The French Competition Authority imposes fines amounting to 672.3 M€ regarding concerted practices in the parcel delivery service industry

On 15 December 2015, the Autorité de la concurrence (“The Autorité”) issued a decision fining the main firms (with a market share in excess of 71%) and several regional or local players active in the delivery service and express delivery service sectors, as well as a professional trade organisation, a total of 672.3 M€, for having implemented two anticompetitive concerted practices.

The case was brought to the attention of the Autorité by the Deutsche Bahn (for Schenker-Joyau) and Kuehne+Nagel (for Alloin) groups through the leniency procedure.

Evidence provided by the leniency applicants together with evidence gathered by the Autorité during dawn raids supported the finding that between September 2004 and September 2010, the parties shared sensitive business information relating to their annual price increases enabling them to harmonize their pricing demands and secure their business negotiations. This process mainly took place during regular round table discussions held within the framework of a professional trade organisation (TLF, transport and logistics trade association). The discussions were kept secret with no official minutes being taken and were completed, with regard to some firms, by bilateral or multilateral exchanges. TLF actively participated in the organisation of the unlawful discussions whilst also protecting their confidentiality.

The Autorité also found that 15 of these parcel delivery providers as well as TLF had implemented a concerted practice consisting, between May 2004 and January 2006, in the establishment of a common method for passing on to clients the increase in the price of diesel through a specific surcharge.

Together, these practices affected virtually all French industries and businesses, from manufacturers relying on the delivery of raw materials to online retailers shipping products for household consumption.

When calculating the penalties, the Autorité took into account the duration of the practices, their seriousness and the harm caused to the economy, in particular to SMEs, which due to their limited bargaining power, were the first victims of the concerted practices. It adjusted the fines for six firms on the basis of their inability to pay and reduced accordingly the amount of the penalties by more than 90%. The Autorité also took into account the fact that 10 firms abstained from disputing the charges (settlement procedure) and submitted significant, credible and verifiable commitments to improve their compliance programs, in line with the Autorité’s Framework-Document on Compliance Programs of 10 February 2012. Further reductions of between 16 and 19% were awarded on this
basis. As regards specifically the Kuehne+Nagel group, the combination of settlement and leniency discounts was accepted in light of the further procedural gains derived from the settlement, linked to the differences in duration, scope and nature between the infringements and the practices referred to in the leniency application on the basis of the information and evidence available to the applicant.

Finally, whilst the leniency applicant (Kuehne+Nagel) benefited from a 30% reduction, the immunity applicant (Schenker-Joyau) lost its immunity as it failed to inform the Autorité about an anticompetitive meeting which it had attended. The Autorité imposed accordingly a 3 M€ fine on the immunity applicant, account taken of the fact that this breach did not prevent, delay or render more difficult the investigation.

More information available here:

- Press release in English
- Full text of the decision in French

Authority:
France - Autorité de la concurrence

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