

competition-relevant information, such as the salary levels of their external sales forces, terms of guarantee and the participation in trade fairs, or they discussed specific market behaviour issues. The members of the cartel defined their sales policy based on the information exchanged and the competition parameters agreed to in the HERRZ meetings. As a result of the agreement, competition on prices and terms between the five major manufacturers of ophthalmic lenses in Germany was limited at least to the extent that they were able to coordinate price increases for the sale of ophthalmic lenses to opticians on a regular basis, while at the same time not granting higher bonuses and discounts than the others granted to their customers. As a result, competitive moves on prices by individual manufacturers of ophthalmic lenses became less probable and competition in general was weakened. The overall motivation behind the HERRZ meetings was a mutual wish to maintain, as far as possible, existing market structures.

Secondly, the directors or sales managers of the five manufacturers of ophthalmic lenses concluded another anticompetitive agreement with representatives of the ZVA on “non-binding price recommendations”. The majority of the opticians determine their sales prices for ophthalmic lenses on the basis of price lists provided by the manufacturers of ophthalmic lenses. The manufacturers calculate the non-binding price recommendations quoted in the price lists on the basis of company-specific calculation formulas. The non-binding price recommendations, which also cover the craftsmanship services rendered by the optician (i.e. fitting the ophthalmic lenses into the spectacle frame) have a target price function in the lense manufacturing sector and are therefore applied by the majority of opticians. In addition to the price list containing the non-binding sales prices, the opticians are supplied with a second list which contains the cost prices they have to pay for the respective lenses.

The companies involved in the ZVA „pricing structure working group“ met three times in 2005 and at these meetings disclosed their company-specific calculation formulas and agreed to add any cost price increases in the subsequent three years at an approximately 1:1 ratio to the non-binding recommended prices. The representatives of the companies also agreed on how to include the increase in VAT from 16% to 19% in their calculation formulas. Due to this coordination, the group members knew about each other’s pricing strategies. Thus, they were able to raise the cost prices of opticians on a regular basis, while the opticians were able to pass these price increases on to their customers by means of the non-binding price recommendations.

Both cases are hardcore cartel offences. The actions of the HERRZ group and the pricing structure working group constitute separate offences. The investigations did not reveal that the actions were committed on the basis of a general agreement.

In calculating the fines, the Bundeskartellamt applied in both cases the provisions of the ARC as laid down in the 7th Amendment which came into force in July 2005. Accordingly, companies can be fined up to 10% of their worldwide (group) turnover. In application of the Bundeskartellamt's Guidelines on the setting of fines¹, the fines were calculated on the basis of the turnover achieved in Germany between August 2005 and May 2008 by each of the companies with the ophthalmic lenses covered by the agreements (so-called turnover achieved from the infringement). Excluded was the turnover achieved with optician chains and via the Internet. Under its Leniency Programme, the Bundeskartellamt granted Rodenstock GmbH a considerable reduction of its fine for its comprehensive cooperation during the proceedings. The fines imposed on Hoya Lens Deutschland GmbH, Carl Zeiss Vision GmbH and the ZVA were also reduced on account of their cooperation with regard to the accusations against the HERRZ group and the pricing structure working group. In addition, two of the companies concerned and the ZVA have agreed to have their proceedings terminated by way of settlement, which led to a further reduction of their fines.

For reasons of proportionality, the Bundeskartellamt has lowered the fines calculated according to the rules for determining the penalty amount for cumulative offences (*Tatmehrheit*), amongst other reasons because the calculations were in both cases based on the same turnover and offence period. The resulting fines amounted to approx. € 85 million for the HERRZ group and approx. € 30 million for the pricing structure working group.

¹ Notice no. 38/2006 on the imposition of fines under Section 81 (4) sentence 2 of the ARC against undertakings and associations of undertakings of 15 September 2006