Distribution Law Center
DRIVEN BY CONTRAST

Vertice Avocats

NEWS | 8 December 2022

Paris Court of Appeals substantially reduces record fine imposed by French Competition Authority on Apple and its wholesalers

In 2020, the French Competition Authority imposed a record fine on Apple (1.1 billion EUR) and two of its wholesalers (139 million EUR). The Authority sanctioned Apple for engaging in three different anticompetitive practices concerning distribution in France of non-iPhone products (such as iPads).

On 6 October 2022, the Paris Court of Appeals partially overturned this decision and significantly reduced Apple's fine to 371.7 million EUR, which is roughly a third of the original fine.

Resale price maintenance (first practice)

In its 2020 decision, the French Competition Authority found that Apple obliged specialised independent resellers ("Premium" distributors) to apply the same prices as those used in its stores and website, and concluded that this practice constituted resale price maintenance ('RPM').

The Paris Court of Appeals reformed the French Competition Authority's decision on this point. According to the Court, the Authority did not sufficiently demonstrate that Apple engaged in RPM, as there is no proof that Apple had made binding price recommendation to its retailers and that they had adhered to a fixed price system that restricted their pricing freedom. In order to conclude that Apple engaged in RPM, the Authority would have had to demonstrate a sufficiently explicit invitation from Apple to respect these prices and an adherence of the resellers to this system.

As a result, the Paris Court of Appeals annulled the fine that was imposed for this practice.

Allocation of products and customers (second practice)

In 2020, the French Competition Authority held that Apple and two of its wholesalers agreed to share the market by allocating products and customers instead of freely deciding on their commercial policy. This practice was considered by the Authority to be the most important of the three, which therefore led to the highest fines.

The Court of Appeals confirmed the existence of the market sharing infringement, but reduced the amount of the fines considering that there was insufficient evidence to prove that the practices concerned took place from

December 2005 to March 2013. The Court therefore shortened the duration of the infringement by four years, which ultimately led to a significant reduction in the total amount of the fine.

Abuse of economic dependence (third practice)

In 2020, the French Competition Authority held that Apple abusively exploited the economic dependence of its resellers, imposing unfair and unfavourable commercial conditions with regard to its network of official distributors.

The Court of Appeals confirmed this finding, saying that the supply difficulties and differences in treatment between the supply channels have placed Apple's resellers at a competitive disadvantage compared to the Apple stores and such behaviour constituted an abuse within the meaning of Article L. 420-2, paragraph 2, of the French Commercial Code.

The Court nevertheless modified the French Competition Authority's decision, stating that the Authority did not establish that the abuse treatment included commercial conditions concerning the rebates. According to the Court, the commercial conditions relating to the discounts granted to resellers did not abnormally restrict their activity, noting the sufficient visibility offered to the resellers to adapt their commercial policy.

Fines

In view of the above, the Court of Appeals reduced the total penalty imposed on Apple and its wholesalers.

First, the amount of the fine was reduced considering the partial reversal of the French Competition Authority's decision, more specifically with regard to the RPM infringement.

Second, the Court slightly reduced the percentages applied to the value of sales for the fines resulting from the market sharing and the abuse of economic dependence infringements.

Finally, and most importantly, the Court of Appeals reduced the percentage increase in the base amount of the fines due to the fact that Apple and its wholesalers belong to large corporate groups (90% to 50% for Apple, 60% to 10% and 50% to 8% respectively for the wholesalers). According to the Court, the surcharge rates were disproportionate. It therefore considered that the reduced rates are sufficient to satisfy the objectives of repression and dissuasion in terms of competition law.

Commentary

The Court of Appeal's judgment is important as it confirms the existence of two anticompetitive practices implemented by an operator as powerful as Apple.

In its judgment, the Court also recalled the standard of proof that must be met for a practice to qualify as RPM and/or market sharing.

Finally, this case constitutes one of the rare applications of the abuse of economic dependence prohibition, which is provided in Article L. 420-2 of the French Commercial Code. The Court of Appeals has the opportunity to specify in its judgment that the scope of application of the abusive exploitation of economic dependence may include the French restrictive practices of competition – another specificity of French law – which is provided in Article L. 442-1 of the French Commercial Code (in this case, the significant imbalance between the rights and obligations of the parties), when the practice is likely to affect the competitive process or the competition structure.