

CASE CARD | 20 July 2026

FCCA v Isojoen Konehalli Oy (KHO:2023:127)

Resale price maintenance

1. CASE SUMMARY

A. Summary of facts

IKH is an importer and wholesaler of tools and spare parts. The Finnish Supreme Administrative Court found that IKH had infringed Article 101 TFEU and its Finnish counterpart Section 5 of the Competition Act by engaging in resale price maintenance ('RPM').

According to the Supreme Administrative Court, IKH's infringement consisted of two parts:

- First, from March 2010 until February 2015, IKH had required its certain retailers to price all products supplied by IKH ('IKH Products') in accordance with IKH's recommended resale price ('RRP') in the retailers' own online stores.
- Second, in October 2014, IKH had established its own online store (the 'IKH Online Store') for selling IKH Products itself to which only its authorized retailers that had entered into a Sales Cooperation Agreement with IKH could join by signing a separate Online Store Agreement. Pursuant to these agreements, the IKH Online Store directed all orders placed in the store, including the price paid by the customer, to an authorized retailer based on the customer's zip code. All the IKH Products sold through the IKH Online Store were priced according to IKH's RRP, irrespective of whether IKH or an authorized retailer delivered the product. This part of the infringement lasted from the opening of the IKH Online Store in October 2014 until the FCCA ordered IKH to cease the conduct on 20 May 2020.

B. Notes on case history

The FCCA proposed the Market Court to impose a fine of 9 million EUR to IKH, but the Market Court ended up imposing a fine of 1.75 million EUR in its judgment of 11 August 2022. Both IKH and the FCCA appealed the Market Court's decision to the Supreme Administrative Court.

C. Legal analysis

Article 101(1) TFEU – by object restrictions

The RPM was twofold, first in IKH's contacts with its retailers concerning their own online stores, and second with

regard to the IKH Online Store:

- Regarding the retailers' online store, the Supreme Administrative Court found that IKH had an agreement or at least a concerted practice with four of its retailers concerning the retailers' pricing of IKH Products in their own online stores. IKH pressured or requested the retailer to alter their online prices to correspond IKH's RRP and the retailer acquiescing to IKH's initiatives.
- Regarding the IKH Online Store, the Supreme Administrative Court found that the relevant agreements did not constitute genuine agency agreements. It concluded that since the Sales Cooperation Agreement explicitly stated that the authorized retailers act as independent undertakings when selling IKH Products, and since the Sales Cooperation Agreement and the Online Store Agreement formed a single whole, it was clear that the authorized retailers were not acting as agents when delivering orders directed to them by the IKH Online Store.

Subsequently, the Supreme Administrative Court found that the RPM constituted restrictions by object:

- Regarding the retailers' online store, the Supreme Administrative Court stated that IKH's conduct by which it required its retailers to comply with or pressured them to comply with its RRP had at least the potential to have a negative impact on competition, and thus its object was to restrict competition.
- Regarding the IKH Online Store, the Supreme Administrative Court considered the following:
 - First, it noted that IKH had dictated the price of IKH Products sold through the IKH Online Store, and that this price was paid to any party that delivered the order whether it was IKH or an authorized retailer.
 - Second, it added that when fulfilling the orders directed to them by the IKH Online Store, the retailers delivered to the customer an IKH Product from their own stock that they had previously bought from IKH for resale, and thus carried the commercial risk related to that product.
 - Third, it considered IKH's other conduct by which the company had required its retailers to comply with its RRP in their own online stores. According to the Supreme Administrative Court, this conduct combined with the fact that the price visible in the IKH Online Store was IKH's RRP, the IKH Online Store's pricing could lessen the retailers' incentives to deviate from IKH's RRP in their own online stores. Based on this the Supreme Administrative Court stated that with the fixed pricing based on the Online Store Agreements, IKH aimed to influence the resale pricing of IKH Products, and to lessen price competition between IKH and its authorized retailers on the one hand and between the authorized retailers on the other. The Supreme Administrative Court concluded that IKH's conduct concerning the IKH Online Store aimed to restrict competition in the online sales of IKH Products, which by its very nature displayed a sufficient degree of harm to competition, thus having as its object the restriction of competition.

Article 101(3) TFEU – RPM not an indispensable restriction

During the proceedings, IKH argued that consumers had benefited from the IKH Online Store since it resulted in faster deliveries and better services in connection with the deliveries provided by the authorized retailers. The Supreme Administrative Court referred to the decision of the Market Court which underlined that IKH's conduct concerning the IKH Online Store had as its object the restriction of competition, so that the examination of its effects or the definition of relevant markets had not been necessary. The Supreme Administrative Court then stated that IKH had not given adequate justifications for why such restriction would have been indispensable to achieve the claimed benefits, and that selling IKH Products through an online store could have been achieved without RPM.

Fines – a significant reduction based on narrower extent of the infringement

The Supreme Administrative Court found that the infringement constituted illegal price fixing restrictive of competition, which was a serious infringement despite its vertical nature. The Supreme Administrative Court also found that, contrary to what the FCCA claimed, IKH had not required its retailers to comply with its RRP in the retailers' brick-and-mortar stores, but only in their online stores. Second, the Supreme Administrative Court considered that the orders from its online store that IKH delivered itself was IKH's unilateral conduct, and thus were outside the scope of the infringement. Such deliveries made up most of the total deliveries made through the IKH Online Store. Based on these two factors the Supreme Administrative Court concluded that the extent of the proven infringement was significantly narrower than what the FCCA's request was based on. As a result of an overall assessment, the Supreme Administrative Court confirmed the amount of the fine imposed by the Market Court which was significantly lower (1.75 million EUR) than proposed by the FCCA (9 million EUR).

2. QUOTES

"The Supreme Administrative Court finds, as did the Market Court, that IKH had an agreement or at least a concerted practice with [Retailer A] concerning resale price maintenance of IKH products in these retailers' online stores. In this respect, it was not a matter of IKH's unilateral measures, but conduct within a vertical contractual relationship in which the aforementioned retailers harmonized their pricing of IKH products in their online stores to match the minimum price level determined by IKH." (free translation of §155)

"Based on the evidence presented in the case, IKH has been found, among other things, to have pressured its resellers to raise prices in their own online stores and to comply with the minimum resale prices set by IKH. According to the evidence, resellers have in some instances agreed to these demands. With regard to the IKH online store, IKH's resale price maintenance has resulted in a fixed resale price being applied in the IKH online

store." (free translation of §553)

"IKH's conduct in setting the prices of its resellers has restricted internal price competition for IKH products in the IKH online store and thereby limited price competition both among resellers and between IKH and its resellers."
(free translation of §554)

"When assessing the harmfulness of IKH's competition infringement, it can be taken into account that the resale price maintenance targeting online sales has had at least some impact on the price level of brick-and-mortar sales as well." (free translation of §561)

"IKH's total turnover during the infringement period has been over 100 million euros, and the penalty has been only slightly more than one percent of its total turnover." (free translation of §573)

3. RELEVANT LEGISLATION

- Section 5 of the Finnish Competition Act (no. 948/2011)
- Article 101 TFEU

4. PRACTICAL SIGNIFICANCE

This was the first statement of objections by the FCCA and the first judgment of the Supreme Administrative Court concerning RPM in Finland for a decade. The judgment shows that, while the enforcement level has been low, RPM is considered to be a serious infringement of competition law that will, as a rule, attract a fine.

The judgment also underlines the relevance of e-commerce in the enforcement of vertical cases. The FCCA had underlined the effectiveness of e-commerce as a means of enhancing price competition, and the Supreme Administrative Court considered that using IKH's Online Store to dampen price competition was a relevant factor when assessing the degree of gravity of the infringement and consequently the amount of the fine. It is noteworthy that the IKH Online Store resembled a so-called 'hybrid platform' as defined in recital 14 of the Vertical Block Exemption Regulation (Regulation 2022/720) and paragraphs 104-109 of the Vertical Guidelines run by IKH, which its authorized retailers could join. Even if possible to read case as RPM conducted by a hybrid platform, it should be noted that the case was decided before the new Vertical Block Exemption Regulation was in force and was assessed based on existing principles from case law based on Article 101 TFEU. However, suppliers and buyers should conduct a thorough competition law assessment before establishing a joint online presence, be it in the form of a common store or a platform, in order to avoid RPM or other hardcore infringements.