International Distribution Institute

IDI CONFERENCE 2014

Turin (Italy) 13-14 June 2014

Setting up a compliance programme
Establishing a panel of arbitrators specialized in distribution law

The International Distribution Institute invites you to take part, on 13 and 14 June in Torino, in an event of great importance for attorneys, corporate lawyers and practitioners dealing with international distribution.

The conference is addressed to lawyers and businessmen involved in negotiating, drafting and managing international distribution contracts (agency, distributorship, franchising, etc.) and will deal with a number of topical issues which justify an in depth discussion between the participants and qualified experts in this field.

The conference is divided into a main session (on Friday 13 June) and three parallel workshops on specific issues chosen by IDI in collaboration with its members (on Saturday 14 June, morning).

Friday 13 June

Morning Session 9:00 - 13:00

Setting up and managing a compliance programme in antitrust and anti-corruption

Compliance programmes are becoming more and more important at present, especially for large companies, which need to ensure that all people which work for the company pay due respect to the applicable laws.

Smaller companies are now beginning to approach this issue and are asking themselves whether they should engage in this type of initiative, in particular with respect to "hot" issues arising within the distribution system, such as in particular compliance with antitrust rules and anticorruption laws.

The session will first deal with the objectives of a compliance programme and the reasons why this issue is important, even for smaller companies, and thereafter examine the main aspects to be considered when building and managing such a programme (training, auditing, enforcing, etc.)

Thereafter two panels will discuss the following two basic fields of risk within the creation and management of a distribution network:

- Antitrust: agreements with competitors, vertical agreements with distributors (export prohibitions, price fixing, etc.);
- Corruption: contracts with agents and other intermediaries, illicit commissions.

CHAIR	**Raimondo Rinaldi,** President AIGI, General counsel Esso italiana
08:30-09:00	**Registration**
09:00-09:15	**Welcome** **Fabio Bortolotti,** Buffa Bortolotti & Mathis, Torino; President IDI **Andrea Montanari**, General Counsel FATA, Sezione AIGI Piemonte-Valle d'Aosta
09:15-09:40	**Surfing the new IDI website** **Silvia Bortolotti,** Buffa Bortolotti & Mathis, Torino; Secretary General IDI
09:40-10:00	**Purpose and general characteristics of a compliance programme** What is a compliance programme and what are the reasons for such an initiative. How should this tool be adapted to the specific needs of each company **Raimondo Rinaldi,** President AIGI, General counsel Esso italiana, Rome
10:00-10:20	**Setting up a compliance programme: the main steps to be taken** Setting up a code of conduct in the relevant areas; training, enforcement .. **Antonio Matonti,** Confindustria, Rome
10:20-10:40	**Adapting compliance programs to the needs of a distribution/franchising system** SME's cannot afford extensive compliance programs involving disproportionate cost and personnel. The speakers will concentrate on the basic compliance issues to be dealt with in the context of the management of a distribution/franchising network. **Marco Hero,** PF&P Rechtsanwälte, Munich **Andreas Mundanjohl,** Verlagsgruppe Weltbild, Inhouse Counsel IT, Augsburg
10:40-11:00	**Discussion**
11:00-11:30	**Coffee break**
11:30-12:00	**Discussion panel: areas of risk to be considered for the antitrust compliance within distribution** Defining the main risk areas in distribution for the antitrust compliance programme.

	Agreements of marketing and sales managers with competitors; exchange of information on pricing policies; respect of territory of competitors. Agreements with resellers: price maintenance, export prohibitions, post-contractual non competition clauses. **CHAIR: Didier Ferrier,** Professor of Law, University of Montpellier; Vice-President IDI **Niccolò Della Bianca,** in-house counsel Enel S.p.A., Rome **Diego Saluzzo**, Grande Stevens, Torino; former general counsel IVECO
12:00-13:00	**Discussion panel: issues to be considered for anticorruption, with particular reference to agents** Criteria for selecting agents; actual activity to be carried out by the agent; contractual clauses prohibiting bribery; Mount of commission; means of payment of commission. **CHAIR: Raimondo Rinaldi,** President AIGI, General counsel Esso italiana, Rome **Stefano Catelani,** Corporate Counsel, Dupont de Nemours International SA, Geneva **Emanuela Misserville,** Finmeccanica S.p.A., Rome **Massimo Restino,** Alenia Aermacchi S.p.A., Turin
13:00-14:30	**Lunch**

Friday 13 June

Afternoon Session 14:30 - 18:00

International arbitration and distribution: should IDI establish a panel of arbitrators specialized in international distribution?

The use of arbitration (instead of domestic jurisdiction) for disputes in the field of distribution has been discussed several times in the last years within our association. Two main aspects which need to be improved in order to facilitate the recourse to arbitration in disputes with agents, distributors and franchisees are the availability of arbitration procedures for small claims and the possibility to identify arbitrators having specific experience in the field of international distribution.

With respect to the first issue we will examine a number of arbitration rules providing cost-effective fast-track arbitration procedures and verify if these procedures may be used for small disputes (especially within agency and franchising agreements).

As regards the second issue, a panel will analyse and discuss with the participants a possible initiative of creating, within the International Distribution Institute, a panel of arbitrators having specific experience in the field of international distribution linked to an expedited procedure under the Swiss Rules of International Arbitration organized in collaboration with the Chamber of Commerce of Geneva.

CHAIR	**Fabio Bortolotti,** Buffa Bortolotti & Mathis, Torino; President IDI
14:30-14:50	**Expedited arbitration procedures: the appropriate solution for resolving small disputes in the field of distribution** Expedited arbitration is an interesting solution for distribution disputes which often imply claims of limited amounts for which cost and time of ordinary arbitration procedures would be disproportionate. However, a fast track arbitration procedure should strike a reasonable balance between the need of rapidity and the due process rights of the parties. This result can be obtained by various means. A first one is that of limiting the exchanges of briefs and possible hearings. Another means consists in requesting the parties to submit all evidence from the outset (in the request and answer of arbitration) or in the first submissions. A further requirement is that there must be a sole arbitrator assuming a very pro-active role. Also a specific expertise of the arbitrator on the type of issues in dispute will be important. **Stefano Catelani,** Corporate Counsel, Dupont de Nemours International SA, Geneva

	Claudia Kolb, Legal and corporate department, Gucci Spa, Florence
14:50-15:30	**Discussion panel: practical experience in expedited arbitration procedures** A panel of officers of arbitral chambers and "users" will discuss their actual experience with fast track arbitration. Is the system of expedited arbitration really effective? Does it warrant equal treatment of the parties or does it imply a too heavy limitation of the right of due process? Does it really minimize costs and time? Should such procedures be limited to small claims or may they be also applied to disputes of greater economic importance? **CHAIR: Francesca Mazza,** DIS, Cologne **Frank Spoorenberg,** Tavernier Tschanz, Geneve; Vice-President Cour d'arbitrage de Geneve **Marco Venturello**, Venturello e Bottarini Avvocati, Turin
15:30-16:00	**Coffee break**
16:00-16:20	**An example of customised dispute resolution under the Swiss rules: the Alternative Dispute Resolution for Commodity Trading, Shipping and Trade finance (ACT)** GTSA, the main commodity trading association in Switzerland has partnered with the Geneva Chamber of commerce to develop the Alternative Dispute Resolution for Commodity Trading, Shipping and Trade finance (ACT). This procedure, based on the Swiss Rules of International Arbitration includes the possibility of resorting to an optional list of arbitrators and mediators compiled by an independent selecting committee with an experience in the specific field. **Jean-Paul Vulliéty,** Lalive, Geneve
16:20-16:40	**Establishing a customised arbitration and mediation procedure for international distribution disputes and a panel of specialized arbitrators** Parties engaged in arbitration proceedings regarding international distribution agreements (agency, distributorship, franchising) would like to have their dispute decided by arbitrators who have an actual knowledge of the commercial practice in this field and who can consequently have an actual understanding of the issues involved. Since IDI groups a great number of lawyers and managers experienced in international distribution, IDI has the necessary skills for selecting prospective arbitrators for international distribution disputes in order to include them in a panel which can be accessed by members. IDI is currently discussing with the Geneva Chamber of Commerce a project similar to the ACT. **Fabio Bortolotti,** Buffa Bortolotti & Mathis, Turin; President IDI
16:40-17:00	**Discussion**

General Meeting of IDI members 17:00 - 18:00

At this general meeting, to which non members are also invited, the officers of IDI will inform the members about the current situation of IDI, the results achieved in 2013 and the plans for the following years.

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

Friday 13 June

Social Event – Gala Dinner 20:00

On Friday evening a Gala Dinner will be held at Ristorante del Borgo - Gerla 1927 in the Medieval Village of Torino (built up in 1884, reproducing a 15th century castle).

Reservations should be made in time due to the limited number of places.

Ristorante del Borgo - Gerla 1927

Medieval Village of Torino

<u>How to get there:</u>

By foot: Viale Virgilio 107, Parco del Valentino, 10126 Torino

By taxi: Viale Enrico Millo 6, Parco del Valentino, 10126 Torino

Saturday 14 June 9:00 - 13:00

Workshop 1: Complying with the EU antitrust rules: to what extent are they really binding for SME's?

Drafting and negotiating agency and distributorship agreements within the European Union has become a difficult task for SME's wishing to take into account all limitations arising from the European antitrust rules. There are, however, situations where the prohibitions of article 101 do not apply to small businesses as well as contractual provisions which may, under certain circumstances, escape antitrust prohibitions. This session will examine a number of critical situations where the antitrust rules do not apply or only apply under certain conditions. In particular, we will deal with the de minimis theory and the latest developments due to the Expedia case, the non-competition obligation in distributorship agreements and the Commission's guidelines on agency agreements.

CHAIR	**Fabio Bortolotti,** Buffa Bortolotti & Mathis, Turin; President IDI; Chair ICC Commission on Commercial Law and Practice (CLP)
09:30-10:00	**Analyzing the *de minimis* rule: a general overview of its different applications** The *de minimis* rule developed by the Court of Justice and the bagatelle exemption contained in the Commission's notice on agreements of minor importance are two different things. The first is much stricter but covers also hardcore restrictions; the second sets higher thresholds, but covers only non-hardcore restrictions. A third type of *de minimis* rule (covering also hardcore restrictions) is contained in the Commission's guidelines on effect on trade. Is this picture still valid after the Expedia judgment of the Court of justice? **Fabio Bortolotti,** Buffa Bortolotti & Mathis, Turin
10:00-10:30	**Analyzing Expedia: how can § 37 of the Expedia judgment be reconciled with earlier case law (e.g. Völk/Vervaecke)?** The Court of Justice in Expedia clearly states (§ 16) that Völk/Vervaecke is "settled case law". Consequently agreements restrictive by object which have only an insignificant effect on the market fall outside the prohibition of article 101. How can this be reconciled with the statement in § 37 that an agreement that has an anticompetitive object constitutes, by its nature and independently of any concrete effect that it may have, an appreciable restriction on competition? How should undertakings evaluate with sufficient certainty if their agreement falls under the de minimis rule? **Ginevra Bruzzone,** Deputy Director-General, Assonime, Rome
10:30-11:00	**Coffee break**
11:00-12:00	**Discussion panel: Is it really necessary to respect the 5 years' duration limitation contained in article 5(1)(a) of Regulation 330/2010?** The block exemption contained in Reg. 330/2010 does not apply to non-compete obligations the duration of which is indefinite or exceeds five years. In order to comply with this principle companies are forced to avoid distributorship contracts for an indefinite period (or for one year with automatic renewal) and to provide a five year maximum duration which are difficult to negotiate with counterparts unable to understand the reasons. On the other hand, they should not enter into franchising contracts for periods longer than 5 years when this would be appropriate (but see § 190(b) of the Commission's Guidelines). However, non-compete clauses in distribution and franchising agreements normally do not foreclose market access to competitors of the supplier and consequently should not fall under the prohibition of art. 101 (see judgment Technique Minière). How should companies manage the 5 years limit of art. 5(1)(a) of the block exemption? **CHAIR: Rocío Belda de Mergelina,** Garrigues SLP, Madrid **Jeffrey A. Brimer**, Faegre Baker Daniels LLP, Denver **Karsten Metzlaff,** Noerr LLP, Berlin **John Pratt,** Hamilton Pratt, Warwick
12:00-12:30	**Discussion**
12:30-14:00	**Lunch**

Workshop 2: choice-of-law clauses in agency agreements after the UNAMAR case.

Choosing the applicable law in international commercial agency agreements is a common practice. Principals tend to impose their own law and agents are often forced to accept such a choice. This type of approach may however cause problems when the choice of the applicable law has the effect of depriving the agent of the protection granted by his national law. This is why certain domestic law tend to disregard choice-of-law clauses which may deprive the agent of his rights. This issue has been dealt with by the European Court of justice in the Ingmar case with respect to an agreement submitted to the law of a third country which did not provide the protection granted in all EU countries by the directive 86/653. Now the question has been raised, in the UNAMAR case, whether parties can choose the law of another EU country, whent the country of the agent has implemented the directive by enacting rules which increase the protection of the agent.

CHAIR	**Jaap Van Till,** Van Till Advocaten, Amsterdam
09:30-09:50	**Choosing the applicable law in commercial agency agreements: finding the balance between freedom of contract and protection of the weaker party?** Several countries have enacted rules that protect the position of commercial agents, by providing minimum periods of notice, goodwill indemnities and other compensation. In order to warrant their effectiveness, national legislators may qualify such rules as internationally mandatory ("overriding mandatory rules" according to the terminology of regulation Rome I on the applicable law), in the sense that they must be applied whatever the applicable law. But when can rules protecting the agent be qualified as internationally mandatory? And how is this principle to be applied if the parties choose to submit possible disputes to the court of another country or to arbitration? **Silvia Bortolotti,** Buffa Bortolotti & Mathis, Turin; Secretary General IDI
09:50-10:10	**The Unamar case: what is the actual meaning of the decision of the Court?** In the UNAMAR case the European Court of justice has given some general indications on the issue whether the court of a member state may disregard the agency law of another member state, chosen by the parties, and apply instead its own law, which warrants a higher level of protection to the agent. The Court has, in particular, adopted a very restrictive interpretation of the "overriding mandatory rules" that is likely to restrict the situations in which the national court is entitled to overcome the choice of the parties in favour of its own law. The Court's reasoning and the impact of its decision on agency and distribution laws will be thoroughly reviewed. **Pascal Hollander,** Hanotiau & van den Berg, Brussels
10:10-10:30	**The other side of the coin: applying the law of the principal without the provisions which protect the agent** There are national laws which make it possible for the principal to submit the agreement with a foreign agent to his own law, but at the same time to exclude the provisions the mandatory provisions in favour of the agent. This result can be achieved though specific provisions of law (see Denmark, Germany) or by interpreting the law in the sense that it applies mandatorily only to agents of the country which enacted it (Belgium). And, in the absence of provisions of this type should the principal, when dealing with agents of countries which do not have protective rules, choose the law of the agent? **Peter Gregersen,** Horten law firm, Copenhagen
10:30-11:00	**Coffee break**
11:00-12:00	**DISCUSSION PANEL. Choice of jurisdiction or arbitration as a means for avoiding mandatory rules of the agent's country: pro's and con's** Internationally mandatory rules of the agent's country will normally not bind a foreign court or international arbitrators. This means that their application can in several cases be excluded by excluding the jurisdiction of the courts of the agent's country. But is this solution fair? And, if it is defendable (e.g. because the level of protection of the agent's country clearly exceeds international standards), is it effective? In which cases can the courts of the agent's country pretend to have jurisdiction notwithstanding the choice-of-forum or arbitration clause? **CHAIR: Ercüment Erdem,** Erdem & Erdem, Istanbul **Valentina Maglio,** Senior Counsel International Business Law, Luigi Lavazza Spa,

	Turin **Ingrid Meeussen,** LVPLaw, Brussels **Magnus Nedström,** Advokatbyrån Sigeman & Co, Malmö
12:00-12:30	**Discussion**
12:30-14:00	**Lunch**

Workshop 3: When does a purchaser/reseller become a distributor? Considerations after the Corman-Collins judgment of the European Court

It is common in the relationship between suppliers and distributors that mere seller-purchaser agreement evolves to an exclusive distributorship. In these cases the issue will often arise if the distributor is a mere buyer-reseller or if he must be qualified as a distributor who provides at the same time a service to the supplier.

The qualification as purchaser or, on the contrary, as distributor has important consequences (jurisdiction under article 5(1) of the Brussels regulation; law applicable in the absence of choice under the Rome I regulation; possible protective rules under national legislations or jurisprudence regarding, for instance, termination indemnity, period of notice, etc.).

CHAIR	**Didier Ferrier,** Professor of Law, University of Montpellier; Vice-President IDI
09:30-09:50	**What is a distributor? When does the law (or jurisprudence) recognize his status as a provider of services?** In recent years the notion of distributor as a buyer-reseller responsible for distributing the products of a supplier in a given territory (normally on an exclusive basis) has been accepted in many countries. This may imply for the distributor the right to a period of notice in case of termination and in some cases a goodwill indemnity or similar compensation. It is therefore important to identify the criteria for distinguishing a distributor from a mere purchaser, under different legal systems. **Raimond Emde,** Graf von Westphalen, Hamburg
09:50-10:10	**The Corman-Collins case: which are the characteristics of a distributor as provider of services ?** The judgment of the court identifies a number of elements which can be used for distinguishing a distributor from a mere buyer-reseller. What is their respective importance for this evaluation? **Gustav Breiter,** Viehböck Breiter Schenk & Nau, Vienna
10:10-10:30	**The importance of the Corman-Collins case beyond the application of article 5 of Regulation 44/2001** Determining who can be considered as a distributor is not only important for fixing the jurisdiction under Regulation 44/2001. It is likely that the same criteria of the Corman-Collins case will be used for interpreting the notion of distributor under Regulation Rome I and thus for determining the applicable law in the absence of choice by the parties. Furthermore, the judgment may impact on the interpretation of national laws. **Pedro da Costa Mendes**, CNCM, Porto
10:30-11:00	**Coffee break**
11:00-12:00	**Discussion panel: What type of action should be taken by a supplier when his customer is gradually becoming a distributor?** A very common situation in international trade is that where a supplier enters into a continuing relationship with a buyer of a foreign country, and this relationship gradually evolves into a distributorship. What should the supplier do when this happens? Leaving things as they are? Entering into a distributorship contract? Which are the critical issues of the various possible solutions? **CHAIR: Jelena Perovic,** professor at Faculty of Economics, University of Belgrade **Ignacio Alonso,** Even Abogados, Madrid **Olga Sztejnert - Roszak,** Drzewiecki, Tomaszek & Partners, Warsaw

	Leslie Thiele, Whiteman Osterman & Hanna, Albany, New York
12:00-12:30	**Discussion**
12:30-14:00	**Lunch**

Practical Information

Venue

Circolo dei Lettori
Via Giambattista Bogino, 9
10123 Torino

Language

English

Documentation

A USB stick containing all documents discussed at the conference.

Fees

800€ first participant

400€ for IDI members (subscribers) having paid their yearly subscription fee

300€ for additional participants within the same premises of the same organisation as the first participant (i.e. having the same address and VAT code)

AIGI Members: 20% of discount on the total amount.

***** The fee includes coffee break, lunch and documentation.

Gala dinner

100€ per person. Please, remember that places are limited and must be reserved in time.

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

Continuing Legal Education / Continuing Professional Development Credits

This conference will be accredited for CPD/CLE by "Ordine degli Avvocati di Torino". Italian participants will receive the attendance certificate to be submitted to their regional bar in order to obtain the credits. We will be pleased to prepare an attendance certificate for anybody who will ask us for it.
Please, send an email to editorial.board@idiproject.com in order to receive it.

Registration and cancellation

Registration on-line:

Registration can be made through the IDI website, at the page:
http://www.idiproject.com/conferences/registration

In that case, you can pay with credit card or by bank transfer. After complete payment, you will receive a confirmation of your registration by e-mail

Registration by fax:

Please, fill in the registration form, and send it by fax or by email to:
IDI Project Srl,
Via Alfieri 19,
10121 Torino (Italy)
fax: + 39 011 574 11 41
Email: editorial.board@idiproject.com

Payment shall be made by bank transfer and confirmation of your registration will be sent after having received the registration form together with the evidence of the payment.

Payment:

Registration online: Credit card or bank transfer.

Registration by fax or by email: bank transfer only.

Regarding bank transfer payment, the payment should be transferred with no cost to IDI. The confirmation of your registration will be sent after having received the registration form together with the evidence of the payment.

NO CHEQUE PAYMENTS WILL BE ACCEPTED.

Cancellation

Cancellation request received in writing to IDI Project **on or before 3 June 2014** will be subject to a 20% administration charge of the total fees paid. **After that date no refunds are possible.**

Hotel Accommodation

IDI reserved a limited number of rooms in the following hotels at special rates to the IDI conference participants. Rooms shall be reserved within May 15, by phone or by email, specifying your participation to the IDI conference 2014.
Golden Palace ****: **Phone**: + 39 011 55 12 727 **Email**: reservations@goldenpalace.it
Victoria ****: **Phone**: +39 011 561 1909 **Email**: reservations@hotelvictoria-torino.com
Petit ***: **Phone**: +39 011 561.26.26 **Email**: info@lepetithotel.it

Further hotels can be found **here**

REGISTRATION FORM

First Name ..... Last name .....

Company ..... Address .....

ZIP/ Postal code ..... City .....

Country ..... Value Added Tax (VAT) Code .....

E-mail ..... Phone ..... Fax.....

WORKSHOPS: (Saturday, 14 June 2014):

Please specify to which workshop you would like to attend (only one per person):

- ❑ I will attend the **First WORKSHOP**
- ❑ I will attend the **SECOND WORKSHOP**
- ❑ I will attend the **THIRD WORKSHOP**

FEES: (in case of more participants, please fill in a separate form for each participant)

IDI Conference (13-14 June 2014):

- ❑ **€ 800**: First participant
- ❑ **€ 400**: IDI member (subscriber), having a valid subscription on the day of the conference.
- ❑ **€ 300**: Additional participant
- ❑ **€ 100**: Ticket for the gala dinner (please, specify the number of tickets: …..)
- ❑ **AIGI Membership:** 20% of discount on the total amount.

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

TOTAL AMOUNT: **€: .....**

PAYMENT: Please make a bank transfer marked «13-14 June 2014 Conference», including a clear reference to the name of the participant. The payment should be transferred with no cost to the organizers 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

NO CHEQUES payments 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 theirs rights provided by Article 7 of the Italian Legislative Decree 196 of 2003, by sending an informal request to privacy@idiproject.com