

# Belgian Competition Authority Imposes Record Fines - Exemplifies Trends in Cartel Enforcement in the European Union

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On 22 June 2015 the Belgian Competition Authority (“BCA”) issued its decision in the supermarkets cartel, fining 18 supermarkets and suppliers of personal care, hygiene and cleaning products for coordinating retail price increases between 2002 and 2007. This occurred in the context of a cartel settlement decision, the first ever in the history of Belgian competition law enforcement.

The total fine amounted to Euro 174 million and was imposed on supermarkets Colruyt, Cora, Delhaize, Intermarché, Makro and Mestdagh, and a range of household name suppliers such as Colgate-Palmolive, Henkel, L’Oréal, Procter & Gamble and Unilever<sup>1</sup>.

The decision illustrates several new trends in cartel enforcement in the European Union, such as the following:

- **Sanctions on facilitating a cartel:** Although the cartel occurred at the level of the supermarkets, certain suppliers of products to the supermarkets were also sanctioned, on the basis that they had facilitated the cartel by providing the necessary information to the cartel members. The individual suppliers namely communicated the supermarkets’ decisions on the products for which price increases needed to be implemented and the timing thereof to other supermarkets. This is a continuing trend in the European Union, supported by the courts, whereby companies who knowingly provide logistical or substantive support to the operation of a cartel are subject to sanctions along with the direct cartel members. The fact that the suppliers were merely supporting the horizontal price cartel was however taken into account when calculating the suppliers’ fine, as they obtained an additional reduction for their intermediary role in the infringement.
- **Ever increasing fines:** The decision is evidence of the ever increasing fines for cartel behaviour in the European Union. Although various fine reductions were applied to many of the companies, the fine imposed is the highest ever in the history of Belgian cartel enforcement.
- **More cartel settlements:** The decision is evidence that the cartel settlement procedure is getting traction. This is part of a wider trend in Europe, both at the EU and at the Member State level. The settlement procedure was introduced in Belgium in 2013 as part of the new Competition Act. As is the case with the settlement procedure used by the European Commission, the procedure results in a 10% fine reduction for an admission of participation in the infringement.

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<sup>1</sup> Covington represented one of the suppliers involved in the settlement.

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- Increasing role of the National Competition Authorities: Although cartel enforcement by the European Commission generally attracts the bigger headlines, the Decision shows that competition enforcement in the Member States is thriving. Belgium is another example of a Member State, which up until now has not been involved in many significant cartel matters, but that is strengthening its enforcement efforts against local cartels.

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