



Fine proceedings against manufacturers of consumer goods

Sector: Manufacture of consumer goods

Ref: B11-12/08

Dates of the decisions: February 2011 and 22 March 2013

The cartel proceedings against manufacturers of consumer goods were concluded in December 2016 after *Nestlé Deutschland AG* and its employee involved had withdrawn their court appeals against the Bundeskartellamt's fine.

Between 2011 und 2013 the Bundeskartellamt had conducted fine proceedings against manufacturers of consumer goods on account of their involvement in an illegal information exchange and imposed fines totalling approx. 57 million euros on four companies and representatives of the companies¹.

At least between October 2005 and January 2008 high-ranking sales executives of the companies involved had met regularly in a secret discussion group, the so-called "Hema-Vertriebskreis"², and exchanged competitively sensitive information. This included information about the state and progress of negotiations with food retail companies at annual talks and on special requests by the retailers and, to some extent, about planned list price increases. Information was also exchanged on the current percentage changes in turnover of the companies with individual product categories or with certain food retailers. The product areas concerned were, in particular, chocolate products, hot beverages such as instant coffee and instant coffee specialities, frozen pizzas,

¹ See Bundeskartellamt press releases of 17 March 2011 and 27 March 2013

(http://www.bundeskartellamt.de/SharedDocs/Meldung/EN/Pressemitteilungen/2011/17_03_2011_Hema.html) and

http://www.bundeskartellamt.de/SharedDocs/Meldung/EN/Pressemitteilungen/2013/27_03_2013_Hema.html)

² The name derives from the company Herstellermarken GmbH (HEMA) which, despite the similarity in name, bears no relation either in terms of content or organisation to the discussion group.

cereals/muesli, pet food and detergents. At least two of the companies in the group were active in each of these product areas and were therefore in direct competition with one another.

The information exchange gave members of the discussion group a knowledge edge and helped them to minimise uncertainty about market developments. In particular, information about planned price increases and negotiations at annual talks and on the special requests of the food retailers allowed them to adjust their own price or negotiation strategies for their own annual talks and negotiations with the retail trade.

In one specific case *Nestlé* and *Kraft* explicitly agreed on a price increase for so-called 'Family-Cappuccino', an instant cappuccino product line, for the turn of 2007/2008³.

The proceeding was initiated in spring 2008 following the leniency application of *Mars GmbH*, Viersen. In February 2011 fining decisions were issued against *Dr. August Oetker Nahrungsmittel KG*, *Kraft Foods Deutschland GmbH* and *Unilever Deutschland GmbH*, which was only involved in the information exchange to a limited extent in the infringement period, as well as representatives of the companies. These fining decisions have since become final after settlements were agreed with the companies. In March 2013 a fine was imposed on *Nestlé Deutschland AG* and a member of staff responsible. Initially this was appealed to the Düsseldorf Higher Regional Court. However, a few weeks before the main proceedings began *Nestlé* and its member of staff responsible withdrew their appeals.

In accordance with the Bundeskartellamt's leniency programme no fines were imposed on *Mars*. In setting the fines against *Nestlé* and *Kraft* the authority took into account that they had cooperated with the Bundeskartellamt in clarifying the allegations within the scope of its leniency programme. No fine was imposed on *Henkel AG & Co. KGaA*, Düsseldorf, which had also participated in the illegal exchange of information because

³ see also the case summary on the fine proceeding against instant Cappuccino manufacturers of 19 September 2014:

http://www.bundeskartellamt.de/SharedDocs/Meldung/DE/AktuelleMeldungen/2014/30_09_2014_Fallbericht_Capuccino.html

the company's conduct had already been dealt with in the authority's "drugstore products" cartel proceeding⁴.

⁴ Cf. Bundeskartellamt's press release of 20.02.2008.

http://www.bundeskartellamt.de/SharedDocs/Meldung/DE/Pressemitteilungen/2008/20_02_2008_Drogerieartikelhersteller-Bu%C3%9Fgeld.html?nn=3591568