President of UOKiK obligated Dell to change its practices

* **Rules for the** **sale of IT solutions, computers and other Dell products could have been impeding competition.**
* **President of UOKiK, Tomasz Chróstny, has obligated Dell to change its practices.**
* **At the same time, the President issued a second decision in which he imposed a fine of PLN 6 million on the company for misrepresentation during the investigation.**

**[Warsaw, 14 October 2024] The investigation against Dell concerned the suspected conclusion of an anti-competitive agreement with wholesale distributors and authorized seller concerning the sale of Dell IT infrastructure products to enterprises and institutions, including through public procurement.**It concerned, but was not limited to, finished IT products: desktops, laptops, peripherals (mice) as well as IT products and services used to develop IT systems, including servers, mass memory, disk arrays, technical support services and other related services, e.g. cloud services, data protection services.

**Current sales system**

The concerns of the President of UOKiK were raised by the sale system based on the registration of transactions by authorized sellers. If one of them reported a potential transaction with a particular institutional or business customer in the internal registration system, then – under the suspected agreement – Dell could prevent other trading partners from submitting competitive price offers to the same customer, even despite the customer’s express request. This practice could have represented a prohibited market allocation scheme through the assignment of specific sellers to a particular transaction. In effect, enterprises and institutions could have been deprived of the option to purchase Dell equipment at more attractive price or technological terms.

In the issued decision, the President of UOKiK obligated Dell to change its sales model. The nature of the case supports such an amicable end to the investigation. Transactions subject to the agreement in very many cases concerned the delivery of custom-ordered complex IT solutions. Therefore, they may have required Dell to provide support in the sales efforts undertaken by authorized sellers. The performance of this obligation will make it possible to eliminate the likely anti-competitive practices at a much quicker pace.

“We understand the nature of Dell’s distribution system, however sales must always respect the rules of competition. In the issued decision, I have obligated the company to eliminate practices that consisted in the allocation of transactions to specific sellers. This way enterprises and institutions buying or ordering Dell products will have an opportunity to compare multiple offers and select the most advantageous one,” said Tomasz Chróstny, President of UOKiK.

**New sales system**

As a result of the aforementioned obligation, multiple authorized sellers will be able to make efforts to sign an agreement with the customer without the need to obtain approval from Dell or provide the name of the end customer to Dell.

Changes will also apply to discounts granted by Dell. At least three authorized seller or distributors may receive a discount for the same transaction outside public procurement, on the basis of transparent criteria, such as order in which transaction was reported or its projected value. Additional sellers or distributors may receive the same discount at a written request of the end customer. Additional discounts will be also available on the basis of the so-called pre-sales efforts, judged based on transparent criteria, such as customer engagement or preparation of test solutions.

All authorized sellers or distributors will also receive the same discount for transactions in public tenders as well as additional discounts for “pre-sales efforts”. This means that multiple sellers will be able to compete for the same order and customer will gain a greater selection of offers and bids.

Dell will have 6 months after the decision becomes final to implement the new sales rules. When setting the 6-month time limit, the President of UOKiK took into consideration such factors as the need to modify global IT systems. The company will have to provide the President of UOKiK detailed information on the how the obligation was fulfilled.

**Fine for providing false information**

The President of UOKiK also issued a decision fining Dell for providing false information during the investigation. The company mislead the President of UOKiK when replying to questions concerning enterprises that made requests to Dell in regard to an offer for the same customer. Despite receiving three notices to that effect, on three separate occasions the company presented the President of UOKiK with false and misleading information concerning enterprises to whom Dell did not present price offers and the reasons why these offers were not provided.

Providing false or misleading information to the President of UOKiK constitutes a serious hindrance to the effective performance of duties related to competition protection. Misleading may delay the investigation, hinder the identification of breaches and the prevention of anti-competitive practices.

In light of the above, the President of UOKiK imposed a fine of PLN 6 million (equivalent to nearly EUR 1.38 million) on the company. Pursuant to the law in force at the time when the investigation was initiated, the maximum fine could have amounted to the equivalent of EUR 50 million.

The issued decisions are not final. They can be appealed with the court.

Notify UOKiK

We remind you that UOKiK operates a programme to acquire information from anonymous whistleblowers. Visit <https://uokik.whiblo.pl/> and fill out a simple form. The system we use guarantees full anonymity, which includes anonymity from UOKiK itself.