

Jurius

## Unlawful restriction of online sales of ASICS running shoes

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The Bundeskartellamt has concluded its proceeding on anti-competitive clauses in the distribution system of ASICS Deutschland. The authority accuses ASICS of having restricted the online sales activities of small and medium-sized authorised dealers in particular.

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Category: News

Region: Germany

Field of law: Competition law; E-Commerce

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[Rz 1] Andreas Mundt, President of the Bundeskartellamt: *«In the dynamically developing e-commerce sector we must take care to address the interests of the manufacturers while at the same time keeping markets and opportunities open for the benefit of distributors and consumers. If manufacturers prohibit their authorized dealers from using price comparison engines and online sales platforms or from using the manufacturers' brand names in their own search engine advertisements, it will de facto no longer be possible for consumers to find the smaller retailers, in particular, in the internet. Many manufacturers of running shoes, as of recently including ASICS, have established their own online stores. They co-operate with large marketplaces such as Amazon. If these manufacturers simultaneously impose far-reaching online restrictions on their predominantly small retailers, the online business will ultimately be concentrated in the hands of the manufacturers themselves and a few large retailers or leading marketplaces.»*

[Rz 2] ASICS, the market leader for running shoes in Germany, selects its authorised dealers according to strict quality criteria as part of its so-called «selective distribution». Under German and European competition law the manufacturers of branded products have a broad scope to safeguard quality standards in the distribution of their products and impose requirements to this effect on their authorised dealers. However, such measures may not be allowed to restrict small and medium-sized dealers, above all, in their ability to sell the products also over the internet. There is the risk that excessive sales restrictions will prevent consumers from enjoying the benefits of the availability of both offline and online sales. A selective distribution system may not be used to eliminate the broad range of online offer and the ensuing price reduction trends.

[Rz 3] In the past ASICS has prohibited its dealers e.g. from using price comparison engines for their online presence and from using ASICS brand names on the websites of third parties to guide customers to their own online shops. In the Bundeskartellamt' s view, this prohibition primarily served to control price competition in both online and offline sales. Its investigations have shown that small and medium-sized distributors, in particular, cannot compensate for the loss of reach resulting from this prohibition.

[Rz 4] Furthermore, the Bundeskartellamt criticizes that the distributors were prohibited without exception from using online marketplaces such as eBay or Amazon. No decision had to be taken on this point in view of the other online restrictions which have proved to be anti-competitive.

[Rz 5] The Bundeskartellamt' s decision is intended to initiate a process of discussion, also at the European level, on the assessment under competition law of the prohibition of the use of online marketplaces and other restrictions of online sales. The competition authorities have received numerous complaints from distributors about the conditions for online sales set by brand manufacturers. The European Commission' s current sector inquiry into e-commerce will also possibly provide further insights on this issue. Further decisions by the authorities or the courts can be expected.

[Rz 6] ASICS Deutschland has meanwhile amended the clauses objected to. The company can appeal against the Bundeskartellamt' s declaratory decision to the Düsseldorf Higher Regional Court.

Source: Press Release by the Bundekartellamt from 27 August 2015