

Deckers v Up & Running: Court of Appeal clarifies the test for 'by object' restrictions in selective distribution under UK competition law

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In brief

- The Court of Appeal has unanimously overturned the CAT's finding that HOKA manufacturer, Deckers, infringed competition law when it refused to allow one of its retailers, Up & Running, from selling its shoes on a discount website.
- In doing so, the court has clarified when controls in a selective distribution system amount to a "by object" restriction under the Competition Act 1998, confirming that such a finding requires assessment not just of the arrangement's objective or purpose, but also its content and scope, legal context, and economic context (including market structure and market shares).
- Applying this framework, the court found that there was no basis upon which the CAT could have reached the conclusion that the arrangement had the object of restricting competition, placing significant weight on the narrow scope of the restriction, the strength of inter-brand competition, and the parties' relatively small market shares in the market.

- The court further found the conduct would have been block-exempt in any event, as the relevant hardcore restrictions were not made out on the facts and each party's market share was well below the 30% threshold.
- This judgment will be good news for businesses operating selective distribution systems as it sets the record straight on the importance of the economic reality to any "by object" analysis and confirms that "hardcore" pricing restrictions are not automatically restrictive by object. The scope and objective of restrictions on distributors remain important and in-house legal teams should ensure their arrangements are carefully designed and criteria are applied consistently and objectively.

On 8 May 2026, the Court of Appeal handed down its highly anticipated judgment in *Deckers UK Limited v Up & Running (UK) Limited*, overturning the earlier [judgment](https://caselaw.nationalarchives.gov.uk/ewca/civ/2026/553) [https://caselaw.nationalarchives.gov.uk/ewca/civ/2026/553] by the Competition Appeal Tribunal (**CAT**). At the heart of the appeal was a fundamental competition law question: *when do controls imposed by a supplier within a selective distribution system on the outlets through which goods are sold and which impact price competition, amount to a restriction of competition "by object" under section 2 of the Competition Act 1998 (CA98)?* Otherwise known as the "Chapter I Prohibition", this provision prohibits agreements that may affect trade within the UK and have as their object or effect the prevention, restriction or distortion of competition within the UK.

Selective distribution systems are a widespread and generally lawful distribution model used by brands across premium retail, sports goods, fashion, and specialist consumer goods sectors, under which a supplier limits resale of its products to retailers that meet defined qualitative or quantitative criteria.

The Court of Appeal's finding is of real practical importance to businesses operating selective distribution systems, particularly in retail settings, where the desire to have control over online sales, pricing and brand presentation often sit in uneasy tension with competition law.

Background

The appellant, Deckers, supplied its HOKA-branded running shoes to Up & Running (**U&R**) on a wholesale basis via its selective distribution system from 2016 to 2021. U&R, founded in 1992, is a UK specialist running retailer selling shoes, including HOKA shoes, and accessories through both physical stores and its website, upandrunning.co.uk.

Deckers structured its distribution around two distinct channels: a "Main Retail Channel" for seasonal stock, supplied to an authorised network of retailers who were expected to align with HOKA's positioning as a prestige product; and a "Clearance Channel" for a group of specifically appointed online retailers to sell residual, out of season HOKA stock. Notably, Deckers also sold HOKA products directly to consumers (both online and through its own bricks-and-mortar stores) in both the Main Retail Channel and the Clearance Channel, placing it in direct competition with its authorised distributors, such as U&R.

The key controls imposed by Deckers can be found in Clause 15 of the terms and conditions imposed upon Deckers' distributors, and an email Deckers sent to its retailers in July 2019. Clause 15 required distributors to obtain Deckers' permission before they could sell HOKA shoes online. By email dated 10 July 2019, Deckers further said that retailers' websites should have a domain name that is "identical or similar" to the name of the retailers' physical store, otherwise they must notify Deckers.

In July 2020, U&R proposed the launch of a new, anonymised, unbranded clearance website: *"runningshoes.co.uk"*. The idea was prompted by the need to clear excess stock built up over the COVID-19 period, but the site would be retained as a permanent clearance channel. Deckers refused permission, saying that the proposal cut across the *"fundamental principles of its brand strategy"*. Nevertheless, U&R went ahead with the launch, and, in response, Deckers terminated supply to U&R on grounds of breach of contract.

U&R brought proceedings against Deckers in the CAT, alleging that Deckers' terms and conditions amounted to a restriction of competition by object in breach of section 2 of the CA98, in two closely related ways:

1. First, they restricted U&R's ability to market and sell HOKA products online, and more generally to make effective use of the internet as a sales channel (the **Online Sales Restriction**); and/or
2. Secondly, Deckers' attempt to prevent U&R from selling HOKA-branded shoes through its website was attempted retail price maintenance (**RPM**), and the decision to rely on Clause 15 to terminate supply was motivated by a desire to shut down the website in order to maintain higher prices for HOKA products (the **RPM Restriction**).

Deckers denied that there was a breach of the Chapter I Prohibition and argued that its selective distribution system was exempt from the prohibition by virtue of the Metro "safe harbour" criteria (Case C-26/76 Metro v Commission) and the Vertical Block Exemption (Commission Regulation (EU) 330/2010) (**VBE**).

The CAT's findings

The CAT found in favour of U&R on liability, holding that Deckers' selective distribution system failed the Metro criteria and infringed the Chapter I Prohibition "by object" by reason of the Online Sales Restriction and the RPM Restriction. Fundamentally, the CAT found there was no "legitimate aim" or "plausible explanation" for the Clause 15 and its application, other than to restrict intra-brand competition (that is, U&R's freedom to make passive sales via the internet) and to prevent discounting by retailers on clearance websites. On the CAT's reading of case law such as *Super Bock*, if the only plausible explanation for conduct is the restriction of competition, it necessarily falls within the scope of a "by object" infringement: there was no need for any wider economic assessment.

Having concluded that Deckers had committed two separate infringements of the Chapter I Prohibition which the CAT found to be "hardcore restrictions" in terms of the VBE, the CAT found that the VBE did not apply to relieve Deckers of liability.

The CAT observed that the facts of the case were unusual – including because it found that Deckers' selective distribution system was "incomplete and flawed in its design and operation" and Deckers could not evidence its position. The CAT was therefore careful to emphasise that its decision should not be taken to mean that selective distribution arrangements falling outside the Metro "safe harbour" will generally amount to restrictions by object or hardcore restrictions. Acknowledging that the limitation of price competition is inherent in selective distribution systems, the CAT said compliance is about ensuring there is a legitimate aim and a clear link between that aim and a well-designed set of vertical restraints.

Deckers appealed the CAT's decision on the grounds that the CAT:

- mischaracterised Deckers' conduct as involving hardcore RPM;
- failed to apply the correct test in law for establishing a "by object" infringement;
- failed to properly apply the correct law to the facts of the case (and if it had, the CAT would have had to conclude that Deckers' conduct was not capable of sufficiently harming competition); and
- failed to properly apply the VBE.

The Competition and Markets Authority (**CMA**) intervened in the appeal, noting that it too considered the CAT's judgment to contain a material error of law. The appeal was heard in February 2026, with judgment handed down on 8 May 2026.

The Court of Appeal's judgment: clarifying the legal test

The Court of Appeal allowed Deckers' appeal in its entirety, agreeing that the CAT had indeed erred in law. Critical to the Court of Appeal's judgment was its rejection of the CAT's interpretation of case law including *Cartes Bancaires*,¹ *Ping*,² *Generics*³ and *Super Bock*⁴ regarding the approach to assessing "by object" restrictions. Where the CAT saw objective or purpose as dispositive of the question of infringement, the Court of Appeal confirmed that such a finding requires a sufficient degree of harm to competition, assessed not only by reference to objective or purpose, but also:

1. the content of the agreement or its scope;
2. its legal context; and
3. its economic context, including market structure, inter-brand competition, and market shares.

With reference to this framework, the Court identified five specific errors in the CAT's conclusions:

1. That the test for assessing a "by object" infringement depends on the objective or purpose of the restriction and that, absent a plausible explanation, a clause with a restrictive purpose is a restriction by object.
2. That other factors were treated as irrelevant to this analysis.

3. That a selective distribution agreement falling outside the Metro "safe harbour" was, or was very likely to be, a restriction by object.
4. That classification as a "hardcore" restriction under the VBE was equivalent to a restriction by object under the Chapter I Prohibition (which it is not).
5. That unfettered discretion in contractual terms was inherently an object restriction because it could be used for an anti-competitive purpose.

Applying the test to the facts

Applying the test to the CAT's own factual findings, the court ultimately tested whether Deckers' termination of supply to U&R could ever have sufficiently impacted competition. Its conclusion was clear: it could not.

Working through each element in turn:

1. On **content**, the court emphasised that the narrower the restriction, the more limited its ability to exert harm. In this case, a number of factors combined to underscore the restriction's limited scope including, for example, that it concerned a tranche of clearance stock, that it was targeted at a single retailer and a single anonymised website only, and that the number of pairs of shoes affected represented only a tiny subset of the relevant product market.
2. On **objective**, the court accepted that Deckers' conduct was linked to concern about the level of price discount that U&R intended but emphasised that objective was one factor, not the whole test. Because the CAT identified a pricing-related objective, it failed to consider and give appropriate weight to the fact that Clause 15 and the July email were also legitimately designed to protect the integrity of Deckers' distribution system.
3. On **legal context**, the court canvassed relevant case law and noted that restrictions inherent in selective distribution systems which mute price competition or those which prohibit particular types of internet sales are not, without more, a restriction of competition by object - and the classification of a restriction as "hardcore" under the VBE did not, of itself, alter that analysis.
4. On **economic context**, which proved crucial to the outcome, the court referred to the economic evidence that Deckers was the sixth largest supplier in a market where approximately 10 suppliers shared 70% of the market, and there were no material barriers to entry. Taken together with the limited scope of the restriction, the share of the market that would be affected by the restriction was therefore very small. Further, the classification of the agreement as vertical rather than horizontal gave the court comfort that it presented "systemically lower risk to competition", especially given the evidence of strong inter-brand competition.

On the VBE question, the court found that the relevant "hardcore" restrictions (RPM and passive sales) as that term is used in the VBE were only triggered if they restricted pricing freedom or customer access to goods (respectively) in a "real and practical sense". This was not made out on the facts, particularly because of the narrow scope of the restriction in this case. In addition, each party's market share was well below the 30% threshold.

Accordingly, the court was satisfied that the challenged conduct would have been block-exempt.

The court declined to remit the case to the CAT, finding that the CAT had all the relevant findings before it but simply failed to draw the inevitable conclusion. On those facts, Deckers' conduct did not amount to a restriction by object under the Chapter I Prohibition – and in any event, it would have been exempt under VBE.

Key takeaways

Although the Court of Appeal's judgment is grounded heavily in the specific facts of this case, three useful points emerge, particularly for suppliers operating selective distribution systems.

1. "Hardcore" pricing restrictions are not automatically restrictive by object

Even conduct that is classified as "hardcore" RPM cannot be automatically treated as a restriction "by object": these two concepts are not co-extensive. There must still be an assessment of whether the restriction reveals a sufficient degree of harm in its full legal and economic context bearing in mind the restriction's scope/content, objectives, and legal and economic context.

2. The scope and content of any restriction matters – and context can be decisive

Where the CAT appeared to focus almost exclusively on the purpose of the restriction, the Court of Appeal clarified this is only one of the factors to be considered. The Court of Appeal placed significant weight on the genuinely narrow scope of the restriction in this case as well as the competitive market dynamics (including the strength of inter-brand competition and market shares).

3. Draft controls carefully and apply them consistently

Whilst the Court of Appeal rejected the idea that a broad, unfettered discretion is inherently unlawful "by object" merely because it could be abused, wide discretion still significantly increases risk. Businesses should ensure their online channel controls have clearly articulated, objective, non-price rationales (such as brand presentation, consumer experience standards, and anti-free-riding protection) and apply those criteria consistently across the network, building procedural safeguards into refusal and termination decisions.

This judgment helpfully clarifies the approach to assessing selective distribution restrictions beyond the Metro "safe harbour" and confirms that even when a restriction is partly motivated by curbing price competition, it will not automatically infringe competition law. This should give greater confidence to suppliers operating well-structured selective distribution systems pursuing legitimate commercial aims. However, the emphasis is on the context: suppliers with significant market positions or those seeking to enforce broader

restrictions than seen in Deckers can expect much greater scrutiny. And as always with selective distribution, the quality of design, documentation, and consistent application remains critical.

Mishcon de Reya's Competition team advises businesses across a broad range of sectors on the design, review, and compliance assessment of selective distribution systems under UK competition law, including in relation to the Vertical Agreements Block Exemption Order and the Chapter I Prohibition.

If you would like to discuss what this judgment means for your distribution arrangements, please contact [Chanelle Cattin](#) or [Victoria Hirst](#) of our Competition team.

¹ *Case C-67/13P Groupement des Cartes bancaires (CB) v European Commission* (11 September 2014).

² *Ping Europe Limited v CMA* [2020] EWCA Civ 13 (21 January 2020).

³ *Case C-307/18 Generics (UK) Ltd v CMA* ECLI:EU:C:2020:52 (22 January 2020).

⁴ *Case C-112/22 Super Bock Bebidas SA v Autoridade de Concorencia* (29 June 2023).

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