

THE OCCP GOES AFTER MANAGERS FOR FIXING MINIMUM PRICES

Antitrust proceedings against Solgar Polska

At a press conference on 15 May 2019, the OCCP announced that it had initiated antimonopoly proceedings against Solgar Polska and two of its managers, accusing them of entering into (or allowing to enter into) a prohibited agreement to fix minimum resale prices for dietary supplements. The agreement may have resulted in higher prices for consumers. The unlawful practice may have been in place since 2010.

The agreement is of a vertical nature (a distribution agreement), and its members are, according to the OCCP, Solgar Polska and independent stores (pharmacies) selling offline and online.

The OCCP suspects that the parties agreed to set minimum prices in a formal (contractual) and/or informal manner (e.g. by e-mail), while Solgar Polska monitored the application of prices by the stores. In particular, representatives of the company visited retail outlets and, if the minimum price did not match these arrangements, they demanded an increase. Certain stores themselves also informed Solgar Polska of cases of other sellers' failing to charge the minimum prices.

For failing to comply with these minimum price arrangements, retailers were deprived of the possibility of placing orders on preferential terms. In the case of repeated infringements Solgar gave notice to terminate its agreements with them.

In order to collect evidence, the OCCP carried out a dawn raid at the office of Solgar Polska. The company may face a penalty of up to 10% of its annual turnover for concluding a prohibited agreement.

Allegations against managers

In this case, the OCCP has also brought charges against two managers of Solgar Polska. They are suspected of deliberately allowing the conclusion of a prohibited agreement. They each face a fine of up to PLN 2 million.

This is the first time the OCCP has accused individuals of participating in an illegal vertical (distribution) agreement. Previous cases concerned horizontal agreements (cartels in the strict sense).

The OCCP takes a tougher stand – more penalties for managers

More frequent financial penalties not only for horizontal cartels (between competitors), but also for minimum resale prices (vertical cartels)

There is still no decision in which OCCP has imposed penalties on natural persons. According to the OCCP's recent statements, 19 proceedings against individual persons are currently pending.

The signals coming currently from the OCCP indicate that, in the case of a prohibited agreement, the Office will in principle, initiate antimonopoly proceedings not only against the company, but also against its managers. This is a major change of direction in the OCCP's practice.

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