
Fine proceedings against confectionery manufacturers

Sector: Manufacture of confectionery products

Ref: B11-11/08

Date of the decisions: January 2013 and June 2014

The cartel proceedings against confectionery manufacturers in the set of infringements involving the "four party" discussion group were finally concluded in December 2016 after *Nestlé Kaffee und Schokoladen GmbH* had withdrawn its appeal against the Bundeskartellamt's fining decision. As regards the set of infringements concerning a working group of an association of the German confectionery industry (Konditionenvereinigung der Deutschen Süßwarenindustrie e.V.), hereafter "Konditionenvereinigung", the appeals of four companies and an association will probably be decided by the Düsseldorf Higher Regional Court in January 2017.

On 31 January 2013 the Bundeskartellamt had concluded its fine proceedings against several manufacturers of branded confectionery and imposed fines totalling approx. 63 million euros on 12 companies and several sales executives. The proceedings were initiated after a leniency application had been filed by *Mars GmbH*. In February 2008 the Bundeskartellamt had conducted sector-wide dawn raids which triggered several more leniency applications.

The investigations focused on coordinated price increases for chocolate products, which had occurred at the beginning of 2008. In 2007, prices for the raw materials milk and cocoa had increased significantly. The manufacturers of chocolate products had to decide whether and to what extent they could pass on increased raw material costs to the retail trade (and ultimately the end consumer) by raising the prices of their products. Some of them coordinated the timing and scope of the price increases with their competitors in a direct and confidential exchange. Furthermore, in various discussion groups several confectionery manufacturers exchanged competitively sensitive information, in particular on the state of their annual negotiations with retailers.

Three different sets of infringements were prosecuted and fined: The first concerned price-fixing agreements between two manufacturers of chocolate blocks. The second related to price-fixing

agreements and an additional illegal information exchange between manufacturers of confectionery. This information exchange took place at meetings of a discussion group, referred to as "four party talks". The third concerned an illegal information exchange between several confectionery manufacturers at meetings of a working group of the "Konditionenvereinigung" association.

Competition conditions in the confectionery sector

Confectionery products can be divided into three categories: chocolate products, sugar confectionery and biscuits. Chocolate products are sold as chocolate blocks, chocolate bars, so-called chocolate bites and pralines.

In most cases the price-fixing agreements and information exchange took place between direct competitors, e.g. manufacturers of chocolate blocks, chocolate bars or biscuits. The confectionery manufacturers involved in the agreements were also indirect competitors for shelf space in retail outlets, in particular with regard to the placing of their products. Confectionery products are predominantly impulse products. These are articles for which from a consumer's perspective there is no recurring need and which are bought spontaneously. For this reason, in retail stores confectionery is placed not only on the shelves but also more prominently in special display areas and near the checkout. The percentage of confectionery sold via these special placements can amount to up to 50% of the total sales of the respective products, depending on the category. While the placement of individual confectionery products on shelves is (at least in the short term) static, special presentation areas can be used to display a mixture of products of different confectionery categories.

Price-fixing agreements for chocolate blocks (fines of approx. 21.7 million euros)

In the first set of infringements, one representative each from *Kraft Foods Deutschland GmbH* and *Alfred Ritter GmbH & Co. KG* had informed each other in a series of telephone calls between March and September 2007 of their intended price increases for chocolate blocks scheduled for the beginning of 2008. Kraft and Ritter are the two market leaders for chocolate blocks in Germany, Kraft with its brand "Milka" and Ritter with its brand "Ritter Sport". In early 2008 the manufacturers' selling prices to retailers for the 100g bars of the two companies were actually raised by 15-25 % and the manufacturers' recommended retail prices were raised by 10-15 Cents. This could only be proved on account of a leniency application filed by *Ritter*.

"Four party" discussion group: Price-fixing agreements and exchange of information (fines of approx. 21.9 million euros)

The second set of infringements concerned an informal discussion group of high-ranking sales executives of the confectionery manufacturers *Mars GmbH*, *Nestlé Kaffee und Schokoladen GmbH*, *Alfred Ritter GmbH & Co. KG* and *Haribo GmbH & Co. KG*. This so-called "Four Party" discussion group met on a regular basis every three months between spring 2006 and February 2008.

Between January and August 2007 the representatives of the chocolate manufacturers *Mars*, *Nestlé* and *Ritter* used these meetings to coordinate price increases for several chocolate products. The coordination covered the time of the price rises (January 2008) and the amount of the intended increase in their ex-factory or manufacturer selling prices. *Mars* and *Nestlé* are two of the leading suppliers of chocolate bars and chocolate bites, selling well-known brands such as Mars, Bounty, Milky Way, Snickers, Twix, Balisto, M&M's (*Mars*) and KitKat, Lion, Nuts, Choco Crossies or Smarties (*Nestlé*). The price increases for these Mars/Nestlé products at the beginning of 2008 averaged around 10 % and were to some extent implemented by downsizing the packet contents.

At their meetings, the members of the four party discussion group also exchanged competitively sensitive information about the state and progress of negotiations between the companies and various major retailers. In addition to the three chocolate manufacturers, a sales representative of *Haribo* also participated in this information exchange. The companies informed each other about demands from the retail trade for rebates from the other confectionery manufacturers and about how the manufacturers had reacted to these demands. This information enabled the companies to adjust their own strategies in the negotiations.

Exchange of information in working group of Konditionenvereinigung e.V. (fines of around 19.6 million euros)

At least between the end of 2003 and the beginning of 2008 information was also exchanged at meetings of a working group of the "Konditionenvereinigung e.V." association. This information concerned the state of negotiations with the retail trade at annual talks on conditions and special demands, as well as information on intended list price increases.

The working group met regularly up to five times a year. Its members were manufacturers of all confectionery product categories, i.e. chocolate products, sugar confectionery and biscuits. The participating company representatives held at least the position of sales manager, in the case of the smaller companies often the managing directors participated in the talks.

The companies involved in this illegal information exchange were, in addition to *Mars* and *Ritter* the leading biscuit manufacturers *Bahlsen GmbH & Co. KG* and *Griesson de Beukelaer GmbH*

& Co. KG, as well as *Storck GmbH & Co. KG*, *Katjes Fassin GmbH + Co. KG*, *CFP Brands Süßwarenhandels GmbH & Co. KG*, *Feodora Chocolate GmbH & Co. KG*, *Piasten GmbH & Co. KG* and *Zentis GmbH & Co. KG*. In addition to the fines imposed on these companies, a fine was also imposed in June 2014 on the Association of the German Confectionery Industry (Bundesverband der Deutschen Süßwarenindustrie e.V. BDSI) because some of its representatives encouraged the illegal exchange of information although the information was exchanged at meetings of the legally independent "Konditionenvereinigung" association.

Leniency applications and settlements

In accordance with the Bundeskartellamt's Leniency Programme, the fine against *Mars* was completely waived. The fine against *Ritter* was waived only in respect of its bilateral price-fixing agreement with *Kraft*. In setting the fines it was also taken into account that the companies *Ritter*, *Nestlé*, *Kraft* and *Katjes* had cooperated with the Bundeskartellamt in clarifying the facts of the case. The proceedings against the companies *Kraft*, *Haribo*, *Storck*, *Katjes*, *Piasten* and *Zentis* could be concluded by settlement. These fines are now final. Appeals have been lodged against the other fines, which are still pending at the Düsseldorf Higher Regional Court.

Withdrawal of appeals

In July 2013 *Ritter* already withdrew its appeal against the fines imposed in the "Four Party" and "Konditionenvereinigung" sets of infringements. In December 2016 *Nestlé* also withdrew its appeal against the fine imposed in the "Four Party" set of infringements. As a result the fines against *Ritter* and *Nestlé* are also final.

Court proceedings in the "Konditionenvereinigung" set of infringements

The Düsseldorf Higher Regional Court is expected to decide on the appeals filed by the companies *Bahlsen*, *Griesson*, *CFP* and *Feodora* as well as the *BDSI* in January 2017.