



International Distribution Institute

# IDI CONFERENCE 2019

Cernobbio, 14-15 June 2019

## **WARRANTING FLEXIBILITY IN DISTRIBUTION NETWORKS**

**Strategies for adapting quickly and effectively to  
market developments**

Managing distribution networks (agency, distributorship, franchising, etc.) necessarily requires a great amount of flexibility permitting them to rapidly adapt to changing market conditions. Suppliers must be prepared to change strategies, structure of their distribution network, counter-parties, etc., whenever this appears necessary or appropriate, in order to face the growing impact of competition.

Much can be done in this direction by anticipating possible problems and by preparing in advance solutions which may facilitate such adaptation. For instance, suppliers should be prepared to change the structure of their distribution network, for instance, by switching from agents to distributors or vice-versa; by taking control of the retail market through selective distribution or franchising; by merging their network with another one; by terminating counter-parties which are no longer performing or adequate for their new strategy. These changes must be implemented as quickly and effectively as possible with reasonably foreseeable costs.

The purpose of this conference is to analyze several "hot topics" of quite different nature which may hamper a quick and effective adaptation of the distribution network and discuss the possible means to overcome the respective problems.

<b>MORNING SESSION</b>	
<b>CHAIR</b>	<b>Fabio Bortolotti</b> , Buffa Bortolotti & Mathis, Turin; Chair IDI
08:30-09:00	<b>Registration</b>
09:00-09:20	<b>Welcome</b> <b>Fabio Bortolotti</b> , Buffa Bortolotti & Mathis, Turin; Chair IDI <b>Paola Grassi</b> , Unindustria Como, Como
09:20-09:30	<b>Presentation of the IDI website</b> <b>Silvia Bortolotti</b> , Buffa Bortolotti & Mathis, Turin; Secretary General IDI, IDI country expert for Italy
09:30-09:40	<b>Introduction</b> The theme of our conference of this year covers a variety of issues which have in common that they all involve the issue of warranting flexibility in managing a distribution network, which must adapt whenever necessary to new market conditions and new strategies. This is why we have decided to concentrate in this session on several different issues which have in common the purpose of increasing flexibility and facilitating adaptation. This will give us the opportunity of discussing together a variety of recurring themes regarding changes in strategies and their consequences, like adaptation and/or termination of existing agreements, and restructuring of the network, which will be the subject matter of the following presentations. <b>Fabio Bortolotti</b> , Buffa Bortolotti & Mathis, Turin; Chair IDI, IDI country expert for Italy
09:40-10:20	<b>DISCUSSION PANEL: Establishing direct control over distribution: acquisition of distributor, joint venture with local partner</b> With respect to important markets, the supplier's final objective will be in many cases that of directly assuming the role of distributor, by establishing a wholly owned company, or a joint venture with a local partner (especially for countries where this approach is more appropriate). The reasons for such strategy are manifold: reduce costs (e.g. where the distributor's margin has become too high in consideration of the turnover attained); direct control of marketing strategies, advertising, etc.; and closer coordination with the supplier's company (or group). In this context various scenarios are possible: the direct acquisition of the existing distributor, or operation through a joint venture agreement with the distributor. Another possible scenario is that of establishing a distribution company through joint venture with a local partner. The members of the panel will first discuss the various scenarios and thereafter deal with a number of common issues: with respect to acquisition, integration of the management of the acquired company with the supplier. With respect to joint ventures, the strategies (and devices) for effectively controlling the operation of the jointly owned company; shareholders' agreements; actual balance of powers within the company; participation of supplier's management, etc. Finally, the supplier must determine in advance the conditions for acquiring the full ownership in case of deadlock or as a solution for the future. <b>CHAIR: Ignacio Alonso</b> , Even Abogados, Madrid; IDI agency & distribution country expert for Spain <b>Filippo Maria Andreani</b> , Head of Legal M&A - Head of Digital and HangarBicocca Legal Affairs, Pirelli & C. S.p.A., Milan <b>Julie Bazinet</b> , Director, Legal Affairs, Gildan Activewear SRL, Barbados
10:20-10:30	<b>Discussion</b>
10:30-10:50	<b>Changing terms and conditions during the contract</b> There are several situations where the principal may need to change the existing contract conditions during the life of the agreement. He can always do so if the counterparty (agent, distributor, franchisee) is willing to agree, but obtaining such approval during the life of the contract may not always be easy and may require a difficult negotiation. In order to limit this problem, the contract can provide the right of the principal/supplier to impose unilaterally certain modifications regarding contractual customers, territory, rate of

	<p>commission, minimum turnover to be attained. This type of solution may not be admissible or require the respect of particular conditions (e.g. objective criteria justifying the change, good faith, etc.), to be verified in advance under the applicable domestic law.</p> <p>An alternative solution consists of limiting from the outset the scope of the contract (mainly as regards exclusivity) and reserving the right to grant extensions which can be revoked at any moment: determining restrictively the range of contractual customers (e.g. only resellers at the retail level, but no end users), limiting the exclusive territory (while permitting sales to other territories not covered by the network).</p> <p><b>Burghard Piltz</b>, Halers &amp; Vogel, Hamburg; IDI distribution country expert for Germany</p>
10:50-11:20	<b>Coffee break</b>
11:20-11:55	<p><b>DISCUSSION PANEL: Preparing for termination</b></p> <p>No contract will last forever, especially in the field of distribution, where the need to replace a party will arise sooner or later. This is why principals/suppliers/franchisors should be prepared for a future termination by providing solutions which make termination easier, speedier and less costly.</p> <p>The first issue is to determine the possible termination scenarios and to plan for them.</p> <p>Secondly the parties should choose between contract for indefinite term/fixed term and possible renewal conditions.</p> <p>Thirdly what contractual provisions can be inserted to make it easier to terminate for breach.</p> <p>Fourthly, what procedures should be followed to minimise the legal risks arising from a contract termination. This will include the use of informal meetings and mediation.</p> <p>Fifthly the parties may wish to enter into a termination agreement, which should take into consideration the expectations of both parties. What should such an agreement look like?</p> <p><b>CHAIR: John Pratt</b>, Hamilton Pratt, Warwick; IDI franchising country expert for UK</p> <p><b>Massimiliano Camellini</b>, General Counsel, Max Mara, Reggio Emilia</p> <p><b>Jaap van Till</b>, Loyal, Amsterdam; IDI agency &amp; distribution country expert for The Netherlands</p>
11:55-12:05	<b>Discussion</b>
12:05-12:25	<p><b>Damages in case of unlawful termination</b></p> <p>In principle damages for unlawful termination (mainly lost earnings during the period the contract would have continued) must be distinguished from goodwill indemnity (which is in principle due also in case of lawful contract termination). However, when the law provides long periods of notice to be determined by the courts (e.g. <i>rupture brutale</i> in French law) awarding damages for not respecting the period of notice may <i>de facto</i> amount to an indemnity for the goodwill developed.</p> <p>How should damages for untimely termination be calculated in agency, distributorship and franchising agreements? Loss of profit? Net sales/gross sales? Lump sum based on previous earnings/commission?</p> <p>Consider also a clause permitting lawful termination without notice (or before date of expiry) by paying a fixed amount (termination indemnity) based on previous earnings.</p> <p><b>Raimond Emde</b>, GvW Graf von Westphalen, Hamburg; IDI agency country expert for Germany</p>
12:25-12:45	<p><b>The right to goodwill indemnity and its gradual extension to distributorship and franchising agreements</b></p> <p>There is at present a trend towards extending the goodwill indemnity provided in many countries to commercial agency contracts to other contracts in the field of distribution like distributorship, franchising, etc.</p> <p>This result can be obtained through specific domestic statutes (e.g. Belgium) or through an application by analogy of the rules on commercial agency providing a goodwill indemnity or similar compensation. The speaker will give an overview of the present situation in some important jurisdictions. One interesting issue is whether the rules on agency, when applied by analogy to other types of agreements, maintain their mandatory character.</p> <p><b>Didier Ferrier</b>, Professor Law, University of Montpellier; Vice President IDI, IDI distribution &amp; franchising country expert for France</p>
12:45-13:00	<b>Discussion</b>
13:00-14:30	<b>Lunch</b>

<b>AFTERNOON SESSION</b>	
<b>CHAIR</b>	<b>Jaap van Till</b> , Loyal, Amsterdam; IDI agency & distribution country expert for The Netherlands
14:30-14:50	<p><b>Termination for cause: general strategy</b></p> <p>Termination for cause (without notice) is an important tool for terminating an agreement quickly and at no cost, provided, of course, that the conditions for immediate termination are met. Most domestic laws contain the principle that a long term contract can be terminated in advance in case of substantial breach, exceptional circumstances, etc., but the specific rules vary from jurisdiction to jurisdiction. It is therefore advisable to regulate this issue in the contract, by providing a general clause and specify individual situations/breaches which justify immediate termination.</p> <p><b>Effectiveness of the listed circumstances/breaches.</b> Can the circumstances specified in the clause as justifying a termination for cause be invoked irrespective of their actual importance? Is it necessary to notify the termination within a short term and to specify the reasons for termination?</p> <p><b>Silvia Bortolotti</b>, Buffa Bortolotti &amp; Mathis, Turin; Secretary General IDI, IDI country expert for Italy</p>
14:50-15:30	<p><b>DISCUSSION PANEL: A typical situation: earlier termination for non attainment of minimum turnover</b></p> <p>One of the most frequently used reasons for early termination is the breach of a minimum turnover obligation. While the unsatisfactory performance as such will normally not justify a termination for cause, agreeing a specific minimum turnover to be attained makes it easier to justify earlier termination. Negotiating appropriate clauses implies a number of possible options:</p> <ul style="list-style-type: none"> <li>- Construing the minimum turnover obligation as an obligation of result or an obligation of means? The first alternative may be easier to enforce.</li> <li>- Agreeing yearly on the threshold or entitling the supplier to determine a reasonable amount? In case the supplier reserves the right to determine the amount unilaterally, which criteria must be observed? Reasonableness? Objective criteria like turnover of other distributors?</li> <li>- Clauses whereby distributor agrees to accept reasonable amount or similar compromise solutions.</li> <li>- Consequences of non attainment: termination, cancelling exclusivity, reduction of scope of contract with respect to territory, products, contractual customers, etc.</li> </ul> <p>Effectiveness of the clause: to what extent can the distributor invoke external circumstances (market conditions) or excessive threshold imposed by supplier? Can the supplier request damages for the non attained turnover? In case of agency, can the termination for non attainment of a minimum turnover be attributed to the agent in order to exclude his right to goodwill indemnity?</p> <p><b>CHAIR: Marco Hero</b>, Schiedermaier, Frankfurt am Main; IDI franchising country expert for Germany</p> <p><b>Sara Citterio</b>, Corporate Affairs, Legal and Compliance Manager, Trussardi, Milan</p> <p><b>Faisal Daudpota</b>, Daudpota International, Karachi</p>
15:30-15:40	<b>Discussion</b>
15:40-16:00	<p><b>Other typical clauses: insolvency/bankruptcy; change of control</b></p> <p>A common clause which can be found in most distribution agreements provides the right to terminate for cause in case of insolvency of the other party.</p> <p>As regards insolvency as such, it is common practice to provide that non-payment or late payment constitutes a reason for termination without notice. The clause may provide conditions which require a certain threshold or which provide the possibility for the defaulting party to remedy. Can the clause be invoked if delayed payments were tolerated in the past? What are the effects of a non-waiver clause in this case?</p> <p>On the contrary, clauses providing the right to terminate for cause in case of bankruptcy may be ineffective under the applicable law. Alternative strategy: invoking non payment and terminating before bankruptcy.</p> <p>Finally, what would be the best strategy to be followed in dealing with distributors who face financial problems: increase credit and risk or extend payment and increase risk of bankruptcy of the distributor?</p>

	<p>The right to termination in case of change of control is essential if the counterparty has been chosen on the basis of quality of specific individuals within the distributor company. Should the distributor be given the possibility to give adequate warranties that the change of control does not affect his ability to carry out his contractual obligations?</p> <p><b>Larry Weinberg</b>, Cassels Brock LLP, Toronto</p>
16:00-16:30	<b>Coffee break</b>
16:30-17:00	<p><b>DISCUSSION PANEL: Competing perspectives of post-termination obligations in cross-border distribution and franchise agreements</b></p> <p>Several issues arise at contract termination that can be addressed in advance in the contract, including: effective and agreeable non-compete clauses; ownership and disposition of required products and inventory; post-termination rights related to trademarks and other IP; control of point of sale locations; ongoing supply related to pre-termination activities; and many other. The panelists will address these issues from the perspective of the franchisee/distributor; the master franchisee, and the franchisor/supplier, in different jurisdictions.</p> <p><b>CHAIR: Carl Zwisler</b>, Gray, Plant, Mooty, Mooty &amp; Bennett, PA, Washington DC; IDI franchising country expert for USA</p> <p><b>Adib A Dib</b>, GM &amp; Chief Legal Officer, Ali Abdulwahab Al Mutawa Commercial Co K.S.C.C, Kuwait City; IDI agency &amp; distribution country expert for Kuwait</p> <p><b>Ronald Gardner</b>, Dady &amp; Gardner PA, Minneapolis</p>
17:00-17:30	<b>Discussion</b>

## General Meeting of IDI members

**17:30 - 18:30**

At this general meeting, to which non members are also invited, the officers of IDI will inform the members about the current situation of the Association, the results achieved in 2018 and the plans for the following years.

The participants will be kindly invited to share their views and opinions about the activity of IDI and make suggestions for the future.

### Workshop 1: Negotiating agreements for distribution within department stores

Selling products within specific areas in a department store is a very important means of distribution, especially for luxury goods, which can benefit from the renown of the department store and of the neighbouring suppliers. At the same time this is a profitable activity for the department store, if it can offer a selection of prestigious brands to its customers.

There is a variety of contracts dealing with these situations: concessions, corner agreements, shop-in-shop, consignment agreement, contrat de vente à condition, contrat de démonstration, although certain provisions are common to many of them.

The purpose of this session is on the one hand to give a general overview of the various types of agreement and on the other hand to identify and discuss the critical issues and possible solutions.

<b>CHAIR</b>	<b>Silvia Bortolotti</b> , Buffa Bortolotti & Mathis, Turin; Secretary General IDI, IDI country expert for Italy
09:30-09:50	<p><b>Different contracts used in this framework</b></p> <p>Suppliers of branded goods (especially luxury goods) sell their products through department stores, by using different contracts: concession, selective distribution, wholesale distribution agreements, etc.</p> <p>The contents of such agreements can also vary depending on the specific choices and circumstances: for instance, within the wholesale contract, the transfer of goods can be regulated under a contract of sale upon condition, consignment, or commission contract; the personnel can be hired either by the brand, or by the DS; etc. The speaker will provide an overview of the different contractual forms.</p> <p><b>Silvia Bortolotti</b>, Buffa Bortolotti &amp; Mathis, Turin; Secretary General IDI, IDI country expert for Italy</p>
09:50-10:20	<p><b>Negotiation of concession contracts: the department store's perspective</b></p> <p>The concession agreement examined from the perspective of two department stores of different jurisdictions (Italy and The Netherlands): what are the main differences and criticalities? Aspects concerning the lease: possible applicability of rules on commercial leases (and possible administrative rules); rules on "lease of business"; the Italian "contratto di affidamento di reparto". Further important needs and criticalities seen from the DS perspective: changes, fittings, costs of furniture, duration, relocation, termination and consideration for the use of the area, the ownership of customers' data etc.</p> <p><b>Alessandro Guidobono Cavalchini</b>, General Counsel, Rinascente, Milan  <b>Barbara Vogel</b>, Head of Legal, De Bijenkorf, Amsterdam</p>
10:20-10:50	<p><b>The brand's position in the commercial negotiation</b></p> <p>What are the main concerns and problems, from a commercial perspective, of companies selling internationally through department stores? One of the main issues certainly concerns difficulties in negotiation (less bargaining power); other typical problems are related to lack of sufficient revenues for the supplier, also on the light of discount policies decided by the DS; positioning and visibility of the products; managing the relationship through wholesale distributors; problems on termination and consequences of possible bankruptcy of the DS.</p> <p><b>Ignacio Alonso</b>, Even Abogados, Madrid; IDI agency &amp; distribution country expert for Spain</p>
10:50-11:10	<p><b>Issues related to the sale of products</b></p> <p>When the products are sold through the DS, the main issues related to the sale of products concern first of all the transfer of ownership of the goods, which have implications on the property of the stock and the supply of products, minimum turnover, price fixing. In most cases, the brand aims at retaining the ownership of the goods until they are sold to the customer: the contractual solutions chosen to that aim (commission contracts, sales under condition or on</p>

	<p>consignment, etc.) are often driven by tax reasons and by the purpose of excluding the application of antitrust rules on price fixing. Are these solutions always effective from the antitrust perspective? Would they not entail other type of risks, e.g. application of the rules on agency?</p> <p><b>Peter Gregersen</b>, Horten law firm, Copenhagen, IDI agency &amp; distribution country expert for Denmark</p> <p><b>Stephen Sidkin</b>, Fox Williams LLP, London</p>
11:10-11:40	<b>Coffee break</b>
11:40-12:00	<p><b>Some typical negotiated issues: exclusivity and consideration</b></p> <p>There have been some decisions in Europe (EC Court of Justice, German and English Courts), which evaluated the compliance of clauses limiting exclusivity (e.g. radius clauses, limitations on products, etc.) with EU antitrust rules. What are the main issues brought by the parties during negotiation of such clauses? How to draft clauses compatible with antitrust rules? Another essential contractual provision, which gives rise to discussion concerns of course the consideration: which are the main elements? Consideration for the disposal of the area; percentage on sales; service charge etc. What is the base for calculation? What are the main issues arising out during negotiation on these aspects? Can the DS ask for a consideration for the “click and collect” service?</p> <p><b>Giulia Comparini</b>, Cocuzza &amp; Associati, Milan</p> <p><b>Antonio Papalino</b>, Senior Legal Counsel, L'Oreal Italia, Milan</p>
12:00-12:40	<p><b>DISCUSSION PANEL: New ways for promoting sales within the DS and on-line</b></p> <p>Department stores, as other companies manufacturing and distributing branded products, are facing a strong competition from on-line sales. What are the main solutions found by DS for facing such situation? Flexibility: improving and always renewing the shopping experience within the shop (e.g. through temporary concession/pop-up contracts). Expanding their sales through the Internet, through Whatsup, Wechat, internet websites, etc. The panel will exchange views and experiences.</p> <p><b>CHAIR: Jeffrey Brimer</b>, Alexius Solutions LLC, Denver</p> <p><b>Marta Freilino</b>, Legal Counsel, la Rinascente S.p.a., Milan</p> <p><b>Sergey Medvedev</b>, Gorodissky &amp; Partners, Moscow</p> <p><b>Barbara Vogel</b>, Head of Legal, De Bijenkorf, Amsterdam</p>
12:40-13:00	<b>Discussion</b>
13:00-14.30	<b>Lunch</b>

## **Workshop 2: EU Competition. Hot topics on vertical restraints – issues to be addressed by the European Commission in the forthcoming reform of the block exemption regulation**

The purpose of this workshop is to analyze a number of "hot topics" which should be considered in the revision of the block exemption on vertical restraints and respective guidelines.

In fact, we believe that IDI is in a position to express the views and needs of undertakings dealing with distribution, and to transmit useful information about the actual problems companies engaged in distribution face with respect to EU competition rules.

It is our intention to draft after the conference, in collaboration with our members, a paper to be submitted to the European Commission, expressing our position on possible improvements of the existing rules regarding vertical restraints.

<b>CHAIR</b>	<b>Fabio Bortolotti</b> , Buffa Bortolotti & Mathis, Turin; Chair IDI; IDI country expert for Italy
09:30-09:50	<p><b>Hardcore restrictions and restrictions by object</b></p> <p>Regulation 330/2010 defines in Article 4 a number of “hardcore restrictions” which exclude the benefit of the block exemption (BER). Whether this list and the interpretation provided by the European Commission in the vertical guidelines should be amended will be one of the crucial</p>

	<p>issues which will be addressed in the forthcoming revision of the EU framework on vertical restraints.</p> <p>It seems undesirable that the list of hardcore restrictions should be extended generally to include all restrictions by object. This is, in fact, the approach followed in the revised <i>de minimis</i> notice. The notion of “restriction by object” is actually vague and subject to different interpretations. It should not be used in the context of the BER, which must provide clarity and certainty for business.</p> <p>The revision will provide the opportunity to discuss whether some of the current hardcore restrictions, like the one on resale price maintenance, are actually justified and whether some of them should be redrafted in order to improve their clarity and at the same time, avoid conflicting interpretations by national competition authorities, especially in the area of online sales.</p> <p><b>Ginevra Bruzzone</b>, Assonime and School of European Political Economy, Luiss, Rome</p>
09:50-10:10	<p><b>Active and passive sales in exclusive distribution</b></p> <p>Regulation 330/2010 follows the well-established principle that a distributor may be prevented from making active sales outside the distributor’s contractual territory, but must remain free to respond to requests from buyers established outside the territory (passive sales).</p> <p>This distinction is meant to provide limited protection of the distributor's exclusivity against other members of the network, by prohibiting active promotion in his territory. However, the internet in particular has made it extremely easy to provoke unsolicited orders from customers in other territories, through means which, according to the interpretation given by the EU Commission, do not constitute active promotion. This approach risks frustrating the purpose of the distinction by excessively broadening the notion of passive sales.</p> <p>Another critical issue concerns the provision which limits the prohibition of active sales to exclusive territories or customer groups. This principle is acceptable in theory, but becomes a dangerous "trap" in its practical application, for the following reasons. First, does a contractual provision prohibiting active sales need to actually identify and name the territories which are allocated exclusively to other buyers or reserved to the supplier? Second, if a restrictive interpretation of exclusivity in § 51 of the Guidelines is followed, territories allocated to two or more exclusive distributors or territories where the supplier retains the right to make direct sales, (co-exclusivity) are not covered. Third, what exactly is the meaning of reserving a territory to the supplier? Is it sufficient that the supplier states his intention to cover remaining countries sooner or later?</p> <p><b>Fabio Bortolotti</b>, Buffa Bortolotti &amp; Mathis, Turin; Chair IDI; IDI country expert for Italy</p> <p><b>Stephan den Hartog</b>, Nestlé Nespresso S.A., Lausanne</p>
10:10-10:30	<p><b>Aggressive pricing practices between distributors of the same brand on the internet</b></p> <p>Although the US Supreme Court judgement in <i>Leegin</i> has signalled a move away from per se illegality of RPM in the US, at present the prohibition on imposing minimum resale price maintenance (RPM) remains a well-established principle under EU competition rules and is enforced vigorously by the antitrust authorities. However, the unlimited freedom of distributors/resellers to resort to aggressive pricing practices, especially by using the internet, can have disruptive effects on distribution networks, and is difficult to accept for suppliers, who are forced to find a way to mitigate complaints by other distributors in their network who invest heavily in the brand and feel bypassed and disrespected by extreme practices of this type.</p> <p>Suppliers may try to react against freeriding by recommending pricing policies compatible with the image and quality of their products. They may try to convince the members of their sales network by adopting qualitative criteria, that it is in their common interest to focus on the quality of the brand and elevated service rather than to only compete on price which may have a negative effect on the proper functioning of the network and on the image of the brand. Nevertheless, any type of influencing as regards the resale price other than setting recommended prices entails the risk that activity of this kind can be considered as amounting to the establishment of fixed or minimum sale prices "as a result of pressure from, or incentives offered by, any of the parties" (Article 4(a) Regulation 330)</p> <p>It would be useful to clarify that clauses, like the provision considered by the Italian antitrust authority in the <i>Enervit</i> case, which affirms the distributor's freedom to fix its resale prices, provided that the image and value of the trademarks of the supplier are respected, are permissible under EU competition law. Considering the impact of price advertising on the internet, MAP clauses should in our view also be admitted, at least in the context of the BER, i.e. whilst not excluding a stricter approach in the context of individual cases outside the BER.</p>

	<b>Martine de Koning</b> , Kennedy van der Laan, Amsterdam
10:30-11:00	<b>Coffee break</b>
11:00-11:40	<p><b>DISCUSSION PANEL: The destiny of selective distribution after the Guess case and in view of the revision of the BER</b></p> <p>In view of the revision of the BER, it is important to stress the importance of selective distribution as a means to develop distribution at retail level throughout the EU. In the Guess decision of 17.12.2018 the European Commission has stated several principles which may limit the recourse to selective distribution in the EU, especially for SME's.</p> <p>The panel will discuss some of the main critical issues regarding the application of competition rules to selective distribution networks, such as in particular:</p> <ul style="list-style-type: none"> <li>- The coexistence of exclusive and selective distribution networks in different countries of the EU.</li> <li>- Appointing exclusive distributors at the wholesale level who supply the retailers of the selective network: the lawfulness of this commonly used solution – in particular restricting passive sales by exclusive wholesalers - should be expressly confirmed.</li> <li>- The freedom of the supplier to choose between different distribution models should be confirmed – in particular within the market shares thresholds of the BER.</li> <li>- The right to require a certain level of sales from the reseller's brick and mortar outlets should be confirmed in the light of comments seemingly casting doubt on this freedom in the Commission's E-commerce Report.</li> <li>- The application of the Coty judgement outside the luxury sector.</li> <li>- After Coty, can the brand owner lawfully restrict sales on third party sites whilst itself selling on third party sites?</li> <li>- Legality of restrictions on bidding for AdWords.</li> <li>- Legality of restrictions on use of price comparison and auction sites.</li> </ul> <p><b>CHAIR: Edward Miller</b>, Reed Smith LLP, London; IDI agency and distribution country expert for UK</p> <p><b>Rocio Belda de Mergelina</b>, Garrigues, Madrid</p> <p><b>Emanuele Camandona</b>, Head of Legal EMEA, Luxottica Group SpA, Milan</p> <p><b>Sara Citterio</b>, Corporate Affairs, Legal and Compliance Manager, Trussardi, Milan</p>
11:40-12:00	<p><b>The need for specific rules dealing with franchising agreements</b></p> <p>As the Court of Justice has evidenced in the <i>Pronuptia</i> case, franchising agreements deserve specific treatment under EU competition rules. Under the BER 2790/1999 and 330/2010 franchising agreements have been regulated by the general rules of the BER and in particular by the special rules regarding selective distribution, for those agreements which include an obligation of the franchisees not to sell to non-members of the network.</p> <p>Actually, this attempt to establish uniform rules for different types of agreements is not convincing. Franchising agreements almost inevitably imply, by their very nature, a closed network, but this does not mean that it is appropriate to apply to franchising agreements the limitations provided for selective distribution agreements. The strict control of the image of the sales outlet and the obligation to comply with the specific know-how characterising the franchising network imply necessarily that the sale of goods or services must be restricted to the members of the network. This is so obvious that many franchising contracts do not even contain a prohibition on selling outside the network, which is taken for granted as an obvious consequence of the system.</p> <p>This is why the prohibition on selling to non-members of the network should be expressly exempted for franchising agreements, without the need to respect the conditions fixed for selective distribution agreements.</p> <p>Moreover should we not consider the impact of know-how on the regime of franchising?</p> <p><b>Didier Ferrier</b>, Professor Law, University of Montpellier; Vice President IDI, IDI distribution &amp; franchising country expert for France</p>
12:00-12:20	<p><b>The application of Article 101 to agency agreements</b></p> <p>In the 2010 Guidelines, the Commission recognizes the well-established principle that agency agreements in principle do not fall under the prohibition of Article 101(1), except in cases of "non-genuine" agency agreements which are closer to distribution agreements with resellers. However, the Commission elaborated criteria distinguishing between genuine and non-genuine agency agreements on the basis of situations where the agent provides products or services directly to customers, which do not at all correspond to the great majority of "normal" agency contracts. In fact, normally the agent transmits to the principal orders (contract</p>

	<p>proposals) and the latter delivers the goods to the final customer, is paid by the customer and pays a commission to the agent.</p> <p>The Guidelines set out (at § 16) a list of distinctive criteria under which many "normal" agency agreements would be considered as non-genuine, such as for instance: the purchase by the agent of a stock of spare parts; <i>star del credere</i>; assumption of advertising costs; setting up of a show-room.</p> <p>Furthermore, it would be almost impossible to apply the rules regarding distribution agreements (with resellers) to "normal" agents who do not deliver the goods and cash the price.</p> <p>In order to avoid these problems, the Commission should make clear in the future guidelines that the problem of "non-genuine" agreements and the applicability of art. 101 to "genuine" agreements with respect to non competition clauses, mainly refers to those agreements where the agent actually delivers goods to the customer and receives the price on behalf of the principal: see, for instance sale of petrol (<i>Cepsa</i>), sale of travel packages (case <i>Vlaamse Reisbureaus</i>), cars (<i>Mercedes</i> case).</p> <p><b>Jaap van Till</b>, Loyal, Amsterdam; IDI agency &amp; distribution country expert for The Netherlands</p>
12:20-13:00	<b>Discussion</b>
13:00-14.30	<b>Lunch</b>

### Workshop 3: The protection of personal data: between constraints and opportunities for companies

Personal data from customers, visitors and others, and the adequate protection of those data, have become increasingly important to distribution networks of all types. This workshop aims to highlight the ambivalence of the European General Data Protection Regulation (EU) 2016/679, generally referred to as GDPR: this new regulation on the protection of personal data creates a commercial opportunity for companies while imposing important legal constraints on the use and protection of the data. This workshop is also an opportunity to highlight similarities and differences in the approaches followed in non-EU countries, such as the USA and Latin America.

<b>CHAIR</b>	<b>Alexandra Mendoza-Caminade</b> , Professor of Law, Toulouse Capitole University – France
<b>First session</b>	<b>GDPR optimization by companies or how to make it an asset and not only a constraint.</b>
09:30-09:50	<p><b>The data policy serving the business activity</b></p> <p>The obligation to protect personal data should lead to better management of customer data, making it possible to develop online sales more effectively: the company can develop a customer profiling policy that is very sophisticated. How far can companies go in consumer profiling while respecting the compliance obligation? What benefits can result for the company? How can these developments affect the relationship between the network manager and its distributors/franchisees?</p> <p><b>Carlo Piltz</b>, Reusch Rechtsanwaltsgesellschaft mbH, Berlin</p>
09:50-10:10	<p><b>Respecting GDPR: a commercial argument</b></p> <p>Compliance with GDPR's personal data protection obligations can be turned into an asset benefiting the company in its relationship with the public: the company with a particularly active protection policy on this subject can command heightened attention. The question is how to determine the form of communication highlighting the company's GDPR-compatible practices. Should it go further than simple commercial communication and adopt other tools such as charters, codes or certifications? Who should take the initiative? The manufacturer/franchisor? More broadly, a profession or a sector of activity?</p> <p><b>Alejandro Padín Vidal</b>, Garrigues, Madrid</p>
10:10-10:30	<p><b>Valuation of the data customer</b></p> <p>The protection of personal data represents a potential source of income for companies: the data are indeed carriers of economic value. The customer is followed very closely, which then makes commercial solicitations very precise and effective. It is a new raw material / economic</p>

	<p>asset for the company and / or the network. In compliance with the regulations, the economic optimization of the GDPR allows the effective monetization of data. What is the most effective yet legally permissible commercial use of customer data in distribution networks? For which actor? In what form?</p> <p><b>Heidi Waem</b>, Crowell &amp; Moring LLP, Brussels</p>
10:30-11:00	<b>Coffee break</b>
<b>Second session</b>	<b>The current constraints of data management.</b>
11:00-11:20	<p><b>Cybersecurity and company reputation</b></p> <p>With its obligation to control and protect personal data harvested from its customers and others, each company must implement electronic means guaranteeing the preservation, security and integrity of the data. How to guarantee a mastery of the treated data and their protection? This very current issue of cybersecurity and security vulnerabilities raises the question of the fragility of companies' IT systems and their vulnerability to external attacks. Examples of companies in Europe and other jurisdictions that have recently been victims of cybersecurity attacks show that the consequences are serious for the victim of the attack. The effects of these breaches must be examined both in terms of compliance with the GDPR and in terms of "reputational" damage to the distribution network.</p> <p><b>Michael K. Lindsey</b>, Steinbrecher &amp; Span LLP, Los Angeles</p>
11:20-11:40	<p><b>Distribution network actors and personal data protection compliance: who is responsible?</b></p> <p>The GDPR emphasizes the responsibility of controllers in its principle of accountability. While data controllers naturally appear on "the front line" to respond to data breaches, the responsibility of the processor has been considerably expanded by the GDPR. The principles of an outsourcing regime can be found in many distribution networks. But these qualities must inevitably reflect the reality of the very limited role of a subcontractor. This raises the question of the qualification of the relationship between the manufacturer and its distributors: the concept of "co-data controllers," and its very wide application in the recent decisions of the Court of Justice of the European Union (CJEU) can lead to requalifying these relations in the distribution network.</p> <p><b>Alexandra Mendoza-Caminade</b>, Professor of Law, Toulouse Capitole University – France</p>
11:40-12:30	<p><b>DISCUSSION PANEL: Sanctions for non-compliance with the protection of personal data</b></p> <p>The GDPR provides a significant incentive for the protection of personal data because of the very heavy penalties it imposes for non-compliance. While the supervisory authorities have so far been relatively conciliatory, the first decisions give some indication of the importance of these sanctions and the potential for damage to the image of the company or the network. This movement is growing not only because of the recent considerable number of data breaches, but also because European citizens have embraced the GDPR and don't hesitate to file a complaint before the relevant supervisory authority. In assessing the initial applications of the GDPR, we must question the sanctions applicable to companies. It's also important to question what role insurers can play in this area to bear part of the risk related to the protection of personal data, and the coverage exclusions insurers have been asserting to avoid that risk. Differences seem to exist within the EU and in other jurisdictions on the question of the extent of insurable risk in this area.</p> <p><b>CHAIR: Mariaelena Giorcelli</b>, Buffa Bortolotti &amp; Mathis, Turin</p> <p><b>Michael K. Lindsey</b>, Steinbrecher &amp; Span LLP, Los Angeles</p> <p><b>Alexandra Mendoza-Caminade</b>, Professor of Law, Toulouse Capitole University – France</p> <p><b>Carlo Piltz</b>, Reusch Rechtsanwaltsgesellschaft mbH, Berlin</p> <p><b>Felipe Toscano</b>, Dannemann, Siemsen, Rio de Janeiro</p>
12:30-13:00	<b>Discussion</b>
13:00-14.30	<b>Lunch</b>

## Conference Social Program

**Thursday 13 June 2019 - Welcome cocktail and dinner** from 6:00 pm

IDI is pleased to offer a **welcome cocktail and buffet/dinner to all the attendants.**

**Venue:** Sheraton Hotel  
Via per Cernobbio 41/a  
22100 Como



Please, confirm your participation by [selecting the relevant box in the registration form.](#)

\*\*\*\*

**Friday 14 June 2019 - Gala Dinner**

**from 8:00 pm**

**Venue:** Villa del Grumello  
Via per Cernobbio 11  
22100 Como



The venue is walking distance from the Sheraton Hotel (about 15/20 minutes)

Reservations should be made at your earliest convenience, due to the limited number of places. We will provide more detailed information in due time.

Please, confirm your participation by selecting the relevant box in the registration form.

\*\*\*\*

## Practical Information

---

### Conference venue:

Sheraton Hotel  
Via per Cernobbio 41/a  
22100 Como (Italy)

**Language:** English

**Documentation:** A USB stick containing all documents discussed at the conference.

### Fees:

- **800€** first participant;
- **400€** IDI member (subscriber) having paid his/her yearly subscription fee;
- **300€** any additional participant within the same premises of the same organisation as the first participant (i.e. having the same address and VAT code).

The fee includes the cocktail/dinner on June 13, 2019, coffee break, lunch and documentation.

Please, **add 22% (VAT)** to your payment (**applicable for both Italian and foreign participants**).

Information about special discounts granted to specific associations will be provide to the relevant associations.

### Discount policy:

Kindly note that the discounts **cannot be cumulated** and they can be applied on the **full fee of 800 € only**.

### Gala Dinner:

**Venue:** Villa del Grumello.

**Cost:** **150€** per person. Please, remember that places are limited and must be reserved on time.

Please, **add 10% (VAT)** to your payment (**applicable for both Italian and foreign participants**).

### Continuing Legal Education / Continuing Professional Development Credits:

This Conference is accredited for CPD/CLE (8 credits). In order to request an attendance certificate, please, send an email to [editorial.board@idiproject.com](mailto:editorial.board@idiproject.com).

### Registration and cancellation:

**Registration on-line:** Registration can be made at: [www.idiproject.com/conferences/registration](http://www.idiproject.com/conferences/registration)

**Registration by Email/Fax:** Please, fill in the registration form, and send it by fax or by email to:

**IDI Project Srl, via Alfieri 19, 10121 Turin (Italy)**

**fax: + 39 011 574 11 41**

**Email: [editorial.board@idiproject.com](mailto:editorial.board@idiproject.com)**

**Payment:** Registration online: Credit card or bank transfer. After having completed the payment, you will receive a confirmation of your registration by e-mail.

Registration by fax or by email: bank transfer only. Confirmation of your registration will be sent after having received the registration form together with the evidence of the payment.

For bank transfer payment, the payment should be transferred with no cost to IDI.

NO CHEQUE PAYMENTS WILL BE ACCEPTED.

**Cancellation** Cancellation requests received by IDI **on or before 31 May 2019**, will be subject to a 20% administration charge of the total fees paid. **After that date no refunds are possible.**

### Dress Code

The conference dress code is business attire for working sessions and smart casual for social events.

### Hotel Accommodation and Flight

#### Airports:

Fly to **Malpensa** or to **Lugano-Agno** airport: 30-45 minutes by taxi.

#### Hotels:

Rooms at special rates are no longer available. To book a room at the Sheraton Hotel you can contact the hotel directly at: Email: [reservations@sheratonlakecomo.com](mailto:reservations@sheratonlakecomo.com), or phone: +39 - 031 5161, or website: [www.marriott.it/hotels/travel/milsc-sheraton-lake-como-hotel/](http://www.marriott.it/hotels/travel/milsc-sheraton-lake-como-hotel/). For other accommodations nearby, please contact Mrs Maddalena Fumagalli at: Email: [madda@mizarconventions.com](mailto:madda@mizarconventions.com) or phone: +39 031 342025

Please, be informed that several other events will occur in the same period of the IDI conference, therefore we strongly suggest you to book your hotel as soon as possible.

# REGISTRATION FORM

First Name ..... Last Name .....  
Company ..... Address ..... ZIP/ Postal code .....  
City ..... Country ..... Value Added Tax (VAT) Code .....  
E-mail ..... Phone ..... Fax.....  
(in case of more participants, please, fill-in a registration form for each participant)

**WORKSHOPS:** (Saturday, 15 June 2019): please specify which workshop you will attend:

- I will attend the **FIRST WORKSHOP** (Negotiating agreements for distribution within department stores)
- I will attend the **SECOND WORKSHOP** (EU Competition: Hot topics on vertical restraints – issues to be addressed by the European Commission in the forthcoming reform of the block exemption regulation)
- I will attend the **THIRD WORKSHOP** (GDPR: how to organize and manage the flow of datas within the distribution networks in compliance with the new rules)

**SOCIAL EVENTS:**

- I will attend the **WELCOME COCKTAIL/BUFFET DINNER** on Thursday 13 June 2019 (included in the conference fee)

**FEES:**

**IDI Conference**

- € 800: First participant
- € 400: IDI member (subscriber), having a valid subscription on the day of the conference
- € 300: Additional participant
- € 300: Country Expert
- Discount granted to **Confindustria Lombardia** (please, check with the relevant association)
- Discount granted to **EFL** (please, check with the relevant association)
- Discount granted to **AIGI** (please, check with the relevant association)

Please **add 22% (VAT)** to your payment **for both Italian and foreign participants.**

**Gala dinner**

- € 150: Ticket for the gala dinner (please, specify the number of tickets: .....)

Please **add 10% (VAT)** to your payment **for both Italian and foreign participants.**

**TOTAL AMOUNT:**

€: .....

**PAYMENT:**

Please make a bank transfer marked «14-15 June 2019 Conference», including a clear reference to the name of the participant. at the following account:

Bank: Banca Sella, Piazza Castello, Torino (Italy)

Account Name: IDI Project s.r.l.

Account Number: 052879649600

ABI: 03268 CAB: 01000

IBAN: IT86X0326801000052879649600

SWIFT: SELB IT 2B

The payment should be transferred with no cost to IDI . NO CHEQUES payments are ACCEPTED.

**Please complete this form and return it, with your payment made out to:**

IDI Project Srl,  
Via Alfieri 19,  
10121 Torino (Italy)  
Fax: + 39 011 574 11 41

Date .....

Signature .....

PRIVACY: All personal information is processed by IDI confidentially and in compliance with the provisions contained in the Italian Legislative Decree 196 of 2003. All personal information stored on our system is secured against unauthorised access. All users may exercise their rights provided by Article 7 of Dlgs 196/2003, by sending a request to: [privacy@idiproject.com](mailto:privacy@idiproject.com)