



## Antitrust: Commission fines Guess €40 million for anticompetitive agreements to block cross-border sales

Brussels, 17 December 2018

Commissioner Margrethe **Vestager**, in charge of competition policy, said: *"Guess' distribution agreements tried to prevent EU consumers from shopping in other Member States by blocking retailers from advertising and selling cross-border. This allowed the company to maintain artificially high retail prices, in particular in Central and Eastern European countries. As a result, we have today sanctioned Guess for this behaviour. Our case complements the geoblocking rules that entered into force on 3 December – both address the issue of sales restrictions that are at odds with the Single Market."*

Guess designs, distributes and licenses clothing and accessories under numerous trademarks, including "GUESS?" and "MARCIANO". Guess operates a selective distribution system in the European Economic Area (EEA), where authorised retailers are chosen on the basis of quality criteria.

Companies in the EEA are generally free to set up the distribution system that best serves them, including selective distribution systems, where the products can only be sold by pre-selected authorised sellers. However, these systems must comply with EU competition rules. In particular, consumers must be free to purchase from any retailer authorised by a manufacturer, including across national borders. At the same time, authorised retailers must be free to offer the products covered by the distribution contract online, to advertise and sell them across borders, and to set their resale prices.

In [June 2017](#), the Commission opened a formal antitrust investigation into the distribution agreements and practices of Guess to assess whether it illegally restricted retailers from selling cross-border to consumers within the EU Single Market.

The Commission investigation has found that Guess' distribution agreements **restricted authorised retailers** from:

1. using the Guess brand names and trademarks for the purposes of **online search advertising**;
2. **selling online without a prior specific authorisation** by Guess. The company had full discretion for this authorisation, **which was not based on any specified quality criteria**;
3. **selling to consumers located outside the authorised retailers' allocated territories**;
4. **cross-selling** among authorised wholesalers and retailers; and
5. independently **deciding on the retail price** at which they sell Guess products.

The agreements allowed Guess to partition European markets. The Commission has observed that in Central and Eastern European countries (Bulgaria, Croatia, Czechia, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia and Slovenia) the retail prices of Guess products are, on average, 5-10% higher than in Western Europe.

On this basis, the Commission concluded that Guess' illegal practices, which the company engaged in until 31 October 2017, deprived European consumers of one of the core benefits of the European Single Market namely the possibility to shop cross-borders for more choice and a better deal.

### Cooperation with Guess

Guess cooperated with the Commission beyond its legal obligation to do so, in particular by revealing an infringement of EU competition rules not yet known to the Commission – the prohibition to use Guess brand names and trademarks for the purposes of online search advertising. The company also provided evidence with significant added value and expressly acknowledged the facts and the infringements of EU competition rules.

Therefore, the Commission granted Guess a 50% fine reduction in return for this cooperation. Further information on this type of cooperation can be found on the [Competition](#) website.

### Fines

The fines were set on the basis of the [Commission's 2006 Guidelines on fines](#) (see [press](#) release and

[MEMO](#)). Regarding the level of the fine, the Commission took into account, in particular, the value of sales relating to the infringement, the gravity of the infringement and its duration, as well as the fact that Guess cooperated with the Commission during the investigation.

The fine imposed by the Commission on Guess amounts to €39 821 000. The infringement of EU competition rules lasted from 1 January 2014 to 31 October 2017.

## **Background**

Guess' agreements infringed [Article 101](#) of the Treaty on the Functioning of the European Union (TFEU), which prohibits agreements between companies that prevent, restrict or distort competition within the EU's Single Market.

More information on the investigation will be available on the Commission's [competition](#) website, in the public [case register](#) under the case number AT.40428.

## ***The e-commerce sector inquiry***

The Commission, in its [final report on the e-commerce sector inquiry](#) on 10 May 2017, found that more than one in ten surveyed retailers experienced cross-border sales restrictions in their distribution agreements. This report was published in the context of the Commission's [Digital Single Market strategy mid-term review](#).

Thanks to the insight gained from the [sector inquiry](#), the Commission was able to target EU antitrust enforcement on the most widespread and problematic business practices in e-commerce, which may negatively impact competition and cross-border trade, and hence the functioning of the EU's Digital Single Market.

The Guess decision follows up on the results of the sector inquiry. The Guess investigation was launched by the Commission as a stand-alone procedure, independent of the sector inquiry.

## ***The geo-blocking Regulation***

Furthermore, today's decision complements Regulation 2018/302 [on unjustified geo-blocking](#), which applies as of 3 December 2018.

The regulation prohibits geo-blocking and other geographically-based restrictions which undermine online shopping and cross-border sales by limiting the possibility for consumers and businesses to benefit from the advantages of online commerce.

Under the regulation, a supplier cannot contractually prohibit a retailer from responding to unsolicited customer requests, the so-called "passive sales", in the specific situations covered by the regulation. Guess' practices that restricted passive sales to consumers are now also prohibited by the geo-blocking regulation.

The regulation does not prohibit restrictions on "active sales", i.e. actively approaching and targeting individual customers, for example through advertising. However, restrictions on active sales need to be compliant with EU competition rules. In the Guess decision, the Commission found that this was not the case.

## **Action for damages**

Any person or company affected by anti-competitive behaviour as described in this case may bring the matter before the courts of the Member States and seek damages. The case law of the Court and Council Regulation 1/2003 both confirm that in cases before national courts, a Commission decision constitutes binding proof that the behaviour took place and was illegal. Even though the Commission has fined the companies concerned, damages may be awarded without being reduced on account of the Commission fine.

The [Antitrust Damages Directive](#), which Member States had to transpose into their legal systems by 27 December 2016, makes it [easier for victims of anti-competitive practices to obtain damages](#). More information on antitrust damages actions, including a practical guide on how to quantify antitrust harm, is available [here](#).

## **Whistleblower tool**

The Commission has set up a tool to make it easier for individuals to alert it about anti-competitive behaviour while maintaining their anonymity. The tool protects whistleblowers' anonymity through a specifically-designed encrypted messaging system that allows two way communications. The tool is accessible via this [link](#).

Press contacts:

[Lucia CAUDET](#) (+32 2 295 61 82)

[Maria TSONI](#) (+32 2 299 05 26)

General public inquiries: [Europe Direct](#) by phone [00 800 67 89 10 11](#) or by [email](#)