

United Kingdom

ANTI-COMPETITIVE PRACTICES

Judgment—abuse of dominant position—collectible toys sector—distribution agreements—relevant market—exclusionary conduct—restrictive business practices—application of Vertical Agreements Block Exemption Regulation—damages claim failed

☞ Abuse of dominant position; EU law; Toys; Vertical agreements

Market Power and Retail Agreements Under Scrutiny: Lessons from *Cabo v MGA*

On 16 June 2025, the High Court handed down its decision in *Cabo Concepts Limited v MGA Entertainment (UK) Limited* [2025] EWHC 1451 (Ch).¹ The High Court found that MGA Entertainment (UK) Limited and MGA Entertainment, Inc. (MGA) had abused its dominant position in the market for collectible toys targeted at girls aged 6–9 years, with at least a single element of surprise. It also found that certain agreements between MGA and retailers were in principle restrictive of competition by object, but were exempted under the Vertical Agreements Block Exemption Regulation 2010 (VBER),² among others. However, the High Court held that Cabo Concepts Limited and The Licence World Limited (Cabo)'s claim for damages failed due to lack of causation.

Background

In 2017, MGA, a major toy manufacturer, launched LOL Surprise in the UK. LOL Surprise is a line of small plastic collectible dolls packaged in a spherical plastic container wrapped in multiple layers of plastic wrapping. Cabo, a toy start-up company, launched Worldeez, which was a line of surprise collectible figurines with a world travel theme, packaged in a plastic capsule designed to represent a globe.

Cabo alleged that MGA abused its dominant position contrary to Chapter II of the Competition Act 1998 (the Act) and art.102 of the Treaty on the Functioning of the European Union (TFEU). In particular, Cabo claimed that MGA stifled the launch of Worldeez by: (i) claiming that the globe was a “knock off” of LOL Surprise, thus infringing MGA's intellectual property; and (ii) threatening toy retailers that their supplies of LOL Surprise would be withheld if they stocked Worldeez. Cabo claimed that, but for MGA's conduct, Worldeez would have succeeded. Cabo sought damages initially exceeding £170 million, later reduced to £53–90 million. MGA denied all allegations and argued that Cabo's business would have failed regardless of its actions.

Judgment

Relevant market and Dominance

Both parties agreed the geographic market was the UK but disagreed on the scope of the product market. The High Court concluded that the relevant market was all collectible toys targeted at girls aged 6 — 9 years, with at least a single element of surprise.

Using this definition, the High Court found that MGA held a market share exceeding 40–50% during the relevant period. The High Court concluded:

- **Barriers to entry and expansion**

There was no realistic possibility of any serious competition to LOL Surprise emerging during the second half of 2017 in response to the success of LOL, bearing in mind the lead times for the development and launch of new toys;³

¹ [2025] EWHC 1451 (Ch) (the Judgment).

² 2010/330/EU [2010] OJ L102/1.

³ Judgment at [289].

- **Countervailing buyer power:**

LOL Surprise was, from spring 2017 onwards, a must-stock product, since the main toy retailers realistically had to stock it in order to avoid substantial diversion of sales and customers to their rivals;⁴ and

- **MGA's Conduct:**

MGA was able to effectively threaten to withhold supplies from retailers because it knew that the demand for LOL Surprise was such that any supply withdrawn from one or more customers could be rapidly reallocated to rival retailers.⁵

Among other factors, the High Court thus concluded that MGA was dominant in the relevant market.

Abuse of Dominance

Cabo alleged that MGA's abuse consisted in three actions:

1. MGA threatened to withdraw supply to its customers, in order to exclude Worldeez;
2. MGA's threats to instigate legal proceedings, which were not a genuine assertion of MGA's legal rights to its intellectual property, but were solely aimed at stifling the competitor; and
3. MGA disparaged Cabo/Worldeez to toy retailers.⁶

The court found that these elements formed a unified exclusionary strategy designed to prevent Worldeez from entering the market.

The court emphasised that MGA's threats to withdraw supply, reinforced by the accompanying threats of litigation and claims that Worldeez was a "knock-off", were clearly anti-competitive, and precisely the sort of exclusionary conduct which has been consistently regarded as an abuse of a dominant position.⁷

Anti-Competitive Agreements and VBER

Cabo further argued that MGA entered into agreements with retailers not to stock Worldeez, contrary to the prohibition in Chapter I of the Act and art.101(1) TFEU. The court found three out of four of these agreements were restrictive of competition by object but exempt under the VBER.

Key findings included:

- **Scope of the VBER:**

The agreements between MGA and the toy retailers were agreements setting out the conditions under which the retailers could purchase LOL Surprise from MGA, the conditions being that the retailers would not stock (at least) the Worldeez globe.⁸ Therefore, the agreements qualified as vertical agreements under art.1(a) of the VBER.

- **Market share threshold:**

MGA's market share in 2016 very likely did not exceed 30%⁹ and only exceeded 35% in early 2017,¹⁰ preserving the exemption under arts 3 and 7(e) of the VBER.

⁴ Judgment at [291].

⁵ Judgment at [300].

⁶ Judgment at [314].

⁷ Judgment at [326].

⁸ Judgment at [391].

⁹ Judgment at [400].

¹⁰ Judgment at [401].

- **Excluded restrictions:**

The agreements were not single branding agreements, requiring the toy retailers not to stock competing brands in general; nor did they require the retailers to take more than 80% of their stock of LOL Surprise and substitutable products from MGA. Rather, they only prohibited the retailers from stocking Worldeez (or at least the Worldeez globe)¹¹ and therefore did not fall within art.5(1)(a) of the VBER, meaning they could still be exempted.

Damages

Although the High Court found that MGA had abused its dominant position, it did not award damages to Cabo, finding that “Worldeez would not have been profitable in the counterfactual scenario.”¹² This was on the basis that “Cabo’s financial model simply did not allow it to break even without huge sales volumes, which it was never realistically going to be able to achieve...”¹³

Implications

The High Court’s decision in *Cabo v MGA* carries significant implications for both commercial strategy and competition law enforcement. Central to the judgment is the principle that firms holding market power must exercise caution when responding to competitive threats. The court made it clear that leveraging dominance to exclude rivals, particularly through coercive or aggressive tactics, is likely to be regarded as abusive conduct under competition law.

Importantly, the judgment provides valuable clarification on the interpretation of the VBER by UK courts. It distinguishes between general non-compete obligations and brand-specific restrictions, offering practical guidance for structuring compliant distribution agreements. This clarity will assist businesses in navigating the complexities of competition law when designing their commercial arrangements. Looking ahead, it is also important to recognise that UK courts are now more likely to apply the UK’s own Vertical Agreements Block Exemption Order (“VABEO”), rather than the EU’s VBER, when considering vertical agreements. As the substantive provisions of both regimes are mostly identical, it is likely that the clarification and interpretation of the VBER by UK courts in this judgment will be equally relevant to future cases under the VABEO. Practitioners should, however, remain alert to any future divergence between the UK and EU approaches, ensuring that their agreements continue to comply with the relevant UK framework.

Ultimately, *Cabo v MGA* reaffirms that dominant firms must not use their position to exclude competitors through coercive means. While vertical agreements may be exempt under the VBER if they satisfy certain criteria, both the economic context and the legal framework will be scrutinised to assess whether conduct is anti-competitive.

For legal practitioners and businesses alike, the case serves as a timely reminder that dominance brings responsibilities, and those exclusionary strategies—however commercially attractive—may risk crossing the line into illegality.

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¹¹ Judgment at [408].

¹² Judgement at [678].

¹³ Judgement at [678].