



International Distribution Institute

IDI Conference 2022 (Workshop 2)

Walter van Overbeek



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CONTENTS

FACTS

THE LAW ON
EXCLUSIVE DISTRIBUTION

APPLICATION



FACTS

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FACTS

Belgian beer manufacturer – on the German market:

- exclusive wholesaler A, specialised in supplying **supermarkets**, only exceptionally to horeca business

now wishes to add

- exclusive wholesaler B, specialised in supplying **horeca business**

Wish list:

- (1) each wholesaler concentrates on its usual market
- (2) each wholesaler will leave alone customers that have an existing relationship with the other
- (3) suggestion: wholesalers exchange customers, that are better served by the other



THE LAW

OVERVIEW

Exclusive distribution system

Supplier allocates

- a territory, or
- a group of customers

exclusively to

- itself, or
- one/more of its buyers

and restricts all its other buyer from actively selling into

- the exclusive territory or
- to the exclusive customer group.

How to define exclusive customer group?

Combination exclusive territory & exclusive customer group?

What about the three conditions?

1. Exclusivity condition
2. Parallel imposition requirement
3. Rolling over prohibition

DEFINING EXCLUSIVE CUSTOMER GROUP

- **Vertical Guidelines 2010:**

(168) In an exclusive customer allocation agreement, the supplier agrees to sell his products only to one distributor for resale to a particular group of customers. At the same time, the distributor is usually limited in his active selling to other (exclusively allocated) groups of customers. The Block Exemption Regulation does not limit the way an exclusive customer group can be defined; it could for instance be a particular type of customers defined by their occupation but also a list of specific customers **selected on the basis of one or more objective criteria**. The possible competition risks are mainly reduced intra-brand competition and

- **Vertical Guidelines 2022:**

(123) The vertical agreements used for exclusive distribution should define the scope of the territory or customer group that is exclusively allocated to the distributors. For example, the exclusive territory may correspond to the territory of a Member State or to a larger or smaller area. An exclusive customer group may be defined, for example, by using one or more criteria, such as the occupation or activity of the customers or by using a list of **identified customers**. **Depending on the criteria used, the customer group may be limited to a single customer.**

COMBINATION?

- Exclusive territory **or** exclusive customer group?
- Exclusive territory **and** exclusive customer group?

- **Regulation 2022/720:**

(h) 'exclusive distribution system' means a distribution system where the supplier allocates a territory **or** group of customers exclusively to itself or to a maximum of five buyers and restricts all its other buyers from actively selling into the exclusive territory or to the exclusive customer group;

- **Vertical Guidelines 2022:**

(221) The supplier may combine the allocation of an exclusive territory and an exclusive customer group by, for instance, appointing an exclusive distributor for a particular customer group in a specific territory.

EXCLUSIVITY CONDITION

- **Regulation 330/2010:**
 - Active sales restriction must target territory/customer group reserved to supplier or **one** single distributor.
- **Intitial proposal European Commission:**
 - Active sales restriction must target territory/customer group reserved to supplier or a **limited number** of distributors, the maximum amount of which is to be determined in proportion to allocated territory or customer group in such a way as to secure certain volume of business that preserve their investment efforts.
- **Regulation 2022/720:**
 - Active sales restriction must target territory/customer group reserved to supplier or **maximum of five** distributors.

(h) 'exclusive distribution system' means a distribution system where the supplier allocates a territory or group of customers exclusively to itself or to a maximum of five buyers and restricts all its other buyers from actively selling into the exclusive territory or to the exclusive customer group;

PARALLEL IMPOSITION REQUIREMENT

- **Regulation 330/2010:**
 - Supplier must impose active sales restriction on ‘all’ of its EU distributors.
- **Initial proposal European Commission:**
 - Supplier must impose active sales restriction on ‘other’ distributors.
- **Regulation 2022/720:**
 - Supplier must impose active sales restriction on ‘all’ of its EU distributors

(h) ‘exclusive distribution system’ means a distribution system where the supplier allocates a territory or group of customers exclusively to itself or to a maximum of five buyers and restricts all its other buyers from actively selling into the exclusive territory or to the exclusive customer group;

ROLLING OVER PROHIBITION

- **Regulation 330/2010:**
 - Active sales restriction can only be imposed on the direct buyer of the supplier (no rolling over to its customers)
- **Regulation 2022/720:**
 - Active sales restriction can be imposed on the direct buyer and its customers (one level rolling over allowed)

The exemption provided for in Article 2 shall not apply to vertical agreements which, directly or indirectly, in isolation or in combination with other factors under the control of the parties, have as their object:

- (b) where the supplier operates an exclusive distribution system, the restriction of the territory into which, or of the customers to whom, the exclusive distributor may actively or passively sell the contract goods or services, except:
 - (i) the restriction of active sales by the exclusive distributor and its direct customers, into a territory or to a customer group reserved to the supplier or allocated by the supplier exclusively to a maximum of five other exclusive distributors;

- **Vertical Guidelines:**
(par. 220)

However, the supplier may not require such other buyers to pass on the active sales restrictions to customers further down the distribution chain.



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Beer distribution

- **Possible:**
 - to allocate supermarket customer group to wholesaler A
 - to allocate horeca customer group to wholesaler B

 - to single out existing customers of wholesaler A from horeca customer group of wholesaler B (and vice-versa): no active sales to these customers possible, or
 - to allocate specific customers to wholesaler A and wholesaler B (shared exclusivity)

 - to demand from customers of wholesaler to respect foregoing

- **Not possible:**
 - let wholesaler A and wholesaler B exchange customers among themselves (horizontal agreement)



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QUESTIONS

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Thank you

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