



Aktuálne trendy v slovenskom a európskom súťažnom práve

Vertikálne obmedzenia v súťažnom práve

22. mája 2019

Coty (C-230/16)

PROHIBITION OF SALES:



- authorized distributors
- under a **SDS** for **luxury products**
- in a **discernible** manner
- through third party undertakings (Amazon, eBay, etc.)

Court judgement highly anticipated given the different interpretation of the CJEU judgment in *Pierre Fabre*

Luxury products necessitate SDS

- Quality of goods is not only the result of their material characteristics
- Luxury goods may require the implementation of a SDS in order to preserve the quality of those goods

Prohibition of TPP is proportionate

- Objective to preserve the image of luxury and prestige of the goods
- Comparable with requirements for offline sales
- Based on the present stage of e-commerce

Prohibition of TPP is not a *hard-core* restriction

- Restriction of a specific kind of internet sales
- Not all online sales are prohibited

Czech Competition Authority

Recent Decisions on Vertical Restraints

- **LR Health & Beauty Systems** (2018)
 - fined 3.5 million CZK (140,000 EUR)
 - **RPM** – LR required the observation of “recommended” resale prices by eshops through payment/withholding of bonuses
 - LR was tracking the prices through **price comparison websites** and own **mobile app**
- **Booking.com** (2018)
 - fined 8.3 million CZK (330,000 EUR)
 - **MFN** - Booking.com applied **wide parity clauses** - access to the hotel's lowest room rates (and best room availability) offered through any channel (own website or other online or offline TA)

Czech Competition Authority

Recent Decisions on Vertical Restraints (cont'd)

- **VIA FAOC** (2018)
 - fine of 1 million CZK (20,000 EUR), returned on appeal based on procedural grounds
 - **radius clause** in lease agreements - prohibition of tenant to open a shop in another outlet center in a certain radius for a certain duration of time
 - complaint of **Premium Prague Outlet Airport** – ca 45 minutes by car
 - *by effects* infringement

Restrictions in Lease Agreements

Radius Clauses - Excursion

- **Maxima Latvija (CJEU, C-345/14), 26. 11. 2015**
 - Right of the anchor tenant to prevent the lessor letting commercial premises to third parties
 - *by effects* infringement, not *by object*
- **VR Franconia (BKA, B1 62/13), 3. 3. 2015**, upheld by OLG Düsseldorf
 - prohibition from using radius clauses in lease contracts if these extend beyond a 50 km air radius and a term of five years
 - ***by object*** infringement (and *by effects* analysis)
- **Radiusklausel IV (OGH Wien, 16 Ok 8/10), 11. 11. 2011**
 - radius clause prohibiting the tenants from opening shop in the radius of 4 km or open a shop in a Factory Outlet Center in the radius of 50 km around the EUROPARK
 - no restrictive effects found