



## A manufacturer can refuse the supply of some of its products to certain distribution channels on the ground of technical or commercial reasons

*Resolution of the Spanish Competition Authority (CNC) of 9 of April of 2012 (Case S/0344/11 Distribution of Beer)*

### Background

The AESECC, which is the entity which brings together the main companies of cash & carry wholesale distribution (wholesalers who offer food products to horeca professionals in supermarkets) lodged a complaint against the three most important beer breweries in the country for allegedly abusing of their collective dominant position when refusing to supply the cash & carry wholesalers with one of the container formats for beer: the keg.

The Investigation Division, after analyzing the market of production and marketing of beer (in which the three companies against which the claim was brought together hold more than 90% of the market share), observes that the keg is considered by the breweries to be a more sensitive product than the rest of the formats given its mode of consumption. Indeed, draught beer needs a certain infrastructure for its dispensation to the client, requiring a service with high levels of safety and hygiene.

Therefore, and in order to guarantee that the bars and restaurants serve the beer according to quality standards and without putting the prestige and reputation of the brand at risk, the manufacturers use their own network of wholesalers to distribute kegs. Such distributors, unlike the cash & carry wholesalers, have the means and knowledge necessary to render the required services of client training and technical assistance for the maintenance of beer taps.

### Justification for the refusal to supply

The CNC decides not to initiate disciplinary proceedings against the breweries as it considers that the refusal to supply is not an obstacle or a restriction for the plaintiffs in order for them to develop their commercial activity as they were and to efficiently compete in the market. Likewise, the refusal to supply is not discriminatory and it is objectively justified to ensure the quality of the product and to maintain the prestige of the brand.

The CNC also considers legitimate the interest of maintaining the contact with the client and of developing the brand through the building of customer loyalty with the establishments (which benefit from the services offered by the breweries).

This resolution is a new example that shows us that the CNC considers that manufacturers are free to establish the distribution network that is the most appropriate for their purposes, as long as objective and non-discriminatory selection criteria are being used (in the pharmaceutical sector, see resolutions of the CNC of 9 of June of 2010 and of 14 of September of 2009). In this case, the CNC takes a step further when accepting not only technical or efficacy reasons, but also the need to safeguard the brand through direct contact with the client as a justification for the refusal to supply. Moreover, the CNC approves that the manufacturer may establish different strategies of supply according to the product in question.