

## Ten years of the vertical block exemption regulation in CEE

...and looking ahead

The updated EU Vertical Block Exemption Regulation (the **VBER**) and the associated Vertical Guidelines (the **VGL**) are due to be published soon, just before their current counterparts expire at the end of May 2022. While the new rules will be adopted by the EU Commission, much of their day-to-day enforcement will remain decentralised, allocated to EU member states' national competition authorities. Below is a brief review of the key enforcement actions by CEE competition authorities (Czech Republic, Hungary, Poland, Romania and Slovakia) in relation to vertical agreements over the past ten years and the expected trends after the new regime enters into force on 1 June 2022.



### What vertical agreements were reviewed by the CEE Competition Authorities?

#### Key focus: resale price maintenance

The single most commonly investigated vertical restriction in the CEE region was resale price maintenance (**RPM**). RPM featured in the vast majority of vertical investigations by the Czech and Hungarian competition authorities, and it was the most common infringement addressed by the Polish and Romanian authorities. The Slovak Competition Authority also dealt with RPM in multiple investigations.

#### Other common trends included exclusivity, single branding and mixed vertical and horizontal conduct

Type of arrangements	Anti-competitive restrictions analysed by CEE authorities
Exclusivity arrangements	<ul style="list-style-type: none"> <li>– lengthy exclusivity agreements</li> <li>– sales restrictions on exclusive distributors</li> <li>– various forms of exclusivity, often combined with RPM</li> </ul>
Non-compete obligations	<ul style="list-style-type: none"> <li>– long-term non-compete arrangements</li> <li>– single branding</li> </ul>
Mixture of both vertical and horizontal agreements	<ul style="list-style-type: none"> <li>– mixture of vertical and horizontal price fixing</li> <li>– import restrictions (essentially through single branding)</li> <li>– customer allocation</li> <li>– information exchange</li> </ul>
Other arrangements	<ul style="list-style-type: none"> <li>– export bans</li> <li>– “promo clauses”</li> <li>– most favoured customer clauses</li> <li>– dual pricing</li> </ul>



## Most exposed sectors

Most CEE authorities did not focus on any particular sectors, but took enforcement action wherever they identified competition law issues, often following up complaints from customers or competitors.

Even though there is no focus on particular sectors or industries, there is a clear trend of the CEE authorities increasing their enforcement efforts in relation to online sales channels. We can expect this trend to continue beyond 2022, as the significance of online sales continues to increase.



## Fines

Highest total fines in purely vertical cases, 2012-2021

Romania	Poland	Slovakia	Czech Republic	Hungary
<b>EUR 35 million</b> (imposed for arrangements between food retailers and their suppliers)	<b>EUR 11 million</b> (imposed on Orlen S.A. in relation to RPM in franchise sales of fuel, later decreased by court)	<b>EUR 10 million</b> (imposed for RPM in the food retail sector)	<b>EUR 3.9 million</b> (imposed on Garland, a garden equipment distributor, for RPM)	<b>EUR 1.5 million</b> (imposed for RPM and parallel export (passive sales) restrictions in relation to home security products)



## Leniency for vertical agreements

There is a clear trend in the CEE region towards extending the leniency regime to vertical agreements. As of April 2022, leniency is available in Romania, Hungary and Poland. The Czech government is currently discussing a legislative proposal, which would extend the leniency programme to vertical agreements as of 1 January 2023.



## Enforcement trends: what to expect after 1 June 2022

There are strong indications that all CEE authorities will continue vigorous enforcement of competition rules in this area. Moreover, we can expect that the publication of the new VBER and the VGL will provide an additional boost and guidance in a number of areas.

A further boost to the enforcement activity of the CEE authorities in relation to vertical agreements

Further guidance on the application of the VBER and the VGL to online distribution (eg, parity obligations in an online context, restrictions on the use of online marketplaces and price comparison tools)

Additional guidance on dual distribution, whereby a brand owner distributes products through its own online shop, as well as through independent distributors or franchisees

In addition, the EU Commission is set to maintain the VBER's and the VGL's uncompromising opposition to RPM. This is likely to strengthen the CEE authorities' traditionally ruthless stance against this kind of conduct.

## Contacts

### Warsaw



**Marta Sendrowicz**

Partner

Tel +48 22 820 62 55

Marta.Sendrowicz@AllenOvery.com

### Budapest



**Attila Komives**

Senior Associate

Tel +36 1 429 6007

Attila.Komives@AllenOvery.com

### Bratislava



**Peter Stastny**

Senior Associate

Tel +421 2 5920 2448

Peter.Stastny@AllenOvery.com

### Prague



**Ivana Halamova  
Dobiskova**

Senior Associate

Tel +420 222 107 137

Ivana.Halamova-  
Dobiskova@AllenOvery.com

### With special thanks for a contribution from Romania



**Roxana Ionescu**

Partner

Tel +40 31 405 7777

roxana.ionescu@rtpr.ro

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