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COMPETITION REGULATION LITIGATION



# Distribution Agreements

## A Focus on Poland

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## Vertical agreements are the second main subject of antitrust proceedings in Poland after bid collusion.

The Polish Competition Authority usually issues only a few decisions per year regarding violations of Art. 6 of the Act on Competition and Consumer Protection and (if applicable) Art. 101(1) TFEU, but each year at least one (and usually more) decisions concern vertical restrictive agreements.

The distinguishing feature of Polish competition law in the context of distribution agreements is primarily the fact that vertical agreements are also, like horizontal agreements, subject to the leniency program.

In addition, financial penalties related to the violation of the prohibition of anticompetitive agreements are imposed not only on undertakings (up to 10% of annual turnover), but also on managers who, while exercising their functions, have intentionally, through their action or omission, contributed to the violation of the prohibition of agreements restricting competition (up to approximately EUR 445,000).

2024

So far in 2024 the Polish NCA has adopted only one antitrust decision on distribution contracts. **In the most recent decision concerning a vertical agreement** (adopted on 23 February 2024) **the Polish NCA analysed differences between distribution agreements and agency agreements.** Even if Atax company (an importer of coal) characterized its commercial partners as ‘agents’ and therefore it imposed prices and discounts applied by them, they were just independent distributors as they bore all the risks associated with selling coal. The fine imposed on the Atax company accounted for approximately EUR 555,000).

2023

2023 brought **two significant decisions** regarding vertical agreements. **The Dahua decision** (DOK-5/2023) confirmed a violation of Art. 101(1) TFEU and corresponding national prohibition by a distribution agreement on resale price maintenance and market sharing on a domestic market for the distribution of electronic products constituting elements of the monitoring system, access devices and accessories related to security systems. Dahua and its distributors agreed on minimum and fixed sales prices for products and implemented a system for monitoring these arrangements. Allocation arrangements involved assigning projects prepared with a usage of Dahua products (i.e. high-value sales transactions) to specific distributors and therefore discouraging other distributors from competing for these projects. While determining the amount of fines imposed on both entrepreneurs and managers, the President of the Office of Competition and Consumer Protection took into account the fact that the infringement concerned intra-brand competition, alongside the simultaneous existence of inter-brand competition.

Nevertheless, the NCA imposed a fine of approximately EUR 8.2 million on seven undertakings and thirteen managers!

[See preliminary information on the Dahua case](#)

**The Merida decision** (RKT-1/2023) concerned an allocation of markets through an agreement between the bicycle manufacturer and its distributors. The agreement was found to be prohibited under both national and EU law. Merida was recognized as the organizer of the agreement - it initiated the agreement, played a decisive role in it, developed, and implemented the concept of the entire agreement. Distributors with stationary stores were prohibited from selling online - they could only present their product on the website, and they could accept the online payment, but the goods had to be collected (physically) in the store. Additionally, distributors were prohibited from selling via e-commerce platforms such as eBay or Allegro. The fine imposed on Merida was ca. EUR 545,000.

According to the Polish NCA in the Merida case: presentation of goods online and the possibility of making payments online, but without the possibility of shipping the goods (obligation to collect the goods in the store) means that online sales is prohibited.

[See a presentation of the Merida case](#)

In 2023 the Polish NCA also announced the opening of preliminary (explanatory) investigations regarding setting resale prices on markets for the bathroom equipment and Jura coffee machines.

Additionally, three explanatory proceedings were initiated regarding the division of the market and setting prices of agricultural machines of various brands by their dealers (dawn raids were conducted by the NCA at premises of ten dealers). The latter are surely horizontal agreements with a strong impact on distribution networks, so they are worth mentioning.

2022

Only one decision concerning distribution agreements was adopted in 2022. The **Kärcher case** (RKR 2/2022) focused on **resale price maintenance** that was being practiced by Kärcher in its relationships with distributors from the end of the 90s of the 20th centuries up to 2021. Before 2005 the practice covered all prices (regular and promotional), while after 2005 – the practice, considered as a single and continuous infringement, referred only to promotional prices, especially those used in online sales. The Kärcher decision was based on Polish and EU law as the practice had an impact on intra-EU trade. When determining the amount of the fine, the Polish Competition Authority did not fully accept a leniency application from Kärcher, arguing that Kärcher persuaded other undertakings to participate in the agreement and used economic pressure to force distributors to comply with the imposed cooperation rules. However, due to the value and importance of the evidence provided by Kärcher regarding the existence of the agreement, the ultimate fine imposed on Kärcher was reduced by 50% (amounting to approximately EUR 5.8 million).

[See a presentation of the Kärcher case](#)