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German court imposes 20 million EUR fine for RPM agreement

Düsseldorf Higher Regional Court imposes 20 million EUR fine against Dirk Rossmann GmbH because of vertical price fixing in the sale of coffee.

The case

The proceedings concerned vertical price-fixing agreements for roasted coffee products (filter coffee, whole bean coffee) between Melitta Kaffee GmbH ('Melitta') and its retailers, of which Dirk Rossmann Gmbh ('Rossmann') was one. The agreements were in place between the end of 2004 and mid-2008. The retailers were expected to maintain a minimum retail price level (resale price maintenance).

In 2010, the Bundeskartellamt (German Federal Cartel Office, 'FCO') initiated investigations. All retailers except Rossmann agreed to a settlement, which led to a further reduction of the imposed fine by the FCO. At the end of 2015, the FCO imposed a fine of 5.25 million EUR on Rossmann, against which Rossmann filed an appeal before the Düsseldorf Higher Regional Court.

The Court fully confirmed the findings of the FCO and found Rossmann guilty of having intentionally engaged in illegal vertical price fixing. In particular, Rossmann's promotion prices for Melitta filter coffee were agreed on a weekly basis between representatives of both companies. The Court also significantly raised the fine imposed by the FCO to 30 million EUR. The Court set its fine with a view to the fact that the case concerned an infringement of competition law with nationwide horizontal effects in the sale of a major consumer good.

After the Federal Court of Justice overturned the ruling due to a breach of procedural requirements, the Düsseldorf Higher Regional Court had to rule on the matter again. Rossmann wanted to end the proceedings at this point with the original fine of 5.25 million EUR and withdrew its appeal against the fine. Since the Düsseldorf Public Prosecutor's Office did not agree to the withdrawal, the Düsseldorf Higher Regional Court rejected the withdrawal. This ruling was overturned again by the Bundesgerichtshof (the German Federal Court of Justice) due to a legal error. This is why the Düsseldorf Higher Regional Court had to rule on the matter for the third time.

Decision of the Düsseldorf Higher Regional Court

During this third hearing the Düsseldorf Higher Regional Court and Rossmann agreed on Rossmann limiting its

original appeal to the legal consequences of the fine notice. Hereafter, the Düsseldorf Higher Regional Court mainly had to assess the sentencing. The Court imposed a fine of 20 million EUR on Rossmann. This decision has not yet become final, meaning that an appeal on points of law can be filed by all parties to the proceedings.

The sentence to pay 20 million EUR is based on various mitigating circumstances. In particular, the fact that the proceedings lasted more than 12 years was taken into account. Furthermore, Rossmann was not the driving force in the cartel and played a rather minor role in the German coffee sales market. In this context, the Court considered the injustice of Rossmann's conduct to be rather small. Therefore, the Court established a fine which falls in the lower range of the framework for the assessment of fines.

Commentary

The decision of the Düsseldorf Higher Regional Court is not published yet but the published information shows already that the assessment of fines might vary significantly depending on the authority ruling. The FCO and German courts consider a series of circumstances before imposing a fine. For example, the nature and the magnitude of the infringement, in particular the turnover linked to the infringement, as well the relevance of the products affected, besides that, previous infringements committed by the undertaking as well as any precautions taken to prevent and uncover infringements, and the undertaking’s efforts to remedy the harm (Section 81d Act against Restraints of Competition).