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RPM in the spotlight of the Czech Competition Authority: the watchdog means business. It fined Garland heavily

We told you so!

In November 2021, we have warned DLC readers that the resale price maintenance ('RPM') is under increased scrutiny from the Czech Competition Authority ('CCA'). Using the example of the *Baby Direkt* case, we have demonstrated that there is a risk of severe fines for RPM due to the new CCA's guidelines for setting fines. We have expressed our expectations that substantial fines for RPM will be a common phenomenon in the future in Czechia. And look, the future is already here!

Garland Case

Earlier this week, the CCA announced that it issued its first-instance decision in the *Garland* case, by which it imposed a fine of 96.75 million CZK (approx. 3.9 million EUR) on a garden equipment supplier. According to the CCA, *Garland* engaged in vertical agreements with its buyers (dealers) with the aim to fix their resale prices between 2013 and 2019. According to the CCA, *Garland* not only initiated the anticompetitive agreements, but also enforced them on retailers by mean of penalties.

It has also been proven by the CCA that some buyers participated in the RPM scheme by monitoring whether their competitors adhered to the set retail prices and, eventually, requested *Garland* to intervene in cases of non-compliance, *i.e.,* to ensure unified – higher – prices. However, no sanctions were imposed on buyers, as this has been the common practice of the CCA so far.

Commentary

The fine imposed on *Garland* is the highest RPM fine ever imposed by the CCA. The level of the fine is striking, as *Garland* cannot be considered a hegemon in the affected relevant markets. Even though the interbrand competition was not excluded, the application of the new guidelines for setting fines led to the imposition of the heavy fine, which is more than double the fine in the *Baby Direkt* case.

The decision is not final and may be appealed. However, we do not expect that the Chairman of the CCA acting as the appellate body will make any substantial changes to the decision as regards the determination of the amount of the fine. He has repeatedly stated that fines must be severe enough to deter undertakings from

violating competition law rules.

It will be interesting to see how the *Garland* case develops. The question of legality of the CCA's guidelines for setting fines will be sorely challenged. Not for the first time, and certainly not for the last time. We will keep you informed.

We consider the application of the new guidelines for setting fines inappropriate and too strict. In many cases, it will lead to higher fines for verticals than for cartels. This is not good news for businesses using third parties to distribute their goods. Distribution relationships are still high on the CCA's agenda. Only the court will confirm whether the policy of draconian penalties for this type of conduct is legal and proportionate. Until then, anything will hardly change.