

New Enforcement Action in Relation to Resale Price Maintenance – Once Again Heavy Fines in Germany and France

The article deals with the recent actions in Germany (ZEG) and France against companies engaging in competition law infringements in the form of resale price maintenance.

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The fine and its context

The German Federal Cartel Office (FCO) imposed a fine in the amount of EUR 13.4 million on ZEG for fixing prices with 47 bicycle retailers.

The investigation on ZEG forms another part of a recent series of actions on resale price maintenance. The FCO had also imposed fines in similar matters in 2017 against the clothing manufacturer Wellensteyn and the trading company Peek & Cloppenburg, against five furniture manufacturers, in 2016 against LEGO, and in 2015 against three mattress manufactures. In the ZEG case, the FCO investigated yet another product area which is of importance to consumers. This goes to show again that companies involved in multi-party distribution systems for consumer products should be especially vigilant of potential law infringements.

ZEG's position and the fined misconduct

The purchasing cooperative ZEG represents about 960 independent bicycle retailers throughout Europe with about 670 of them in Germany. The cooperative markets some bike brands of its own such as Pegasus, Bulls and ZEMO to the retailers but also trades models of other manufactures, overall holding a strong market position in Germany. The purchasing cooperative was fined for its agreements with 47 bicycle retailers, requesting them not to sell below a minimum sales prices set by ZEG for certain bikes. The FCO stated that this greatly restricted price competition between the members of the purchasing cooperation to the detriment of the consumer. However, the FCO solely fined ZEG due to its superior role in this matter and showed lenience to the retailers. According to the FCO, the cartel offence lasted from February 2007 to February 2015 and ended with a dawn raid after a tip-off from the industry.

Details and assessment by the FCO

Under German and European competition law there are forms of short-term resale price maintenance, for instance concerning limited promotional offers, which are not prohibited a priori for purchase cooperations like ZEG. But the investigated measures far exceeded what would be permissible and created a situation similar to a sales cartel among the participating retailers according to the President of the FCO.

Essentially, the involved parties agreed on fixed prices and ZEG established a mode of surveillance to check if the retailers were sticking to the bargain. For instance, retailers would notify ZEG when other retailers would undercut the fixed minimum prices. The Cooperative also did its own price research or delegated it to third parties and strongly requested retailers to observe the pre-set prices in cases where they went below a certain price. Such measures were set up to effectively ensure the execution of the agreement. As a result, they were considered to be of importance by the FCO to back up the infringement.

On account of these aspects the infringement was considered to be quite serious by the FCO. However, the FCO substantially reduced the fine as ZEG had cooperated with the authority during the investigation and in the end had agreed to a settlement.

The French position

The French Competition Authority has also a long-standing practice in enforcing the resale price maintenance prohibition.

At the end of last year, for example, the French Competition Authority (FCA) imposed fines in the total amount of EUR 355,000 on liquid fertiliser manufacturers and their wholesale distributors for several parallel vertical agreements between manufacturers and wholesalers to fix the wholesale and retail resale prices between 2010 and 2013. Resale price list were set between each manufacturer and wholesale distributor and monitoring measures as well as police measures and possible reprisal were implemented to ensure compliance with the price fixing. The ultimate objective was to boost the margins of wholesale distributors.

Contrary to the German decision, distributors were also fined and did not benefit from any leniency.

Further Guidance

For more guidance on this subject you may also be interested in our recent [European RPM Client Alert](#). Likewise, for further questions feel free to contact us.

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