geo-blocking is on the Commission’s agenda, there is still room for allowing geographic exclusivity for active sales where this genuinely improves the distribution of goods or services.**

Six recent cases demonstrate that the Commission does not allow contractual geo-blocking clauses. The agreements the European Commission focused on were distribution and licensing agreements. When selling to customers in the final stage of the distribution process, the Geo-Blocking Regulation offers customers protection against different – less favourable – treatment on the basis of their place of residence, in terms of access to web shops, payment methods and delivery conditions (see our previous [article](#) about this).

### **Distribution agreements**

The [Guess](#) case, concerning the distribution of clothing, is an example of the Commission’s approach. Guess imposed a range of restrictions on its retailers, including banning retailers in their selective distribution network from selling Guess clothing outside their allocated territory. In addition to the geo-blocking, Guess tried to keep the online commerce to itself along with other restrictions; this included a Google Adword restriction, where we already shared our [view](#).

In the recent [AB InBev](#) case, a Belgian brewer was fined by the Commission for preventing parallel trade of Jupiler beers from the Netherlands to Belgium. The brewer prevented re-importation through several measures, including by offering promotional terms to a supermarket, on the condition that it would only use the discount for resale in the Netherlands, not in Belgium. Furthermore, AB InBev had threatened Belgian supermarkets with refusing to supply other AB InBev must-haves if they imported Jupiler beer from the Netherlands.

### **Licensing agreements**

The [Nike](#) and [Sanrio](#) cases concerned licensing agreements that allowed licensees to produce merchandise with the logos which Nike and Sanrio were entitled to under

intellectual property rights. Under the licensing agreements, the licensees were banned from selling their products outside their specific territory. Licensees were threatened with termination of the contract if they violated this ban, or the contract was not renewed if out-of-territory sales had taken place. (A similar case against Universal Studios involving production of merchandise related to that company's films is currently under review by the Commission). In all four cases, only the suppliers – Guess, AB InBev, Nike and Sanrio – were fined as part of a settlement with the Commission.

With respect to geo-blocking of online services, the Commission reached a settlement with several film studios and Sky UK. In licensing agreements entered into with the film studios, Sky UK had undertaken to block customers outside the UK and Ireland from accessing the studios' films on its pay-TV platform. As part of the settlement, the parties made a commitment to the Commission not to block unsolicited customers who reside outside the UK and Ireland and approach Sky UK for pay TV on their own initiative ("passive sales").

Finally, the Commission suspects five PC video game publishers and Valve's video game platform Steam of engaging in similar geo-blocking. In these cases, to play a PC video game, the players have to insert an activation key on the online Steam platform. The video game companies involved are accused of using geo-blocked activation keys. If customers buy PC video games in a member state other than where they reside, the activation key does not work.

All these cases concern the restriction of passive sales. As a result of such a restriction, customers located outside a specific territory that solicit an offer/supply cannot be served by the restricted retailer. Under competition law, passive sales restrictions imposed on resellers are generally prohibited. When it comes to active sales, where the business actively solicits customers, an exclusive territory or customer group can still be awarded to a distributor. This is because exclusivity under certain conditions: (i) creates efficiencies in transport and promotions, and (ii) increases investment in pre-sales services and promotions.

### **What's next?**

The Commission has nearly finalised all the cases it started after its e-commerce sector inquiry. Another consequence of that inquiry is the adoption of the Geo-Blocking Regulation. In the near future, we can expect another wave of cases from national authorities seeking to enforce this regulation at member state level.