Bisphenol A in food containers: almost €20 million in fines

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The *Autorité de la concurrence* has fined three professional canning associations (the FIAC, the ADEPALE and the ANIA) and the can manufacturers' trade union SNFBM for having implemented a collective strategy intended to prevent manufacturers in the sector from competing on the presence, or absence, of Bisphenol A in food containers (cans, tins, etc.).

11 companies, in their capacity as members of these organisations, have also been fined, with the cumulative amount of the fines reaching almost €20 million.

The *Autorité* has fined three professional canning associations and a can manufacturers' trade union for having implemented practices intended to prevent competition on the presence, or absence, of Bisphenol A (BPA) in food containers, in the context of the adoption of the French law of 24 December 2012 banning the use of BPA in all food containers as of 1 January 2015. The cartel was organised during the transitional phase, during which cans with and without BPA were simultaneously placed on the market (a grace period introduced to allow stocks to be used up).

These practices, which together constitute a single, complex and continuous infringement (SCCI), were implemented from 6 October 2010 to 21 July 2015, i.e. over more than four years, and took two forms:

Preventing manufacturers from communicating on the absence of BPA in their food containers:

- the FIAC and then the ADEPALE and the ANIA informed canned food manufacturers of the importance of not competing on the presence, or absence, of BPA in their food containers;
- this collective strategy was extended upstream to can manufacturers, through the actions of the SNFBM;
- efforts were also made to extend this strategy downstream to the mass retail distribution sector, but these were unsuccessful;
- deviations from the cartel were monitored, as several players decided to communicate on the absence of BPA in their products.

Encouraging manufacturers to refuse to supply BPA-free cans before 1 January 2015 and then to refuse to stop selling cans with BPA after this date, despite the demands of the mass retail distribution sector to this effect. The FIAC and the SNFBM are the only two collective organisations implicated in this second practice and, hence, in the SCCI constituted by the two practices together.

11 companies, **in their capacity as members of the above-mentioned collective organisations**, and whose individual participation in the cartel was deemed to have been proven by the *Autorité*, have also been fined. For the most part, this individual participation took the form of attending meetings organised by their associations or trade unions, the purpose of which was anticompetitive. These companies are the canning companies Andros, Bonduelle, Charles & Alice, Cofigeo, Conserves France, D'Aucy, General Mills and Unilever, and the can suppliers Ardagh, Crown and Massilly.

The four professional organisations and 11 member companies have been fined a total of €19,553,400.

The *Autorité* considers the two practices constituting the SCCI to be very serious, as they meant that consumers were unable to choose BPA-free products, at a time when these products were available and when BPA was already considered dangerous to health.

Nevertheless, the *Autorité* departed from its notice on fines, taking into account the diversity of the entities implicated, in terms of both their economic heft and

their role within the sector: on the one hand, the professional organisations sanctioned as directly responsible for the practices in question; on the other, the companies sanctioned as members of these organisations, on account of their individual participation. The *Autorité* considered that, in this context, applying the notice on fines would have led to disproportionate fines being imposed on the companies.

The *Autorité* also took into account the specific legal and regulatory framework in which the practices in question took place and the actions of the authorities vis-à-vis the players in the sector as mitigating factors.

PRESS RELEASE OF 11 JANUARY 2024

See the press release

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