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# Competition policy *brief*

Occasional Discussion papers by the Competition Directorate-General of the European Commission

## EU competition rules and marketplace bans: Where do we stand after the Coty<sup>1</sup> judgment?

### Introduction

On 10 May 2017, the Commission published the Final Report on the E-commerce Sector Inquiry ('Report').<sup>1</sup> The Report confirms that the growth of e-commerce over the last decade had a significant impact on companies' distribution strategies and customer behaviour.

The Report, *inter alia*, points to the importance of marketplaces as online sales channels, in particular for smaller and medium-sized retailers. However, the Report highlights that the importance of marketplaces as an online sales channel differs from one Member State to another to a significant extent with a

Marketplace restrictions encountered in the E-commerce Sector Inquiry range from absolute bans to restrictions on selling on marketplaces that do not fulfil certain quality criteria. Restrictions on the use of marketplaces are mostly found in selective distribution agreements, i.e. closed distribution systems where the supplier distributes its product(s) only through authorized retailers which are chosen based on a number of

### In a nutshell

In its Coty judgment, the Court of Justice confirmed that selective distribution systems designed to preserve the luxury image of products can comply with Article 101(1) TFEU. Analysis of whether or not a marketplace ban in a selective distribution agreement escapes the application of Article 101(1) TFEU must be based on the so-called Metro-criteria. Even

# European Community Competition Policy

**VM Jensen**



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