



## *Aktuálne trendy v slovenskom a európskom súťažnom práve*

Vertikálne obmedzenia v súťažnom práve

22. mája 2019

# Coty (C-230/16)

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## 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

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- 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

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## 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

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## 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

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## 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