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French Competition Authority fines chocolate maker De Neuville for hindering franchisees' commercial freedom

In its decision no. 24-D-02 of 6 February 2024, the French Competition Authority jointly and severally fined the chocolate maker De Neuville and its parent company (the holding company Savencia) 4 million EUR for engaging in two restrictive practices.

This decision follows the penalties imposed by the French Competition Authority against Mariage Frères on 11 December 2023 (decision no. 23-D-12) and against the Rolex company on 19 December 2023 (decision no. 23-D-13) for prohibiting online sales by distributors.

While the practices sanctioned in the De Neuville case share similarities with those in the Mariage Frères case, such as similar practices, a prolonged duration of infringement and a comparable sanction, the French Competition Authority adopted a different approach in determining the amount of the fine.

Prohibition on selling de De Neuville products online

De Neuville, the third-largest French specialised chocolate network with 154 outlets nationwide predominantly operated by franchisees, prohibited its franchisees from selling its products online between 2006 and 2019, thereby reserving the exclusive rights to sell its products online.

From 2006 to 2014, the prohibition was expressly outlined in the franchise agreement. Franchisees could only sell online under specific derogations. However, De Neuville failed to specify the criteria for online sales, leading franchisees to refrain from selling products online.

Between 2014 and 2019, this clause was no longer part of the contract but remained as an appendix. The derogation reference was removed from the contractual documents, and it was only in 2019 that De Neuville amended its provisions, permitting franchisees to sell online.

The French Competition Authority deemed these practices a restriction of competition by object under Article 101(1) TFEU and Article L. 420-1 of the French Commercial Code. No individual or block exemption was considered as these practices partitioned the market and restricted both active and passive sales by franchisees.

Limiting franchisees' commercial freedom with business customers

The investigation revealed that, over 16 years (2006-2022), De Neuville's contractual provisions created a system for allocating sales to professionals among franchisees.

The clauses and instructions ensured that franchisees did not compete in their respective territories, even without customer exclusivity. This limited both active and passive sales, resulting in a division of sales to professionals and *de facto* reducing competition intensity between franchisees and De Neuville.

Methodology for determining the fine

The 4 million EUR penalty aligns closely with the Mariage Frères decision for similar practices and the duration of the infringement.

However, in the Mariage Frères decision, the French Competition Authority determined the penalty on a flat-rate basis without giving any explanation. In contrast, in the present case, it followed the steps outlined in its 2021 procedural notice on fines.

Although no mitigating or aggravating circumstances were considered in determining De Neuville's fine, the fact that it belongs to a powerful group nevertheless resulted in an 8% increase in the basic amount of the fine.