

25 July 2006: Internet sale

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Conseil de la concurrence accepts commitments by jeweller Festina France and closes litigation procedure

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In its decision dated 24th July 2006, the Conseil de la concurrence has noted and accepted the commitments of Festina France, considering that they meet the competition concerns raised.

Although Festina refuses that its products be marketed by companies selling exclusively on the Internet, Festina has committed itself to amend its framework distribution agreement in order to integrate clauses relative to online sale and to propose to members of its network a contract specific for online sale on the Internet.

History of the case

Bijourama, a company specialized in the sale of time pieces, jewels and silversmith's pieces exclusively on the Internet, submitted a referral to the Conseil de la concurrence on October 13th 2005. The referral was accompanied by a request for interim measures.

Bijourama complains about the refusal of Festina France to grant its approval so as to integrate its selective distribution network for watches. Bijourama considers that this refusal is discriminatory towards "pure internet sellers" and that in all cases, Festina France's selective distribution agreement is not lawful since it excludes a certain form of distribution, and that would be prohibited both by EU and domestic law.

Competition concerns : the gap in the law of Festina France's distribution agreement as regards Internet sale

During the hearing (25 January 2006), the Conseil's case officer expressed competition concerns.

The case officer considered that the framework selective distribution agreement set up by Festina France did not contain any provision governing Internet sale and that no agreement specific for mail-order selling existed otherwise.

As a result, Bijourama could not ask for the implementation of mail-order selling rules and Festina France could not use either its distribution agreement in order to justify its refusal to give its consent. Moreover other distributors had been granted the permission to sell on the Internet outside any legal framework applicable to this type of sale.

The absence of rules applicable to online sale of Festina France's products, whereas some informal and particular authorizations for online sale have been granted to already approved distributors having an outlet, seems likely to create discriminations and even competition restrictions, as regards distributors' conditions of approval inside the selective distribution network as well as conditions under which network members may use Internet sale.

Commitments offered by Festina

While challenging the validity of the referral, Festina France offered commitments consisting in amending and completing its selective distribution agreement in order to integrate from now on clauses concerning Internet sale reflecting the conditions relative to sale in stores. Festina however maintained its refusal to approve companies selling exclusively on Internet.

The integration of these clauses will enable all members of the selective distribution network, and any company likely to join, to know the acceptance criteria and the exact conditions for online sale.

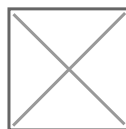
Impact of commitments

The Conseil accepted the commitments, considering that they satisfied its own competition concerns, given the position of Festina France on the market and despite the fact that they do not entirely satisfy Bijourama.

The Conseil stresses the fact that the decision to accept commitments is not aimed at satisfying the request of a party or replying to an individual need but to protect economic public order.

In the case in point, the Conseil noted that EU regulations governing selective distribution did not prevent a selective distribution network operator – whose market share does not exceed 30%- to define freely the selection criteria of its distributors and thus to reserve Internet sale exclusively for its network members which have a store. However the criteria applied to them should be transparent, non-discriminatory and should not restrict the use of this type of advertisement or sale, which the new distribution contracts of Festina France should ensure from now on.

> Decision n° 06-D-24 of July 24th 2006, relative to the request for interim measures presented by Bijourama



> See decision of the Paris Court of Appeal (16th October 2007)