NEWS | 10 August 2023

Decision n°2023-D-01 from the “Autorité de la concurrence du Grand-Duché de Luxembourg

Summary

The leading importer of coffee to the Grand Duchy of Luxembourg was sanctioned for non-compliance with competition rules.

Facts

The largest importer of coffee in the Grand Duchy, Peter Hennen G.m.b.H (“Peter Hennen”), used certain market practices to force its buyers (wholesalers, supermarkets, service stations) to maintain a minimum selling price in order to increase its profit margins.

The methods used by the importer were multiple and used cumulatively to put pressure on his buyers to apply the selling price desired by Peter Hennen.

The importer also penalized customers sourcing from outside the company, which constituted an obstacle to freedom of establishment. Peter Hennen was able to use batch numbers to precisely identify the products he sold, and if a customer bought from outside the company, he was penalized by the loss of any discounts he had received.

In order to control product sales prices and vertical distribution, Peter Hennen used price lists, to which rebates were applied the following month if the distributor offered Peter Hennen products at the price desired by the latter.

Peter Hennen estimated a probable average selling price, which was actually the price at which the company wanted to sell its products. It should be noted that this was often lower than Peter Hennen's selling price to its customers. The wholesalers and retailers who bought coffee from Peter Hennen were encouraged by various mechanisms (either appeals, controls or threats) to offer their products at this estimated average price.

Every week or month Peter Hennen checked with his customers to see if the selling price was the likely average price (suggested by Peter Hennen).

It was at this point that the discount system was set up. As the average price offered by Peter Hennen was often lower than the selling price to the various distributors, Peter Hennen granted conditional discounts at the end of the month. In the absence of these discounts, the distributors sold at a loss or were forced to sell at a higher price.

The average price estimated by Peter Hennen was €4.49. The price of 200 grams of JACOBS coffee was sold at €5.43 by Peter Hennen, to which a discount of 0.27 cents was offered depending on the volume and the applicable discount (if the average selling price was respected) of €0.925. That is a final price of €4.235. In the absence of this discount of €0.925, we see that the windfall was at a loss.

The discount being granted the following month, Peter HENNEN's teams came to check that the price was respected and the discount was not offered if the price was not the right one.

For wholesalers, the bonus was conditional on the identification of the end customer, which allowed Peter Hennen to control stocks in addition to the price.

Decision of the competition authority

The old law of 20 October 2011 was the one used as the basis for the decision given that the law of 30 November 2022 was not yet in force at the time of the facts.

It is Article 3 of the law of 2011 which prohibits price agreements. This same Article prohibits price agreements in both vertical and horizontal agreements.

The competition authority holds that exports and imports may have been affected given Luxembourg's cross-border position and the importance of Peter Hennen on this market.

The authority decides that these practices amount to indirect vertical price fixing which was operated by Peter Hennen.

Peter Hennen was imposed a fine of €3,075,962. Peter Hennen can appeal to the administrative court against the decision of the competition authority.