



EU Competition Webinar Series (Part I)

Achieving A Successful Product Launch

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PRESENTATION OF TODAY'S PANEL AND TOPIC

Today's Panel

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PRODUCT LAUNCH - SETTING THE SCENE

Novel Product: Positioning is Key



- **Choice of distribution model**

- **Attention to product life cycle**
 - Distribution model may evolve with the cycle
 - Calling for dynamic review

- **Today's main focus is on margin/price**
 - Goal: position the product at retail level to ensure initial take-up and endorsement
 - Importance of reconciling distributors' interests with supplier's



Interests of Supplier

- **Ensuring that reseller:**
 - Adopts and endorses the product
 - Invests in promotion and after-sale
 - Secures product visibility with consumers before and during launch

- **In order to:**
 - Generate critical mass in terms of demand and
 - Reach break-even at the earliest possible time

Reseller's Interests



- **Recoup investment in promotional efforts and inventory**
- **Retail market price predictability**
- **Positive customer experience and satisfaction**

Interests Usually Aligned but...



- **Quality, sophistication, innovation may not be well understood**

- **Some resellers pursue business models that may not fit well with the novel product launch strategy/positioning**
 - Free riding problem: price-cutters, “mavericks”
 - Product launch used to draw traffic to its shop/website
 - New product treated as “loss leader”

- **E-commerce has amplified the phenomenon**

PRODUCT LAUNCH - ANTITRUST PITFALLS

Route to Market Issues



- **How much control do suppliers need? How long will control be needed?**

- **How much control is allowed by EU competition law?**
 - Low levels of control – open distribution
 - Intermediate – exclusive purchasing; exclusive territoriality; customer segmentation; franchising; selective distribution
 - High levels – vertical integration or agency

- **Avoid restrictions ‘by object’ under Art. 101(1) TFEU**

Territory - The Dividing Line



- **When can you use territorial restrictions?**

- **How much can you constrain extra-territorial reach?**
 - Active vs. passive sales
 - The Internet as a passive sale

- **Admixture of territorial and selective criteria – latter must dominate**



Price Influence Versus Fixed Prices

- **What forms of price influence are lawful?**
 - Reminder on resale price maintenance (RPM)
 - When does recommended resale price becomes RPM?
 - How much price guidance can you give?
 - What sort of language can you use?
- **Resale and advertised prices – the distinction**
- **Imposing reseller obligations *in lieu* of price**
 - Service requirements versus margin-maintenance
 - Qualitative versus quantitative criteria
- **Bilateral or multilateral engagement with resellers**
 - Watch out ‘hub-and-spoke’ cartel

PRODUCT LAUNCH - CASE STUDIES

Case 1 - Revolutionary Consumer Product Launch



- **Setting the scene**
 - New concept for high-end consumer product
 - Technological revolution
 - Significant R&D investment
 - To be sold through specialized retailers

- **Repeated history of failed product launches**
 - Succession of failed product launches over several years
 - Price positioning destroyed by pure online players
 - Open distribution model
 - Lack of promotional investment obligations
 - Product did not reach consumers, causing lower consumer choice and availability

- **Revolutionary product in pipeline and looming risk of failure**

Case 1 - Options Available



▪ Options

- ✓ Change distribution model: selective distribution with strong qualitative obligations imposed on distributors
 - ✓ Minimum promotional investments
 - ✓ Minimum inventory requirements

 - ✗ Raise wholesale price?
 - ✗ Appoint a few like-minded distributors for a short-time?
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- **The above did not resolve the free-rider problem and the risk of price downward spiral**
 - **RPM as solution of last resort?**

Case 1 - RPM as Solution of Last Resort?



- **RPM illegal by object**
- **However new product exception**
 - Limited guidance and rarely tested
 - Only for a short duration
 - Monitoring post RPM period to ensure resale price freedom
- **Not risk free, but robust self-assessment and careful implementation**
- **Outcome**
 - Successful product acceptance and take-up
 - Market demand exceeded expectations

Case 2 - Launch of a New Food Product



- **Setting the scene**
 - Development of a new food product by a JV between Y and Z
 - Y newcomer to this food product category, but project leader + main shareholder
 - Z already active in neighbouring markets
 - Distribution model initially envisaged
 - Z better positioned to market/sell new product (expertise / contacts / credibility)
 - So initially envisaged that Z would purchase / resell JV products
- **But constraints on resale price control in a classic purchase for resale-distribution model (RPM prohibition)**
- **Y unwilling to relinquish control over resale price**
 - Y project leader
 - Price positioning of new product essential to success of launch
 - Especially in a very competitive nascent product category

Case 2 - Can't Change the Rules? Change the Model!



- **Proposition to switch to an agency model**
 - **Advantage? Under EU Guidelines on Vertical Restraints, « true agency » agreements can escape art. 101 constraints**
 - “True agent” does not bear any (or negligible) financial and commercial risk
 - Regarded as forming part of the same economic unit as the principal
 - Principal can set the prices and conditions of resale without constraints
- ↓
- ↓
- **PROs / CONs for principal**

Bears risks

(commercial risk + indemnification of agent upon termination)

vs.

Free to set price / conditions of resale



Case 2 - Take-aways

- **Solution allowing Y to achieve its price control goal**
- **Again, not risk free**
 - Need to ensure that agent is a “true agent”
 - Careful and thorough tailoring of the contract terms
 - Qualitative analysis of the risks borne in practice by the agent in light of the market circumstances
- **Agency model is not for everyone and every situation**
- **But may have merits in early stages of product launch**
 - Control over price positioning
 - Test customer appetite for product



Final Thoughts on the Case Studies

- **Contradict general wisdom about relinquishing control over product**
- **You can launch novel product AND retain control over price positioning and resale conditions**
- **Early involvement with client to discuss goals and best approach**
 - No template or standard solutions
 - Requires client engagement and understanding of risks
 - Tight monitoring during implementation of launch strategy is key

Questions?



Thank You for Joining Us

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