6 October 2006: Selective distribution of Hi-fi and home cinema equipment

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Conseil de la concurrence accepts commitments
Approved distributors of Hi-Fi and home cinema equipment entitled to online selling

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Considering the commitments taken by the companies Bose, Focal JM Lab and Triangle, the Conseil de la concurrence, in its decision dated October 6th 2006, has accepted to close the litigation proceedings against these companies. However, the proceedings are still pending for the case of Bang & Olufsen, which will be dealt with separately.

These proceedings were opened in 2002 after a referral of the Minister of Economy following an investigation led by the DGCCRF (Directorate-General for Competition, Consumer Affairs and Fraud Control) in the sector of Hi-fi and Home cinema equipment.

Competition concerns

The inquiry by the Conseil has confirmed that the company Triangle was exerting an excessive control over exchanges in its selective distribution network in forcing the distributors of its brand to provide the company with the detailed accounting of all their deliveries made within the network in case of a “suspected violation of the network's sale regulation”.

Moreover, the total prohibition of selling Focal JM Lab and Triangle products on the Internet, imposed on approved distributors of these two brands, was

unjustified since the restrictions on this type of sale must be proportionate to the objective, and similar to those which apply to the approved distributor's real outlet. As such, the restrictive conditions imposed by Bose on its distributors for online sale exceeded what was deemed necessary for the preservation of the brand image of its products and the integrity of its network.

As part of the commitment procedure provided for by Article L.464-2 of the Code of commercial Law, the three companies offered to amend their selective distribution contracts.

The commitments offered by the companies, accompanied by a procedural notice, were published on the Conseil Internet website in order to receive the observations from interested third parties.

The commitments taken by Bose, Focal JM Lab and Triangle

The companies Bose, Focal JM Lab and Triangle committed themselves to draft a specific amendment so as to allow their approved distributors, in non restrictive conditions, to sell their products on the Internet. The company Triangle committed itself to remove the excessive obligations imposed on its distributors as regards exchanges within the network.

The impact of the commitments

The Conseil considered that the commitments offered by the companies Bose and triangle constitute a satisfying answer to the competition concerns identified.
As regards sale on the Internet, the commitments enable to conciliate the respect for the brand image and the high technical skill of the products with the access of approved distributors to this dynamic distribution channel likely to promote intra-brand as well as inter-brand competition, for the benefit of the consumer. The commitment taken by the company Triangle removes an unjustified restriction to trade within its selective distribution network.

However, the Conseil has not accepted, in a first step, the commitments offered by the company Focal JM Lab on the grounds that they excluded on principle the online sale of two ranges of the brand products. The Conseil therefore asked the company Focal JM Lab to amend its proposed commitments. These two

product ranges will henceforth be sold online but only to customers who will prove to have benefited from a test and individual advice for installation in an approved distributor's outlet. Should these conditions not be met, this could constitute a ground for terminating the distributor's contract. These conditions are linked to the fact that the products concerned have high technical skills and that buying or installing them without the advice of a skilled salesperson prevents the customer from benefiting from all the advantages of the products and can therefore damage the company's brand image.