Distribution Law Center
DRIVEN BY CONTRAST



NEWS | 12 September 2022

The Finnish Market Court imposes fines for resale price maintenance

Case summary

The Finnish Market Court ('MC') specializing in *inter alia* competition affairs has, pursuant to a statement of objections by the Finnish Competition and Consumer Authority (the Finnish Competition Authority, 'FCCA'), imposed a fine of 1.75 million EUR on *Isojoen Konehalli* ('IKH') for engaging in resale price maintenance ('RPM') with its retailers. The MC also upheld the FCCA's cease-and-desist order requiring IKH to bring its infringement to an end.

IKH, a supplier of hardware tools and spare parts, had required its retailers to comply with its recommended resale price ('RRP') in the retailers' own online stores with respect to products supplied by IKH. If the retailers did not follow IKH's RRP, IKH pressured them by *inter alia* cutting the retailer's discounts, and threatening to cut supplies to said retailer. In one case IKH ejected a retailer from its chain of authorized distributors by terminating the retailer's authorized distributor agreement.

Moreover, IKH had set up a common online store with its authorized retailers through which both IKH and its authorized retailers sold products supplied by IKH to customers. The agreement setting up the online store dictated that the price of all products sold through that online store was IKH's RRP, irrespective of whether the sale was made by IKH or an authorized retailer. This online store was still running at the time of the FCCA's decision, so the FCCA had ordered IKH to cease this part of its infringement.

Commentary

The first count of IKH's RPM concerned a rather straightforward case of a supplier dictating the resale price at the distributor level, where in some cases the agreement was a result of pressure and tacit acquiescence, and in some cases, there was explicit acquiescence to IKH's requests from a retailer.

The second count of IKH's RPM resembles a "hybrid platform" scenario. IKH and some of its authorized retailers had been planning a "chain-driven" online store, which would divide orders between the authorized retailers that had joined the online store. IKH set up the platform and invited all its authorized retailers to join it by undersigning a separate agreement. Pursuant to the agreement, the online store directed the orders to retailers based on the customer's zip code. The retailer who received the order also received the customer's payment, and delivered the

product to the customer from its own stock of products supplied to it by IKH. If the retailer could not deliver the product, IKH would deliver it and charge the retailer afterwards. Irrespective of who delivered the product, the customer's price was always IKH's RRP.

In effect, IKH had established a sales platform which automatically facilitated transactions between customers and all retailers who had joined the platform. In a sense IKH therefore provided an "online intermediation service" within the meaning of Article 1(e) of the new Vertical Block Exemption Regulation (Regulation 2022/720). In addition, IKH was also active at the retail level, therefore competing with its independent authorized retailers. However, the case was decided under the old vertical regime (Regulation 330/2010), so there was no consideration as to how the case would play against the rules concerning so-called "hybrid platforms" pursuant to the new vertical regime.

It should be noted that the MC imposed a significantly lower fine than what the FCCA had proposed. The FCCA had proposed that the MC would impose a fine of 9 million EUR on IKH. The MC concluded that the proven scope of the infringement was significantly narrower than what the FCCA had claimed, since, first, IKH's RPM concerned only its retailers' online sales and not brick-and-mortar sales, and second, because the MC considered IKH's own sales through the common online store to be outside the scope of the infringement. The MC decided to impose a fine of 1.75 million EUR on IKH.

In Finnish fining practice, it is somewhat customary that the Courts decide on lower fines than what the FCCA proposes. This is usually because the Courts have a narrower view of the infringement's scope or duration, usually because they consider that the FCCA has been unable to prove its assertions to their full extent. Even though the ultimate fine significantly differed from the FCCA's view, the judgment can be seen as a confirmation on the FCCA's tough stance against RPM, since its analysis on the anticompetitive 'object' of IKH's RPM was held in full. This was the FCCA's first statement of objections and the MC's first judgment concerning RPM for a little over a decade. With a confirmation from the judiciary, it would not be surprising that the FCCA would continue to pursue such cases in the future.