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French Competition Authority fines Mariage Frères teas for hindering the commercial freedom of its distributors

In its decision no. 23-D-12 of 11 December 2023, the French Competition Authority fined the Mariage Frères group 4 million EUR for two anticompetitive practices in the luxury tea sector.

Following an investigation report produced by the French ministry responsible for the economy (i.e. the 'DGCCRF'), the French Competition Authority has fined the Mariage Frères Group for having hindered the commercial freedom of its distributors for almost 15 years (from July 2008 to January 2023) by prohibiting them from selling its brand products online and from reselling its products to other retailers.

These practices, which limited intra-brand competition and partitioned markets, were sanctioned under Article 101 of the Treaty on the Functioning of the European Union and Article L. 420-1of the French Commercial Code. Mariage Frères attempted to contest the appreciable effect on trade between member states.

However, the French Competition Authority confirmed this effect on account of the market shares held on the affected market (i.e. the national market for premium teas) exceeding the 5% threshold provided for in point 53 of the guidelines on the effect on trade concept contained in Article 101 and 102 of the Treaty. The reputation of the Mariage Frères brand in France was also retained. As this threshold had been exceeded, the French Authority considered that there was no need to examine the alternative condition relating to the sales threshold of 40 million EUR.

The prohibition on selling Mariage Frères products online

In their general terms and conditions ('GTC'), Mariage Frères prohibited their distributors from reselling on the Internet, thereby reserving the exclusive rights to sell its products online.

The French Competition Authority found that there had been an anticompetitive practice resulting from Mariage Frères' diffusion of GTC including a clause prohibiting online sales to all its distributors and from the distributors' acceptance of these GTC including the disputed clause.

The prohibition on online sales resulted from clauses in the GTC, which were the sole basis for contractual relations between Mariage Frères and its distributors until 2019.

After 2019, Mariage Frères had included in its GTC a clause requiring distributors to obtain a prior authorization to

sell online, which would give rise to a separate contract. In practice, no separate contract dedicated to online sales was concluded between Mariage Frères and its distributors, despite requests from some of them. The French Competition Authority therefore considered that this practice amounted to an absolute and explicit ban on online resale.

Mariage Frères justified this prohibition by the will to preserve the prestigious image of its products. However, according to settled case law and because products were not marketed under a selective distribution system, this cannot justify the absolute neutralisation of the online distribution channel.

Finally, the French Competition Authority noted that the prohibition on selling products on the Internet may restrict the development of distributors' business, which is prohibited by competition law.

In addition, this restriction is detrimental to distributors, particularly the smallest structures, which could have seen a significant increase in their turnover: restriction of the development of their business. On the other hand, between 2013 and 2021, Mariage Frères was able to triple its turnover thanks to online sales on its website or on Amazon.

The prohibition on reselling Mariage Frères products to other retailers

The prohibition on reselling to other distributors was also mentioned in the GTC. The litigious provision gave Mariage Frères exclusive rights to resell and limited the commercial scope of its distributors to sales to consumers.

The prohibition deprives end consumers of the possibility to benefit from better prices resulting from effective competition between all distributors.

The French Competition Authority considers that the customer restriction imposed by the disputed clauses constitutes, by their mere presence in the GTC, a hardcore restriction, given that Mariage Frères does not operate under a selective or exclusive distribution system. The restriction of customers is a hardcore restriction under Commission Regulation EU 330/2010 and 2022/720, and therefore constitutes, by virtue of its harmfulness, a restriction of competition by object within the meaning of Article 101 of the Treaty on the Functioning of the European Union.

The amount of the fine resulting from the anticompetitive practices in question

The limited size of the company that Mariage Frères claimed, as well as the absence of legal, marketing or sales management, do not constitute mitigating circumstances.

The French Competition Authority imposed a joint and several fine of 4 million EUR on Mariage Frères International SAS and Mariage Frères SAS.

This amount is explained by the "certain" nature of the seriousness of the practices, according to the French Competition Authority. Although Mariage Frères was found not to have taken any reprisals against its distributors during the infringement period, the French Competition Authority has established that the company ensured that its distributors complied with the prohibitions. In addition, the practice affected distributors who were small or even very small businesses, in the relevant market.

However, the amount is lower than the legal ceiling set by Article L. 464-2 of the French Commercial Code.