20 December 2007: Price agreement in the sector of toy distribution

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The Conseil de la concurrence imposes a €37 million fine on 5 toy manufacturers
and 3 distributors

>Version française

Following a referral by the ministry of Economy, the Conseil de la concurrence issues a decision against five toy manufacturers for agreeing with distributors to fix Christmas toys' resale prices, to the detriment of consumers. The Conseil also imposed a fine on three distributors on the same grounds.
Total fines amount to €37 million and are broken down as follows :

Suppliers :
- Chicco – Puériculture de France : €600,000
- Goliath: €25,000
- Hasbro : €5.1million
- Lego : €1.6 million
- MegaBrands :€240,000

Distributors:
- Carrefour: €27.4 million
- MaxiToys :€1.8 million
- EPSE (JouéClub) : €300,000

The Conseil considered that it had insufficient evidence - notably as regards pricing policies –to prove the involvement of other companies in the agreement

under investigation and to which charges had been notified. Most of these other companies had not been subject to visits and seizures during the investigation led by the DGCCRF (Directorate General for Competition, Consumer Affairs and Fraud Control), prior to the ministerial referral.

The suppliers concerned reached agreements with their distributors in order to fix their products' resale prices in all the retail outlets. Suppliers also monitored the market and retail pricing policies, practices in which the distributors concerned actively participated

From 2001 to 2003(1) , during Christmas time, the suppliers concerned agreed respectively with their distributors in order to impede competition between retail outlets and to fix a single retail price for each of their products.
These vertical agreements were accompanied by 'price monitoring' practices concerning 'deviant' distributors in order to increase retail prices for 'problematic toys' and realign retail prices quickly. This was evidenced by numerous errata published by distributors to correct – and systematically increase - prices a posteriori in their Christmas catalogues.

Fines were imposed on three distributors which also actively participated in these monitoring practices:

• This was notably the case of Carrefour, which set up a promotional campaign called 'Carrefour reimburses the difference times 10' for several successive years, thus encouraging consumers to monitoring prices on its behalf. Using information obtained when reimbursing consumers, Carrefour systematically asked the relevant suppliers to 'solve the problem' caused by the lower prices offered by its competitors.

• This was also the case of MaxiToys, which repeatedly accepted to raise prices at the request of its suppliers, although it benefited from lower purchase prices by sourcing its requirements in the Benelux. In this respect, a Director from MaxiToys indicated during the investigation that ' In order to avoid that MaxiToys disrupts the French market, French toy manufacturers provide us with their French purchase prices and ask that we align [our own prices] on the French

threshold for below cost pricing. This avoids market disruption and allows us to obtain higher margins and consequently to make some money'.

• Finally, this was also the case of EPSE, JouéClub's network leader, which participated in Goliath's and MegaBrands' price monitoring practices in 2002.

The Conseil considered that the relevant distributors could not justify their demands for suppliers to obtain that their competitors increase prices, based on laws prohibiting below cost pricing. Such justification was deemed all the more moot that investigations resulted in numerous pieces of evidence, concerning the overall sector, showing that thresholds for below cost pricing had been artificially raised (identical below cost pricing threshold in all retail outlets, regardless of the distributor, unsubstantial description of services provided by distributors as part of their 'business cooperation', which were neither specific enough nor individualised, thus making it impossible to verify that services allegedly rendered had been truly performed, description of services part of the purchase-resale act as business cooperation, rebates unduly presented as conditional).

These elements also led the Conseil de la concurrence to communicate the file to the relevant commercial courts

These resale price agreements prevented competition between distributors for each of the concerned brands' toys, to the detriment of consumers

Prices listed in catalogues for 13 distributors (Toys'R'Us, JouéClub, KingJouet, LaGrandeRécré, PicWic, MaxiToys, Auchan, Cora, Casino, Intermarché, Leclerc, HyperU and Carrefour) and statements from the relevant distributors' show that the agreements were effectively implemented and that suppliers' prices were largely maintained by their distributors.
Consumers were deemed to have been the main victims of these infringements since the purchase of Christmas toys is significant at this time of the year.

The Conseil de la concurrence considers that the practices are harmful

Practices having as their object and effect to hinder free market price fixing

constitute hard core restrictions of competition under both National and European laws.
In the case at hand, the infringements are all the more harmful that they were partly implemented by companies or groups with highly renowned brands, such as Hasbro, Lego or Chicco.
As regards Carrefour, the Conseil observed that 'using consumers, who are led to contribute without their knowledge and to their detriment to the alignment of toy prices on Carrefour's higher price, whereas the promotional campaign ['Carrefour reimburses the difference times 10'] purported to portray the distributor as adopting an aggressive pricing policy, adds to the practice's seriousness'.

(1)The infringements' durations vary according to suppliers. For further details, please refer to the full text of the decision.

> Decision 07-D-50 of 20 December 2007, relative to practices implemented in the sector of toy distribution



> See decision of the Paris Court of Appeal (28th January 2009)

> See decision of the Cour de cassation of the 7th April 2010 (appeal made by Carrefour France)

> See decision of the Cour de cassation of the 7th April 2010 (appeal made by Puériculture France)

> See decision of the Cour de cassation of the 7th April 2010 (appeal made by Hasbro France)

> See decision of the Cour de cassation of the 7th April 2010 (appeal made by Maxi Toys France)