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# Record fine for RPM annulled by Brno regional court in Garland case

## Case summary

In January 2022, the Czech Competition Authority ('CCA') imposed a record fine of 96.75 million CZK (approx. 3.95 million EUR) on Garland – a garden equipment distributor – for retail price maintenance ('RPM').

The CCA Chairman slightly reduced the fine by approximately 500,000 EUR due to an incorrect definition of the alleged infringement´s duration. However, he essentially upheld the first instance decision, as previously reported. Nevertheless, the Regional Court in Brno has annulled the Chairman´s decision recently.

According to the CCA, Garland enforced its RPM agreements with buyers, by monitoring compliance and imposing sanctions. For instance, Garland allegedly enforced its recommended minimum retail prices by threatening to refuse to deal with the buyers or by blocking their user accounts in the company's order management system.

Relying on its previous judgment in the Baby Direct case (confirmed by the Supreme Administrative Court) and the European Court of Justice's ('ECJ') judgment in Super Bock, the Regional Court ruled that the CCA had failed to prove the existence of RPM agreements in each individual supplier-buyer relationship concerned.

As the ECJ ruled in the Super Bock case, an (anticompetitive) agreement is defined by the 'concurrence of wills' among the colluding undertakings. Thus, such a concurrence of wills must be proven with respect to each agreement under investigation. Instead, the CCA generally claimed that, for a certain period, Garland concluded RPM agreements with its buyers, but the details of these agreements were not sufficiently specified. The CCA thus failed, according to the Regional Court, to adequately specify and provide evidence supporting the existence of the alleged RPM agreements in each individual case.

The Regional Court also determined that the CCA had incorrectly categorised the RPM agreements as 'by object' infringements. In line with the Super Bock ruling, the Regional Court determined that the CCA must first assess whether an RPM agreement poses a significant enough threat to competition before classifying it as a restriction 'by object'. Therefore, the CCA incorrectly concluded that such agreements would be automatically prohibited due to their anticompetitive object.

For those reasons, the Regional Court annulled the CCA's decision.

The CCA has lodged an appeal against the Regional Court´s judgment with the Supreme Administrative Court.

## Commentary

The judgment affirms the evolving trend in Czech judicial decision-making practice regarding vertical agreements. As pointed out previously, the CCA´s strong incentives for undertakings to cooperate during investigations (such as leniency and settlement procedures), have led to a lack of judicial review of the RPM cases over the past several years.

As a result, the CCA has dramatically expanded its interpretation of what conduct constitutes RPM, effectively pushing the boundaries of the infringement to the limit. This has led the Supreme Administrative Court to conclude that the CCA´s approach to RPM investigations is incorrect (as demonstrated in the Baby Direct decision), thus aligning the Czech practice with EU legal standards.

Following the Baby Direct decision, Garland represents a second RPM decision annulled by the Czech courts recently. We expect that the Supreme Administrative Court will follow its reasoning in the Baby Direct judgement and uphold the Regional Court's annulment judgment in the Garland case. This will require the CCA to reflect the judgments in its decision-making.

The official decision is available here.