

## EU GENERAL COURT UPHOLDS LUXURY-BRAND RESTRICTIONS ON SUPPLY OF SPARE PARTS

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The General Court of the European Union has provided some further guidance for luxury-brand companies on the different practices allowed on the secondary markets, such as repairs and supply of spare parts. First, the General Court has confirmed that luxury watch manufacturers (and, by analogy, other luxury-brands and high-tech goods) can use selective repair and maintenance systems if they are objectively justified, non-discriminatory and proportionate. Secondly, the General Court has also confirmed that a refusal to supply spare parts would only constitute an abuse of a dominant position only where such refusal would eliminate all competition.

### BACKGROUND

The recent General Court judgment (Case T-712/14) follows the 2004 complaint made by an association representing independent watch repairers to the European Commission against a number of luxury watch manufacturers. It was alleged that independent repairers would be driven out of the market, as the luxury watch manufacturers refused to supply spare parts to independent repairers, other than to those who were part of the selective repair and maintenance systems. The authorised repairers were required to invest in machines, training and premises to obtain authorisation to become part of that selective repair and maintenance system.

In 2008, the complaint was rejected by the European Commission on the basis that there was not sufficient EU interest in continuing the investigation. The association appealed the European Commission's decision to the General Court, which annulled that decision, finding that the European Commission had failed to take into account all the relevant facts and arguments put forward by the complainant.

As a result, in 2011 the European Commission opened a new investigation into further allegations made by the association of independent watch repairers. The investigation was closed by a decision of the European Commission in July 2014, citing that the resources required for the more detailed investigation were disproportionate given the low probability of identifying an EU competition law infringement. The association appealed for a second time the European Commission's decision to reject the complaint. The association claimed that the European Commission wrongly concluded that the repair and maintenance systems set up by the luxury watch manufacturers were compliant with EU competition law on the basis that they were objectively justified, non-discriminatory and proportionate.

### JUDGMENT

## Selective Distribution/repair Systems

The General Court noted that selective distribution systems capable of providing specific services for high-quality and high-technology products are not prohibited under EU competition law as long as such systems aim to attain a legitimate goal of improving competition in relation to factors other than price. The General Court held that the European Commission did not err in law by considering that a selective distribution system, and, by analogy, a selective repair system, was in conformity with EU competition law as long as it was objectively justified, non-discriminatory and proportionate.

The European Commission in its 2014 decision considered that the selective repair systems used by the luxury watch manufacturers were justified based on the need to take into account the increased complexity of luxury watch models, the preservation of brand image, the maintenance of high and uniform quality repair services, and the prevention of counterfeiting. The General Court held that while preserving a brand image cannot justify a restriction of competition by establishing a selective repair system, the objective of ensuring the products' use and preserving their quality may justify the operation of a selective repair system. The General Court noted that it was apparent from the file that one of the objectives pursued by the watch manufacturers was the prevention of counterfeiting of watches and their spare parts. The General Court also noted that the association failed to put forward any arguments as to why there was no risk of counterfeiting or why the refusal to supply spare parts could not constitute a means of limiting said counterfeiting.

## REFUSAL TO SUPPLY SPARE PARTS

Consistent with existing case law, the General Court held that only in certain circumstances will a refusal to supply services or goods (including spare parts) by a company in a dominant position constitute an abuse within the meaning of EU competition law. In particular, such action will constitute abuse where all of the below circumstances are present:

1. The refusal to supply the goods or services is likely to eliminate all competition on the market on the part of the company requesting the goods or services;
2. Such refusal cannot be capable of being objectively justified (the lack of an objective justification does not constitute a sufficient ground for the establishment of abusive conduct); and
3. The goods or services must themselves be indispensable to carrying on the purchasing company's business.

The General Court also found that the European Commission was right to consider that the probability of competition being eliminated was low, based, for example, on the fact that the Commission had established the following:

4. There was competition on the repairs market between the authorised repairers and between those repairers and the watch manufacturers;
5. There was the possibility of creating economies of scale, given the ability of the authorised repairers to carry out repairs for several brands; and

6. During the investigation some independent repairers had joined the selective repair systems of certain brands.

## CONCLUSION

The judgment provides greater certainty to companies, including those that are in a dominant market position, that would like to only supply spare parts to authorised companies. The General Court clearly recognises that the objectives of preserving the quality of the products and ensuring their proper use may justify a selective distribution or repair system. It also considers the prevention of counterfeiting to be a legitimate objective for such systems. The judgment also helpfully confirms that refusal to supply spare parts by dominant companies may only occur in limited circumstances.

## KEY CONTACTS



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