



Case report

24 October 2013

Sennheiser lifts ban on sales via Amazon Marketplace for distributors in its selective distribution system

Sector: Entertainment electronics

Ref.: B7-1/13-35

Sennheiser Vertriebs- und Service GmbH (Sennheiser) distributes consumer audio products manufactured by Sennheiser electronic GmbH & Co. KG via authorised distributors with which new selective distribution agreements were concluded on 1 April 2013. Article 2 (5) of these agreements made the following provision: “A partner may only offer the contract products online if it operates a bricks-and-mortar outlet that meets the criteria specified in Annex 3. It may not sell the contract products via third-party online platforms that do not meet the criteria specified in Annex 4 (e.g. eBay, Amazon Marketplace or similar)”. Annexes 3 and 4 of the agreement specify criteria for offline outlets and webshops. This prohibition on marketing on third-party platforms resulted in the complete exclusion of marketing via electronic marketplaces and a major hindrance to online distribution.

Submissions were made to the Bundeskartellamt requesting an assessment under competition law of the intended ban on sales via Amazon Marketplace and eBay laid out in Article 2 (5). The provisional result of this informal assessment was that a manufacturer operating in the area of standardised electronics products for end consumers may not prohibit an authorised distributor from distributing these products via an online platform, at any rate if the platform is fully integrated in the electronic distribution system of another distributor also authorised by the manufacturer. Given that this case involves a distributor operating an electronic distribution platform that meets all the specified quality requirements, there was no evidence that the ban improved the platform’s efficiency. In particular, the ban cannot be justified by reference to its effects on product presentation and service quality. In this connection, it also appears questionable whether an authorised distributor can be part of the selective distribution system of third parties within the meaning of para. 54 of the European Commission’s vertical restraints guidelines, to which regular reference is made when platforms are prohibited.

The Bundeskartellamt therefore took the preliminary view that Sennheiser, which authorised Amazon as a distributor within the scope of its selective distribution system, may not prohibit distribution via the Amazon Marketplace platform by its other authorised contractors. In order to meet these competition concerns, Sennheiser issued a Europe-wide clarification in writing to its authorised dealers that it would no longer invoke the "Amazon Marketplace" example within the context of the prohibition of third-party platforms in Article 2 (5) of its selective distribution agreement. On this basis, the Bundeskartellamt refrains from initiating proceedings against Sennheiser under Article 101 of the Treaty on the Functioning of the European Union (TFEU) and Section 1 of the German Act against Restraints of Competition (German Competition Act – GWB).

This applies provisionally to Sennheiser's prohibition on sales by authorised dealers via platforms that are not authorised as distribution partners, e.g. eBay. A number of proceedings are currently pending at the Bundeskartellamt in relation to eBay and other platforms in which the permissibility of platform prohibitions is being assessed.