

Parties to the main proceedings

Appellant: WY

Respondent: Steiermärkische Landesregierung

Operative part of the order

The Court of Justice of the European Union clearly has no jurisdiction to answer the question referred by the Landesverwaltungsgericht Steiermark (Regional Administrative Court, Styria, Austria) by decision of 3 February 2021.

⁽¹⁾ OJ C 148, 26.4.2021.

Order of the Court (Eighth Chamber) of 16 May 2022 (request for a preliminary ruling from the Landgericht Köln — Germany) — RV

(Case C-724/21) ⁽¹⁾

(Reference for a preliminary ruling — Article 99 of the Rules of Procedure of the Court of Justice — Citizenship of the Union — Article 21 TFEU — Right to move and reside freely in the territory of the Member States — Criminal offence specifically concerning international child abduction — Restriction — Child protection — Proportionality)

(2022/C 266/10)

Language of the case: German

Referring court

Landgericht Köln

Parties to the main proceedings

Defendant: RV

Interested party: Staatsanwaltschaft Köln

Operative part of the order

Article 21 TFEU must be interpreted as precluding the legislation of a Member State under which the removal by a parent of a child from the carer who is entitled to determine the place of that child's residence, with the aim of taking the child abroad, attracts criminal penalties even in the absence of force, threat of serious harm or deception, whereas where such removal takes place in the territory of the first Member State, the same act is punishable only if recourse is had to force, threat of serious harm or deception.

⁽¹⁾ Date lodged: 30 November 2021.

Request for a preliminary ruling from the Tribunal da Relação de Lisboa (Portugal) lodged on 17 March 2022 — Super Bock Bebidas, S.A., AN, BQ v Autoridade da Concorrência

(Case C-211/22)

(2022/C 266/11)

Language of the case: Portuguese

Referring court

Tribunal da Relação de Lisboa

Parties to the main proceedings

Appellants: Super Bock Bebidas, S.A., AN, BQ

Respondent: Autoridade da Concorrência

Questions referred

1. Does the vertical fixing of minimum prices constitute in and of itself an infringement by object which does not require a prior analysis of whether that agreement is sufficiently harmful?
2. In order to demonstrate that the 'agreement' element of the infringement consisting in the (tacit) fixing of the minimum prices to be charged by distributors is present, is it necessary to show that the distributors actually charged the fixed prices in the case in question, in particular by direct evidence?
3. Do the following factors constitute sufficient evidence of the commission of an infringement consisting in the (tacit) fixing of the minimum prices to be charged by distributors: i) the sending of lists containing minimum prices and margins for distribution; ii) asking distributors for information on the selling prices they charge; iii) complaints from distributors (where they consider the resale prices imposed on them to be uncompetitive or find that competing distributors do not adhere to them); iv) the existence of price-tracking mechanisms (as a minimum); and v) the existence of retaliatory measures (even though it has not been demonstrated that these have actually been applied)?
4. In the light of Article 101(1)(a) TFEU, Article 4(a) of Regulation No 330/2010,⁽¹⁾ the European Commission's Guidelines on Vertical Restraints and the case-law of the European Union, can an agreement between a supplier and its distributors which (vertically) fixes minimum prices and other terms of business applicable to resale be presumed to be sufficiently harmful to competition, without prejudice to an analysis of any positive economic effects arising from such a practice, within the meaning of Article 101(3) TFEU?
5. Is it compatible with Article 101(1)(a) TFEU and the case-law of the European Union for a judicial decision to find that the presence of the objective defining element of an 'agreement' between a supplier and its distributors is proved on the basis of:
 - (i) the fixing and imposition, by the former on the latter, on a regular, universal and unchanging basis during the period of the practice, of the terms of business which the latter must fulfil when reselling the products they acquire from the supplier, in particular the prices they charge their customers, principally in terms of minimum prices or average minimum prices;
 - (ii) the fact that the resale prices imposed are notified either verbally or in writing (via e-mail);
 - (iii) the fact that distributors are unable to fix their resale prices independently;
 - (iv) the customary and universal practice whereby the supplier's employees ask distributors (by telephone or in person) to adhere to the prices indicated;
 - (v) the universal adherence by distributors to the resale prices fixed by the supplier (other than in the event of occasional disagreements) and the finding that the conduct of distributors on the market is generally in keeping with the terms laid down by the supplier;
 - (vi) the fact that, in order not to breach the terms laid down, distributors themselves often ask the supplier to tell them what resale prices to charge;
 - (vii) the finding that distributors frequently complain about the prices set by the supplier rather than simply charging other prices;
 - (viii) the fixing by the supplier of (reduced) distribution margins and the assumption by distributors that those margins correspond to the level of remuneration payable for their business;
 - (ix) the finding that, by imposing low margins, the supplier imposes a minimum resale price, as the distribution margins would otherwise be negative;

- (x) the supplier's policy of granting discounts to distributors on the basis of the resale prices actually charged by them — the minimum price previously fixed by the supplier being the level of the price of restocks at sell-out;
 - (xi) the need for distributors — in the light in many cases of the negative distribution margin — to adhere to the resale price levels imposed by the supplier; the practice of lower resale prices is followed only in very specific circumstances and where the distributors ask the supplier for a further discount at sell-out;
 - (xii) the fixing by the supplier of (reduced) distribution margins and the assumption by distributors that those margins correspond to the level of remuneration payable for their business;
 - (xiii) the direct contact between the supplier and the distributors' customers and the fixing of the terms of business subsequently imposed on distributors;
 - (xiv) the supplier's intervention, on the distributors' initiative, inasmuch as it is the supplier that makes the decision to apply certain trade discounts or renegotiates the terms of business for resale; and
 - (xv) the fact that distributors ask the supplier to authorise them to conclude a particular transaction on certain terms in order to ensure their distribution margin?
6. Is an agreement on the fixing of minimum resale prices which exhibits the characteristics described above and covers almost the entire national territory capable of affecting trade between Member States?

(¹) Commission Regulation (EU) No 330/2010 of 20 April 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices (OJ 2010 L 102, p. 1).

Request for a preliminary ruling from the Supremo Tribunal Administrativo (Portugal) lodged on 22 March 2022 — Instituto de Financiamento de Agricultura e Pescas, IP v CS

(Case C-213/22)

(2022/C 266/12)

Language of the case: Portuguese

Referring court

Supremo Tribunal Administrativo

Parties to the main proceedings

Appellant: Instituto de Financiamento de Agricultura e Pescas, IP

Respondent: CS

Questions referred

1. May repayment of the maintenance costs and premiums for loss of income provided for in Article 3(b) and (c) respectively of Regulation No 2080/92 (¹) of 30 June 1992 be required where the beneficiary proves that the afforestation conditions required by the national aid programme were not met for reasons beyond his or her control and he or she made every effort to achieve the outcome?