

Case summary

Liquefied petroleum gas, proceedings under the Administrative Offences Act

Sector	Sale of liquefied petroleum gas (LPG)
Ref:	B11-20/05
Dates of Decisions:	14 Dec 2007, 26 Feb 2008, 12 Feb 2009, 09 Apr 2009

The Bundeskartellamt has imposed fines totalling approx. € 250 million on 9 persons and 11 companies on suspicion of anti-competitive agreements in the LPG sector.

So far, only the administrative order imposing a fine against one company and one person has become final; appeals have been lodged against the remaining orders. An application for leniency has not been filed.

The administrative fine proceedings were instigated on suspicion of nationwide customer protection agreements and accompanying price agreements in the supply of LPG in tanks and bottles. The companies involved were organised in an association and agreed on the basis of rules laid down by the association not to poach customers from one another. All types of competitive measures that are typically employed in markets that are not dominated by a cartel were considered to constitute a violation of the agreed competition rules. Customers of other members of the association who were bound by a contract were neither advised on possibilities to terminate their contracts, nor did they receive advantageous price offers in response to enquiries that would have induced them to examine contractual possibilities to terminate their contracts and possibly switch to another supplier. Instead, in response to enquiries the cartel members either did not provide any price information at all, or they quoted a list price that was clearly above the competitive price. Where cartel discipline was violated (so-called “competition case”) in many cases compensation was demanded, i.e. the losses incurred were to be compensated by enabling the competitor to win another customer with a comparable LPG consumption. The consumer protection agreements were supplemented by agreements on minimum prices for new customers and specific customer groups.

The cartel agreements for the sale of LPG in tanks (bulk LPG) were secured by a notification system which was implemented via two transport companies that were jointly operated. Thus, if a customer switched from one LPG supplier to another, this became immediately known and enabled the former supplier to react accordingly.

In addition, the companies regularly exchanged sales data with competitive relevance (esp. monthly sales statistics). This also helped to identify competitive behaviour at an early stage.

For the sale of LPG in bottles (bottled LPG), a number of bottle pools¹ and other cooperation agreements existed (such as agreements on the joint use of bottling plants etc.) which led to a standardisation of costs for the companies involved. Many of these agreements included an explicit customer protection clause.

In the administrative orders imposing the fines the Bundeskartellamt has limited the prosecution of the alleged cartel to the period from 1 July 1997 to 1 May 2005 for bulk LPG and from 1 January 1999 to 1 May 2005 for bottled LPG; however, there are numerous indications that the agreements were already practised before this period.

In the case of bulk LPG, fines were calculated on the basis of additional proceeds which led to high fines due to the long period of the infringement. The additional proceeds were not calculated on the basis of a separate comparable market² but on the basis of a comparative standard within the affected market. The regional prices of suppliers who were not involved in the cartel were taken as hypothetical competitive prices.

¹ Within the bottle pools the joint distribution and use of bottles as well as the joint use of storage capacities and bottling plants were agreed upon.

² As a rule, the Bundeskartellamt calculates additional proceeds by comparing the affected market with another, functioning market. This second market, from which the so-called hypothetical competitive price is established, has to be a neighbouring market in product or geographic terms or the same market at different periods of time and must have a comparable structure.