NEWS | 31 January 2025

The French Competition Authority fines ten suppliers and two distributors of household electrical appliances for twelve vertical price agreements

On 19 December 2024, the French Competition Authority (the 'Authority') imposed the 4th largest penalty in its history. It fined ten suppliers and two major distributors of household electrical appliances and wholesale products 611 million EUR, for operating a widespread vertical cartel aimed at fixing the retail prices of their products.

The cartels were implemented between February 2007 and December 2014 in response to the boom in online sales of household electrical appliances and the entry into the market of distributors with a low-price policy.

Dawn raids were carried out on 17 October 2013 and 27 May 2014 by the Authority, following which the BSH group companies (Siemens, Bosch, etc.) filed a leniency application. On 19 July 2015, the Authority issued an opinion granting them the conditional benefit of a penalty reduction.

In the course of the investigation, the Authority separated out part of the facts relating to horizontal cartel practices, which were the subject of separate proceedings and led to a first penalty decision for 6 companies, dated 5 December 2018.

This second decision of 2024 is noteworthy in several respects.

Procedure and prescription

First of all, the Authority examined the question of the prescription period for anti-competitive practices. The length of the procedure in this case was due in particular to the appeals initiated against the dawn raids.

Some companies that were accused but had not initiated such appeals argued that the practices of which they were accused were prescribed, pursuant to the ten-year statute of limitations.

Article L. 462-7 of the French Commercial Code specifies that the statute of limitations is suspended for the duration of the appeal procedure brought against a dawn raid. The question then arose as to whether this suspension had a relative effect (*inter partes*), i.e. limited to the companies that had brought an appeal, or an *erga omnes* effect, applying to all the companies involved in the infringement, whether or not they had brought an appeal.

The respondents relied on various French civil rules, but also on the ArcelorMittal judgments, in which the

General Court of the European Union and then the Court of Justice upheld the inter partes effect of the suspension of the time limit laid down in Article 25 of Regulation 1/2003. The Authority considered that it was not bound by the Court of Justice's interpretation of the inter partes effect of the grounds for suspension of the ten-year limitation period applicable to the Commission under Article 25 of Regulation 1/2003.

More generally, the Authority considered that the causes for suspending the ten-year limitation period provided for in Article L. 462-7 suspend the limitation period in respect of all the parties involved, and not only in respect of those who, as in this case, brought an action against the dawn raids.

On another point relating to the procedure, some respondents complained that the procedure was unreasonably long. As is often the case, they were told that the length of the procedure in this case was due to its scope and complexity.

Sanctioned practices

The first grievance concerned the exchange of individualised data on sales volumes by category of small electrical appliance. The Autority did not uphold this complaint, considering that this information was not of a strategic nature and did not have the effect of reducing uncertainty about operators' future behaviour.

The other 12 grievances concerned widespread vertical agreements between manufacturers and distributors to fix, directly or indirectly, the retail price of small and large electrical household appliances.

The manufacturers systematically attached a ‘recommended’ price to all their product references, sometimes using coded language to conceal the price instructions. Then, they monitored the resale price instructions for their products, sometimes on a daily basis.

Some distributors (Darty and Boulanger, for example) also exercised real control over other distributors, not hesitating to inform suppliers of those who did not comply with recommended prices.

In the event of non-compliance with recommended resale prices, the distributors concerned could be subject to retaliatory measures, such as stopping or threatening to stop deliveries, or even a ban on the sale of certain products.

Ten companies chose not to contest the reality of the grievances and to benefit from the French settlement procedure, while the companies of the SEB and Boulanger groups contested the grievances:

- SEB contested the existence of an agreement of wills and argued that it was not sufficiently harmful.

With regard to the existence of an agreement of will, the Authority found that SEB continuously communicated recommended prices, monitored compliance with them automatically and frequently requested price increases

when this was not the case. There was documentary evidence that the distributors complied with the prices and even requested price increases.

As regards the harmfulness, the Authority considered that SEB's practices had the object of restricting intra-brand competition on the market.

- Boulanger, as a distributor, also actively participated in the cartel.

The Authority found that Boulanger monitored the other distributors to ensure that the pricing policy was applied. Boulanger also made requests to raise its prices conditional on parallel behaviour on the part of its competitors, and even required compensation for the margin lost as compensation.

The Authority then verified the participation in the general cartel of the ten companies that benefited from the settlement procedure.

Penalties

The Authority applied its penalty notice of 30 July 2021, which was challenged on the basis of the principle of non-retroactivity of the more severe penal law. The Authority considered that this principle did not prevent it from adapting its method of calculating penalties to the needs of effective application of the competition rules, nor did it constitute a change that could not reasonably have been foreseen.

As a result, the Authority imposed fines totalling 611 million EUR in respect of these twelve grievances.

The parties retain the right to appeal the decision before the Paris Court of Appeal.

The official press release and decision are available online.