The Autorité de la concurrence fines Rolex €91,600,000 for prohibiting its authorised retailers from selling its watches online

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Background

Following referrals from the Union de la Bijouterie Horlogerie and Pellegrin & Fils, as well as dawn raids, the *Autorité de la concurrence* has fined Rolex France (jointly and severally with Rolex Holding SA, the Hans Wilsdorf Foundation and Rolex SA) for prohibiting its retailers from selling Rolex watches online for more than ten years.

The *Autorité* considers that the terms of the selective distribution agreement between Rolex France and its retailers constitute a vertical agreement that restricts competition. The *Autorité* rejected Rolex France's argument that the ban on online selling was justified by the need to combat counterfeiting and parallel trade. Finding in this respect that Rolex's main competitors, who face the same risks, authorise the online selling of their products under certain conditions, it considered that these objectives can be achieved by means that are less restrictive of competition.

It has imposed a penalty of €91,600,000 on Rolex France SAS, together with a disclosure and publication injunction.

However, the *Autorité* rejected the objection concerning the resale prices imposed on its retailers, which had been notified to Rolex. It considered that the evidence in the case did not prove that Rolex France had restricted the pricing freedom of its authorised retailers.

Rolex's selective distribution model

The Rolex group is a Swiss group founded in 1905 that designs, manufactures and markets luxury watches and components under the Rolex and Tudor brands. In France, imports are handled by a French subsidiary of the Swiss company Rolex Holding SA, Rolex France SAS, the sole importer of the brand's products.

Rolex is active in the French luxury watch distribution market and, by virtue of its reputation and market share, is, according to several concordant sources, the largest player in the market. The company exclusively uses a network of authorised independent retailers to market its watches. It sells its watches to watch and jewellery retailers, to which it grants the right to distribute its products under a "Rolex selective distribution agreement".

Rolex prohibits its authorised retailers from selling its products online

The selective distribution agreement governing relations between Rolex and its retailers prohibited the latter from selling the brand's watches by mail order and, *a fortiori*, via the Internet. In a letter to one of its retailers, Rolex acknowledged this ban: *"we confirm that under no circumstances can our Authorised Retailers, who are the only parties authorised to sell our products, do so via the Internet or by mail order. Any sales via the Internet contravene the provisions of Article IV.3.b of the Selective Distribution Agreement signed by all our Authorised Retailers."*

The *Autorité* and case law consider this type of clause to be inherently restrictive of competition.

Furthermore, the *Autorité*'s investigation of Rolex's retailers confirms the practical application of this ban.

As justification, Rolex argued that the ban on online selling was intended to preserve its image and enable it to combat counterfeiting and off-network sales. While the *Autorité* does not dispute the legitimacy of these objectives, it found that prohibiting online selling is not a proportionate measure. It points out that Rolex's main competitors, who themselves face this type of risk, have

implemented (primarily technological) solutions to reconcile online selling with the fight against counterfeiting and off-network sales. In addition, Rolex, in conjunction with one of its retailers, has developed a programme for the online purchase of pre-owned watches, whose authenticity it guarantees. An absolute ban on the online selling of its products cannot therefore be justified.

The *Autorité* fines Rolex €91,600,000

The ***Autorité*** considers these practices to be serious, as they amount to closing a marketing channel, to the detriment of consumers and retailers, when the online distribution of luxury products, including watches, has been booming over the past 15 years. Given their duration (more than ten years) and nature, the ***Autorité*** is imposing a penalty of €91,600,000. Because of the capital, organisational and legal links between Rolex France and Rolex Holding SA, Rolex SA and the Hans Wilsdorf Foundation, the ***Autorité*** holds the latter companies jointly and severally liable for the payment of the fine.

In addition, the ***Autorité*** is ordering Rolex France to send a summary of the decision to all its authorised retailers. It must also publish a summary of this decision on its website within two months and for seven consecutive days.

Lastly, the ***Autorité*** orders Rolex France to publish a summary of the decision in the print and digital editions of ***Le Figaro*** and in ***Montres Magazine***.

Compliance

While a supplier is free to organise its distribution network as it sees fit, this organisation must not give rise to a restriction of competition.

The principle of the free organisation of the network cannot authorise a manufacturer to restrict the commercial freedom of its resellers. Prohibiting its retailers from selling its products online distorts the competition in which resellers should normally engage, not only between themselves but also with regard to the manufacturer in the online sales distribution channel. This rule remains valid even if, as in this case, the products concerned are distributed

exclusively or almost exclusively through a network of independent retailers.

DECISION 23-D-13 OF 19 DECEMBER 2023

relating to practices implemented in the luxury watch distribution sector

See full text of the decision (in French)

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