

European Commission
Ms. Maria Rehbinder
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Brussels, 12 September 2014
EG/RB/140912-commercial agents-EN-FIN

SUBJECT: Public Consultation on the Evaluation of the Commercial Agents Directive

Dear Ms. Rehbinder,

I am writing on behalf of Independent Retail Europe, the trade body representing groups of independent retailers at EU level. We group together over 300,000 independent retailers across Europe, with a combined retail and wholesale turnover of over 900 billion Euros. Our members are directly responsible for over five million jobs in the European retail sector.

I would like to address the following points related to the public consultation on the evaluation of the Commercial Agents Directive. Please regard this letter as our consultation response, although it addresses a use of the Commercial Agents Directive that is different to a traditional principal/agent relationship.

The use of agency agreements for e-commerce operations within groups of independent retailers

Context

Resale Price Maintenance (RPM) between independent retailers operating in a group, particularly in the context of online sales, is an absolute, and urgent, necessity. If independent retailers, operating in a group, do not have a unified pricing policy, they are not able to develop an efficient online service and a uniform brand image. This creates a huge competitive disadvantage for groups of independent retailers compared to integrated chains, who use common pricing to develop their brand image. For example, price can convey quality or value, as an image, depending on the image a brand wishes to project.

Currently groups of independent retailers have not been able to set up an efficient single consumer facing e-commerce platform due to RPM restrictions. Instead, each independent retailer will have his own web offering. This leads to hundreds, if not thousands of different websites of independent retail group members which dilutes the brand image of a group, weakens a brand in the mind of the consumer and prevents the efficiency gains, such as centralising administration, normally accrued by being part of a group structure. Allowing intra-group RPM in this context will benefit consumers by boosting inter-brand competition as efficient cooperation in groups is the only way for independent retailers to compete with integrated chains. Indeed, it is in the long-term consumer interest to have a strong 'independent' sector and therefore a diverse retail sector. To aid this, there should be a level playing field for the group/integrated chain business models to compete on.



Groups of independent retailers pass the efficiencies created by RPM within a group of independent retailers onto consumers in the form of more choice and lower prices.

Agency agreements in the 'group' business model

As you know, there are numerous difficulties in allowing RPM under EU competition law. As such, our members have been trying to find alternative (less risky, more legally certain) ways to set up e-commerce platforms. It is indispensable that they find a way of carrying out efficient e-commerce operations as omni- or multi-channel retail offerings are standard consumer expectations.

An alternative way to structure group/independent retailer e-commerce offerings has been through the use of agency agreements, where the independent retailer acts as an agent for the wider independent retail group. This is not an ideal way for a group of independent retailers to operate as it goes against the spirit and philosophy of the business model, where the independent retailer has a lot of freedom to run his own business as he wishes, in addition to driving the overall strategy of the wider group.

However, as the independent retailers are ultimately the shareholders in the wider group they still receive some benefit from this agency structure. **At the moment it is seen as a decent compromise approach to developing an online offering, hence we do not want any changes to the Commercial Agents Directive.** Changes to the legal framework for agency agreements would cause more complications for groups of independent retailers looking for a solution to develop an online sales platform whilst working around the incompatibilities between the current competition law doctrine on RPM and the group of independent retailers business model.

Looking at it pragmatically, for certain groups of independent retailers the Commercial Agents Directive is absolutely necessary to be able to meet, to an adequate certain, extent consumers' e-commerce expectations.

Regarding our wider concerns on RPM and e-commerce we hope that the issue will be addressed within the High Level Group on Retail Competitiveness.

Kind regards,



Else GROEN
Director General

