

The Investigation and Prosecution Service of the Belgian Competition Authority adopts its first settlement decision and imposes fines amounting to 174.000.000 EUR

The Investigation and Prosecution Service of the Belgian Competition Authority sanctions 18 companies that took part in coordinated increases of end-consumer prices for drugstore, perfumery and hygiene products (hereinafter DPH products) between 2002 and 2007 in Belgium, and imposes fines amounting to 174.000.000 EUR.

Companies involved

The 18 companies concerned are important actors of the Belgian retail (Carrefour, Colruyt, Cora, Delhaize, Intermarché, Makro and Mesdagh) and suppliers who together represent a large part of DPH products sold (Beiersdorf, Bolton, Belgium Retail Trading, Colgate-Palmolive, DE HBC Belgium, GSK, Henkel, L'Oreal, Procter & Gamble, Reckitt Benckiser (Belgium) and Unilever).

All companies under investigation have agreed to the settlement.

Description of the infringement

The infringement consisted of the repeated organization, at retail level, on the whole of the Belgian territory, of coordinated increases of end-consumer prices of branded DPH products of the suppliers involved.

This practice had as its object the increase and stabilization, for a certain period of time on the whole of the Belgian territory, of end-consumer prices of branded DPH products at similar or nearly similar levels at the distributors involved, with the help of each supplier concerned, the latter solely for its own products.

The branded DPH products from a given supplier are identical products for which the end-consumer price is an important competitive parameter.

The facts considered in the decision show that the core of the infringement was at retail level, with suppliers acting as intermediaries and facilitators, each of them exclusively for their respective products.

The practice demonstrated by the investigation unfolded generally similarly and according to the same guidelines for the respective suppliers concerned. However, as part of these coordinated price increases, no direct contact between the distributors were identified, nor contact between the various suppliers involved.

The coordinated price increases concerned a large number of branded DPH products sold in the retail in Belgium and followed each other repeatedly throughout the period of infringement which lasted between 2002 and 2007, although the duration of the participation in the infringement varied between the companies involved. The coordinated price increases yielded variable results.

A practice detected thanks to the leniency program

The practice at issue was denounced in late 2006 by Colgate-Palmolive that benefits, as the first leniency applicant, of a full immunity from fines in this case. Subsequently, GSK and Reckitt Benckiser (Belgium) also applied for leniency and were granted a reduction of the otherwise applicable fines.

Sanctions

As part of the settlement procedure, the companies have acknowledged their involvement in the infringement as set out in the decision, as well as the sanction imposed on them. They benefited in this respect from a 10% reduction of the fine.

Details of the fines are as follows:

Company	Reduction under the Leniency program	Amount in EUR (after reduction of 10% for settlement)
Colgate-Palmolive	100%	0
GSK	50%	554.000
Reckitt Benckiser (Belgium)	25%	5.084.000
Beiersdorf		5.103.000
Belgium Retail Trading		2.351.000
Bolton		1.435.000
Carrefour		36.373.000
Colruyt		31.579.000
Cora		4.575.000
D.E HBC		1.236.000
Delhaize		24.944.000
Henkel		5.678.000
Intermarché		1.690.000
L'Oréal		7.991.000
Makro		7.341.000
Mestdagh		2.025.000
Procter & Gamble		29.086.000
Unilever		6.707.000

Procedural background

Following the leniency application of Colgate-Palmolive, the Investigation and Prosecution Service has opened an investigation and carried out inspections in April 2007 at Carrefour, Colruyt, Delhaize and Intermarché.

End of 2012, the competition prosecutor in charge of the case closed the investigation and submitted its reasoned report to the former Competition Council, the above mentioned 18 companies being accused of restrictive practices contrary to Article 101 TFEU and Article 2 of the former Act on the Protection of Economic Competition (APEC) (now Article IV.1. of the Code of Economic law).

In September 2013, the new Code of Economic law entered into force. On the basis of Article IV.79 of the Code, most of the companies concerned challenged the legality of the inspections carried out in 2007 before the Brussels Court of Appeal. While the judicial proceedings were ongoing, discussions in view of a settlement were conducted by the Investigation and Prosecution Service with the 18 companies concerned. Given the settlement decision, the parties will now withdraw their appeal before the Brussels Court of Appeal, as they agreed in the framework of the settlement procedure.

The settlement procedure is a new tool that the Code of Economic law has given to the Investigation and Prosecution Service in order to simplify and expedite the procedure leading to the adoption of a final decision.

The settlement decision cannot be appealed.

The settlement decision is available on the website of the Belgian Competition Authority (www.belgiancompetition.be)

For more information you may contact:

Press contact:

Véronique Thirion,
Competition Prosecutor General

Tel: +32 (2) 277 93 53

E-mail: veronique.thirion@bma-abc.be

Website: www.belgiancompetition.be

The BCA (composed of the Competition College and the President as the decision making body in formal procedures and the Investigation and Prosecution Service under the direction of the Competition prosecutor general) has as mission statement to promote and to safeguard the existence of an effective competition in Belgium. To this end she examines and may impose sanctions on restrictive practices (cartels, abuse of dominant position). It examines also the admissibility of concentrations which might have a noticeable effect on the market. To this end the authority applies books IV and V of the Code of Economic Law as stipulated in the act of 3 April 2013 (Belgian Official Gazette of 26 April 2013) and competition rules of the European Union such as articles 101 and 102 of the TFEU (ex-articles 81 and 82 of the EC treaty). The authority takes part in the implementation of the European competition policy. She works together with other competition authorities and is member of the European competition network (ECN), the European Competition Authorities (ECA) and the International Competition Network.