The Autorité de la concurrence fines Mariage Frères teas for hindering its distributors' commercial freedom

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Background

Following a report prepared by the local network of the Minister of the Economy and submitted by the Directorate General for Competition Policy, Consumer Affairs and Fraud Control (DGCCRF), the *Autorité de la concurrence* has imposed a €4 million penalty on the Mariage Frères group – one of France's leading producers of premium teas – for hindering the commercial freedom of its distributors for almost 15 years by forbidding them to sell its branded products online, on the one hand, and to resell its products to other retailers, on the other. These practices, which limited intra-brand competition and partitioned markets, constitute a cartel.

In a sector where online sales are enjoying strong growth, the ban on selling the products concerned on the Internet was likely to restrict the development of distributors' business. By coupling this practice with the ban on reselling to other distributors, Mariage Frères also deprived end consumers of the possibility of enjoying better prices as a result of effective competition between all distributors.

A ban on online sales of Mariage Frères products

The general terms and conditions of sale governing relations between Mariage Frères and its distributors prohibited the latter from selling Mariage products over the Internet. Mariage Frères therefore reserved the exclusive right to the online and distance selling of its products.

While distributors were allowed to indicate on their website that they sold the brand's products in their stores, they were not allowed to sell them over the Internet, nor to use the brand's logo. Mariage Frères meticulously monitored compliance with these rules, asking distributors who offered its products for sale online to remove them from their websites immediately.

Many distributors, often small or very small businesses, suffered from this ban, which hampered the growth of their business. For example, one business stated during the investigation, "*I think that online sales of Mariage Frères products could generate at least a 30% increase in my turnover.*"

At the same time, between 2013 and 2021, when retailers were faced with this ban, the Mariage Frères group's share of online sales (mainly via its website or Amazon) more than tripled.

Mariage Frères justified the ban on its distributors by its desire to preserve the prestigious image of its products. According to its CFO, "*we could not control the way our products would be marketed or the quality of the website, and this was likely to damage the brand*."

However, according to decision-making practice and settled case law, this objective does not justify the absolute neutralisation of the online distribution channel.

The ban on reselling Mariage Frères products to other retailers

The clauses of the general terms and conditions of sale also prohibited distributors from reselling the premium tea products to other retailers. This restriction gave Mariage Frères exclusive rights to wholesale sales and limited the commercial scope of its distributors to sales to individual consumers. According to one of the distributors, "*I can confirm that Mariage forbids me from selling Mariage products to other retailers. This was made clear to me one month ago by telephone (not in writing, of course*)."

This practice, which restricts the clientele to which a buyer can sell goods, constitutes, by the harm caused, a restriction of competition by object.

Compliance

While a supplier is free to organise its distribution network as it sees fit, this organisation must not give rise to anticompetitive practices.

The principle of the free organisation of the network cannot authorise a manufacturer to restrict the commercial freedom of its resellers. Reserving the manufacturer's exclusive right to sell its products online distorts the competition in which resellers should normally engage, not only between themselves but above all with regard to the manufacturer in the online sales distribution channel.

DECISION 23-D-12 OF 11 DECEMBER 2023

relating to practices implemented in the premium tea sector

See full text of the decision (in French)

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