

# Antitrust: Commission fines Nike €12.5 million for restricting cross-border sales of merchandising products

Commissioner Margrethe **Vestager**, in charge of competition policy, said: *“Football fans often cherish branded products from their favourite teams, such as jerseys or scarves. Nike prevented many of its licensees from selling these branded products in a different country leading to less choice and higher prices for consumers. This is illegal under EU antitrust rules. Today’s decision makes sure that retailers and consumers can take full advantage of one of the main benefits of the Single Market: the ability to shop around Europe for a larger variety of products and for the best deals.”*

Licensed merchandising products are extremely varied (e.g. mugs, bags, bedsheets, stationery, toys) but all carry one or more logos or images protected by intellectual property rights (IPRs), such as trademarks or copyright. Through a licensing agreement, one party (a licensor) allows another party (a licensee) to use one or more of its IPRs in a certain product. Licensors typically grant non-exclusive licenses to increase the number of merchandising products in the market and their territorial coverage.

Nike’s core business is the design and sale of athletic footwear and apparel, including for football clubs and federations, which generally feature Nike’s registered trademarks, such as its name or “Swoosh” logo. Other products, so-called “licensed merchandise”, only feature the brands of a football club or a federation, not Nike’s trademarks. For these products, Nike acts as a licensor of IPRs that grants licences to third parties, who become entitled to manufacture and distribute those products. It is in the context of Nike’s role as a licensor for the manufacture and distribution of these licensed merchandise products that the Commission is imposing a fine.

In [June 2017](#), the Commission opened an antitrust investigation into certain licensing and distribution practices of Nike to assess whether it illegally restricted traders from selling licensed merchandise cross-border and online within the EU Single Market.

The Commission investigation has found that Nike’s non-exclusive licensing and distribution agreements breached EU competition rules:

- Nike imposed a number of **direct measures restricting out-of-territory sales by licensees**, such as clauses explicitly prohibiting these sales, obligations to refer orders for out-of-territory sales to Nike and clauses imposing double royalties for out-of-territory sales.
- Nike enforced **indirect measures** to implement the out-of-territory restrictions, for instance threatening licensees with ending their contract if they sold out-of-territory, refusing to supply “official product” holograms if it feared that sales could be going towards other

territories in the European Economic Area (EEA), and carrying out audits to ensure compliance with the restrictions.

- In some cases, Nike used master licensees in each territory to grant sub-licences for the use of the different IPRs to third parties. To secure the practice through the whole distribution chain, Nike imposed **direct and indirect measures on master licensees**. Through these measures, Nike compelled master licensees to stay within their territories and to enforce restrictions vis-à-vis their sub-licensees.
- Nike included clauses that explicitly prohibited licensees from supplying merchandising products to customers, often retailers, who could be selling outside the allocated territories. In addition to **obliging licensees to pass on these prohibitions** in their contracts, Nike would intervene to ensure that retailers (e.g. fashion shops, supermarkets, etc.) stopped purchasing products from licensees in other EEA territories.

The Commission has concluded that Nike's illegal practices, which were in force for approximately 13 years (from 1 July 2004 until 27 October 2017), partitioned the Single Market and prevented licensees in Europe from selling products cross-border, to the ultimate detriment of European consumers. Nike's illegal practices affected to varying degrees the licensed merchandise products bearing the brands of clubs like FC Barcelona, Manchester United, Juventus, Inter Milan and AS Roma, as well as national federations like the French Football Federation.

### **Nike's cooperation**

Nike cooperated with the Commission beyond its legal obligation to do so, in particular by providing the Commission with information that allowed it to extend the scope of the case. As a result, the investigation included ancillary sport merchandise of a number of additional clubs. The company also provided evidence with significant added value and expressly acknowledged the facts and the infringements of EU competition rules.

Therefore, the Commission granted Nike a 40% fine reduction in return for this cooperation. Further information on this type of cooperation can be found on the [Competition](#) website.

### **Fines**

The fine was set on the basis of the [Commission's 2006 Guidelines on fines](#) (see [press](#) release and [MEMO](#)). Regarding the level of the fine, the Commission took into account, in particular, the value of sales relating to the infringement, the gravity of the infringement and its duration, as well as the fact that Nike cooperated with the Commission during the investigation.

The fine imposed by the Commission on Nike amounts to €12 555 000.

Fines imposed on companies found in breach of EU antitrust rules are paid into the general EU budget. This money is not earmarked for particular expenses, but Member States' contributions to the EU budget for the following year are reduced accordingly. The fines therefore help to finance the EU and

reduce the burden for taxpayers.



## Background to the investigation

In [June 2017](#), the Commission opened three separate antitrust investigations to ascertain whether certain licensing and distribution practices of Nike, Sanrio and Universal Studios illegally restricted traders from selling licensed merchandise cross-border and online within the EU Single Market. The investigations against Sanrio and Universal Studios are on-going.

Nike's manufacturing and distribution agreements for merchandising products infringed [Article 101](#) of the Treaty on the Functioning of the European Union (TFEU), which prohibits agreements between companies that prevent, restrict or distort competition within the EU's Single Market.

More information on the investigation will be available on the Commission's [competition](#) website, in the public [case register](#) under the case number AT.[40436](#).

## Action for damages

Any person or company affected by anti-competitive behaviour as described in this case may bring the matter before the courts of the Member States and seek damages. The case law of the Court and Council Regulation 1/2003 both confirm that in cases before national courts, a Commission decision constitutes binding proof that the behaviour took place and was illegal. Even though the Commission has fined the companies concerned, damages may be awarded without being reduced on account of the Commission fine.

The [Antitrust Damages Directive](#), which Member States had to transpose into their legal systems by 27 December 2016, makes it [easier for victims of anti-competitive practices to obtain damages](#). More information on antitrust damages actions, including a practical guide on how to quantify antitrust harm, is available [here](#).

## **Whistleblower tool**

The Commission has set up a tool to make it easier for individuals to alert it about anti-competitive behaviour while maintaining their anonymity. The tool protects whistleblowers' anonymity through a specifically-designed encrypted messaging system that allows two way communications. The tool is accessible via this [link](#).