Distribution Law Center
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Musical instruments (B11-33/19 and B11-31/19)

Resale price maintenance and horizontal price agreements

1. CASE SUMMARY

A. Summary of facts

The manufacturers (respectively their importers), Yamaha, Roland and Fender and the retailers, Thomann and Music Store, agreed to comply with the minimum sales price requirements set by the manufacturers. If the minimum sales prices were undercut, the staff responsible at Yamaha, Roland and Fender would regularly contact Thomann and Music Store and demand them to adjust their sales prices, which they also did in many cases. To some extent, Yamaha and Roland also used a price tracking software to monitor end customer prices. In individual cases, the manufacturers threatened retailers with (or even actually) sanctions, such as a suspension of supply, worsening of terms and conditions or termination of the agreements.

There was no or only sporadic enforcement or monitoring of the minimum sales prices for some products. The retailers did moreover often not comply with the minimum sales prices either by applying lower prices or by circumventing them (e.g. by bundling several products).

At the same time, in complaints addressed to Yamaha, Roland and Fender, the retailers Thomann and Music Store demanded that other specialist musical instrument retailers also observe the minimum prices. This was partly in reaction to complaints that their own prices were too low.

The resale price maintenance practices in the case of the business relation between Yamaha and the retailers Thomann and Music Store took place between 1 August 2005 and 31 March 2017.

Regarding the business relation between Roland and the retailers, the resale price maintenance practices took place from 1 January 2006 (in the case of Thomann) and from 1 October 2009 (in the case of Music Store), until 31 March 2018.

The resale price maintenance practices in Fender's business relation with Thomann and Music Store had been in place between 1 January 2011 and 31 March 2018.

In the course of the proceedings concerning resale price maintenance, indications of horizontal price fixing agreements between the retailers Thomann und Music Store also emerged. Between 21 December 2014 and 27 April 2018, Thomann and Music Store had agreed in thirteen cases to increase the prices of individual musical instruments or additional products. However, these agreements only led to short-term price modifications.

All described practices of the manufacturers (respectively their distributors) and of the retailers took place in Germany.

B. Legal analysis

The case involves two object infringements: a vertical price fixing arrangement between the manufacturers/importers concerned and their retailers and a horizontal price cartel between the retailers concerned. Once the facts were established, the legal analysis was therefore very straightforward.

2. RELEVANT LEGISLATION

- Article 101 TFEU
- Regulation 330/2010
- Vertical Guidelines

3. PRACTICAL SIGNIFICANCE

This case is highly relevant not only due to the significant fine imposed to the manufacturers and retailers (EUR 21 million), but also because it confirms the strict enforcement practice of the FCO. Furthermore, the conduct sanctioned in the present case by the FCO involves vertical pricing agreements (resale price maintenance) as well as horizontal agreements. Nonetheless, the cooperation of the manufacturers and retailers with the authorities resulted in the discontinuation of the proceedings and the reaching of settlements.

Overall, the FCO sets very high standards for suppliers in the context of resale price maintenance. This contrasts with the strong interest of many suppliers to prevent a deterioration of resale prices, as this creates pressure on their sales prices towards their distributors. The strict enforcement practice of the FCO shows that these standards are not just theory but that suppliers are well advised to ensure compliance with them.