

CASE CARD | 3 September 2026

Rajo (5s/82/2018-1549)

Resale price maintenance

1. CASE SUMMARY

A. Summary of facts

Following dawn raids and on the basis of emails and other evidence gathered during its investigation, the Antimonopoly Office of the Slovak Republic ('AMO') concluded that RAJO, a major dairy supplier in Slovakia, had participated in a system aimed at influencing and controlling the retail prices of its milk, butter and cream products sold by the Retail Chains. According to the AMO, retail prices communicated as "recommended" prices by RAJO were in reality used to establish minimum resale prices, thereby amounting to resale price maintenance ('RPM').

The AMO further considered that the Retail Chains were aware of RAJO's pricing strategy and cooperated by applying similar retail prices. According to the AMO, this conduct enabled the Retail Chains to align their pricing with RAJO's recommended prices rather than determine prices independently. The AMO therefore concluded that the arrangements reduced incentives to lower retail prices and thereby limited price competition.

According to the AMO, the conduct contributed to maintaining higher price levels for RAJO products and facilitated coordinated increases in retail prices. The AMO considered that RAJO products were consequently sold at higher prices than would have been the case under effective competition.

The AMO also found that the arrangements operated to the mutual benefit of RAJO and the Retail Chains. In its view, the Retail Chains were able to achieve desired profit margins without the risk of price wars, while RAJO avoided pressure to reduce wholesale prices. The AMO therefore concluded that the arrangements benefited the parties involved at the expense of competition consumers.

B. Notes on case history

The AMO imposed total fines of more than EUR 10 million on RAJO and the Retail Chains. The AMO decisions were the first Slovak competition law decisions in which not only a supplier, but also purchasers, were fined for their active involvement in the alleged conduct.

RAJO and the Retail Chains except BILLA, which settled with the AMO, appealed the AMO decisions before the Regional Court.

C. Legal analysis

The Regional Court concluded that the AMO Decisions were affected by numerous legal errors, lacked sufficient factual findings and were not capable of effective judicial review. It therefore annulled both AMO Decisions.

The principal grounds for annulment were the following.

C.1 - Standard of proof under Slovak and EU law

The applicants argued that the AMO had failed to establish the facts sufficiently, had not demonstrated the participation of all parties in the alleged conduct, had infringed the principle of material truth and had failed to prove the express or implied consent of the Retail Chains, which was required for the existence of an agreement.

In addressing those arguments, the Regional Court examined whether the AMO had applied the appropriate standard of proof. The AMO had applied the “balance of probabilities” standard. The applicants, by contrast, argued that the higher “beyond reasonable doubt” standard should have applied.

The Regional Court agreed with the applicants. It held that the “beyond reasonable doubt” standard follows from Slovak law and must be applied by the AMO. According to the Court, even if EU law were interpreted as requiring a lower standard of proof, the AMO was required to apply the higher national standard when enforcing Slovak competition law.

C.2 - Requirement of pressure or inducement in relation to recommended prices

The applicants further argued that the AMO had failed to establish the existence of a penalty or incentive mechanism in relation to the alleged minimum resale prices. According to them, the resale prices at issue had merely been communicated as recommended prices.

The Regional Court held that Regulation 330/2010 distinguishes between fixed resale prices, minimum resale prices and recommended resale prices. It further concluded that recommended resale prices are not prohibited as such. Where prices are merely recommended, it is necessary to establish the existence of pressure, inducement, a penalty mechanism or a comparable enforcement mechanism in order to demonstrate an infringement.

The Court therefore considered that the AMO should have examined and established the existence of such a mechanism.

C.3 - Article 101(3) TFEU and the burden of proof

The Regional Court also concluded that the AMO had erred by failing to assess the economic analysis submitted by RAJO in support of the application of Article 101(3) TFEU.

RAJO relied on paragraph 47 of the 2010 Vertical Guidelines (paragraph 181 of the 2022 Vertical Guidelines), which provides that where undertakings substantiate that likely efficiencies arise from a hardcore restriction and

demonstrate, in general terms, that the conditions of Article 101(3) TFEU are fulfilled, the competition authority must effectively assess the likely negative effects on competition before reaching a final conclusion on the applicability of Article 101(3) TFEU.

According to RAJO, it had submitted a detailed economic analysis demonstrating likely efficiencies arising from the conduct, in particular the protection of the RAJO brand. It therefore argued that the AMO was required to assess the likely negative effects of the conduct before rejecting the applicability of Article 101(3) TFEU.

The Regional Court agreed that the analytical framework described in paragraph 47 of the 2010 Vertical Guidelines was applicable to the case. It found that the AMO had failed to apply that framework and had not explained why it considered it inapplicable. The Court therefore concluded that the AMO had committed a material error in this respect.

2. QUOTES

"As regards the objection concerning the standard of proof, the Administrative Court agrees with the applicant's position. That position is supported, inter alia, by the judgment of the Supreme Court of the Slovak Republic of 31 May 2018 in Case No. 8Sžh/3/2016. As follows from Act No. 136/2001 Coll., read in conjunction with Sections 2(3) and 37(1), the Administrative Procedure Code also applies to proceedings concerning infringements of competition law to the extent that it provides for a higher standard of proof. Under Sections 3(5) and 32(1) of the Administrative Procedure Code, decisions adopted in administrative proceedings must be based on a reliably established state of affairs, and the actual facts must be established accurately and comprehensively. The Administrative Procedure Code is therefore based on the principle of material truth. A comparison between the standard of proof under the Administrative Procedure Code and the European standard of proof relied upon by the defendant shows that the higher standard of proof under the Administrative Procedure Code must be applied in the present case." (free translation of §349)

"It is therefore impossible to agree with the defendant (note: the AMO) that, in the present case, the law does not require the existence of a penalty mechanism. That requirement is expressly laid down in Article 4(a) of Commission Regulation (EU) No 330/2010 and constitutes an essential element of the infringement, which must be reflected in both the factual and legal assessment of the case. The defendant's argument cannot therefore be accepted. The defendant has not explained why Article 4(a) of Regulation No 330/2010 would be inapplicable to the present case, has not referred to any national or EU provision supporting such a conclusion, and has not provided any convincing reasons why the decisions relied upon by the applicants should not apply in the present proceedings." (free translation of §364)

"In the contested decision and in its submissions before the Court, the defendant (note: the AMO) addressed the

issue of the individual exemption claimed by applicant No. 5 (note: RAJO). However, it failed to respond to the applicant's argument that the administrative proceedings were affected by a procedural irregularity. Once the relevant conditions are met, paragraph 47 of the Guidelines on Vertical Restraints requires the European Commission, or the competent competition authority, in this case the defendant, to carry out an effective assessment of the likely negative effects on competition of the agreement under review and, on that basis, to determine whether the conditions of Article 101(3) TFEU are fulfilled. It cannot be established from the contested decision, the administrative file or the defendant's submissions in these proceedings that the procedure required by paragraph 47 of the Guidelines on Vertical Restraints was followed, nor is it explained why such a procedure would not be appropriate in the present case." (free translation of §388-389)

3. RELEVANT LEGISLATION

- Article 101 TFEU
- Regulation 330/2010 (now: Regulation 2022/720)
- Section 4(1) and 4(5) of the Slovak Act No. 136/2001 Coll. on Protection of Competition (in the meantime replaced by the new Slovak Competition Act No. 187/2021 Coll.)
- 2010 Vertical Guidelines, paragraph 47 (now: 2022 Vertical Guidelines, paragraph 181)

4. PRACTICAL SIGNIFICANCE

This case illustrates that, although RPM is considered a restriction by object, competition authorities remain required to assess the likely negative effects of the conduct where a party substantiates that likely efficiencies result from the conduct and demonstrates that, in general, the conditions of Article 101(3) TFEU are fulfilled. A final assessment under Article 101(3) TFEU cannot be made without such an assessment.