Report

Poland

Resale Price Maintenance after the CJEU's *Super Bock* Judgment: The Polish Competition Authority's Approach in *Jura Poland*

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I. Introduction

On 24 February 2025, the Polish Competition Authority (the President of the Office of Competition and Consumer Protection) (PCA, or Authority) issued an antitrust decision concerning Jura Poland Sp. z o.o. (Jura), the exclusive importer of Jura-branded coffee machines (the Decision).[1] The infringement found by the Authority consisted of Jura, together with its four authorised distributors, entering into an anti-competitive agreement aimed at fixing resale prices of Jura coffee machines and coffee machine accessories.

The evidence obtained, *inter alia*, during dawn raids conducted on the premises of several companies, showed that the undertakings had agreed minimum resale prices for Jura coffee machines and the accessories. As a result, these products could not be purchased at prices lower than those set by the importer. This applied to both brick-and-mortar stores and online sales. According to the Authority's findings, the undertakings also colluded on prices applied during promotions and clearance sales, as well as on the types and values of free gifts offered to consumers. Jura monitored the prices applied by its distributors and intervened if they attempted to sell coffee machines at lower prices. In such cases, Jura informed distributors of possible consequences, including suspension of supplies or termination of the contract. The distributors themselves also checked whether the other participants in the collusion complied with the arrangements. The exchange of information took place via telephone, e-mail, WhatsApp, and SMS messages. Price-related arrangements were also made by Jura during meetings with the distributors.

The PCA found that the challenged practice constituted an infringement of both Polish and EU competition law – specifically, Article 101 of the Treaty on the Functioning of the European Union and respective national provisions. The total administrative fine imposed on Jura and the distributors amounted to PLN 66 million (approx. EUR 16 million). The CEO of Jura was found responsible for implementing the challenged practice and was also punished.

This is yet another administrative decision issued following antitrust proceedings concerning resale price maintenance (RPM) in which the PCA expressly referred to the judgment of the Court of Justice of the European Union (CJEU) of 29 June 2023 in Case C-211/22, *Super Bock Bebidas*[2] (*Super Bock* Judgment). The purpose of this report is to analyse the PCA's application of the CJEU's guidance on the assessment of RPM arising from the *Super Bock* judgment.

II. Facts of the Case

The case concerned Jura, the exclusive importer and distributor of Jura-branded coffee machines and accessories in Poland, and four of its authorised distributors. The Authority found that the undertakings had entered into an anti-competitive agreement aimed at fixing resale prices of Jura products in both online and offline sales channels.

Jura operated a dual distribution channel system, acting as the sole importer and wholesaler in Poland, while cooperating with a network of authorised distributors who were contractually required to meet

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1 Decision of the PCA of 24 February 2025, no DOK-1/2025.

2 Case C-211/22, *Super Bock Bebidas SA, AN, BQ v Autoridade da Concorrência* [2023] EU:C:2023:529.

certain qualitative conditions for both brick-and-mortar and online stores. Although the formal distribution agreements granted distributors the right to set their own prices freely, according to the PCA's findings, Jura maintained a *de facto* RPM system.

Evidence obtained by the Authority revealed that Jura constantly monitored prices applied by its distributors and pressured them to maintain minimum resale prices in line with the recommended retail price lists. If the distributors deviated from the agreed prices – for example, by lowering them in online promotions or applying excessive discounts – Jura would intervene. The interventions included threats to reduce discounts, delay deliveries, or terminate the business relationship. In some cases, price adjustments were made shortly after contact from Jura. In addition, the distributors themselves monitored prices of the competitors and reported any non-compliance to Jura.

The price coordination extended to promotional campaigns and sales events. According to the PCA's findings, Jura not only influenced the base resale prices but also intervened in the types and values of free gifts offered along with the products. The distributors were expected to seek approval from Jura before applying discounts or modifying promotional conditions.

The anti-competitive practices covered multiple types of Jura-branded coffee machines (the domestic, professional, and GIGA line – intended for self-service areas and conference rooms) and a wide range of accessories, including milk coolers, frothers, filters, and cleaning agents. These products belong to the premium segment of household and professional coffee machines, characterised by high unit prices, brand prestige, and the need for proper maintenance. Effective sales and long-term customer satisfaction in this market depend not only on the product itself, but also on extensive pre-sale advice and post-sale services such as installation, maintenance, and periodic servicing.

The conduct lasted for several years and involved not only Jura and its distributors, but also the company's CEO, who was found individually liable for initiating and enforcing the RPM policy.

III. Legal Assessment by the PCA

Once again, the Authority assessed the RPM agreement to be a 'by object' infringement. In its reasoning, the PCA pointed out that, given the strict monitoring and ongoing communication between Jura and its authorised distributors, combined with threats of sanctions by Jura, the parties to the agreement could reasonably assume that their competitors would not sell below the agreed prices. This, in turn, maintained Jura product prices at a higher level than would have prevailed under conditions of undistorted competition. According to the antitrust watchdog, the conduct had a negative impact on end customers, who were offered Jura-branded products on less favourable terms than would have been if the agreement had not existed.

IV. Application of the *Super Bock* Criteria

As mentioned in the introduction, in the Decision, the Authority referred to the *Super Bock* Judgment. The PCA stressed that:

> Where an anti-competitive object of an agreement has been established, it is not necessary to examine its effects. Such an agreement may include, inter alia, the setting of minimum and fixed prices. When conducting the above assessment of the agreement, it is necessary to examine the content of its provisions and the objective aims it seeks to achieve. The fact that the parties to the agreement acted without any subjective intention to restrict competition is irrelevant for the application of the above provision. The analysis of the agreement must also take into account its legal and economic context. In assessing such a context, the nature of the goods or services concerned by the agreement, as well as the actual conditions of functioning and structure of the market(s) in question, should be taken into account. The assessment of the legal and economic context should not be confused with an analysis of the effects produced by the practice or with the examination appropriate to determine whether the agreement has the effect of restricting competition. ...[3]

This approach stands in a clear contrast to the judgment of the CJEU in the *Super Bock* Judgment, where the Court held that

3 The Decision, para 315.

> ... the finding that a vertical agreement fixing minimum resale prices entails a 'restriction of competition by object' may only be made after having determined that that agreement presents a sufficient degree of harm to competition, taking into account the nature of its terms, the objectives that it seeks to attain and all of the factors that characterise the economic and legal context of which it forms part.[4]

In the commented case, even though the Authority acknowledged that a legal and economic context is necessary for proper assessment, it simultaneously stressed that this context

> ... should not be confused with an analysis of the effects produced by the practice or with the examination appropriate to determine whether the agreement has the effect of restricting competition.

However, in another part of its reasoning in the Judgment, the CJEU held that

> [...] where the parties to the agreement rely on its procompetitive effects, those effects must, as elements of the context of that agreement, be taken into account. Provided that they are demonstrated, relevant, intrinsic to the agreement concerned and sufficiently significant, those effects may give rise to reasonable doubt as to whether the agreement concerned caused a sufficient degree of harm to competition.[5]

Against this background, the PCA's reasoning appears internally inconsistent: at first, it assumed that Jura's practice constituted a 'by object' infringement, and only subsequently stated that a context should be taken into account to reach such a conclusion. This sequencing reverses the logical order mandated by the Judgment, where assessment of the context precedes the decision whether the infringement is of a 'by object' character or not.

That being said, the Authority's classification of RPM as a restriction of competition 'by object' from the outset – without a prior, substantive assessment of its legal and economic context, including potential pro-competitive effects – is not consistent with the standard set out by the CJEU in the Judgment. This approach in practice amounts to treating RPM as a *per se*-like infringement, a position from which the CJEU has expressly withdrawn. Consequently, the PCA's strict approach not only contradicts the CJEU's jurisprudence but may also lead to excessive enforcement, potentially stifling legitimate commercial strategies and innovation.

Furthermore, the Authority expressly claimed that

> Agreements involving price fixing affect a fundamental aspect of market competition among enterprises, constituting practices with exceptionally strong anti-competitive potential, and are therefore classified as the most serious violations of competition law. The very fact of concluding a price agreement that sets minimum or fixed resale prices allows for the assumption that the purpose of the agreement was to restrict competition.[6]

Meanwhile, the CJEU advised not to treat 'hardcore restriction of competition' and 'agreements restricting competition by object' as synonymous terms. In order to establish whether the practice classified as hardcore restriction of competition does constitute a restrictive practice by object, a detailed analysis is required, and no automatic condemnation applies.[7]

Moreover, it should be mentioned that it has recently become the PCA's common practice to superficially refer in its antitrust decisions (issued after the Judgment) to the said CJUE's ruling without any further actual application of its criteria. Such an approach is, without saying, favoured by the Authority since it saves the enforcer's resources, as it is much easier and faster than performing a potentially time-consuming and multi-threaded contextual analysis. Nevertheless, a lack of an in-depth examination of the real effects of the sanctioned practice on the market (including possible advantages in terms of sales-related services) shows that the Authority's investigations in RPM cases are not thorough or detailed enough.

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4 Case C-211/22, *Super Bock Bebidas SA, AN, BQ v Autoridade da Concorrência* [2023] EU:C:2023:529, para 43.

5 Ibid, para 36.

6 The Decision para 317.

7 Case C-211/22, *Super Bock Bebidas SA, AN, BQ v Autoridade da Concorrência* [2023] EU:C:2023:529, para 39. See also: Kanton, K. (2024). The impact of the judgment in Case C-211/22 *Super Bock* on the assessment of vertical pricing agreements. *internetowy Kwartalnik Antymonopolowy i Regulacyjny (internet Quarterly on Antitrust and Regulation), 13*(4), p 144. <https://doi.org/10.7172/2299-5749.IKAR.4.13.8> accessed 23 September 2025.

V. The Economic and Comparative Perspective: From *Dr. Miles* to *Leegin*

It is noteworthy that the Supreme Court of the United States had already, in the 2000s, moved away from its almost century-old precedent in *Dr. Miles Medical Co. v John D. Park & Sons Co.* (1911), which regarded RPM as unlawful *per se*. The landmark judgment in *Leegin Creative Leather Products, Inc. v PSKS, Inc.* (2007) abandoned the *per se* rule and subjected RPM to the *rule of reason* analysis, allowing for a context-specific assessment of possible pro-competitive justifications.

The economic analysis (a service hypothesis in this regard) shows that RPM can protect retailers' margins, encouraging them to invest in pre- and post-sale services, improve product presentation, and maintain the brand image. In some cases, this increases demand sufficiently to outweigh the negative price effect. RPM can also prevent free-rider effects – where discount sellers undercut full-service retailers while benefiting from their sales efforts – and facilitate market entry for new brands by ensuring adequate resale margins.[8] In such a scenario, RPM is claimed to be a pro-competitive tool where manufacturers and retailers collaborate to offer consumers a better overall buying experience, even if it results in higher prices.

This reasoning appears particularly relevant in the Jura case, given the nature of the products as premium, service-intensive goods. Maintaining qualified distribution channels capable of providing high-quality demonstrations, installation, and after-sales servicing may require protecting distributor margins against aggressive price competition, especially from online-only sellers who cannot and, most of the time, do not provide the same level of customer support.

VI. Conclusion

The Authority's approach reflects formalism reminiscent of the pre-*Leegin* US approach to RPM agreements, focusing on the inherent restrictiveness of RPM while putting aside potential pro-competitive effects.[9] This is at odds not only with the Judgment but also with the gradual convergence in the EU and US thinking towards a more effects-based assessment for vertical restraints.

From a policy standpoint, ignoring contextual economic analysis carries a risk of over-enforcement: legitimate distribution strategies could be deterred, innovation in retail services constrained, and brand positioning strategies undermined. In jurisdictions where administrative authorities (rather than private plaintiffs like in the US) lead competition enforcement, the cost and complexity of a context-driven analysis are less of a barrier than in the US, making the economic approach both viable and desirable.[10]

The Decision illustrates the tension between the formal classification of RPM as a 'by object' infringement and the Judgment mandate for a contextual assessment. By not engaging substantively with the economic rationale and possible pro-competitive effects of RPM, the Authority risks perpetuating a *per se*-like enforcement stance that modern jurisprudence and economic theory have moved beyond. In markets for premium, service-intensive products, such as high-end coffee machines, this risk is even more pronounced: disregarding the potential efficiency gains from preserving retailer incentives to invest in product presentation and servicing may lead to enforcement outcomes that, paradoxically, ultimately harm consumers.

On the other hand, the PCA's well-rooted approach may suggest that the undertakings investigated in RPM proceedings should make a greater effort to deliver arguments and evidence to illustrate the pro-competitive effects of the discussed practice. The more such well-founded analyses are put forth, the more likely it is that the antitrust watchdog will decide to drop the case.

The Decision is not final as it has been appealed.

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8 Aziewicz, D. (2013). Validity of an economic analysis with respect to minimum resale price maintenance under Polish competition law. *internetowy Kwartalnik Antymonopolowy i Regulacyjny (internet Quarterly on Antitrust and Regulation), 2*(3), p 13-17. Retrieved from <https://press.wz.uw.edu.pl/ikar/vol2/iss3/1> accessed 22 September 2025.

9 For more details on the PCA's approach towards RPM, please see: Feliszewski, T., Musielak, M. (2022). The Office of Competition and Consumer Protection Investigates Vertical Restraints in the IT Sector – Does the EU Approach Prevail? *European Competition and Regulatory Law Review, 6*(3), p 264-265. Retrieved from <https://core.lexxion.eu/article/CORE/2022/3/12> accessed 22 September 2025.

10 Aziewicz, D. (2013), p 18-22.