20 March 2012: Sale of dry dog and cat food in specialist retail

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The *Autorité de la concurrence* fines the Nestlé, Mars Incorporated, Colgate-Palmolive Groups and their specialist subsidiaries €35,322,000 for having limited competition in the wholesale distribution of their products

Nestlé Purina Petcare France and Royal Canin applied imposed resale prices and territorial restrictions throughout France over a 5 year period

> Version française

The Autorité de la concurrence has today published its decision in which it is fining three leading companies in the dog and cat food sector - **Nestlé Purina Petcare France SAS (Nestlé SA Group), Royal Canin SAS (Mars Incorporated Group) and Hill's Pet Nutrition SNC (Colgate Palmolive Company Group)** – for having, between 2004 and 2008, restricted competition on the dry dog and cat food markets in specialist retail – covering specialist shops (pet shops, garden centres, agricultural self-service, DIY stores), farmers and vets.

The dry dog and cat food market

France has approximately 8 million dogs and 10 million cats. The three manufacturers fined covered, at the time of the facts, more than 70% of overall sales of dry dog and cat food in specialist retail. The sale of dry food (also called "kibbles") represents nearly 70% of overall sales of cat and dog food in France. In dry food, a distinction is made between standard products, which are distributed

mainly in food supermarkets, and top of the range foods (also called premium and super premium), which are sold exclusively in specialist retail.

With regard to specialist retail, Nestlé Purina Petcare France and Royal Canin sell their top of the range products to independent wholesalers, which then sell these products to retail outlets of specialist stores: BHV, Delbard, Gamm Vert, Jardiland, Leroy Merlin, Monsieur Bricolage, Truffaut, etc.

Nestlé Purina Petcare France and Royal Canin, which have not challenged the facts, implemented concerted practices with all their independent wholesalers to restrict competition

For 5 years, from 2004 to 2008, Nestlé Purina Petcare France and Royal Canin implemented concerted practices with all their independent wholesalers. The two suppliers each implemented a range of practices tending to restrict competition: imposition of resale price on their wholesalers; prohibition of "passive sales"; territorial, supply and clientele exclusivities.

Owing to these practices *(expanded on below),* **retailers were unable to rely on competition between wholesalers to reduce their supply costs. All these competition restraints were of a kind that generate additional costs and therefore repercussions on the prices charged to end consumers of the Nestlé Purina Petcare France and Royal Canin brands.**

• Resale prices imposed by the manufacturers

The resale prices of products for specialist purchase centres or brand name purchasing bodies were negotiated directly between the manufacturers and these centres even though the latter purchased their products from wholesalers who got their supplies from the aforementioned manufacturers. On the strength of this system, the wholesalers were therefore not free to set their prices: the rate negotiated nationally for shops of the same retail chain was applied in the same way by all wholesalers. With regard to Nestlé Purina Petcare France, these imposed price practices extended to independent shops not belonging to a particular retail chain.

• Territorial restraints

Each wholesaler operated over a limited geographical area only, determined by the manufacturer. This territorial exclusivity contributed to wholesale market partitioning and weakening competition between wholesalers for products of the same brand ("intra-brand" competition).

Furthermore, wholesalers refused to sell products to a retail outlet situated outside their distribution area ("passive sales"). A given shop could therefore only get its supplies from a single wholesaler assigned to it by the manufacturer. Consequently, wholesalers actually did not compete with one another.

• Accumulation of exclusivity clauses

Nestlé Purina Petcare France and Royal Canin set up distinct and impenetrable distribution systems for their top of the range products linked to the retailer category concerned. Wholesale sales to specialist shops and breeders were entrusted to a network of independent wholesalers, while products intended for vets (and supermarkets, concerning Nestlé Purina Petcare France) were distributed directly by the manufacturers.

This client exclusivity, which helped to partition the markets concerned for some product ranges, thus limited competition preventing retailers from relying on competition between wholesalers.

Furthermore, wholesalers had no option but to accept an exclusive purchasing agreement from a single manufacturer ("single brand" distribution) preventing a retailer from choosing between several brands when it purchased at a defined wholesaler. This sales strategy among manufacturers relied on an incentive system of discounts granted to wholesalers, the effect of which was reinforced by the multiplicity of references and the saturation of their logistical capabilities.

Hill's Pet Nutrition forbade exports of its products outside France

Hill's Pet Nutrition (Colgate Palmolive group), which used five wholesalers-vets

for the resale of its product ranges aimed at vets, made agreements with its wholesalers-vets over 5 years, from 2004 to 2008, to ban exports of its products outside France. A clause, mentioned in the general terms of sale concluded by Hill's with wholesalers-vets, concerned a ban on delivering products to vets situated outside France without the manufacturer's prior agreement.

Financial penalties imposed

The Autorité assessed the overall seriousness of the practices and the extent of the damage to the economy.

The various concerted practices implemented concerned products *"that elicit an emotional investment for end consumers, who are vulnerable to brand loyalty ".* Furthermore, price elasticity of demand for these products is low, in view of consumer loyalty to brands.

The Autorité states in its decision that the damage to the economy is potentially all the greater as price elasticity of demand is low. In fact, while competition should theoretically lead to prices closer to costs – and this all the more so as it is strong -, anticompetitive concerted practices allow companies implementing them to increase their prices even more sharply as demand is price inelastic.

Concerning the practice of territorial exclusivity implemented by Hill's Pet Nutrition and its wholesalers-vets, the Autorité observed that the damage to the economy had been extremely limited, or even nonexistent, considering the fact that the contractual clause had been limited to the vet sector only and was not in fact applied.

To determine the level of the financial penalties, the Autorité also took into account the individual situation of each company, notably the respective duration of practices implemented by each of them, and the global reach and financial resources of the Nestlé, Mars and Colgate Palmolive groups, to which Nestlé Purina Petcare France, Royal Canin and Hill's belong respectively. It also took into account the reiteration of practices by Royal Canin, owing to a previous breach of competition rules (decision of the Conseil de la concurrence of 22

June 2005[1]).

However, the Autorité granted penalty reductions of 18% to Nestlé Purina Petcare France and Nestlé SA and 20% to Royal Canin and Mars Incorporated for having waived their right to challenge the charges (settlement procedure) and having made commitments concerning their competition law compliance programmes in particular.

The final amount of financial penalties stands at:

Companies	*Penalty amount*
Nestlé Purina Petcare France and Nestlé SA Group	**€19,040,000**
Royal Canin SAS and Mars Incorporated Group	**€11,618,000**
Hill's Pet Nutrition SNC and Colgate Palmolive Company Group	**€4,664,000**

(1) Decision 05-D-32 of the Conseil de la concurrence of 22 June 2005 on practices implemented by Royal Canin and its distribution network.

> Full text of decision 12-D-10 of 20 March 2012 on practices implemented in the cat and dog food sector

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This press release translated into English is for information purposes only. Only Decision 12-D-10 in French is deemed authentic.

> See decision of the Paris court of appeal (10th October 2013)

> See decision of the Cour de cassation of 17th March 2015 (Supreme Court of

Appeal)