

EU competition authorities tighten the screws on resale price maintenance

May 11, 2016

The seemingly slumbering enforcement of resale price maintenance in some parts of Europe has flared up with almost every competition authority lashing out at companies involved in these pricing practices now. More and more of the EU's national competition authorities take a strict approach by regarding resale price maintenance as a per se or object infringement, often without the need to demonstrate any appreciable effect on competition. In light of this pan-European development, it is wise for companies to double-check their agreements and commercial practices and offer resale price maintenance refresher courses to their employees. The focus of many EU competition authorities has clearly shifted to vertical restraints.

Looking at the last three years, the Austrians are the European champion when it comes to number of fines imposed (33 out of 85 in the EU in total). Germany wins looking at the monetary value of the fines (EUR 90.5 million out of EUR 437 million in the EU in total). While traditionally promoting a liberal rule of reason-like approach towards resale price maintenance, even the UK jumped on the resale price maintenance bandwagon recently, imposing a fine of just over EUR 1 million on the supplier of bathroom fittings without – at least in the press release – showing any harm done to competition. Only the Dutch competition authority has so far refrained from fining resale price maintenance and is sticking to its evidence-based approach. This wave of resale price maintenance cases is fuelled by leniency requests made possible in EU countries such as Austria, Romania and Sweden, as well as by the willingness of companies to settle early with the authorities, avoiding a drawn-out public debate on their illegal commercial practices. Most countries do not allow leniency in vertical cases yet, but the possibility of early settlement with resale price maintenance violators goes a long way.