



Fine proceedings against manufacturers of drugstore products

Sector: Manufacture of drugstore products

Ref: B11 - 17/06

Date of the decisions: February 2008 - March 2013

On 18 March 2013 the Bundeskartellamt concluded its fine proceedings against manufacturers of brand drugstore products on account of their participation in an anticompetitive information exchange and imposed fines totalling approx. 63 million Euros on 15 companies and their sales representatives involved. A fine was also imposed on the trademark association Markenband e.V. and a member of staff involved because she had assisted the companies in their anticompetitive practices.

The respective representatives of the drugstore product manufacturers were all members of the trademark association's working group on "body care, cleaning agents and detergents" (KWR). This working group was set up mid/end of the 90s and disbanded in November 2007.

During the period of infringement, from March 2004 to the end of November 2006, the following companies, in particular, were members of the KWR working group:

- *Colgate-Palmolive GmbH*
- *Beiersdorf AG*
- *GlaxoSmithKline Consumer Healthcare GmbH & Co. KG*
- *Schwarzkopf Henkel GmbH*
- *Henkel Wasch- und Reinigungsmittel GmbH*
- *Johnson & Johnson GmbH*
- *SC Johnson GmbH*
- *Erdal-Rex GmbH*
- *Reckitt Benckiser Deutschland GmbH*
- *Coty Deutschland GmbH*
- *Sara Lee Deutschland GmbH*
- *Lever Fabergé Deutschland GmbH, since 2005: Unilever Deutschland GmbH*

- *Procter & Gamble GmbH*
- *Gillette Gruppe Deutschland GmbH & Co. oHG*
- *delta pronatura Dr. Krauß & Dr. Beckmann KG*
- *L'Oréal Haarkosmetik und Parfümerien GmbH & Co. KG*

The companies represented in the KWR are the leading suppliers in Germany of brand body care products, cleaning agents and detergents. The vast majority of the market segments affected are highly concentrated markets, in which the three leading brand product manufacturers have shares of over 50%. The companies named above sell their brand products at least nationwide to the retail trade, which sells them in its own name to the end consumer.

The KWR working group met several times a year, usually five or six times; the meetings were also attended by the management of the trademark association. At these meetings the representatives of the companies regularly exchanged competitively sensitive information. This included information on planned gross price increases for all customer groups and on the current state of negotiations with selected, major retailers at annual talks and on special demands from the retail trade. Information was also exchanged on non-public sales data, which disclosed in identifiable form information on sales structures and costs as well as terms of payment granted to retailers.

The information exchange gave KWR member companies a knowledge edge and helped them to minimise uncertainty about market developments. The information about planned price increases and negotiations on special demands from the retail trade and on annual talks of the other companies allowed them to adjust their own price or negotiation strategies for their own annual talks and negotiations. At the same time the exchange of sales data provided the companies with sensitive information about the other companies which they were also able to use for their negotiations and planning, thus improving their bargaining power vis à vis their customers.

The proceedings were initiated in 2007, following an application for leniency by *Colgate-Palmolive*, and initially concerned the companies *Colgate-Palmolive*, *Henkel*, *Schwarzkopf & Henkel*, *Sara Lee* and *Unilever*. In March 2008 proceedings were then also initiated against the other KWR members. In this case the accusation was limited at first to the regular exchange of information among KWR members on negotiations with retailers, in particular on changes to the rebates agreed with the retailers. The proceedings could be concluded on the basis of a

settlement with the following companies: *Henkel, Schwarzkopf & Henkel, Sara Lee, Unilever, Johnson & Johnson, SC Johnson, Coty, delta pronatura.*

After further investigations the accusation was extended in June 2010 to other practices. In addition to exchanging information about negotiations with retailers, the companies were also accused of regularly exchanging information on planned gross price increases for all customer groups and on key parameters of sales activity. It was only at this stage of the investigation that proceedings were also initiated against the trade association and a member of staff involved.

At a further stage the proceedings were concluded on the basis of a settlement with *Reckitt Benckiser* and *Beiersdorf*. All in all, the proceedings could therefore be concluded by settlement in ten cases. In accordance with the Bundeskartellamt's Leniency Programme, the fine against *Colgate-Palmolive* could be waived. In respect of the companies *Sara Lee* and *Reckitt Benckiser*, account was taken of the fact that these had also applied for leniency and cooperated in clarifying the facts of the case.

A settlement could not be reached in the proceedings against *GlaxoSmithKline, Procter & Gamble, Gillette, Erdal Rex* and *L'Oréal* as well as the trademark association *Markenverband*. On 18 March 2013 orders imposing fines were issued against these five companies and the trademark association. *GlaxoSmithKline, Erdal Rex, L'Oréal* and the trademark association have appealed their fines to the Düsseldorf Higher Regional Court. In May 2013 *Procter & Gamble* and *Gillette* withdrew their initial appeals against the decisions imposing the fines following the decision of the Federal Court of Justice in the cement cartel case (ref. KRB 20/12) (cf. [press release of 18 March 2013](#)).