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NEWS | 10 December 2021

Belgian court annuls Caudalie's fine for RPM

The Brussels Court of Appeal (division Markets Court) has annulled the fine imposed by the Belgian Competition Authority (BCA) on several companies of the French Caudalie Group earlier this year.

Decision of the BCA

After receiving two complaints in 2017, the BCA carried out dawn raids at Caudalie's premises in Belgium and France. The BCA found that Caudalie had fixed the maximum discount that the distributors could offer to customers. In addition, the investigation showed that Caudalie had prevented its online distributors from selling to consumers located in another Member State, to ensure that the minimum prices were observed. Imposing minimum prices by determining the maximum level of discounts and limiting cross-border sales within the EU are considered hardcore restrictions under EU competition law.

Caudalie submitted commitments regarding the conditions it could impose on its distributors to preserve the integrity of its selective distribution network and protect its brand image. However, the BCA considered these commitments insufficient in view of the gravity of the conduct and decided that they could not replace a finding of an infringement and a penalty. On 6 May 2021, the BCA imposed a fine of EUR 859,310 on Caudalie. In the same decision, Caudalie's commitments were made legally binding and were considered as mitigating circumstances leading to a reduction of the fine.

Caudalie appealed this decision to the Brussels Court of Appeal.

The Court's ruling

In its ruling, the Court confirms that the BCA may order a company to stop an illegal practice according to terms that the BCA may decide, and to impose an eventual sanction. Since the Belgian Code of Economic Law (CEL) does not prescribe any limitation with respect to such terms, the BCA can, according to the Court, take inspiration from the commitments formulated by the prosecuted party.

However, in this case, the BCA did not prescribe any terms. It only accepted the commitments submitted by Caudalie and made these commitments binding in its decision to impose a fine. The Court, however, held that the CEL does not foresee the acceptance of commitments at the same time as a declaration of an infringement.

Although the BCA had argued that the finding of illegality could not affect the finding of an infringement and the amount of the fine imposed, the Court ruled that the acceptance of the proposed commitments is contradictory and incompatible with the finding of an infringement and its punishment by a fine. Caudalie's commitments proposal was precisely intended to avoid an infringement decision, the Court held. Hence, the contested decision was annulled in its entirety.

Commentary

Now the Brussels Court of Appeal has decided to annul the decision of the BCA in its entirety, we will have to wait and see what steps the BCA will take next. To date, the BCA has not responded to the annulment of its decision. Given the level of the fine imposed on Caudalie, and the fact that the BCA has only recently confirmed that RPM infringements remain high on its list of priorities, it would not be surprising if the BCA continues to pursue the matter.