March 2026

VBB on Competition Law

Issue Highlights

Jurisdictions covered in this issue

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ABUSE OF DOMINANT POSITION

National level

FRANCE

Google AdTech: French courts award follow-on damages to Ad exchange customers

Two courts in Paris (the "Tribunals") have ordered Google, by judgments of 10 March 2026 and 26 March 2026 respectively, to pay € 22.69 million to M6 and € 16.19 million to L'Équipe in follow-on civil damages for anticompetitive self-preferencing in online advertising services, stemming from the French Competition Authority, Autorité de la concurrence ("FCA") 2021 Decision.

Background

On 7 June 2021, following a complaint by various publishers, the FCA found that Google had abused its dominant position in the market for publisher ad servers by favouring its own ad exchange, AdX, over competing platforms. The conduct included a "last look" mechanism allowing AdX to observe rival bids before placing its own, and technical and contractual limitations on the use of AdX through third-party ad servers. The Decision found that, in addition to competing technology providers, publishers also suffered harm, as a result of reduced competition among exchanges, resulting in reduced publisher revenues. Google settled, accepting a fine of € 220 million, and offering interoperability commitments. Follow-on claims on the basis of this judgment were brought before the Tribunals.

Judgments

By the judgments of 10 and 26 March 2026 respectively, the Tribunals ordered Google to pay € 22.69 million to broadcaster M6 and € 16.19 million to sports publisher L'Équipe, covering harm suffered between 2014 and 2022. Both claims relied on the FCA decision as proof of infringement, with proceedings focusing solely on the existence and quantum of harm.

The proportion of damages awarded to the claimants versus the damages claimed varied in each instance. For L'Équipe, the damages received (€ 16.19 million) represented a fraction of the sums originally claimed of approximately € 120 million, reflecting the courts' rigorous approach to causation. Amaury Media's (L'Equipe's parent) claim was dismissed for failure to establish an independent loss. The amount awarded to M6 (€ 22.69 million, calculated on the basis of revenue reduction, commission rate increase, and lasting effects of the conduct) is closer to the € 25.98 million initially requested. A spokesperson for Google has since stated that it intends to appeal the M6 judgment.

LATVIA

Latvian Competition Council finds abuse of dominance by SS through exclusionary conduct restricting multi-homing

On 5 March 2026, the Latvian Competition Council ("LCC") found that "SS", an online classified advertisements platform in Latvia, had abused its dominant position by adopting exclusionary practices targeting its rival, pp.lv. The LCC imposed a fine of € 186,780.65 and ordered SS to implement transparent and objective conditions governing access to its platform.

LCC Decision

The LCC defined the relevant market as the market for online classified advertising services in Latvia. The LCC considered that turnover was not a reliable indicator for assessing market power of digital platforms. Instead, it looked at the number of advertisements posted and unique visits data to assess SS's market position, arriving at market share estimates between 60% and 80%, depending on the metric used. The finding of dominance was reinforced by strong indirect network effects, high switching costs, and first-mover advantages.

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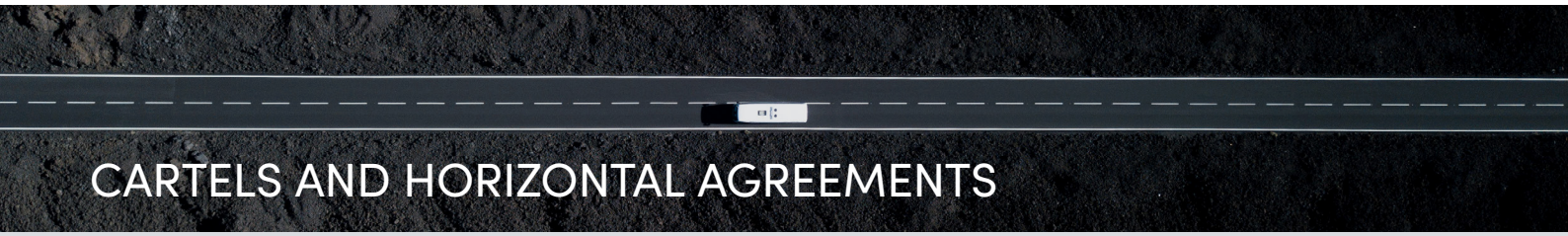
Between March 2020 and May 2021, SS engaged in exclusionary practices targeting users who published advertisements both on its platform and on pp.lv. In particular, SS blocked user accounts and deleted advertisements where users engaged in parallel listings on the competing platform. Internal email correspondence showed that this conduct was deliberately aimed at discouraging users from engaging with pp.lv. Furthermore, SS required customers providing inbox.lv email addresses - associated with pp.lv - to provide an additional email address to post advertisements. No equivalent requirement was imposed on users of other email providers.

The LCC concluded that this conduct constituted exclusionary abuse, as it restricted pp.lv's ability to attract users at a critical stage of its market entry, and also reduced advertisers' ability to use multiple platforms simultaneously to reach a broader audience. In digital platform markets characterised by network effects and having a two-sided nature, such restrictions were found to be particularly harmful, as they reinforced user lock-in and hindered effective competition/market entry.

The LCC prohibited SS from engaging in similar exclusionary practices in the future. It required SS, within three months, to amend/establish terms of use to include clear and objective grounds for account blocking and advertisement removal, procedures for complaints and appeals handling, an obligation to explain the reasons for such measures, and the possibility to update the terms while maintaining the established conditions.

Key takeaways

The LCC decision highlights that local platforms are also at risk in smaller jurisdictions, and restrictions such as on multi-homing may constitute exclusionary abuses particularly where a dominant platform plays a key role in market access. The case also underlines the importance of network effects and user lock-in in digital markets, which continues to be a priority consideration/concern of authorities across the EU and beyond.



CARTELS AND HORIZONTAL AGREEMENTS

National level

PORTUGAL

Portuguese Competition Authority steps up enforcement against anti-competitive agreements in labour markets

Two recent developments in Portugal confirm the increased enforcement of the competition rules in labour markets, confirming the illegality of no-poach arrangements and sending a clear warning to business to exercise care in relation to agreements with other employers affecting employee mobility.

Court upholds AdC fine on Inetum

First, on 30 March 2026, the Portuguese Competition Court ("Court") fully upheld the Portuguese Competition Authority's ("AdC") earlier decision to fine three companies of the Inetum group, active in the technology consultancy sector, around € 3 million for participating in bilateral no-poach agreements with competing firms in the sector. These agreements prevented the parties from recruiting or approaching each other's employees between March 2014 and August 2021. The judgment is not yet publicly available.

As reported by the AdC, the Court considered the conduct as a very serious infringement, emphasising that labour mobility is a key driver of efficiency and innovation, particularly in markets for highly qualified human capital. By restricting employee mobility, the agreements reduced workers' bargaining power and career opportunities, and hindered the efficient allocation of talent. The Court also highlighted the potential downstream effects, noting that such restrictions may result in lower-quality services or higher prices for clients in key sectors such as banking and insurance.

This ruling constitutes the first judicial confirmation in Portugal of a fine imposed for restrictive practices in labour markets.

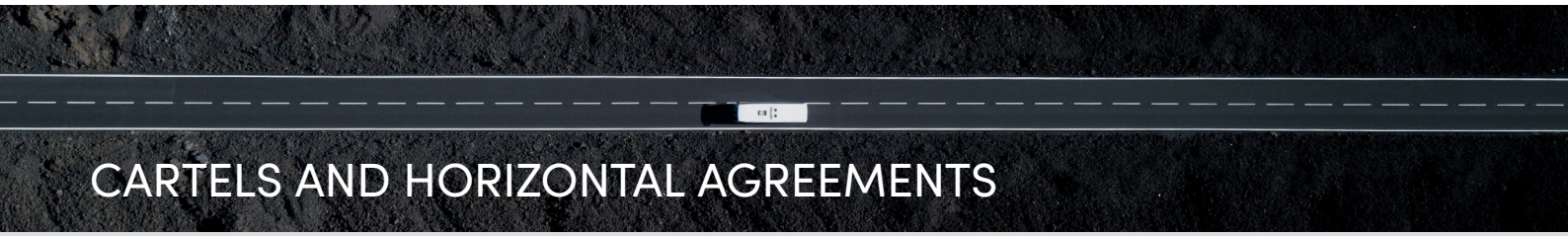
AdC fines APESPE for no-poach clause in Code of Ethics

Second, on 10 March 2026, the AdC fined the Portuguese Association of Private Sector Companies and Human Resources ("APESPE") around € 4.5 million for having included in 1987, in its Code of Ethics, a no-poach clause preventing member agencies from recruiting each other's temporary workers.

Compliance with the Code of Ethics was a statutory condition of membership, which rendered the clause binding on all 37 member agencies. The AdC found that the clause formed part of a decision by an association of undertakings covering the entire national market for temporary employment services, restricting labour mobility, reducing workers' bargaining power, and limiting competition between talent agencies. The conduct was treated as inherently harmful to competition and thus restricting competition by object, without the need to demonstrate concrete effects, and as capable of affecting trade between Member States, leading to the application of Article 101 TFEU alongside national competition law.

Key takeaways

These developments reflect the AdC's increasing focus on labour markets as a priority area of enforcement. The AdC has been particularly active in this field, combining enforcement with advocacy initiatives. This includes the publication in 2021 of a Report and Best Practices Guide on anti-competitive agreements in labour markets, which highlight the risks associated with no-poach and wage-fixing agreements, such as reduced labour mobility, downward pressure on wages and potential harm to innovation and downstream markets.



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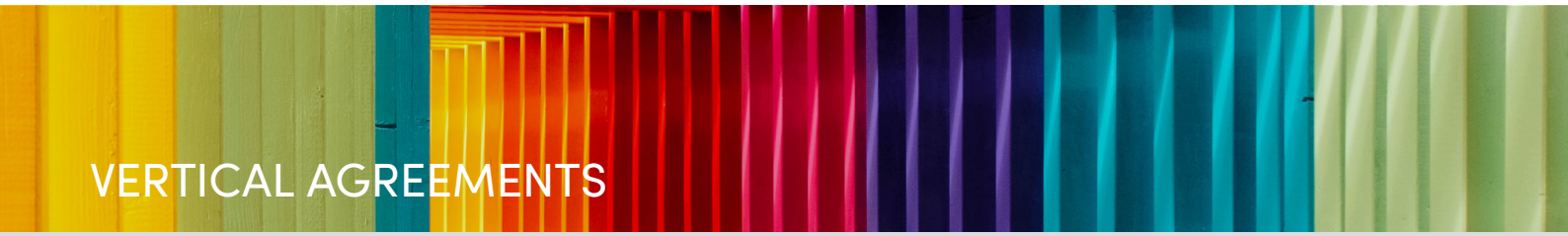
Both developments confirm that no-poach clauses may be qualified as restrictions by object, reflecting their inherently harmful nature. Indeed, as illustrated in the Inetum judgment, labour market restrictions such as no-poach agreements can have a broad economic impact, including reduced innovation, inefficient allocation of human resources and potential harm to downstream markets.

Together, these cases signal a clear willingness to pursue and sanction practices that limit labour mobility and distort competition for human resources. With labour market enforcement identified as one of the AdC's Competition Policy Priorities for 2026, further decisions in this area can be expected.



VERTICAL AGREEMENTS

National level

ITALY

Italian Competition Authority fines a jewellery company for RPM and a discriminatory marketplace ban

On 17 March 2026, the Italian Competition Authority ("ICA") imposed a fine of over € 25 million on Morellato S.p.A. ("Morellato"), a company active in the production and sale of mid-range jewellery and watches. Following a report from a whistleblower, the ICA opened an investigation into whether Morellato's selective distribution agreements impeded distributors from effectively using the internet as a sales channel, contrary to Article 101 TFEU. The investigation was later extended to include potential resale price maintenance ("RPM") practices. The ICA concluded that Morellato had infringed Article 101: both by engaging in RPM and by prohibiting its authorised distributors from selling over marketplaces whilst itself selling over, for example, Amazon, Yoox and Zalando. The decision is noteworthy for the analysis of discriminatory marketplace bans.

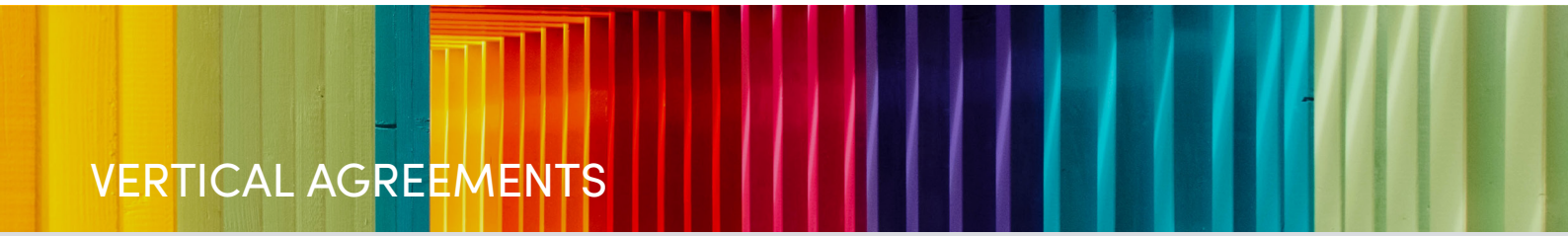
Morellato's distribution system

Morellato sells its products to jewellery stores through a selective distribution system. In its distribution contracts, Morellato included an explicit clause prohibiting its authorised distributors from selling on third-party online marketplaces. However, Morellato itself sold its products to consumers on such platforms (in addition to in its own stores) and had approved Amazon as a distributor through the Amazon Vendor program – Morellato therefore sold its products both on, and to, Amazon.

The ICA's assessment

Discount policy. The ICA found that, from 2018 onwards, Morellato engaged in RPM by fixing the maximum discounts that distributors could apply when selling online (which went as far as prohibiting all discounts for new product lines). The ICA relied on Morellato's discount policy (internally referred to as "Internet Policy") and other internal documents to conclude that Morellato had communicated these discount policies to distributors, monitored compliance using an external software tool (*Competitoor*) designed specifically for this purpose, and sanctioned non-compliance by automatically blocking the orders of offending distributors. As Morellato's distributors complied with the Internet Policy and in some cases reported back when others did not, the Internet Policy was found to be part of the overall agreements reached with distributors. The ICA found that the Internet Policy had as its object the restriction of the distributors' ability to determine their own resale prices and infringed Article 101 TFEU. As this conduct constituted a hardcore restriction under Art. 4(a) of the EU's Vertical Block Exemption Regulation ("VBER"), this prevented Morellato's selective distribution agreements as a whole from benefiting from the block exemption.

Marketplace ban. As the VBER was not applicable to Morellato's agreements, the ICA assessed the marketplace ban under Article 101 TFEU, at least implicitly finding that the ban did not escape the application of Article 101(1) by satisfying the *Metro* criteria, and concluding that it was capable of having the effect of restricting competition in violation of Article 101(1). In its assessment, the ICA determined that, because Morellato itself sold products on third-party marketplaces and supplied Amazon as a distributor, the marketplace ban was discriminatory. It also rejected Morellato's defence that the ban was necessary to combat the sale of counterfeit products, noting that tracking serial numbers would have been a less restrictive alternative control mechanism. Relying also on Morellato's internal documents, the ICA found instead that the marketplace ban stemmed from an intention to control the distributors' commercial strategies and sales channels, as well as to counteract "out-of-control Amazon discounts."



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Apparently underpinning its finding that the ban restricted competition by effect, the ICA emphasised – throughout the decision – the importance of marketplaces for the sale of jewellery in general and Morellato products specifically (marketplace sales had accounted for 30-40% of Morellato's online jewellery sales since 2023 and approximately 47% of total online sales by jewellers) and found that, because of this, the conduct reduced intra-brand competition across the whole brand, and not only within the specific online marketplace sales channel.

Having found that the ban infringed Article 101(1) TFEU, the ICA found that it could not be exempted under Article 101(3), as no valid justification was available and the clause was neither necessary nor proportionate.

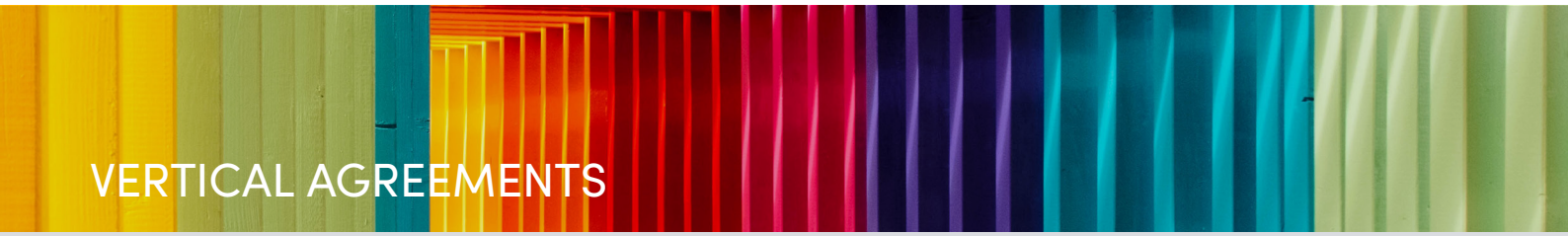
Key Takeaways

The case is an interesting addition to the precedents on marketplace bans, particularly because it concerns a partial (apparently discriminatory) restriction in circumstances where the brand itself sold over platforms, including Amazon, and supplied Amazon as a distributor. To recap, a marketplace ban can be exempted by the VBER, but requires a more complex self- assessment where the VBER does not apply. Relevant to a self-assessment, (i) the ECJ's judgment in Coty demonstrates that a consistently applied marketplace ban may well comply with Article 101 in selective distribution systems, at least with respect to luxury products, while (ii) the Vertical Guidelines suggest that this may also extend to non-luxury products where the supplier has no contractual relationship with the platform.

The legal reasoning of the ICA does not appear controversial. As the VBER could not apply due to the RPM practices, it is not particularly surprising – in light of the Commission's assessment in the Vertical Guidelines – that the discriminatory marketplace ban was found *not* to escape Article 101(1) by meeting the *Metro* criteria. Defending a restriction applied by a brand to its authorised distributors is inevitably far more difficult where the brand itself chooses to sell over, and to, Amazon. What is significant about this case is that the ban was apparently found to be a restriction by effect, rather than a restriction by object, with the ICA emphasising sales data and survey results which, in its view, proved the importance of marketplaces for intra-brand competition, specifically in the sale of Morellato's products.

When opening its investigation, the ICA had suggested that a discriminatory marketplace ban could constitute a hardcore restriction under the VBER. Although the ICA could side-step this issue in its decision, as the RPM practices prevented the VBER from applying, the apparent finding that the practice constituted a restriction by effect suggests that the ICA may not have found the restriction to have constituted, in itself, a hardcore restriction under the VBER. This likely would have been the correct conclusion as, following *Coty*, it is clear that a (more restrictive) full marketplace ban does not constitute a hardcore restriction under the VBER and, as indicated by Advocate General Wahl in *Coty*, is unlikely to be considered a restriction by object.

Thus, whereas the application of a discriminatory marketplace ban may generate considerable enforcement risk where the VBER does not apply (i.e., where the agreement contains a hardcore restriction or because the market share threshold is exceeded), if the VBER otherwise applies, such a ban in itself should be exempted under the VBER unless and until an authority brings proceedings to remove (*ex post*) the benefit of the VBER. Even outside the safe harbour of the VBER, an authority or court should need to prove appreciable anti-competitive effects. This may enable even apparently discriminatory restrictions to escape Article 101 where a brand has a small market share or where marketplaces are not likely to be a key channel for the products concerned.



VERTICAL AGREEMENTS

National level

THE NETHERLANDS

Amsterdam District Court rejects claim that HP's selective distribution system infringes competition law

On 11 February 2026, the Amsterdam District Court issued its final judgment related to a claim brought by the online retailer group 123ink, alleging that the conditions of HP's selective distribution system for printers and cartridges infringed Articles 101 and 102 TFEU.

The judgment, which rejects the claim, is important as it concludes that a selective distribution system cannot be assumed to be a restriction by object which infringes Article 101(1) TFEU, even if the *Metro* criteria established by the ECJ are not met. In its interlocutory judgment of 18 December 2024, the Court had found that the *Metro* test was not met, because the nature of HP's products did not justify the use of selective distribution. Although the Court upheld this part of its initial finding in the final judgment, it reversed its earlier conclusion that HP's system therefore infringed Article 101(1), citing the claimant's failure to meet the burden of proving that the system had either the object or effect of restricting competition.

Background to dispute

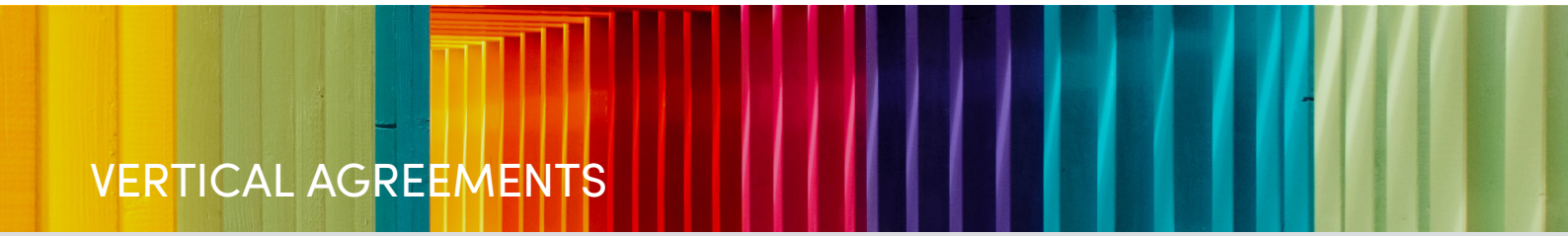
123ink is an online retailer, selling both original HP printers and cartridges and its own brand cartridges compatible with HP printers. It had been engaged in a long-running dispute with HP. Relevant to this dispute is HP's dynamic security authentication process which, in certain circumstances, can cause an HP printer not to function when used with third party cartridges which do not contain an HP chip or unmodified HP circuitry. In separate proceedings, which are still ongoing, the 123ink group had challenged the legality of the dynamic security process under Article 102 TFEU, claiming that it constituted an unjustified exclusionary practice harming its own brand cartridge business.

In August 2020, HP introduced a selective distribution system ("SDS") in the EEA, Switzerland, and the UK, restricting sales of the HP printers and cartridges to authorised partners ("Authorised Partners") who must accept HP's selective distribution criteria. In the proceedings leading to the 11 February judgment, 123ink challenged this system as unlawful under Articles 101 and 102 TFEU.

As part of the overall dispute between the parties, HP had objected to various of 123ink's commercial practices, including ones which sought to steer customers away from HP products toward own-brand alternatives, such as: advising customers to disable automatic printer updates (to circumvent HP's dynamic security process); engaging in "bait-and-switch" tactics (offering to exchange an HP product for its own product, including after the sale has taken place); and selling HP cartridges without original packaging, including products with expired manufacturer warranties. HP had also found counterfeit cartridges in 123ink's stock in 2023.

Preliminary judgment (December 2024)

Article 101. The Court found that HP's SDS did not meet the first *Metro* criterion, which – it considered – requires that the characteristics of the product necessitate selective distribution to maintain its quality and ensure its proper use. The Court held that HP printers and cartridges are neither luxury goods, nor high-quality or high-tech products requiring specialist distribution. It noted that comparable products had been sold without selective distribution for many years, and no fundamental change in the nature of the products justified introducing such a system.



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The Court rejected HP's claim that its SDS was exempted under the VBER (which exempts selective distribution agreements, regardless of the nature of the product, where the supplier's market share does not exceed 30%). Based on available data, the Court concluded that HP had not demonstrated that its market share fell under this threshold; and that it would only do so if a broad "systems market" definition (combining printers and cartridges) was adopted, which the Court found insufficiently substantiated. The VBER was therefore found not to apply and the SDS was found to infringe Article 101(1) TFEU.

The Court did not decide whether the SDS met the criteria for exemption under Article 101(3) TFEU. It suggested that it might be capable of satisfying the conditions of Article 101(3) — the system is broadly open, it contains no hardcore restrictions and may benefit consumers through improved information and distribution quality. However, it found that some specific criteria (particularly the compliance/audit condition and the brand presentation conditions) required further scrutiny, especially regarding whether they are indispensable. The Court therefore invited further submissions from the parties to enable it to make this determination.

Article 102. The Court rejected this claim on the grounds that HP did not have a dominant position, despite being the market leader. It found no reason to depart from an earlier ruling in which it had found that competitive pressure in the printer market disciplines HP's conduct in the cartridge market, taking into account that consumer purchasing decisions are influenced by total lifetime printing costs.

Final judgment (February 2026)

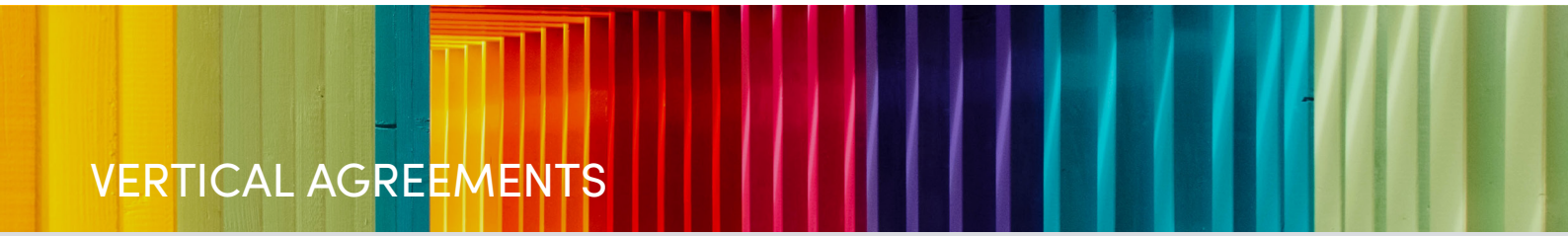
In its final ruling, the Court acknowledged that, in its earlier interlocutory judgment, it had made an error in its legal analysis by assuming that, because it had found that HP's distribution system did not fall outside Article 101(1) TFEU by satisfying the *Metro* criteria, the system necessarily constituted a restriction by object which infringed Article 101(1). In so doing, the Court explicitly followed the legal reasoning of the U.K. Competition Appeals Tribunal in its *Deckers* ruling of 31 October 2024 (now under appeal, with the judgment of the UK Court of Appeal expected in the coming months, if not weeks).

Applying the corrected legal standard, the Court dismissed the claim on the basis that the claimant had failed to prove that the SDS had either the object or effect of restricting competition under Article 101(1), even though it did not meet the *Metro* criteria. In so doing, the Court noted that there were no indications that the SDS was sufficiently harmful to competition, taking into account that it was in principle open to all resellers with no prior screening, the selective distribution criteria were not particularly restrictive and there appeared to be no cumulative restrictive effect on competition (as other brands did not use selective distribution). It also found no suggestion that the SDS was part of a market-exclusionary strategy.

Takeaways

As an initial point, the case is a rare example of a finding that the nature of a product does not justify the use of selective distribution under the *Metro* criteria. The factors identified in the caselaw as relevant to this determination seem to allow for a wide margin of interpretation and it is not obvious that printers and cartridges would necessarily fail to qualify. For example, the Court's suggestion that HP's products were not sufficiently high quality appears surprising. The fact that similar printers and cartridges had not previously been sold under selective distribution by HP, or by its competitors, may have been the factor which made the Court confident in reaching this conclusion.

Of broader significance, the final ruling is in line with what appears to be an evolving consensus, despite certain less nuanced statements made by the ECJ in some earlier cases, that selective distribution systems that do not meet *Metro* cannot be automatically assumed to infringe Article 101(1). This is consistent with more recent case



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law of the ECJ which makes it clear that no restriction, even resale price maintenance, can be characterised as a by-object restriction without a proper assessment of both the specific legal and economic context of which it forms part. This also appears consistent with the European Commission's approach to selective distribution reflected, at least implicitly, in both the VBER, which does not treat systems that fail the *Metro* criteria as hardcore restrictions, and the Vertical Guidelines (which focus on an effects assessment).

The formalistic application of Article 101(1) TFEU, such as applied in the Court's interlocutory ruling, largely shifted the burden of proof to the operator of the system to demonstrate that, in order to escape the finding of an infringement, it met the stringent conditions of Article 101(3). In contrast, the final judgment makes clear that the burden of proof rests with the plaintiff or competition authority, in the sense that an individual assessment of the legal and economic context is required *before* it can be concluded that Article 101(1) is infringed. After rejecting its earlier formalistic approach, the Court readily identified a number of reasons why the system was not likely to be harmful to competition and therefore why 123ink had not met the burden of proof under Article 101(1).

Finally, it is also interesting to note the major influence of a UK Court ruling on the outcome of a Dutch case, even after Brexit.

INTELLECTUAL PROPERTY/LICENSING

National level

GERMANY

Regional Court of Frankfurt confirms admissibility of action to compel conclusion of FRAND licence agreement

On 25 February 2026 (Case No. 2-06 O 426/24, the Regional Court of Frankfurt ("Court") issued a judgment in which it defined the strict requirements for a licence seeker / implementer to legally compel a holder of a standard essential patent ("SEP") to enter into a specific licence agreement on terms that are fair, reasonable and non-discriminatory ("FRAND").

In the underlying case, Samsung had filed a contract formation claim against ZTE at the end of 2024. Samsung claimed that ZTE had breached competition law and was required to enter into a specific FRAND agreement. This was based on a claim for injunctive relief and damages under Section 33 and 33a of the German Act against Restraints of Competition ("GWB"). Samsung claimed the formation of the contract as the remedy to restore the position in which it would have been, absent the competition law infringement.

With reference to a judgment of the UPC, local division Mannheim (See, VBB on Competition Law 2025, No. 1, the Court confirmed the admissibility of the claim brought by a licence seeker for the formation of a FRAND licence agreement, even where the licence requested is worldwide. The Court acknowledged that a foreign court could refuse to recognise such a decision on the grounds of public policy. However, the Court considered this irrelevant to its own decision, as the public policy of other legal systems is generally not taken into account unless a specific provision so provides (which did not appear to be the case). The Court also referred to the fact that, in proceedings concerning a FRAND defence, it is already recognised that the licence seeker can request a worldwide licence.

On the substance, the Court held that an action for the conclusion of a FRAND licence agreement will be well founded, provided (i) the patent holder has not made an offer that satisfies FRAND terms, (ii) the agreement requested by the licence seeker complies with FRAND terms, and (iii) the licence fee to be agreed ranges at the upper end of or above the FRAND corridor.

The Court may estimate whether the licence fee offered by the licence seeker is at the upper end of, or exceeds, the FRAND corridor. The Court held that, in assessing whether a licence fee is fair and non-discriminatory, reliance on comparable licences is preferable to the top-down approach (a valuation methodology whereby: (a) the aggregate royalty for all SEPs related to a particular standard is determined / estimated; and (b) a share of this aggregate rate is apportioned to a specific patent holder based on its share of the standard). Where no comparable licences are available, however, the licence fee may be determined by other means.

On the facts of the case, the Court dismissed Samsung's claim, finding that ZTE was entitled to refuse Samsung's licence fee offer, because it was not at the upper end of the FRAND corridor.

Takeaways

The judgment is noteworthy since, to our knowledge, this is the first time in Germany that a *licence seeker* brought a stand-alone action to compel the conclusion of a FRAND licence agreement, based on an alleged competition law infringement of the SEP holder, thereby presenting the Court with a claim which put the 'FRAND-ness' of the

INTELLECTUAL PROPERTY/LICENSING

National level

licence fee offer at the centre of the litigation. Prior to this, German Courts typically dealt with the question of whether the SEP holder's refusal to contract infringed competition law in the context of injunctive actions or damages claims brought by the *SEP holder*, against which the implementer raised the FRAND defence. In such cases, German courts refrained from examining whether the offered licence fee was in fact FRAND and usually sided with the SEP holder, holding that the implementer had been unwilling to enter into a licence agreement on FRAND terms and was therefore barred from relying on the FRAND defence.

By recognising a contract formation claim as generally admissible, the present judgment strengthens the position of the licence seeker. However, the requirement that the licence seeker's offer must be at the upper end of the FRAND corridor continues the SEP holder-friendly approach for which the German courts have become known (See, VBB on Competition Law, Volume 2025, No. 1 and 2).

STATE AID

European Union level

European Commission adopts new State Aid rules for transport amid looming energy challenges

On 16 March 2026, the European Commission adopted new State aid rules aimed at accelerating the transition toward more sustainable transport across the European Union. This updated framework, designed to support greener mobility solutions, may also play a role in navigating the increasingly complex energy landscape in the months ahead.

The new State aid rules for the transport sector

The new framework includes two different instruments – namely, the State aid Land and Multimodal Transport Guidelines (LMT Guidelines), which replace the 2008 Guidelines on State aid for railway undertakings, and the State aid Transport Block Exemption Regulation (TBER).

These instruments provide rules for several categories of aid in the sector of sustainable transport, including aid to reduce the external costs of transport, aid to launch new commercial connections, aid to construct, upgrade and renew railway service and inland waterways facilities, and aid for the acquisition of vehicles for rail or inland waterways transport. While the LMT Guidelines clarify the conditions under which such measures may be considered compatible with the internal market, the TBER specifically exempts certain categories of aid from the requirement of prior notification to, and approval by, the Commission.

As a result, measures falling within the scope of the TBER can be implemented more quickly by Member States and with significantly reduced procedural requirements. By contrast, measures that are not block-exempted remain subject to the notification obligation and require prior approval by the Commission. The adoption of the TBER is therefore expected to reduce administrative burdens and accelerate the implementation of projects within its scope.

The Commission's objective is to enhance the competitiveness of sustainable transport alternatives compared to more carbon-intensive options, such as road freight. By clarifying and streamlining the conditions under which public funding may be granted, the new framework is expected to stimulate both public and private investment in cleaner infrastructure and technologies, while also promoting interoperability, efficiency, and cross-border integration.

Interestingly, these instruments – under review since 2019 – have been adopted in a context marked by renewed uncertainty in the energy sector. Against this backdrop, they provide the Member States with flexible tools to support transport initiatives in a time of crisis for the sector.

In conclusion, the new State aid framework strengthens the EU's capacity to facilitate targeted public support while preserving competition safeguards. In doing so, it contributes to the modernisation of the transport network and to the gradual reduction of its environmental footprint, while also enhancing the system's resilience in the current critical energy context.

LEGISLATIVE, PROCEDURAL AND POLICY DEVELOPMENTS

European Union level

Anthony Whelan appointed Director-General of DG Competition

On 13 April 2026, Anthony Whelan was appointed Director-General of the Directorate-General for Competition ("DG COMP"), the European Commission's antitrust department. He succeeds Olivier Guersent, following a seven-month period during which the position was held on an interim basis.

Whelan is a veteran Commission official with more than 25 years' experience in competition, telecoms, and digital policy. He takes up the role at a pivotal moment for EU competition policy and enforcement.

Career Background

Whelan joined the Commission's Legal Service in 2000, where he focused on competition law litigation before the EU Courts. From 2006 to 2013, he served in the Cabinet of Competition Commissioner Neelie Kroes, later becoming her Head of Cabinet. He subsequently held positions as Head of Unit and Director in DG CNECT, where he led the reform of the EU's telecoms regulatory framework. In 2019, he joined the Cabinet of Commission President Ursula von der Leyen as Digital Advisor, shaping the early policy development of the Digital Markets Act. From September 2025, he served as Deputy Director-General for State Aid at DG COMP.

Implications for EU competition policy and enforcement

Anthony Whelan takes office with a number of significant issues on his desk that will shape EU competition policy and its enforcement. He has signalled that he will steer these matters as both "*a guardian of continuity and an agent of change*".

On merger control, Whelan has signalled that the fundamentals of the current review framework "*remain extremely valid*", despite calls to relax enforcement and give greater weight to industrial policy considerations and efficiencies. At the same time, he has pledged to provide greater clarity on how the Commission will assess companies' claims that efficiencies arising from a merger may offset potential anti-competitive effects. The draft Merger Guidelines, expected at the end of April or early May 2026, should elaborate on this in greater detail.

On the digital front, the Commission has faced transatlantic pressure to ease enforcement of the Digital Markets Act and the Digital Services Act. Here too, Whelan has committed to upholding the EU's digital rulebook, while signalling a willingness to pursue negotiated solutions rather than simply imposing fines.

As regards antitrust, Whelan has stressed that the Commission will remain "*very vigilant*" in detecting cartels, warning companies against collusion in response to current economic pressures. Two other key matters on his desk include the reform of the EU's antitrust procedural framework and the forthcoming Guidelines on Article 102 TFEU, on both of which he has yet to articulate his position.

LEGISLATIVE, PROCEDURAL AND POLICY DEVELOPMENTS

National level

GERMANY

Germany adds a new provision to its Competition Act to address abuse of dominance or relative market power through "unreasonable" fuel prices

On 27 March 2026, Germany adopted a legislative "Fuel Measures Package" to address high fuel prices, an important part of which consists of an amendment to the German Act against Restraints of Competition ("GWB"). The changes are intended to facilitate the ability of German competition authorities to determine that a fuel supplier abuses its market power by charging prices that "unreasonably exceed costs".

The amendment introduces a new Section 29a GWB, pursuant to which a fuel supplier with a position of dominance or of relative market power in a market upstream of fuel supply to consumers must not abuse its market power by charging prices for petrol or diesel fuels which "unreasonably exceed costs". A position of dominance or of relative market power can be held by a single fuel supplier, or collectively by two or more fuel suppliers active on the same market.

This special abuse prohibition for fuel suppliers applies in parallel to the existing general prohibitions of abuse of dominance and of relative market power under Sections 19 and 20 GWB, which apply across all industries.

In order to resolve one of the key challenges for competition authorities to establish a price-based abuse, the new Section 29a GWB shifts the burden of proof concerning the supplier's costs from the competition authority to the supplier. Whilst the competition authority still has to establish that the prices charged by the fuel supplier unreasonably exceed its costs, the fuel supplier bears the burden of substantiating its relevant costs. In particular, the supplier must substantiate the allocation and amount of its relevant costs, and prove that its costs are "reasonable" if they are significantly higher than the normal market costs. Section 29a (3) GWB also clarifies that costs shall not be taken into account if such costs would not arise in a competitive market.

This new provision applicable to fuel suppliers has certain similarities with the existing special provision applying to home energy suppliers (Section 29 GWB), which also prohibits abuse of dominance through the charging of energy fees that "unreasonably exceed costs". However, the new provision on fuel markets is the first that shifts the burden of proof concerning the allocation and amount of costs from the competition authority to the supplier.

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