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TEGOS LAW FIRM

CASE CARD | 16 September 2026

Mantinga and Maxima (A-741-552/2016)

Resale price maintenance

1. CASE SUMMARY

A. Summary of facts

Mantinga produces bread and other food products, which Maxima sells in its retail stores. The Lithuanian Competition Council ('LCC') found that Mantinga and Maxima had agreed that Mantinga's products would not be sold in Maxima's stores below the prices included in Mantinga's price list, referred to as the 'base prices'.

According to the LCC, the companies consistently sought to ensure that the retail prices, also referred to as the 'shelf prices', applied in Maxima's stores were not lower than Mantinga's base prices. The infringement lasted from 2003 until 2013.

The Supreme Administrative Court upheld the finding of an infringement and the following fines:

- 13,666,216 EUR for Maxima; and
- 2,151,417 EUR for Mantinga.

B. Notes on case history

The LCC found that Mantinga and Maxima had entered into an agreement concerning minimum and, in certain instances, fixed resale prices. It based that finding on the provisions of the parties' supply agreements, their pricing practices, email correspondence between Mantinga and retailers, Mantinga's base prices and the shelf prices applied to Mantinga's products.

One of the disputed issues concerned the duration of the infringement. Although Mantinga and Maxima did not dispute that certain supply agreements had included resale pricing provisions under which Mantinga's base price constituted the minimum resale price, they argued that the infringement had lasted for a shorter period than the LCC had established. In particular, they argued that the agreement containing the relevant provisions was no longer in force after 2003.

The LCC acknowledged that the subsequent supply agreements did not expressly provide for minimum resale prices. Nevertheless, it considered that their provisions on base pricing and the calculation of supply prices, together with the requirement that Mantinga apply uniform base prices to Maxima and other retailers, formed part of the mechanism implementing the agreement and confirmed its continued existence.

Maxima also argued that the LCC had not convincingly explained how an agreement supporting minimum prices could have been implemented without communication between the parties. Mantinga submitted that the email correspondence relied on by the LCC did not demonstrate a concurrence of wills to set minimum or, in certain instances, fixed resale prices.

The parties further argued that the email correspondence reflected the use of recommended resale prices rather than an agreement to fix resale prices. Mantinga emphasised that recommended resale prices are generally permissible under competition law and argued that the evidence did not demonstrate that it had pressured or incentivised Maxima to follow its recommendations.

C. Legal analysis

C.1. - Existence and duration of the agreement

The Supreme Administrative Court agreed that the provisions included in the supply agreements concluded after 2003 contributed to establishing the continued existence of the prohibited agreement. These provisions concerned Mantinga's base pricing, the method for calculating supply prices, the requirement to apply uniform base prices to Maxima and other retailers, and the mechanism for compensating Maxima when other retailers deviated from the minimum shelf prices.

According to the Court, these contractual arrangements were essential to ensuring the effectiveness of the agreement on resale prices. They therefore constituted evidence that the prohibited agreement continued after 2003, even though the later supply agreements did not expressly impose minimum resale prices.

C.2. - Assessment of the evidence

The Supreme Administrative Court held that, even if the wording of the email correspondence could not in itself establish every element of the prohibited agreement, the infringement was demonstrated by the totality of the evidence collected in the case.

The Court considered that the email correspondence, viewed as a whole, confirmed that Mantinga and Maxima had communicated with a view to coordinating minimum shelf prices. It was not necessary for each individual email to disclose the entire mechanism of the prohibited agreement.

The fact that Maxima may occasionally have applied base or shelf prices that differed from the prices discussed in the correspondence did not demonstrate that the parties lacked the intention to agree on minimum or, in certain instances, fixed resale prices. Deviations from the parties' general plan to adhere to the agreed resale prices did not negate the existence of the agreement.

C.3. - Recommended resale prices

The Supreme Administrative Court rejected the parties' argument that the prices were merely recommended and therefore non-binding. The email correspondence demonstrated that Mantinga and Maxima coordinated both the level of the resale prices and the date on which those prices would apply. This contradicted the purportedly non-binding nature of the prices.

The Court agreed with the court of first instance that prices presented as recommended prices may constitute an agreement on price fixing where the available evidence establishes that the parties coordinated their application.

C.4. - Restriction by object

The Supreme Administrative Court concluded that the totality of the evidence was sufficient to establish a common plan under which the shelf prices of Mantinga's products were not to fall below Mantinga's base prices. The relevant evidence included the supply agreements, the parties' email correspondence, Mantinga's base pricing, the monitoring of shelf prices and the application of Mantinga's base prices within Maxima's retail network.

The Court considered the parties' conduct to constitute coordinated action and therefore an agreement within the meaning of Article 5(1) of the Lithuanian Law on Competition and Article 101(1) TFEU.

The agreement restricted competition by object. Consequently, it was not necessary to establish that the agreement had been fully implemented. Any deviations from the agreed resale prices did not negate either the existence of the agreement or its restrictive object.

C.5. - Effect on trade between Member States

The Supreme Administrative Court held that the coordinated conduct was capable of affecting trade between Member States. It rejected the argument that the LCC had been required to investigate the actual existence and significance of such effects.

According to the Court, it was sufficient to establish that the agreement was capable of directly or indirectly, actually or potentially affecting the pattern of trade between Member States.

In reaching this conclusion, the Court considered that the agreement covered the relevant Lithuanian market and concerned everyday consumer products. It also took into account that the wholesale markets for some Mantinga products extended beyond Lithuania, that a significant proportion of Mantinga's products was exported, and that Mantinga maintained contractual relationships with companies belonging to the Maxima group in other countries.

2. QUOTES

"*Such a system, when UAB 'Mantinga' had to assume the risk of shelf prices applied by other retail companies, so that they would not be lower than the prices of Maxima LT, UAB, created incentives for UAB 'Mantinga' to avoid competition in product retail prices and created conditions to support applicants concluded agreement on resale prices.*" (free translation)

"*The fact that the applicants did not use binding expressions in their electronic correspondence does not in itself negate their desire to avoid retail price competition. After evaluating the stated circumstances, the panel of judges states that the applicants' email correspondence had the purpose, among other things, of consolidating UAB 'Mantinga' base prices as minimum 'shelf' prices.*" (free tranlation)

"*It should also be noted that the infringement of the applicants restricts competition by purpose, so when assessing the existence of such an agreement, it is not significant whether it was implemented. Deviations from the agreement to adhere to agreed resale prices do not negate the existence of such an agreement and restriction of competition.*" (free translation)

"The panel of judges agrees with the assessment of the court of first instance that even the setting of prices of a recommendatory nature can be objectively considered as an agreement on fixing prices in terms of Article 5(1) of the Law on Competition." (free translation)

3. RELEVANT LEGISLATION

- Article 5 of the Lithuanian Law on Competition
- Article 101 TFEU
- Guidelines on Vertical Restraints

4. PRACTICAL SIGNIFICANCE

The judgment shows that an agreement on resale price maintenance does not need to be expressly included in a written supply agreement. Its existence and duration may also be established on the basis of the contractual pricing mechanism, the parties' pricing practices, email correspondence and the monitoring of retail prices, assessed as a whole.

The judgment further confirms that prices presented as recommended resale prices may constitute minimum or fixed resale prices where the supplier and retailer coordinate their level or application. The absence of overtly

binding language and occasional deviations from the agreed prices do not necessarily negate the existence of an agreement.

Finally, the judgment illustrates the evidential importance of email correspondence in resale price maintenance cases. Suppliers and retailers should therefore ensure that communications concerning recommended resale prices do not amount to coordination of actual retail prices or otherwise restrict the retailer's freedom to determine its resale prices independently.