3rd July 2002 : Electrical appliances and audiovisual equipment : the Conseil de la concurrence penalises an agreement between the main distributors and certain manufacturers

Published on July 03, 2002

> Version française

In a decision dated 28th June 2002, the *Conseil de la concurrence* fined the electrical appliances manufacturer Thomson and the distributors Fnac, Darty, Euromarché, Connexion, Camif and Conforama a total of 34,160,000 Euros (224 million Francs).

Although the company Akaï actively participated in the practices penalised, the *Conseil* did not impose fines upon it as it has been ordered into liquidation.

The brands Akaï and Thomson are among the highest sellers in France for VCRs, video cameras and television sets.

Akaï products at the same price in most outlets...

After a wide-ranging inquiry involving numerous price analyses, it was established that the distributors accused were practising identical (or very close) prices for each Akaï brand reference.

The *Conseil de la concurrence* found that this price alignment was the result of a series of vertical agreements on retail sales prices in stores, between Akaï and the five distributors Fnac, Darty, Euromarché, Connexion and Conforama.

This price alignment, which had been introduced during commercial

negotiations between Akaï and its distributors, was then consolidated by the commercial and marketing policy they implemented :

- The uniformity of prices was controlled both by the manufacturer, via its sales forces, and by the distributors themselves, via the clause stating that if a customer can purchase the same product from another store at a lower price, then the distributor will refund the difference. In fact, this clause meant that consumers spotted any distributors who failed to respect the agreed price ;
- The issue of catalogues and of national or local advertising also enabled the distributors to ensure that the prices agreed were widely respected across the country.

Thomson “negotiated” the sales prices of its products to the Camif catalogue

The inquiry and the investigation also revealed that the sales prices of products made by the Thomson group (brands Thomson, Brandt, Saba, Telefunken) and sold by Camif to its members, had been fixed at an agreed level during commercial negotiations between the two parties, well before the mail order catalogue was printed and distributed.

The end consumer : a victim of these practices

This series of agreements between Akaï and its distributors ultimately led to a standardisation in sales prices to consumers. They enabled Akaï and its distributors to guarantee their margins and penalised the end consumer, by making it impossible for competition to apply through prices practised by distributors for the same product.

Similarly, common price fixing between the manufacturer Thomson and Camif potentially deprived the consumer of the possibility of taking advantage of lower prices.

Serious practices, the scope of which justifies fines

Price agreements are among the most serious anticompetitive practices, and are

systematically identified and penalised by competition authorities. In this particular case, the practices concerned are all the more serious in that the companies accused are major players in the market :

Along with the company Philips, Akaï (specialist in so-called "brown" goods, i.e. radio, television and video equipment) occupies the number one spot in sales of video cassette recorders.

Among the distributors, the Pinault-Printemps-La Redoute group (which owns Fnac and Conforama) is the leader in the "*specialist*" distribution segment, followed by Darty.

The company Euromarché (Carrefour group) is leader in the segment for distribution via the network of hypermarkets selling mainly food products.

Along with the company Philips, Thomson occupies the number one spot in sales of television sets. The Camif group is the third largest mail order distributor.

The *Conseil* indicated that where such large distributors participate in agreements of this kind, it could lead other independent distributors and suppliers to believe that this type of behaviour is normal, and encourage them to adopt it. It therefore considered that the damage caused to the economy went beyond the stakes of the brands and distributors concerned : the penalties imposed take account of these elements, but also the duration and the scope of the practices as well as the respective turnovers of the companies accused. The *Conseil* also took into consideration the fact that this is a repetition of practices for the companies Thomson, Darty and Conforama, which had already been found guilty of similar practices in 1980.

> Decision n° 02-D42 relative to practices in the sector for distribution of electrical appliances and consumer electronics

> See decision of the Paris Court of Appeal (4th July 2003)