20 December 2018: Gardening, farming

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The Autorité hands down fines for anticompetitive practices to several producers and wholesale distributors of liquid fertilisers.

Why are vertical pricing agreements forbidden in competition law?

Competition law generally forbids horizontal (between competitors) and vertical agreements (between suppliers and distributors) which aim to fix prices.

Competition rules indeed aim to preserve price setting mechanisms through competition between market players, which ensures an efficient competition that brings numerous benefits. Real competition fosters a drive for higher quality and diversity of products for a given price (a pursuit that does not necessarily take place when there is a pricing agreement) and compels economic players to sell their products at a competitive price. In a cartel case, the consumer is disadvantaged because products are of lesser quality, less varied or more expensive. In the past, the *Autorité* sanctioned resale price maintenance practices, for instance in the perfume or heating equipment sectors.

The decision issued today

Following an investigation conducted by the DGCCRF and ex officio proceedings, the *Autorité de la concurrence* handed down fines to liquid fertiliser manufacturers and their wholesale distributors for several vertical agreements. Between 2010 and 2013 (the precise period varies by company) each of the manufacturers concerned conspired to set the resale prices of their products with one or two wholesale distributors, which is prohibited by competition law.

Liquid fertilisers are used in farming/ plant cultivation

Liquid fertilisers are fertilisers and additives whose function is to provide essential nutrients to plants (vegetables, flowers, fruit) grown above ground, i.e. in a substrate without soil.
Hydroponic culture, or off-ground cultivation, which is both productive and water-efficient, tends to develop in France for numerous uses (such as urban agriculture, vertical farming, roof gardens and green spaces in buildings).

The fertilisers are offered for sale through specialised distribution channels, in stores or online, and target well-informed consumers.

Manufacturers consulted their wholesale distributors to determine the resale prices of their products

E-mails seized during dawn raids show that the four manufacturers concerned (Canna, GHE, Bertels and Biobizz) each agreed with one or two wholesale distributors[1], CIS (Culture Indoord brand) and Hydro Factory/Hydro Logistique (Indoor Gardens brand), to set the resale prices of their products. The objective was to boost the margins of wholesale distributors.

In practice, resale price lists were set between each manufacturer and wholesale distributor. In order to ensure compliance with the price fixing, they implemented measures to monitor and/or police wholesale distributors, and even considering reprisals against those considering to apply prices lower than the fixed prices.

These practices contributed to levelling of prices

These vertical agreements contributed to harmonised fertiliser prices, thus reducing price competition for the same product within different networks (intra-brand competition) and depriving consumers, to an extent, of the benefit of competitive prices. The impact of these practices was even more harmful because the wholesale distributors concerned were among the largest in the sector.

Fines imposed

As a result of these actions, the *Autorité* has imposed fines, the amount of which has been calculated based - among other reasons - on the value of the sales affected by the practices according to the usual calculating methods of the *Autorité*. In its calculation, it took into account the individual situation of each company and, in particular, the financial difficulties of Hydro Factory/Hydro Logistique, which received a reduction in penalties of more than 99% as a result.

The following fines are imposed:

Manufacturers	**Fine**
Canna France	152 000 €
GHE	22 000 €
Bertels	35 000 €
Biobizz	38 000 €
Wholesale distributors	
Hydro Factory/Hydro Logistique	1 000 €
CIS	107 000 €
Total	355 000 €

1 Concerning GHE, only the agreement with Hydro Factory/Hydro Logistique has been proven.

> For further details, consult the full text of decision 18-D-26 of 20 December 2018 pertaining to practices used in the sector for marketing liquid fertilisers

used in above ground home farming.

> Press contact: Chloé Duretete +33 1 55 04 01 20 / Email



>The decision was submitted before the cour d'appel de Paris