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CASE CARD | 12 March 2026

Super Bock Bebidas (C-211/22)

Resale price maintenance

1. CASE SUMMARY

A. Summary of facts

Super Bock is a Portuguese company whose main activity is on the market for beer and bottled water. Super Bock concluded exclusive distribution agreements with independent distributors that cover the entire Portuguese territory, with the exception for example of Lisbon, Porto and Coimbra, which are supplied by direct sales of Super Bock. Super Bock fixed and imposed terms of business and minimum resale prices on those distributors and retaliated in case they applied lower resale prices. The Portuguese NCA considered that these practices constituted by object infringements of Article 101 TFEU and imposed a fine on Super Bock. Two persons, AN (member of Super Bock's board of directors) and BQ (head of the commercial department), were also fined.

B. Legal analysis

On resale price maintenance and by object restrictions of competition

The European Court of Justice ('ECJ') reiterates its established case law on restrictions of competition by object. It clarifies that the concept must be interpreted restrictively and only applies to types of coordination between undertakings that demonstrate significant harm to competition, removing the need to examine their effects in detail. While typically less damaging to competition than horizontal agreements, vertical agreements can qualify as a restriction of competition by object. Importantly, however, the qualification of resale price maintenance ('RPM') as a hardcore restriction by the VBER does not automatically categorise it as a by object infringement. To determine that this is the case, it is necessary to analyse the content of the agreement's provisions, its objectives and the economic and legal context of which it forms a part. The fact that RPM is hardcore restriction under the VBER is merely an element of the legal context; it cannot substitute for the analysis that is required to determine whether there is a by object restriction.

On RPM and the concept of agreement

Article 101 TFEU requires an agreement, so for RPM to be caught by the prohibition of Article 101(1) TFEU, more is required than unilateral pressure from a supplier. Notably the undertakings must have expressed their joint intention to conduct themselves in a specific way. This joint intention may be shown from the conduct of the

parties, in particular, from any explicit or tacit acquiescence on the part of the distributors to an invitation to comply with minimum resale prices

On the effect on trade between Member States

Vertical agreements covering almost the entire territory of a Member State can affect trade between Member States, regardless of partial territorial coverage.

2. QUOTES

"*[…] Article 101(1) TFEU must be interpreted as meaning that the finding that a vertical agreement fixing minimum resale prices entails a 'restriction of competition by object' may only be made after having determined that that agreement presents a sufficient degree of harm to competition, taking into account the nature of its terms, the objectives that it seeks to attain and all of the factors that characterise the economic and legal context of which it forms part.*" (§43)

"*[…] the fact that a supplier regularly transmits to distributors lists indicating the minimum prices that it has determined and the distribution margins, as well as the fact that it asks them to comply with those prices, which it monitors, on pain of retaliatory measures and at the risk, in the event of non-compliance with those measures, of the application of negative distribution margins, are elements from which it may be concluded that that supplier seeks to impose minimum resale prices on its distributors. While, in themselves, those facts appear to reflect an apparently unilateral conduct by that supplier, it would be otherwise if the distributors complied with those prices. In that respect, the facts that the minimum resale prices are, in practice, followed by the distributors, or that their indication is sought by the latter, who, whilst complaining to the supplier about the indicated prices, do not however apply other prices on their own initiative, could be of such a nature as to reflect the acquiescence on the part of those distributors to minimum resale prices being fixed by the supplier.*" (§52)

"*It follows that the existence of an agreement, within the meaning of Article 101(1) TFEU, on minimum resale prices may be established not only by means of direct evidence but also on the basis of consistent coincidences and indicia, where it may be inferred that a supplier invited its distributors to apply to follow those prices and that the latter, in practice, complied with the prices indicated by the supplier.*" (§57)

"*Similarly, the Court has held that an arrangement that covers only part of the territory of a Member State may, in some circumstances, be capable of affecting trade between Member States […].*" (§63)

"*Article 101(1) TFEU must be interpreted as meaning that there is an 'agreement', within the meaning of that article, where a supplier imposes on its distributors minimum resale prices of the products that it markets, if the imposition of those prices by the supplier and compliance with them by the distributors reflects the expression of*

the concurrence of wills of those parties. That concurrence of wills may be shown from the terms of the distribution contract at issue, where it contains an express invitation to comply with minimum resale prices or authorises, at the very least, the supplier to impose those prices, as well as from the conduct of the parties and, in particular, from any explicit or tacit acquiescence on the part of the distributors to an invitation to comply with minimum resale prices." (§2 of the operative part)

"*Article 101(1) TFEU must be interpreted as meaning that the fact that a vertical agreement fixing minimum resale prices covers almost the entirety, but not all, of the territory of a Member State does not prevent that agreement from being capable of affecting trade between Member States*." (§4 of the operative part)

3. RELEVANT LEGISLATION

- Article 101(1) TFEU

4. RELEVANT LITERATURE

F. WIJCKMANS and F. TUYTSCHAEVER, *Vertical Agreements in EU Competition Law*, Oxford University Press, 2025, §3.185ff

5. PRACTICAL SIGNIFICANCE

The case serves as a valuable reminder of the standard of proof for fundamental concepts in competition law, notably the notion of ‘agreement’ and ‘restriction by object’. It is also a useful reminder of the difference between hardcore restrictions in the context of a block exemption regulation and restrictions of competition by object. Hardcore restrictions are central to a block exemption but their significance for the purpose of finding a by object restriction is limited: they are only a relevant element when assessing the legal context. As the ECJ put it: the provisions on hardcore restriction do not contain an indication as to whether those restrictions must be categorised as a restriction ‘by object’ or ‘by effect’. Only a case-by-case analysis can determine if this is the case.