Distribution Law Center
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ARNECKE SIBETH DABELSTEIN

CASE CARD | 17 January 2023

FOND OF (B10-26/20)

Resale price maintenance

1. CASE SUMMARY

A. Summary of facts

FOND OF is a company based in Cologne (Germany) that specializes in the development and manufacturing of school backpacks and school bags under the brand names ‘ergobag’ and ‘Satch’. Throughout the relevant period, FOND OF predominantly sold its products via wholesalers and retailers.

FOND OF and the retailers involved agreed that the products should be sold at the price set by FOND OF as the recommended retail price (‘RRP’). The agreement generally ruled out any discounts on the RRP. If the retailers launched discount or voucher campaigns, it was generally understood that FOND OF products were to be excluded. In addition, at least until 2016, only a small number of retailers were permitted to engage in online sales. This agreement resulted in a very stable price level for FOND OF products sold in Germany.

FOND OF, as well as the retailers, monitored compliance with the prices and rules for online sales at regular intervals. Any increase of the RRP was followed up to ensure that all retailers changed their prices. FOND OF sales staff contacted trading partners which deviated from the prices and rules. The deviating retailers were requested to stop their conduct and maintain price discipline. In individual cases where the partners did not stop the conduct objected to, FOND OF used sanctions such as blocking reorders, removing benefits or, in extreme cases, terminating the business relationship.

The price fixing practices were in place since the early stages of FOND OF’s business relations with the retailers, starting from March 2010 and continuing until the end of August 2018, in some cases even until the dawn raid in January 2019.

B. Legal analysis

The case involved vertical price fixing, an object infringement. Once the facts were established, the legal analysis was therefore very straightforward.

2. RELEVANT LEGISLATION

- Article 101 TFEU
- Regulation 330/2010
- Vertical Guidelines

3. PRACTICAL SIGNIFICANCE

This case is particularly relevant as it serves as an illustration of the strict enforcement practice of the FCO in the area of resale price maintenance. Overall, the FCO sets very high standards for suppliers. This contrasts with the strong interest of many suppliers to prevent a deterioration of resale prices, as this creates pressure on their sales prices towards their distributors.

The strict enforcement practice of the FCO illustrated by the present case shows that these standards are not just theory, but that suppliers are well advised to ensure compliance with them as the FCO otherwise imposes severe fines.