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VBB on Competition Law

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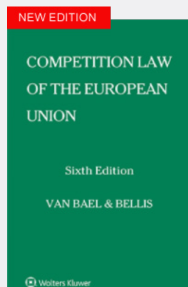

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MERGER CONTROL

European Union level

Commission orders Illumina to divest Grail

On 12 October 2023, the European Commission ("Commission") issued a decision ordering genomics company Illumina to unwind its already completed acquisition of cancer detection test producer Grail, after prohibiting the transaction over a year ago.

The Commission accepted jurisdiction to review the Illumina/Grail case in April 2021, on referral from several EU Member States under a then-novel application of Art. 22 EUMR (a decision Illumina unsuccessfully challenged before the General Court (see VBB on Competition Law, Volume 2022, No. 7)). In August 2021, Illumina closed its acquisition of Grail while the Commission's review of the deal was still pending, in violation of the EU Merger Regulation's standstill requirement. This unprecedented move prompted the Commission to launch a gun jumping investigation and eventually issue a monumental € 432 million fine against Illumina (see VBB on Competition Law, Volume 2023, No. 6).

The Commission ultimately prohibited the acquisition on 6 September 2022, citing vertical foreclosure concerns (see VBB on Competition Law, Volume 2022, No. 8-9). The Commission has now issued a decision imposing restorative measures. This decision comprises: (i) divestment orders, requiring Illumina to restore Grail's independence, viability and competitiveness to the degree present before the acquisition and within a set timeframe; and (ii) new interim measures to ensure that Grail remains separate and viable until it can be sold. Nevertheless, Illumina's appeal of the General Court's refusal to annul the Commission's decision to review the deal is still pending before the European Court of Justice, so the last chapter of the *Illumina/Grail* saga is yet to be written.

FOREIGN DIRECT INVESTMENT

National level

GERMANY

Germany prohibits acquisition of additional stake in satellite startup by Chinese investor

In September 2023, the German government blocked the planned acquisition by Shanghai Spacecom Satellite Technology of an additional 45% stake in German satellite startup KLEO Connect. The startup aims to create a network of more than 300 low earth orbit satellites for global communication services by 2028, very similar to SpaceX's Starlink project. Interestingly, the Chinese investor already holds a majority stake (53% of the shares) in KLEO Connect. The German FDI screening regime requires notification of acquisitions of additional shares when overall shareholding thresholds of 20%, 25%, 40%, 50% or 75% are reached. Each time a new threshold is reached, a fresh national security assessment is made.

This prohibition is part of Germany's efforts to reduce any strategic dependencies on China. It can be seen in the broader context of the proposed tightening of the existing FDI regime. The proposed rules do not explicitly target China, however they encompass stricter restrictions in sectors with potential major Chinese influence such as AI, semiconductors and quantum computing. The new rules will provide for enhanced oversight in these sectors, by lowering the review thresholds and expanding the scope of investments subject to screening to include intellectual property acquisitions under licensing agreements.

THE NETHERLANDS

Dutch government announced € 100 million investment fund to accompany new FDI screening Act

On 19 September 2023, as a part of its annual budget presentation, the Dutch government announced the creation of a € 100 million investment fund accompanying the new FDI screening legislation. The Dutch Act on Security Screening of Investments, Mergers and Acquisitions ("Veiligheidstoets investeringen, fusies en overnames - VIFO Act") entered into force on 1 June 2023. It introduces a mandatory national screening regime applicable to investments in vital sectors, sensitive technologies and operators of business campuses. The VIFO Act applies retrospectively to all qualifying investments made after 8 September 2020.

The new fund, administered by Invest-NL, the domestic investment arm of the Dutch government, is planned to be available by the end of 2023 and aims to protect strategic sectors and technologies, by preventing "undesirable parties from acquiring control or influence" in the Dutch economy. This Dutch mechanism is quite a unique feature in the FDI landscape in the EU. To be used as a last resort, the Dutch State can acquire an indirect stake in the target company, provided that (i) the intended investment/ acquisition carries risks for national security and (ii) in the case of presence of direct or indirect influence of a State actor. This is perceived to be aimed at China and Russia. Factors to be taken into account to assess risk for national security are "unique and sensitive" knowledge and tech; crucial position in ecosystems; relevance of undertaking for "vital processes"; integrity/exclusivity of high-value knowledge and information of the undertaking and contribution to societal challenges and/or policy goals (e.g., energy transition, housing, health). Once the national security risks have been mitigated, the government will eventually reduce its stake by divesting or diluting the shares.

ABUSE OF DOMINANT POSITION

European Union level

General Court annuls Commission decision fining Bulgarian gas supplier Bulgargaz for breach of Article 102 TFEU

In its *Bulgargaz* judgment of 25 October 2023, the General Court annulled a 2018 Commission decision finding that the Bulgarian BEH Group – comprised of the State-owned Bulgarian Energy Holding ("BEH") and its two subsidiaries, the public gas supplier Bulgargaz and the gas transmission network operator Bulgartransgaz – had infringed Article 102 TFEU by foreclosing competing gas suppliers on gas supply markets in Bulgaria. The General Court annulled the Commission decision, as well as the approximately € 77 million fine imposed on the BEH Group, both on substantive and on procedural grounds.

Although the General Court upheld some of the Commission's findings of anticompetitive conduct, it held that key allegations in the Commission's decision, which supported the Commission's finding that BEH had engaged in a single and continuous anticompetitive strategy to foreclose rivals, were not supported by sufficient evidence. Accordingly, the General Court concluded that there was no support for the Commission's finding of a single and continuous infringement of Article 102 TFEU.

Background

Following an initial complaint by Overgas (a competitor in the gas supply market in Bulgaria), the Commission found in its 2018 decision that the BEH Group had abused its dominant position by engaging in a strategy to exclude rival gas suppliers from the market between 30 July 2010 and 1 January 2015.

According to the decision, the BEH Group had a dominant position throughout the gas supply chain in Bulgaria, including (i) exclusive access to the pipelines supplying Russian gas to Bulgaria (Romanian Transit Pipeline 1) during a time when most of the gas supply of the country came from Russia, (ii) ownership of Bulgaria's gas transmission network and of the only natural gas storage facility (the Chiren storage facility), and (iii) a dominant position on certain downstream wholesale and retail gas supply markets where Bulgargaz was by far the largest supplier.

The BEH Group's alleged anti-competitive practices included the adoption of delaying tactics in relation to access requests from third party gas suppliers, granting access conditions to third parties that were restrictive and non-transparent, providing preferential treatment to BEH subsidiary Bulgargaz, as well as applying access rules in such a way that the conduct amounted to a refusal to grant access to third party gas suppliers – including Overgas – to the Romanian Transit Pipeline 1, the Bulgarian gas transmission network and the Chiren storage facility. This prevented competitors from developing their gas supply offerings in Bulgaria. The Commission concluded that the BEH Group's practices constituted a single and continuous Article 102 infringement and imposed a fine of just over € 77 million.

General Court Judgment

On appeal, the General Court annulled the Commission decision on both substantive and procedural grounds. Although it upheld certain findings of anticompetitive conduct, it considered that key elements of the decision were not supported by firm, precise and consistent evidence (or, in fact, were contradicted by evidence on file). For example, the General Court found that third party access requests, which the BEH Group allegedly had ignored or delayed, were not sufficiently clear or often not even forwarded to the BEH Group. The General Court also concluded that there was no proof that the BEH Group was responsible for the length of certain negotiations with Overgas, and that Bulgargaz had acted in fact "constructively."

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ABUSE OF DOMINANT POSITION

European Union level

The Commission decision characterised the BEH Group's practices as "*explicitly interlinked*" and part of a "*comprehensive and long-term plan to foreclose [Bulgarian] gas supply markets… to the benefit of Bulgargaz*," to support the finding a single and continuous infringement. Given that key elements of the Commission's decision were found to be insufficiently supported, the General Court annulled the Commission decision in its entirety.

Observations

Bulgargaz is the latest in a series of judgments in which the European Courts demonstrate their willingness to closely review Commission decisions finding an infringement of Article 102.

Bulgargaz also confirms the key role of a robust effects test in Article 102 cases. The General Court confirms that this effects test must first establish that conduct is capable of foreclosing rivals (and, in the same vein, therefore was capable of having an impact on market structure), and that, second, the conduct was not consistent with competition on the merits. Both elements are therefore necessary parts of the effects analysis. This confirmation should be helpful as the Commission has embarked on drafting Article 102 guidelines, which can be expected to objectively reflect this and other Article 102 judgments.

Like *Qualcomm, Bulgargaz* also confirms that an effects test must be realistic and consider a counterfactual situation that would exist absent the allegedly unlawful conduct. In this context, the General Court agrees with the Commission that Bulgargaz engaged in abusive conduct hindering access of its rivals to the Romanian Transit Pipeline 1, but finds that the rivals would in any event not have been able to access the pipeline for reasons outside Bulgargaz's control. In this situation, the Commission could not demonstrate that Bulgargaz's conduct had any impact on the market.

Unlike earlier judgments like *Intel* and *Qualcomm*, *Bulgargaz* does not provide any new insights into the analytical framework governing Article 102 cases. However, it does confirm that a robust effects test must be part of the Article 102 analysis, and that the Commission must support allegations of anticompetitive foreclosure with clear and consistent evidence, and must objectively evaluate all evidence on file.

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CARTELS AND HORIZONTAL AGREEMENTS

European Union level

European Commission imposes fines on pharma cartelists

On 19 October 2023, the European Commission ("Commission") adopted a decision imposing fines totalling € 13.4 million on five pharmaceutical companies – Alkaloids (Australia), Alkaloids Corporation, Boehringer, Linnea and Transo-Pharm – for fixing the minimum sales price of N-Butylbromide Scopolamine/Hyoscine ("SSNB") charged to distributors and generic drug manufacturers and for allocating quotas. SSNB is an active pharmaceutical ingredient used to produce the abdominal antispasmodic drug *Buscopan* and its generic versions. The decision was adopted under the Commission's cartel settlement procedure and, in settling the case, the companies admitted their involvement in a single and continuous infringement over various periods between 1 November 2005 and 17 September 2019.

The infringement was brought to the Commission's attention by C2 Pharma, which was granted immunity from fines under the Leniency Notice. The Commission granted all the settling companies a 10% fine reduction under the Settlement Notice, as well as an additional 50% to Transo-Pharm and 30% to Linnea for their cooperation under the Leniency Notice.

While the Commission settled with five companies through this decision, one other company under investigation – Alchem – chose not to settle. As far as that company is concerned, the Commission will continue its investigation under the standard infringement procedure.

According to the Commission's press release, this is the first time that a cartel has been sanctioned in relation to an active pharmaceutical ingredient. Following closely on the back of the Commission's first imposition of cartel fines in the defence sector in September 2023 (see VBB on Competition Law, Volume 2023, No. 9), the decision provides another example of the Commission's apparent desire to send the message that the EU competition rules apply in all industry sectors.

Block exemption regulation applicable to liner shipping consortia set to expire on 25 April 2024

On 10 October 2023, the European Commission published a staff working document in which it stated that it would not renew the block exemption regulation applicable to consortia agreements between liner shipping companies (the Consortia Block Exemption Regulation, or "CBER").

The 2009 CBER, which replaced an earlier block exemption from 1995, was adopted in response to the advent of containerisation and the increased use of large, cost-effective vessels in international maritime transport. Cooperation between vessel operating carriers, through a consortium, was intended to promote containerised transport and more efficient use of vessel capacity.

The Commission's decision not to renew the CBER followed from a review process covering the period 2020-2023. On the basis of the information collected from relevant stakeholders, the Commission has concluded that the CBER no longer appears fit for purpose "*as it does not fulfil the criteria of effectiveness, efficiency and EU added value*".

The expiry of the exemption rules which apply specifically to the maritime transport sector seems to confirm a trend that the Commission seeks to subject all sectors of the economy to EU competition rules, and limit to the extent possible special sectoral regimes.

CARTELS AND HORIZONTAL AGREEMENTS

European Union level

General Court dismisses Clariant's appeal to reduce fine in ethylene purchasing cartel

On 18 October 2023, the General Court dismissed an appeal lodged by Clariant AG and its subsidiary, Clariant International AG, against a decision adopted by the European Commission (the "Commission") under the settlement procedure in connection with the ethylene purchasing cartel case (Case T 590/20, *Clariant and Clariant International v Commission*).

In the contested decision, the Commission found that the companies concerned had colluded between 2011 and 2017 by exchanging commercially sensitive information in order to bring down the monthly contract price ("MCP") of ethylene in Germany, France, the Netherlands and Belgium. Three of the participants – Orbia, Clariant and Celanese – settled with the Commission and a total fine of € 260 million was imposed, while the fourth participant, Westlake Chemical has granted immunity from fines under the Leniency Notice. Clariant received the largest fine of the group, in the amount of € 156 million, which included a 30% leniency reduction and 10% settlement reduction.

Clariant's appeal was limited to issues relating to the calculation of the fine. Among the pleas raised, the Applicant took issue with the fact that, in its reasoning supporting the calculation of the fine, the Commission considered it a repeat infringer, on the basis of which the basic amount of the fine was increased by 50%. In the settlement decision, the Commission noted that Clariant had been involved in the earlier monochloroacetic acid cartel ("MCAA") cartel case due to the conduct of a subsidiary it had acquired at that time and for which it had applied for immunity.

In its judgment, the General Court found that the Commission enjoys particularly broad discretion in relation to the issue of repeat offences. The Court confirmed that the Commission was entitled to consider Clariant a repeat infringer based on the following considerations: (i) the limited time period between Clariant's involvement in the MCAA cartel and the ethylene purchasing cartel (around seven years); (ii) the fact that Clariant had applied for immunity in the MCAA cartel case did not prevent it from being considered a repeat infringer in the ethylene cartel case; and (iii) the fact that the MCAA cartel involved downstream markets, as opposed to the upstream markets at issue in the ethylene cartel, was irrelevant, since both patterns of conduct constituted an infringement of Article 101(1) TFEU.

This judgment also considered a counterclaim from the Commission requesting the Court, in the exercise of its unlimited jurisdiction, to remove the 10% fine reduction granted to Clariant under the Settlement Notice and to increase the fine to € 181 million. According to the Commission, Clariant's challenge to facts contained in its own settlement submission removed any efficiency gains achieved under the settlement process. The Court, however, rejected that argument, stating that the fact that Clariant accepted a maximum amount of the fine in its settlement submission is not the same as accepting the final amount of the fine, the method of its calculation or the Commission's reasoning to arrive at that final amount. The Court also noted that the Commission had, in fact, benefited from efficiency gains from the settlement, particularly in the gathering of certain evidence and in issuing a simplified statement of objections.

On the basis of the above, the General Court dismissed both Clariant's claim and the Commission's counterclaim.

This case should be viewed as a cautionary tale for the companies that, despite having settled with the Commission under the Settlement Notice, nevertheless appeal against the decision before EU courts on issues previously discussed during the settlement process. While, in this case, the Court dismissed the Commission's counterclaim, it is clear that the Commission intends to take a hard stance against appeals made by settling companies through requesting the withdrawal of the settlement reduction.

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INTELLECTUAL PROPERTY/LICENSING

European Union level

General Court confirms Teva and Cephalon pay-for-delay infringement decision

On 18 October 2023, the General Court dismissed the application for annulment filed by Teva Pharmaceutical Industries Ltd ("Teva") and its subsidiary Cephalon Inc ("Cephalon") challenging the European Commission's ("Commission") decision that fined the two companies for breaching EU's competition rules by agreeing to delay for several years the market entry of the generic version of Cephalon's drug after that its patents had expired (Case T-74/21, *Teva Pharmaceutical Industries and Cephalon v Commission*)

The facts of the case are, in summary, as follows: in 1997, Cephalon started selling Modafinil, a long-acting wake-promoting agent used for the treatment of certain sleep disorders in the United Kingdom ("UK") and, after a few years, in several countries of the European Economic Area. In June 2005, Teva launched its generic modafinil product in the UK. In response, Cephalon initiated patent proceedings before the UK High Court of Justice that led, shortly after, on 8 December 2005, to the conclusion of a settlement agreement. According to that agreement, Teva committed to respect both a non-compete and a non-challenge clause and concluded with Cephalon a package of transactions relating to: (i) a license from Teva to Cephalon in respect of Teva's intellectual property rights, i.e., all patents, copyrights, data rights, trade secrets and know-how owned by Teva in relation to the drug concerned; (ii) a license from Cephalon to Teva to use the data co-developed by Cephalon in the connection with studies on the treatment of other diseases; (iii) the supply by Teva to Cephalon of the modafinil active pharmaceutical ingredient ("API"); (iv) payments from Cephalon to Teva amounting in € 3.07 million to put an end to the ongoing litigation in the UK and € 2.5 million to prevent future litigations outside the UK; (v) the distribution by Teva of Cephalon's products in the UK.

In 2020, the Commission adopted a decision finding that the above-mentioned package of transactions was a reverse payment (that is, payments from an originator to a generic producer) aimed at delaying Teva's entry into the Modafinil market and that the companies infringed Article 101 TFEU. The infringement covered most of EU Member States for a period ranging between 4 December 2005 to October 2011, just a few months prior to Teva's acquisition of Cephalon.

Teva and Cephalon raised three pleas – all of which were dismissed by the General Court – namely that the Commission erred in considering that the agreements at issue constituted a restriction of competition by object (first plea) or by effect (second plea) and that Article 101(3) TFEU was erroneously applied (third plea). The first plea will be examined further below.

The present case follows the case-law trend of judicial review of patent dispute settlement agreements through the lens of Article 101 TFEU and the "by-object" restriction's scrutiny. The General Court, when setting out the test to evaluate the settlement agreement in question, referred to the Court of Justice's decision delivered in Case C 307/18, Generics (UK) and further confirmed by Case C-591/16, Lundbeck v Commission.

According to that case law, a "restriction by object" must be adopted when it is plain from the examination of the settlement agreement concerned that the transfers of value provided by the originator to the generic producer cannot have any explanation other than the parties' commercial interests not to engage in competition on the merits. For the purpose of that examination, the General Court found it appropriate to assess on a case-by-case basis whether the gain of the transfers of value was sufficiently large to actually act as an incentive for the manufacturer of generic medicines to refrain from entering the market concerned and not to compete on the merits with the manufacturer of originator medicines. In order to assess whether the agreement concerned involves a "restriction by object", regard must be had to the content of its provisions, its objectives and the

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INTELLECTUAL PROPERTY/LICENSING

European Union level

economic and legal context of which it forms a part. Finally, the General Court stated that the Commission had to carry out a case-by-case analysis according to which it had to consider the economic and legal context of the agreement, and that it is required to ascertain whether the commercial transactions covered by the settlement agreement would also have been concluded, on equally favourable terms, absent the restrictive clauses.

In the present case, the General Court found that, although a transfer of value may take various forms and although the fact that, under normal market condition, settlement agreements may consist of a non-compete and non-challenge commitment, none of the five parts of the package of transactions had a plausible alternative explanation. More specifically, the General Court assessed, and rejected, the explanations provided by the applicant that the following considerations justified the transfers of funds contained in the settlement agreement : 1) the licence to Teva's intellectual property rights in modafinil; 2) the supply agreement under which Teva would supply Cephalon with a minimum volume of modafinil API at a pre-determined price because Cephalon was allegedly facing undersupply of that API; 3) the arrangement under which Cephalon granted Teva a licence for clinical and safety data co-developed by Cephalon in connection with studies on the treatment of Parkinson disease; 4) a distribution agreement under which Cephalon appointed Teva's UK subsidiary as the exclusive distributor of all its modafinil product in the UK; and 5) the avoidance of litigation costs.

On the above, the General Court confirmed the Commission's finding that the agreements at issue constituted a restriction of competition by object.

INTELLECTUAL PROPERTY/LICENSING

National level

GERMANY

Higher Regional Court of Düsseldorf prohibits discounter ALDI Süd from selling JOOP! and Calvin Klein perfumes

On 29 June 2023, the Higher Regional Court of Düsseldorf (the "Court") rendered a judgment according to which ALDI SÜD must cease and desist offering, advertising and distributing the sale of certain Coty perfumes in ALDI SÜD's discount retail stores. The Court found ALDI SÜD had displayed the goods in their stores in a way that lacked exclusiveness and, therefore, damaged the reputation of the trademarks concerned. According to the Court, Coty had a legitimate reason under Art. 15 (2) of Regulation (EU) 2017/1001 (the EU Trademark Regulation – the "EUTMR") to oppose the commercialisation of the goods by ALDI SÜD.

The applicant, Coty, is active in the production and distribution of perfumes, including brands like JOOP! and Calvin Klein. It operates a selective distribution system for these products, which were placed on the EEA market with Coty's consent. Coty asserts its own and assigned EU trademark rights for JOOP! and Calvin Klein perfumes.

The defendants, part of the ALDI SÜD group, operate discount retail stores which do not form part of Coty's selective distribution system. The defendants acquired JOOP! and Calvin Klein perfumes and sold them in their stores from December 2017 to October 2018. The perfumes were displayed in different discount retail stores, partly in rummages next to liquor and partly in glass cabinets alongside multimedia items and bargain bins. On one occasion, in February 2018, ALDI SÜD promoted the perfumes at issue in a weekly ALDI leaflet as a Valentine's Day gift.

Coty argued that ALDI SÜD's presentation and advertising of JOOP! and Calvin Klein perfumes damaged the reputation of the licensed trademarks and that, therefore, it had the right to oppose the commercialization of the perfumes because the exhaustion principle did not apply. Coty's request for injunction was denied by the Regional Court of Düsseldorf on the ground that the reputation of the perfumes could not be negatively impacted by ALDI SÜD's presentation and advertising because they were not luxury products.

On appeal, the Court granted the injunction requested by Coty. With reference to the judgment of the Court of Justice ("ECJ") in *Copad* (Case C-59/08), the Court held that the decision whether sales by a discounter harm the reputation of the trademark depend, among others, on the addressees to which the goods are meant to be sold and the specific circumstances of the sale of the prestigious goods. The Court also referred to its judgment of 6 March 2018 in Case I-20 U 113/17, (see VBB on Competition Law, Volume 2018, No. 7) according to which the owner of a very exclusive luxury trademark can outright reject sales by a discounter. In the present judgment, however, the Court clarified that, for less exclusive prestigious trademarks, such as the perfumes at issue in the present case, the specific circumstances of the presentation of the goods had to be assessed on a case-by-case basis.

According to the Court, the image of the trademark is closely related to the products sold under this trademark. In this context, the fact that the products concerned were marketed via a selective distribution system in Germany and that the applicant prosecuted infringements against entities selling the products concerned outside of this selective distribution system was seen as an indication for a luxurious aura of the trademark. This could not be put into question by the fact that the perfumes concerned were easily accessible through the distribution network or that they were also sold by certain drugstores in their specific perfume departments, namely dm and Rossmann, which do not form part of the selective distribution network. Furthermore, the fact that the perfumes ranged at a mid-price level, compared to other far more expensive perfumes, did not speak against a "*certain luxury image*".

INTELLECTUAL PROPERTY/LICENSING

National level

The Court found that, in the specific circumstances of the case, the display of the perfumes concerned in ALDI Süd's discount stores infringed the reputation of the trademarks. According to the Court, the display lacked exclusiveness as the perfumes were presented with other products of every day needs and, even where glass cabinets were used, the products still shared this space with other random products (such as computer accessories). The Court took the view that the glass cabinets did not enhance the presentation of the perfumes concerned but, rather, were perceived as theft protection. Furthermore, the fact that the perfumes were available for almost one year did not give customers the impression of an exceptional promotional offer but, rather, indicated that the perfumes were part of the defendant's regular product range.

Balancing the interests of the parties concerned, the Court determined that Coty's interest in preserving the reputation of the trademarks concerned "*clearly*" outweighed ALDI SÜD's interest in selling them in their discount stores.

Interestingly, applying this balancing test, the Court did not consider the advertising of the perfumes in ALDI SÜD's weekly promotional leaflet, where the perfumes were presented separate from other products and highlighted as gifts for Valentine's Day, as lowering the image of the trademarks.

The Court's judgment has to be seen in the context of previous EU and German case law (see judgment of the ECJ of 6 December 2017, Case C-230/16 Coty Germany v Parfümerie Akzente, reported in VBB on Competition Law, Volume 2017, No.12; judgment of the Higher Regional Court of Düsseldorf of 6 March 2018, Case I-20 U 113/17, see VBB on Competition Law, Volume 2018, No. 7 or judgment of the Higher Regional Court of Hamburg of 21 June 2018, Case 3 U 151/17, reported in VBB on Competition Law, Volume 2018, No. 6), which allowed sales prohibition of luxury trademark goods in discount stores without a dedicated luxury section based on trademark law or under Article 101(1) TFEU.

While the definition of what is a luxury product has remained unanswered at EU-level so far, the present case tries to find a balanced approach under trademark law for prestigious goods which are subject to a selective distribution system but which cannot clearly by attributed to a high-luxury market segment.

Similar considerations have been applied in the past, when the prohibition of sales through online platforms for high quality products positioned in the market by means of accompanying counselling and support services were considered as competition law compliant, see judgment of the Higher Regional Court of Hamburg of 22 March 2018 in Case 3 U 250/16.

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