Finally, the decision also provided some useful analysis of the scope of the
Chapter I prohibition, which prohibits "exclusive dealing" agreements as an
object of the agreement. As the ECJ pointed out, there is a restriction of
competition "by object" when the licensor and licensee agree that the
licensee will only be able to use the licensor's product in a restricted way.
ECJ Case C-570/16: Cochrane (UK) Ltd v Astellas Pharma
Europe GmbH [2018] ECR I-3711. In this case, Roche and Novartis
reportedly disseminated sales literature informing physicians that the
marketed product was less safe than the on-label use of another product
can be considered a restriction of competition "by object".

In this instance, the ECJ was not concerned with the behaviour of
specific competitors or even a specific market. Instead, the ECJ focused
on the nature of the restriction of competition. The restriction was
considered to be a "commercial autonomy restriction" because it was
oriented towards the commercial autonomy of each party involved in
the license agreement. The ECJ distinguished that restriction from
commercial autonomy restrictions that are based on the parties' rights
under the license agreement, as required by the licensing agreement
under Art. 101 TFEU. The restriction was an object restriction with the
meaning of Art. 101 TFEU and imposed a fine of €242.6 million on both
Roche and Novartis for infringing Article 1 of the Spanish Competition
Act ("LDC") and Article 101 of the TFEU.

The AGCM also examined the case of a series of similar arrangements
between other suppliers to reject each other's customers from the new
customer market, consisting of exchanges of sensitive commercial
information from suppliers to customers and a third company, Dyball,
for providing software to facilitate the collusion. Many competition
authorities worldwide have noted that the software can be used to
facilitate arrangements to reduce competition, often forming the
underpinning of a new cartel.