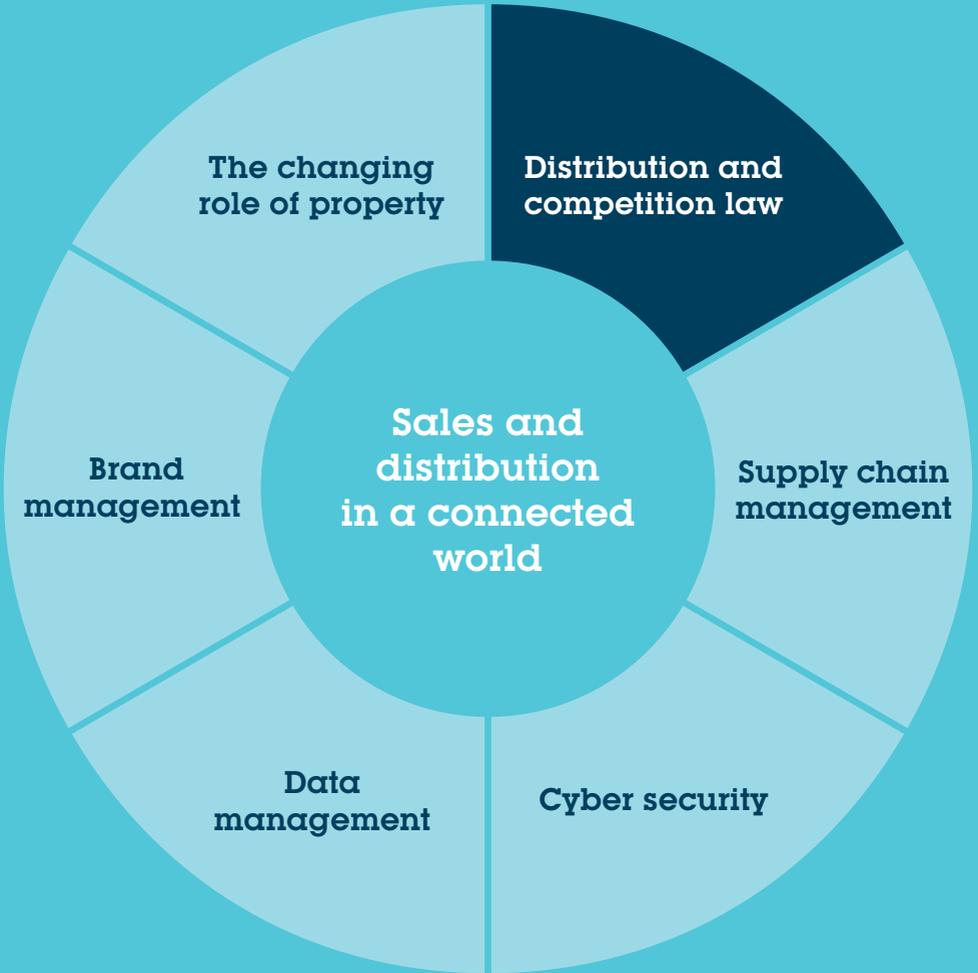


Retail and Consumer Brands in Tomorrow's World





Distribution and
competition law

Helping you
succeed in
tomorrow's
world.

The line between 'competitive' and 'anti-competitive' is not always clear, but knowing the difference can give you a competitive advantage

What's changed?

The internet has led to an explosion in choice and price transparency for consumers, but many brand owners fear that their brand will be damaged in a "race to the bottom" online. To counter this, manufacturers increasingly seek to control access to their products.

Tactics include:

- Restrictions on the use of third party marketplaces
- Attempts to control resale pricing
- Restrictions on onward sales by resellers
- Stopping online sales
- Setting criteria for online sales
- Restrictions on the use of AdWords and other search advertising.

Brand owners beware!

Some of these restrictive activities are deemed unlawful and investigations by the competition authorities are increasingly frequent. To add to the confusion, many of these restrictive tactics can be legal in some circumstances – and illegal in others.

Where these activities are judged illegal, competition authorities can impose fines of up to 10% of worldwide turnover and the 'victims' can bring follow-on damages claims.

What brand owners need to do now

It's important that brand owners review their distribution systems to:

- assess where they may be exposed to the risk of legal action
- determine the opportunities lawfully to protect the brand online (which, as the Coty decision above confirms, may be more than you think)

How OC can help

Whilst there are challenges in lawfully controlling your brand online, emerging guidance does present opportunities as well as risk.

We are experts in helping our clients to navigate the sometimes conflicting case law and strike the right commercial balance between protecting the brand and minimising legal exposure.

The Coty decision 2017:

On 6 December 2017, the Court of Justice of the European Union issued a judgement confirming the ability of luxury brands to restrict the use of online marketplaces when operating a selective distribution system. Provided the requirements of selective distribution are complied with (including that the manufacturer does not itself use the platform), this decision will give brand owners greater control over the resale of their products.



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