12 December 2012: Selective distribution of Hi-fi and home cinema equipment

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The Autorité de la concurrence fines Bang & Olufsen for prohibiting its approved distributors from selling its products online

>Version française

The Autorité de la concurrence has just issued a decision by which it imposes on the companies Bang & Olufsen France and Bang & Olufsen A/S (Danish parent company) a fine of €900,000 for having, since 2001, prohibited de facto their distributors from selling the brand's products online, thus weakening competition between distributors. The Conseil de la concurrence (which became 'Autorité de la concurrence' in March 2009) had been referred this case by the Minister for the Economy, Finance and Industry[1] .

The entire selective distribution network of the Bang & Olufsen brand, made up of 48 distributors, was affected by this sales policy, which covered the entire country.

A restriction prohibited by competition law

However, a ban on online sales is prohibited by competition law: within a selective distribution system the dealers should be free to sell to all end users, also with the help of the internet.

In the Pierre Fabre[2] case, the Court of Justice of the European Union has recently recalled that a clause in a selective distribution contract banning the distributors from selling the products online amounts to a restriction of

competition by object, unless that clause is objectively justified.

Bang & Olufsen France has unilaterally limited the commercial freedom of approved distributors, while the online sales channel, had they been allowed to use it, would have allowed them to reach more consumers.

Furthermore, this prohibition limited intra-brand competition (between distributors of the same brand), consequently depriving consumers of lower prices and limiting the choice available to them, especially for consumers living a long way from any point-of-sale.

The Autorité ordered a fine of €900,000 as well as an injunction

The Autorité imposed a fine of €900,000 on companies Bang & Olufsen France and Bang & Olufsen A/S. It also required Bang & Olufsen France to, modify within three months, its existing selective distribution contracts, in order to make it clear that its approved distributors are authorised to sell online.

(1) The minister referred the case to the Conseil de la concurrence on 20 February 2002. The examination of the case lead to two separate investigations ('separation of proceedings'), the first of which resulted in Decision 06-D-28 of 5 October 2006, by which the Conseil accepted the commitments of three undertakings and made them mandatory. Investigation of the second case was subsequently suspended for two years – between October 2009 and October 2011 – pending a ruling by the Court of Justice of the European Union (see following note).

(2) Decision 08-D-25 of 29 October 2008 relating to practices in the sector of cosmetic and personal care products sold upon pharmaceutical advice (Pierre Fabre Dermo-Cosmétique case) that was subject to a ruling of the Paris Court of Appeal on 29 October 2009, which referred to the Court of Justice of the European Union for a preliminary ruling a question relating to the ban on online sales (see Court ruling of 13 October 2011 and the related press release).

> ***Consult the full text of Decision 12-D-23 of 12 December 2012 on practices implemented by the Bang & Olufsen company in the sector of selective distribution of Hi-fi and home cinema equipment***

> ***Press contact : André Piérard - Tel.: (+ 33) 1 55 04 02 28 - Contact by email***



> See decision of the Paris Court of Appeal (13 March 2014)