



## Case summary

18 January 2016

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### Fines imposed on account of the resale price maintenance of roasted coffee products

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| Sector:           | Sale of roasted coffee (filter coffee, whole-bean products) via food retailers |
| Ref.:             | B10-050/14   |
| Date of decision: | 19 December 2014, 10 June 2015, 16 June 2015 and 23 December 2015              |

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On 19 December 2014, 10 June 2015, 16 June 2015 and 23 December 2015, the Bundeskartellamt imposed fines amounting to a total of about €50 million for resale price maintenance in connection with the sale of roasted coffee (Melitta brand filter coffee and whole bean products). The companies fined are

- Edeka Zentralhandelsgesellschaft mit beschränkter Haftung and Edeka Zentrale AG & Co. KG (*Edeka*),
- Kaufland Stiftung & Co. KG and Kaufland Warenhandel GmbH & Co. KG (*Kaufland*),
- Metro Dienstleistungs-Holding GmbH as the legal successor of the MGB Metro Group Buying GmbH (*Metro*),
- Rewe – Zentral-Aktiengesellschaft (*Rewe*),
- Dirk Rossmann GmbH (*Rossmann*).

No fines were imposed on Melitta Europa GmbH & Co. KG, the legal successor of Melitta Kaffee GmbH (*Melitta*), since the company had fully cooperated with the Bundeskartellamt before proceedings were initiated. The proceedings were triggered by a dawn raid on 14 January 2010. Following the initiation of proceedings, Rewe also cooperated with the Bundeskartellamt, for which the company was granted a reduction of its fine.

With the exception of Rossmann all the fined companies reached a negotiated agreement (settlement), which led to a (further) reduction of their fines. The fines notices of December 2014 and June 2015 are now final. Rossmann has lodged an appeal against the decision of 23 December 2015 addressed to it, on which a decision has to be taken by the Düsseldorf Higher Regional Court.

According to the results of the investigations, Melitta representatives had concluded a basic agreement with representatives of each retail company from the end of 2004 at the latest. On the basis of this agreement, retailers maintain a certain price level for Melitta's roast coffee products (filter coffee and whole bean products) on condition that Melitta ensures that the major competitors on the retail side maintain this minimum retail price level. When price campaigns were used for marketing, this related both to shelf and price campaign prices and when a permanent low price concept was used for marketing, it related to permanent low prices. The focus here was on the product of filter coffee, which comprised a large share of Melitta's sales volume. The minimum retail price level was maintained when the products were offered at retail prices that maintained or were at least only slightly below Melitta's respective RRP. The aim was to avoid so-called cut prices, i.e. national prices at more than 10 to 15 cents below Melitta's current recommended retail price (RRP). The basic agreement ended in mid-2008, after the Bundeskartellamt had carried out dawn raids on three coffee roasters on suspicion of price collusion.

Various measures were used to implement the basic agreement:

- When the price of filter coffee was increased in December 2004, April 2005 and December 2007, and the price of whole bean products was increased in April 2005, Melitta representatives colluded with retailers' representatives on the increase in retail prices (on the basis of Melitta's new RRP) and on the calendar week from which these new prices were to apply. In so doing, Melitta's representatives were aiming to gain the more or less explicit agreement of the retailers' representatives that they would increase retail prices to the new RRP level in the specified calendar week. To this end, Melitta's representatives agreed with the retailers' representatives in some cases that they would receive financial incentives, such as one-off payments etc. for increasing retail prices to the desired level in a given calendar week (this remuneration was subsequently also granted). In a few cases, Melitta's representatives also threatened not to pay the agreed remuneration, for example of advertising subsidies. In addition, Melitta's representatives communicated to the representatives of the retail companies information on the retail price increases planned and actually implemented by other retail companies. In order not to jeopardise the process of

increasing retail sales prices, Melitta's representatives sometimes also agreed with the retail companies' representatives the cancellation/postponement of special offers in the period around the time of the price increase. In some cases, Melitta's representatives offered financial incentives in return, such as one-off payments etc. (these financial incentives were also actually granted).

- Between 2005 and the second half of 2008, representatives of Melitta and of the retailers spoke before nearly every special offer during the year about the "right" retail prices, usually on the basis of Melitta's RRP. Often, however, this price was not referred to as a non-binding recommendation or RRP, but as a "target price" or "sales price". In many cases, particularly at critical times during and after so-called seasonal peaks at Easter, Whitsun and Christmas, Melitta representatives and retailers' representatives agreed on explicitly defined (special offer) pricing, or made commitments to this effect. Sometimes, remuneration was also agreed between Melitta representatives and retailers' representatives (and paid by Melitta) for the maintenance of certain retail prices. In a few cases, Melitta representatives also threatened not to pay the agreed remuneration (for example, of advertising subsidies) if certain retail prices were not maintained. In addition, Melitta representatives informed retailers' representatives of other retailers' intended special offer prices of which they were aware within the context of a special offer.
- During the period from 2005 to the second half of 2008, representatives of Melitta and of the retailers observed the current development of retail prices (shelf prices and special offers) for filter coffee and whole bean products. To this end, Melitta's representatives and sometimes also retailers' representatives also tracked retail prices themselves. Melitta's price tracking involved its sales representatives investigating the retail prices of certain predefined products in certain outlets or by means of the leaflets of these outlets each Monday. The sales representatives reported the retail prices they had collected to their headquarters by 3.00 p.m. on the same day. The headquarter office evaluated the reported data and entered them into a spreadsheet. This spreadsheet was then sent to Melitta's sales staff, but also to representatives of the retail companies.
- If a retailer undercut Melitta's current RRP by significantly more than 10 to 15 cents and if this involved not only smaller retailers or a regionally limited undercut, Melitta representatives regularly telephoned the retailer concerned to intervene, pointing out that this might lead to price competition on the part of other retailers. Sometimes, representatives of the retailers concerned then offered to write a letter to Melitta saying that it was a marketing anomaly, printing mistake or other error. Then, this letter could and was to be submitted to the other retailers to prevent them from adopting the low retail price if at all possible and to prevent any significant deviation from Melitta's RRP in the market as

a whole.

- When Melitta's current price recommendations were undercut, complaints were also often made by representatives of the other retailers, in which they threatened to cancel their next special offer or also to undercut Melitta's RRP in their next special offer. These complaints regularly led to Melitta representatives intervening with the retailer that had undercut the RRP as described above. Melitta representatives also informed the representatives of the retailer that had made the complaint about the intervention and, where relevant, also of its results.
- If Melitta representatives discovered beforehand that a retailer was intending to sell a product significantly below Melitta's RRP, they usually asked that company's representatives by telephone to sell the product at a special price close to the RRP. If that was unsuccessful, further requests were made, if necessary to postpone or cancel entirely the next special offer. In individual cases, financial incentives were offered and granted for implementing the special offer at a retail price in line with Melitta's RRP.
- The basic agreement was ultimately included more or less explicitly in the annual agreements between Melitta and some retail companies. For example, the confirmations of the annual talks sent by a retail company to Melitta in 2006 and 2007 explicitly state that the retailer concerned would "*go along with*" a special offer of €3.49 euro for filter coffee.

The Bundeskartellamt based its calculation of the fines on the assumption of a single offence. In all cases, fines were imposed within the turnover-based framework of fines and by applying the Bundeskartellamt's Guidelines for the setting of fines in cartel administrative proceedings of June 2013.<sup>1</sup> Concerning the amount of the fines, the Bundeskartellamt took into account the type, gravity and duration of the infringement of competition law.

This case summary gives an account of the situation as of 18 January 2016 and does not take account of any later events (the filing or withdrawal of an appeal etc.).

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1 Cf. Guidelines for the setting of fines in cartel administrative offence proceedings, 25 June 2013.

