



RESTRICTIVE PRACTICES IN SELECTIVE DISTRIBUTION CONTRACTS

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Article history:		Abstract:
Received:	8 th March 2026	This Study Addresses One Of The Most Significant Challenges Facing The Selective Distribution Model: Striking A Balance Role Of The Iraqi Competition Council In Investigating And Monitoring Distribution Networks Between The Principles Of Free Competition And The Criteria Inherent In This Type Of Distribution, Selective Distribution Is A Modern And Innovative Method Used By Large Companies To Market Their Products By Establishing Carefully Selected Networks Based On Specific Objective And Technical Criteria, With The Aim Of Marketing High-Value Products And Protecting Luxury Brands. This Method, However, Often Involves Clear Restrictions That May Make Selective Distribution Shift From A Legitimate Marketing Tool To Practices That Restrict Competition And Limit Market Freedom. In Studying This Topic, We Relied On A Descriptive And Analytical Approach To Assess The Adequacy Of Legal Regulations And Judicial Precedents In Achieving The Aforementioned Balance. The Study Concluded That There Is A Legislative Gap In The Regulation Of Selective Distribution Agreements, As Well As Gaps In The Regulation Of Practices That Restrict Competition. It Recommends Filling This Gap By Issuing Specific Instructions And Regulations For This Purpose, Amending The Provisions Of Article 10 Of The Iraqi Competition And Antitrust Law, And Strengthening The
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INTRODUCTION

First: The Subject of the Study.

Selective distribution is one of the most important economic strategies adopted by large companies and commercial institutions to market and distribute their products by establishing an interlinked network of contractual relationships based on cooperation under specific terms for the promotion and distribution of products. Selective distribution represents one of the most important and rare of these networks, as it serves as an established marketing and contractual model for protecting luxury brands and expensive or high-tech products.

Although this type of distribution offers significant commercial and legal advantages—such as brand protection and safeguarding customers or consumers by ensuring the quality of services provided to them and the quality of products—it typically includes requirements or standards consistent with its selective nature; however, these can give rise to significant legal challenges, as such requirements and standards may —if included in the selective distribution agreement—into practices that restrict legitimate commercial competition and would therefore be subject to legal prohibition.

Second: The Research Problem.

The research problem of this study lies in the legal conflict between the provisions of a selective distribution agreement and the rules established by competition and antitrust laws, as such an agreement may contain restrictions that exclude certain distributors or limit sales outside a specific geographic area. Whereas the manufacturer's or distributor's objective in imposing such conditions is to protect its brand. Consequently, these practices would transform selective distribution from a legitimate regulatory tool into a practice that restricts competition, This raises the study's central question: Is it possible to distinguish between legitimate objective criteria adopted for selective distribution and practices prohibited under competition rules? Have the relevant laws succeeded in striking a balance between enabling the establishment of legitimate selective distribution networks and prohibiting the abusive practices arising from some of these networks?

This main issue may give rise to several sub-questions:

1. What is meant by selective distribution from a legal perspective and what criteria does this type of distribution rely on?
2. How are the restrictions imposed by some companies within their selective distribution networks—which pose a digital challenge for them, such as bans on online sales and e-commerce platforms—handled?
3. What are the legal implications of selective distribution restrictions?

Third: The Significance of the Study.

The significance of this study lies in shedding light on the legal concept of selective distribution and its objective criteria, in order to define the line between protecting the exclusive rights of the manufacturer or distributor and prohibiting monopolistic practices that restrict competition, as well as in keeping up with digital developments by identifying the restrictions imposed on e-commerce and digital sales platforms, and in understanding the role of regulatory agencies and commercial courts in addressing agreements that restrict competition. In addition, this study aims to provide a scholarly reference to fill the gap in the legal library and specialized literature that has examined the intersection of competition law and selective distribution.

Fourth: Scope of the Study.

The scope of our study of anti-competitive practices in selective distribution agreements is limited to the contractual restrictions contained in selective distribution networks alone, excluding other forms of anti-competitive practices addressed by competition laws, such as the abuse of economic dominance and market concentration by distributors. Since selective distribution pertains to high-quality products and services, our research will be limited to products only, excluding services.

Furthermore, this study will focus solely on the legal implications of restrictions on competition in selective distribution, rather than all legal implications arising from such contracts, such as the obligations and rights of the contracting parties.

Fifth: Methodology and Structure of study.

In this study, we will adopt a descriptive approach to characterize selective distribution and the criteria underlying this type of distribution. We will also adopt an analytical approach to examine the elements of this type of distribution that may constitute a restriction on competition, while analyzing certain judicial decisions and legal texts such as the Iraqi Competition and Antitrust Law, European competition guidelines, and decisions of the French Competition Council. The study of this topic will be divided into two sections. We have devoted the section one to explaining the concept of selective distribution and its criteria, each in a separate subsection, and we have devoted section two to examining forms of selective distribution that may constitute a restriction on competition and their effects, each also in a separate subsection. The study concludes with a summary that includes its most important findings and recommendations.

CHAPTER ONE

The Concept of a Selective Distribution Agreement

Distribution Is One Of The Key Economic Aspects For Commercial Production Enterprises, This Has Led Those Enterprises Or Companies To Establish What Are Known As Distribution Networks, With The Aim Of Achieving Interconnection And Integration Between Producers And Distributors, Since They Are Bound By Complex Contractual Relationships, The Purpose Of Which Is To Promote Products Through Mutual Cooperation; Among These Contracts Is The "Selective Distribution"¹ Agreement. Selective distribution is one of the rarest types of distribution networks; this characteristic derives from its nature and its subject matter, as it involves the distribution of high-value goods associated with luxury brands. Due to the unique legal nature of this contract, it is necessary, on the one hand, to clarify its concept and, on the other hand, to understand the conditions or criteria for selecting distributors under this contract. Are these criteria absolute, or are there specific legal controls or restrictions governing their establishment? This is what we will discuss in detail below:

Section one

Definition Of a Selective Distribution Agreement

The concept of selective distribution is generally defined as a contractual agreement under which the manufacturer selects the best distributors whose capabilities are suited to the type of products covered by the agreement, This selection is made objectively, not subjectively, which has led producers and suppliers to establish or develop a selective distribution network to organize the distribution of the goods they produce. Accordingly, this agreement can be defined as "an agreement under which a supplier undertakes and commits to supplying goods within a specific sector to one or more merchants selected based on objective, qualitative criteria, without unjustified quantitative discrimination "which allows the distributor to simultaneously engage in the sale of competing products.² Regardless of the economic formulation of this definition, it provided a concise overview of selective distribution while attempting to illustrate the impact of the criteria used in selective distribution, which we will attempt to elaborate on later. It has also been defined as "an agreement whereby the supplier commits to financing one or more distributors in a specific region, who are selected, based on objective and quantitative criteria without discrimination and without specifying quantities; this agreement does not contain a clause prohibiting the distribution of other competing goods."³ In accordance with this definition, selective distribution means that the manufacturer operates under a specific system, reserving the distribution of its products for distributors it selects based on predetermined criteria, When all these criteria are met, the

manufacturer delivers its products to that distributor, who then sells the products selected for selective distribution without excluding competing goods; otherwise, it would be deemed a violation of the principles of fair competition, and the selective distribution agreement would be deemed void.

At the legislative level, most laws have not provided a comprehensive and exhaustive definition of distribution contracts in general, or selective distribution contracts in particular. For example, the Iraqi Competition and Antitrust Law No. (14) Of 2010,

Whereas the European Union law, pursuant to Regulation No. 330/2010 on vertical restraints on competition, However, under European Union law, specifically Regulation No. 330/2010 on vertical restraints on competition, selective distribution is defined as “a distribution system in which the supplier undertakes to sell the contracted goods or services, directly or indirectly, only to distributors selected on the basis of specific criteria, and in which those distributors undertake not to sell those goods or services to unauthorized distributors within the territory designated by the supplier for the operation of that system.”, This is considered one of the most sophisticated legal formulations for defining the concept of this agreement. However, this may at the same time lead to confusion between it and a “commercial franchise” agreement, which is based on the condition of exclusivity in a specific geographic territory. While this condition is necessary for a franchise agreement⁴.

Nevertheless, it does not constitute an essential criterion – in our view – with regard to selective distribution. Not only is this criterion mentioned in the aforementioned law, but the French courts have also explicitly clarified it; the French Court of Cassation has held that selective distribution is “a contract under which the supplier undertakes to supply a dealer or several dealers (located in a specific territory and selected on objective grounds without discrimination among them or unjustified limitation on their number) with all the agreed-upon products; on the other hand, the distributor sells products that compete with those covered by the agreement”⁵.

In contrast to the position taken by the French Court of Cassation in previous rulings⁶, It determined that the selective distribution system is intended to protect the reputation and quality of products by carefully selecting distributors; it is based on agreements that restrict the freedom of both parties, without granting either party the right to mutual exclusivity. The manufacturer is entitled to enter into agreements with other distributors in the same geographic territory, and the distributor may sell competing products. From the foregoing, it can be seen that the key provisions of a selective distribution agreement are as follows:

1. Approval by producers or suppliers of distributors who meet specific criteria set by those producers.
2. Distributors sell to end users or to other authorized distributors.
3. The manufacturer or supplier controls the distribution channels all the way to the end users.

In any case, the most important issue raised by this agreement is the criteria set by the supplier or manufacturer for selecting the distributors who will distribute its products. Whether the supplier or manufacturer has the right or complete freedom to set these criteria, or whether there is oversight of those criteria—this is what we will address.

Section two

Criteria for Selective Distribution

Selective distribution networks are based on two main types of distribution criteria. Depending on these criteria, selectivity is either based on a purely qualitative criterion, whereby the manufacturer selects its distributors based on objective criteria related to the nature of the products or services to be marketed, Or it is based on a quantitative criterion, such as the producer specifying the number of distributors in a specific geographic territory⁷.

The question that arises in this regard is: Can these criteria be applied collectively in a selective distribution agreement, and would these criteria have a negative impact on competition, or do they not undermine the principle of fair competition? To this end, we will examine these criteria in turn, as detailed below:

First: Qualitative Selection Criteria: The concept behind this standard is that there are objective criteria for selecting distributors based on reputation and competence⁸, and, of course, suitable for the products or services to be distributed⁹. This policy offers many benefits to both the manufacturer and the distributor—and even the consumer¹⁰, and this standard was first established by the International Court of Justice in its “Metro I” decision, issued on October 22, 1977, which stated that “a selective distribution agreement is based on a positive assessment of the rule of reason”¹¹. This means that, in this case, the selection process is based on a rational weighing of the quality and nature of the products or services against the qualifications of their distributors or suppliers. This must be done in a non-discriminatory manner and applied uniformly to all distributors or dealers involved in this type of distribution.

As for the impact of this criterion on competition, we can draw guidance in this regard from the French Competition Council’s well-known decision issued on October 10, 1996, regarding the most important objective principles that can be established for the selection of distributors, the application of which would ensure that the principle of free competition is not infringed upon. These principles are:

1. These criteria must be objective, meaning they must not discriminate among different distributors and must not, under any circumstances, lead to the closure of a selective distribution network. In this context, the French Competition Council has stated¹² “If a producer is able to establish its own distribution network, based on objective criteria that allow it to ensure the distributors it has selected or chosen possess the necessary means to perform their commercial functions optimally, this must not constitute a discriminatory restriction on the commercial freedom of its distributors to contract with competing producers” .

2. Is the purpose of this arrangement to exclude certain distributors who are qualified to market the products covered by the contract. This principle can be illustrated by another decision of the French Competition Council issued in 1987¹³, in the “**Pharmacy Liquidation**” case, which stated that “A selective distribution system is acceptable in the sale of cosmetics, particularly when criteria for the distributor’s professional competence are specified, as well as requirements regarding the location and layout of the store; in such cases, the criteria are considered objective and non-discriminatory. However, if it is stipulated that these products may only be sold by pharmacies, this constitutes an arbitrary condition that affects competition. For such a contract to be lawful, it may stipulate that a pharmacist be present at points of sale for this type of product in order to provide consumers with the necessary advice.”
3. This ensures that authorized distributors retain complete freedom to set the resale prices of products to consumers. For example, in the case of high-end, expensive goods or well-known brands, if the manufacturer sets the retail price of these goods for consumers or specifies the quantity of product to be supplied to distributors, this may amount to imposing a non-compete clause.

Despite the description provided by the Competition Council to define this criterion and its legitimacy, we believe, in our assessment, that the European Union’s guidelines offer a more concise and clear description, as they present sound recommendations on what should be done, such as (brand evaluation, point-of-sale management, and distributor professionalism), as well as what should not be done, such as (setting or fixing prices, requiring quotas, engaging in discriminatory practices, or restricting sales to consumers—particularly online).¹⁴

Based on the foregoing, we can conclude that the qualitative selection criterion does not lead to a distortion of competition; on the contrary, the application of this criterion enhances competition among the selected distributors within the distribution network.

Second: The quantitative selection criterion. This criterion is based on the concept of quantitative restrictions, whereby the producer or supplier, under this criterion, can specify the number of distributors or dealers in certain “market” areas who join its network ¹⁵, and the adoption of this criterion would make selective distribution similar to exclusive distribution, in that it limits the number of selected distributors in a given area while also setting conditions for the resale of products or services. However, the main difference between the two models lies in the fact that selective distribution systems prohibit sales to unauthorized distributors—that is, distributors outside the selective distribution network ¹⁶. Furthermore, selective distribution may not include any quantitative restrictions on distribution; it may be limited to qualitative restrictions only, whereas exclusive distribution is based on meeting both qualitative and quantitative criteria.

Returning to the question of the legality of this criterion and its impact on competition, we find that the French courts have accepted the quantitative selection criterion and have not challenged its legality, as in the “Boucheron” case, where they specifically accepted the numerical limit on authorized distributors, but under certain conditions and based its decision on the ruling of the Competition Council, which noted that, within the context of “the luxury perfume market and given its specific characteristics and the level of competition among brands in this sector, the producer must determine the total number of distributors it wishes to include in its network, based on its production objectives and without affecting competition.” Consequently, the court ruled that “Boucheron” may limit the number of its distributors, particularly since the manufacturer justifies this decision based on a field study specific to each region and in accordance with consumer needs.

It follows from the foregoing that acceptance of the quantitative selection criterion depends on an analysis of the market and its requirements; however, if this criterion is applied by the producer or supplier arbitrarily and without a legitimate reason, quantitative selection is generally considered a criterion that harms competition¹⁷.

Chapter Two

Forms of Anti-Competitive Practices in Selective Distribution Agreements and Their Effects

Given that the Iraqi legislature has adopted the “effect” test in identifying anti-competitive agreements—as it is most consistent with the economic nature of competition law ¹⁸—and given the protective objective it seeks to achieve, focusing on the form of the agreement alone is insufficient to reveal the true nature of anti-competitive practices, as they may take forms that appear legitimate on the surface, while in practice they harm free competition¹⁹ (), and pursuant to Article (10) of the Iraqi Competition and Antitrust Law, agreements that result in or are likely to result in the prevention or restriction of competition are considered prohibited and unlawful. In this context, provisions in contracts or selective distribution networks that aim to or are likely to result in the prevention or restriction of competition are also unlawful and prohibited. The practical application of these contracts has given rise to numerous forms of anti-competitive practices within their framework, and the existence of these practices will inevitably lead to legal consequences that may target either the selective distribution contract itself or the competition-restricting clause alone. Therefore, analyzing these forms and consequences requires dividing them into two parts, with each addressed as a separate issue, as follows: _

Section One

Examples of Practices Restricting Competition in Selective Distribution Agreements

In our discussion of selective distribution criteria, we noted certain practices adopted by manufacturers or suppliers based on specific criteria that may undermine legitimate competition, such as quantitative restrictions on selective distribution networks. However, here we will highlight certain examples of practices that restrict competition—not

through the selective distribution criterion itself, but through explicit terms imposed by manufacturers on dealers or distributors. These examples include the following:

First: Prohibition on sales outside the selective distribution network. The manufacturer or supplier exercises control over the distributor in its capacity as the party responsible for promoting its network; in return, the distributor is obligated to inform the manufacturer or supplier of all its activities related to the distribution of the products or services covered by the agreement, especially if the distributor handles other competing goods. The distributor must provide the manufacturer or supplier with all information regarding inventory status, sales figures, and invoices related to resale, to verify whether the distributor is selling outside the selective distribution network²⁰. This is because sales between distributor members within the network and between unauthorized distributors outside the network are considered prohibited under a selective distribution agreement. Consequently, if a selective distribution agreement contains a clause or condition imposed by the manufacturer or supplier prohibiting sales between members of the same network, such a clause or condition is considered a restriction on and a violation of competition, regardless of the producer's market share. The French Competition Council has included this prohibition in its list of major restrictive clauses²¹. As for the Iraqi legislature's position on requiring such a prohibition in selective distribution agreements, it does not differ from that of the French Competition Council, even though this prohibition is not explicitly mentioned among the prohibited agreements in the Competition and Antitrust Law; it can be inferred implicitly from the text of paragraph (1) of Article 10 of the aforementioned law, which states that "fixing the prices of goods or services or the terms of sale or similar conditions" Thus, prohibiting resale among distributors—or so-called "cross-supply"—or any other unjustified prohibition constitutes an arbitrary exercise by the manufacturer or supplier of its right to control the selective distribution network and constitutes a restriction on legitimate commercial competition.

Second: Setting and managing resale prices. This practice occurs when a manufacturer or supplier compels a distributor to adhere to a minimum price, a fixed price, or to offer recommended prices for selling the product to the end consumer; this practice is a form of pressure to maintain retail price levels set by the supplier. The application of this practice through selective distribution agreements may effectively limit distributors' ability to offer discounts and promotional offers during sales periods²².

In our view, the reason for prohibiting price restrictions in selective distribution agreements is that price is a fundamental element of commercial competition, and its restriction or control by the supplier would inevitably constitute a restriction on the principle of fair competition. This practice, like its predecessors, has been prohibited under Article 4(c) of European Commission Regulation (VBER) No. 2022/720, issued on May 10, 2022. It has also been prohibited by the Iraqi legislature, as explicitly provided for in Article (10/I) of the Competition and Antitrust Law, referred to above in the context of the prohibition on intra-network sales.

Among the well-known legal precedents regarding the prohibition of price fixing is the Luxottica case²³, involving the global and European leader in the eyewear and frames industry, now known as essilorluxottica. This company engaged in anti-competitive practices, one of which was imposing restrictions on distributors' freedom to set prices, resulting in Decision No. (21) of 2021 by the French Competition Authority sanctioning the company. In its decision, the Authority concluded that between 2005 and 2014, Luxottica implemented a system to maintain resale prices by publishing "recommended prices" for its distributors and pressuring them to maintain specific retail price levels. This practice was implemented through selective distribution agreements that effectively limited the distributors' ability to set prices. Luxottica also established a monitoring system and imposed selective measures against non-compliant distributors, and at times enlisted other distributors to assist in enforcing the pricing system. As a result, the Authority imposed a fine of 124,477,000 euros on this company as the party responsible for this practice. When the company appealed the decision, the Paris Court of Appeal dismissed the appeal in its entirety. The court found sufficient evidence to prove the existence of an agreement between the parties and confirmed its scope and purpose, determining that it constituted a vertical agreement affecting the entire network; it classified the practice as restrictive in nature²⁴.

Third: Online sales. A supplier may impose a specific restriction on distributors within a selective distribution network, namely prohibiting the use of the Internet to sell services or goods to customers, which constitutes an anti-competitive practice. This is because online sales offer significant benefits to both sellers and buyers, as it facilitates the entry of new sellers into the market without bearing the high investment costs of traditional brick-and-mortar stores, and enables them to compete more effectively with other distributors who have long-standing experience in the market. As for buyers, online shopping allows them to easily compare prices and product quality, leading to increased competition within a single brand, as well as competition between different brands, not to mention the role of search tools—which are inevitably linked to the internet—in advertising, which facilitates reaching customers. However, on the other hand, this leads to increased pressure to lower prices; therefore, in an attempt to overcome this drawback, suppliers sometimes resort to imposing various restrictions on their distributors regarding online sales, in order to protect traditional sales territories and thereby maintain the overall price level²⁵.

Opinions have differed regarding whether such a restriction should be prohibited absolutely or only relatively. The French Competition Authority has stated that (a ban on online sales) constitutes, in its entirety, a restriction on freedom of competition—a view also held by French courts, whereas Article 4(c) of European Commission Regulation No. 2022/720 stipulates that a ban on online sales (without objective justification) constitutes an anti-competitive restriction. It is worth noting in this regard that the Iraqi legislature has not adopted any of the aforementioned forms of online sales bans, as the provisions of Article (10) of the Iraqi Competition Law do not contain specific language for this purpose, unlike the other prohibitions referred to in that article. This constitutes a legislative gap that should be

addressed, particularly given the widespread use of the internet, and the growing popularity of e-commerce platforms among manufacturers and distributors worldwide, as well as the role that the legal treatment of this restriction will play in protecting selective distribution networks, which will encourage such networks to expand their commercial activities in the Iraqi market. Returning to the legal dilemma between banning online sales without objective justification and an absolute ban, the European Court of Justice clarified that banning the use of online platforms such as Amazon is justified if the company employs a selective distribution system, as this ban aims to protect the luxury brand. It emphasized that, although it is true that selective distribution systems have an impact on competition in some cases, establishing a selective distribution system to ensure the prestige of luxury goods is, in principle, consistent with competition law to protect the brand's prestige and ensure the appropriate quality of products, thereby enhancing the brand's prestige. Thus, the European Court of Justice considers that ensuring an appropriate brand image constitutes a legitimate justification for restricting competition. However, based on the "principle of equivalence" between traditional and online sales or markets, a supplier may prohibit its distributors and agents from selling through online marketplaces as a sales channel, but not through full-fledged advertising channels such as search engines or price comparison websites, as the latter remains a strict restriction and is unacceptable under the principle of fair competition²⁶.

However, based on the "principle of equivalence" between traditional and online sales or marketplaces, a supplier may prohibit its distributors and agents from selling through online marketplaces as a sales channel, but not through full-fledged advertising channels such as search engines or price comparison websites, where such restrictions remain overly stringent and unacceptable under the principle of fair competition²⁷.

As for the French Court of Cassation²⁸, it held that restricting online sales in a selective distribution agreement renders the agreement void. In one illustrative case, the dispute centered on France Télévisions' broadcast of a program promoting a website that featured products from a selective distribution network, without obtaining the network's consent. Coty France, a leading company in the luxury cosmetics and fragrances sector, filed a lawsuit against France Télévisions and the website's publisher, the American company Marval, seeking damages. However, both France Télévisions and Marval claimed that Coty France's selective distribution network was illegal, and the Paris Court of Appeals ruled in their favor, finding that three provisions of the selective distribution agreement violated the provisions of Article 101(1) of the Treaty on the Functioning of the European Union, thereby rendering the selective distribution network invalid. However, this ruling is currently under review, particularly following the adoption of the EU's block exemption regulation, under which the presence of clauses restricting competition does not necessarily entail the invalidity of the entire selective distribution network. We will attempt to analyze this further below.

Section Two

The Legal Consequences of Practices Restricting Competition in Selective Distribution

Some legal scholars²⁹ hold that selective distribution in and of itself constitutes a restriction on and a violation of legitimate commercial competition in general, basing this view on the provision of Article (101/1) of the Treaty on the Functioning of the European Union³⁰, which considers the selective distribution system to be the true embodiment of vertical restrictions on competition³¹, because it prevents the supplier from selling its products to anyone other than specific distributors who must meet certain selective criteria, and prohibits these distributors from selling to unauthorized dealers, which leads to a reduction in the number of competitors, closes the market to new entrants, and reduces intra-brand competition, in addition to creating a degree of monopolistic control by strengthening the market power of large companies through strict control over sales outlets and marketing conditions.

This view contains an element of truth, as the application of selection criteria that go beyond the requirements of effective product marketing will result in the exclusion of distributors who are capable of carrying out normal marketing of the products in concern. However, it cannot be accepted unconditionally, as a distinction must be made between simple selective distribution agreements or systems, based on selection justified by effective product marketing, and complex selection, which in turn includes selection criteria that are unnecessary and not essential for effective product marketing. Thus, the exclusion of distributors resulting from the application of complex selection is undesirable and reprehensible, unless it is legally exempted³².

However, accepting the arguments set forth in the preceding opinion would lead to the misconception that **the legal effect** of the restrictions inherent in selective distribution is an **"absolute prohibition"** on the selective distribution network—a view we do not endorse **for two reasons** - :

First: A ruling of an absolute prohibition would result in the loss of the many benefits of selective distribution, namely the protection of the value of luxury trademarks, Providing high-quality customer service through sufficient product knowledge when purchasing from select, qualified retail outlets, as well as reducing distribution and promotional costs compared to intensive distribution that relies on widespread coverage, in addition to maintaining consistent and stable product pricing and limiting indiscriminate price competition among retailers, since, in a selective distribution network, it is the manufacturer who sets the average prices for its products, as we noted earlier.

Second: This effect would conflict with well-established legal principles, such as the principle of the stability of commercial transactions and the rule that contracts should be interpreted as far as possible to give effect to their original intent, through which the selective distribution network can be maintained while merely prohibiting the clause restricting competition contained in the selective distribution contract. The other view in legal scholarship³³, which is closer to legal logic, holds that the legal effect that can be drawn from the restrictions contained in selective distribution is a **"relative prohibition"** of the clause that constitutes a restriction on commercial competition—known as **"blacklist provisions"**—rather than a ban on selective distribution as a whole, which is considered a restriction on competition,

According to this opinion, the mere existence of a “**black clause**” does not render the entire network illegal, as the clause’s effect and purpose must be examined in context—whether or not it restricts competition through its purpose or effect—since this clause may be severable or subject to a restrictive interpretation, thereby allowing the distribution system to remain in effect. This opinion is based on the ruling of the Paris Court of Appeal in its 2019 decision³⁴, which held that the legality of a selective distribution network must be assessed on a case-by-case basis, depending on the actual effects of the clauses on competition and that the mere existence of “exclusionary terms” is not sufficient to conclude that the network is unlawful. The French Court of Cassation also ruled in 2022³⁵ that selecting distributors based on qualitative criteria is lawful, provided it is applied uniformly and proportionately; the mere existence of restrictive clauses is not sufficient to invalidate the network, but rather the existence of a genuine anti-competitive effect must be proven. It is worth noting that a new approach³⁶ has emerged from the aforementioned opinion, which supports the concept of a “relative prohibition” on restrictions on competition in selective distribution, but from a different perspective than the previously presented opinion, as it holds that relative prohibition does not entail prohibiting only the clause that constitutes a restriction on competition, but rather maintaining all clauses of the selective distribution contract or network, even those that include restrictions on competition. This opinion is based on reasonable legal arguments, namely: **First**, the exceptions provided for by law that permit such restrictions and the maintenance of distribution networks in certain cases, as is the case with the European Union’s Block Exemption Regulation (BER), which exempts vertical agreements from invalidity³⁷. **Second**: Permitting distribution agreements that serve the public interest and contribute to economic development, provided that the assessment of these exceptions is subject to the authority of competition and antitrust councils. Some comparative laws and judicial precedents have referred to these exceptions, but space does not permit a detailed discussion of them in this section. Returning to the Iraqi legislature’s position on this matter, we find that Article 10 of the Iraqi Competition and Antitrust Law adopts the approach of absolute invalidity for agreements that impose a restriction on competition in its entirety, which is inconsistent with the reasons we previously mentioned regarding the absolute prohibition of selective distribution agreements. Or by maintaining the selective distribution network, subject to restrictions in cases provided for by law or where the public interest so requires, especially since these two cases do not conflict in practice, in cases where the restriction is not expressly exempted by law or is not related to the public interest, it is possible to maintain the selective distribution network after prohibiting only the restriction it contains, provided that the prohibited restriction does not affect the existence or validity of the selective distribution agreement. This calls for concrete action to amend the provisions of the Competition and Antitrust Law regarding the prohibition of distribution agreements in general and selective distribution in particular, as well as to strengthen the role of the Competition Council in its oversight of selective distribution networks.

CONCLUSION

After completing our research on this topic, we have reached a set of key conclusions and recommendations, which are as follows :

First: Conclusion

1. The discussion of the concept of distribution—specifically selective distribution—reveals that it is a legitimate organizational tool aimed at protecting trademarks and industrial property rights and ensuring the quality of the products offered through it. It is not, in and of itself, a practice that restricts competition, but it may become a prohibited practice when it deviates from its objectives and turns into a monopolistic or exclusionary tool.
2. It has become clear to us that the unjustified expansion of selective distribution terms and conditions—particularly in cases involving bans on intra-network sales, resale price maintenance, and restrictions on online sales—will inevitably weaken competition within the distribution network and negatively impact consumers as a result of inflated prices and reduced choices.
3. The study revealed significant legislative shortcomings in the regulation of distribution models in general, and selective distribution in particular, under Iraq’s Competition and Antitrust Law, indicating that the Iraqi judiciary and the Iraqi Competition Council are not prepared to handle disputes arising from this type of commercial activity.
4. An examination of the implications of provisions that impose restrictions on competition in selective distribution has shown that the absolute prohibition adopted by the Iraqi legislature in Article 10 of the Competition and Antitrust Law is an ineffective rule that is inconsistent with the reasons we mentioned earlier, including freedom of trade and the principle of the stability of transactions, as well as the rule that contracts should be adjusted as much as possible; this requires the adoption of the “reasonable assessment” rule to balance the harms resulting from such restrictions against the benefits derived from selective distribution networks in general, before ruling to prohibit them by law.

Second: Proposal

1. We recommend that the Iraqi legislature address the legislative gap regarding selective distribution by issuing directives or implementing regulations that define the rules governing selective distribution in both the physical and digital environments, and establish clear criteria for distinguishing between legitimate, objective terms and exclusionary terms intended solely to restrict competition.
2. Strengthen the role of the Iraqi Competition Council in oversight and investigation, and develop its technical and digital capabilities to ensure the monitoring of any prohibited transactions within selective distribution networks.

3. We recommend that the legislature adopt the principle of "rational assessment" when evaluating the provisions contained in selective distribution agreements, and amend the provisions of Article (10) of the Iraqi Competition and Antitrust Law to read as follows (Twelve: In this regard, distribution agreements that provide benefits to brands and consumers exceeding the extent of any negative impact shall be taken into account, even if they include any of the practices referred to above.)
Thirteenth: Excluding selective distribution agreements from the scope of the prohibition in cases provided for by law, and when such agreements relate to the public economic interest.
4. The Iraqi Competition Council should issue a guide for emerging companies and distributors on the operating mechanisms of selective distribution networks, outlining the general principles and prohibited provisions governing the design of such networks, as well as a model contract that can be adopted by the parties to these networks to provide legal certainty and an attractive legal environment for luxury brands, and to minimize instances of legal disputes.

Endnotes

- ¹ A simple analysis of the concept of a network from a practical standpoint requires viewing it as a group of similar contracts that fall into one of three categories (a commercial concession contract, a commercial licensing contract or "franchise," or a selective distribution contract). Dr. Belazam Mabrouk, "The Legal Concept of Distribution Networks," Academic Journal of Legal Research, Vol. 11, Issue 3, 2020, p. 70. The supplier or producer selects the type of network to establish based on the nature and importance of the distribution of their products or the services they provide, as follows: 1. If the products require heavy investment, a commercial concession is used. 2- If the products or services require technical expertise, a franchise network is established. 3- If the products or services are high-end or highly technical, the supplier resorts to selective distribution. Dr. Hani Hamed Al-Damour, Distribution Methods, Wael Publishing and Distribution House, Jordan, 1st edition, 2000, p. 3.
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