



## Case summary

8 August 2017

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### Fines imposed on account of vertical price fixing in the clothing industry

Sector: Manufacture and sale of clothing

Ref.: B2 - 62/16

Date of decisions: 21 July 2017

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The Bundeskartellamt has imposed fines totalling 10.9 million euros on two companies in the clothing industry on account of vertical price fixing. The companies involved are the clothing manufacturer Wellensteyn International GmbH & Co. KG (Wellensteyn) and the retailer Peek & Cloppenburg KG, Düsseldorf (P&C Düsseldorf). The proceedings were initiated with a dawn raid in March 2013 after the Bundeskartellamt had received complaints about the companies' practices. The infringements were committed between April 2008 (at the latest) and February 2013.

According to the results of the investigations, Wellensteyn pursued a strategy of systematically compelling retailers in Germany to comply with its minimum sales prices for products, especially outdoor jackets, manufactured and sold by Wellensteyn in Germany. Wellensteyn reached a mutual understanding with the retailers to the effect that they would not reduce prices even at the end of the season. These agreements were enforced by threat of sanctions or by granting advantages in the form of merchandise return options.

Wellensteyn checked whether retailers complied with the prices specified, for instance, by visiting its customers' stores. Retailers also monitored the price setting of their competitors. Price undercutting was usually reported to Wellensteyn by other retailers. If a price reduction was confirmed by photos or test purchases, the retailers were given a warning by phone or in person by Wellensteyn employees. In case of continued or repeated non-compliance, Wellensteyn's representatives temporarily suspended supplies in several cases. As regards major customers, a mutual agreement on the non-reduction of prices was more likely to take the form of a return agreement in the interests of both parties.

As a major customer, P&C Düsseldorf implemented the agreement initiated by Wellensteyn and in return was granted merchandise return options. These options are customary within the industry and generally do not raise competition concerns. However, in this case they were dependent on the non-reduction of prices for Wellensteyn products. P&C Düsseldorf also exerted pressure on Wellensteyn to induce Wellensteyn to ensure compliance with end consumer prices among other retailers of Wellensteyn products and to refuse to supply them in individual cases.

The retailers that complained to Wellensteyn about their competitors' price reductions usually received feedback from Wellensteyn telling them that the reduction had been withdrawn. These customers frequently carried out checks locally to establish whether prices had actually been raised as promised by the retailers. The interaction with its customers in the form of reports and feedback on price reductions supported Wellensteyn's price maintenance strategy and simplified its widespread implementation.

In addition to influencing end consumer prices, Wellensteyn banned its customers from selling Wellensteyn products online. This general ban on online sales in itself already constituted a hardcore restriction under Section 4 (b) of the European Vertical Block Exemption Regulation<sup>1</sup>. However, in this case, it could not be regarded as separate from the overall price maintenance strategy because its ultimate purpose was to ensure price maintenance.

Potential efficiencies, which may under certain circumstances exempt resale price maintenance from the ban on cartels, were unlikely in this case and were also not presented by the companies concerned.

The Bundeskartellamt based the calculation of its fines on a single offence. With regard to the setting of fines against P&C Düsseldorf, the profit and damage potential derived from the turnover achieved from the infringement was of relevance in accordance with the Bundeskartellamt's guidelines for the setting of fines<sup>2</sup>, whereas in the case of the clothing

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<sup>1</sup> Commission regulation (EU) No. 330/2010 of 20 April 2010 on the application of article 101 (3) of the Treaty of the Functioning of the European Union to categories of vertical agreements and concerted practices (<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:102:0001:0007:EN:PDF>).

<sup>2</sup> Cf. Guidelines for the setting of fines in cartel administrative offence proceedings of 25 June 2013 [http://www.bundeskartellamt.de/SharedDocs/Publikation/EN/Leitlinien/Guidelines%20for%20the%20setting%20of%20fines.pdf?\\_\\_blob=publicationFile&v=3](http://www.bundeskartellamt.de/SharedDocs/Publikation/EN/Leitlinien/Guidelines%20for%20the%20setting%20of%20fines.pdf?__blob=publicationFile&v=3)

manufacturer Wellensteyn, the decisive factor for the calculation of the fine was the statutory framework of fines alone, which is based on 10% of the company's total turnover. A mitigating factor in the calculation of the fines was that they were imposed on the basis of a negotiated agreement (settlement). For discretionary reasons, no fines were imposed on the individuals involved in the proceedings.

The fines have since become final.

### **Note**

Persons who have sustained a loss due to the infringement may claim compensation from the parties involved subject to the legal requirements being met. Insofar as decisions have become final, they will have a binding effect with regard to the establishment of the infringement in accordance with Section 33b of the German Competition Act<sup>3</sup>.

This case summary reflects the situation on the day of publication and does not take account of any subsequent events (judgements, withdrawals of appeals).

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<sup>3</sup> [http://www.gesetze-im-internet.de/gwb/\\_33b.html](http://www.gesetze-im-internet.de/gwb/_33b.html) (German only)