



The Luxembourg Competition Council fines Bahlsen and the supermarkets Auchan, Cactus and Delhaize of €3.3 million

Luxembourg, 20 November 2020

In three decisions dated 18 November 2020, the Competition Council fines Bahlsen and the supermarkets Auchan, Cactus and Delhaize of €3.3 million for resale price maintenance of Bahlsen products between 2011 and 2015 in the territory of the Grand Duchy of Luxembourg.

The supplier Bahlsen and each of its distributors Auchan, Cactus and Delhaize agreed during five years to fix resale prices of Bahlsen branded products, which resulted in higher prices for consumers.

The decisions are the result of an own-initiative procedure started by the Council in 2015. It had triggered the investigation after noticing identical prices for Bahlsen products in several supermarkets in Luxembourg. The Council then carried out dawn raids at Bahlsen and Auchan in 2015 and 2016. Following that, Bahlsen applied for leniency.

During five years, Bahlsen and each of these major retailers agreed to set the level of prices paid by consumers for Bahlsen biscuits, cakes, nuts and chips, which are very popular consumer products in Luxembourg.

The investigation revealed a system, which resulted in Bahlsen paying financial counterparts, mainly discounts, to Auchan, Cactus and Delhaize, in exchange for their compliance with recommended prices, also called "PVC". Bahlsen had communicated to the supermarkets so-called "*recommended*" resale prices, which amounted to fixed prices with which the companies in question complied. Bahlsen could thus secure its revenues and the retailers guarantee their margins. The result has been an artificial increase in these products' retail prices in the shops of some of the main food retail chains in the country.

The competition authority imposed fines amounting in total to **€3,356,656** and breaking down as follows:

Bahlsen Auchan decision	Bahlsen	Auchan
Fine	€150,839	€246,558

Bahlsen Cactus decision	Bahlsen	Cactus
Fine	€1,083,253	€1,384,413

Bahlsen Delhaize Decision	Bahlsen	Delhaize
Fine	€268,251	€223,342

The added fines imposed on Bahlsen amount to €1,502,343.

The Council determined the fines for the four concerned companies by applying the principles laid down in the Luxembourg Competition Act and in the method defined by the European Commission in its Guidelines on the setting of fines.

The Council rewarded to some extent Bahlsen's cooperation in the investigation with a reduction in the fines that it would have otherwise imposed.

According to the Guidelines on the setting of fines, the fine imposed on Cactus is the highest of those imposed on distributors since it had achieved a much higher volume of sales in Luxembourg than Auchan and Delhaize for the concerned products and years.

Auchan and Delhaize are automatically subject to lower fines under the main criterion for calculating fines, which is based on sales volume. Nevertheless, they have been adjusted upwards as a deterrent due to the global scale of the two groups.

The amount of the fines imposed on companies that infringe competition law rules are paid into the State budget and thus reduce the burden on the Luxembourg taxpayer.

Procedural context

Article 3 of the amended Competition Act of 23 October 2011 and Article 101 of the Treaty on the Functioning of the European Union prohibit anti-competitive agreements and in particular vertical resale price maintenance.

Agreements and concerted practices that directly or indirectly have as their object the establishment of a fixed or minimum sales price that the distributor is obliged to comply with are thus prohibited. A selling price is also considered prohibited when it is imposed by indirect means such as, for example, fixing the distributor's margin, setting the maximum level of discounts that

the distributor may grant or making the granting of financial advantages such as discounts or the financing of promotional operations subject to compliance with a given price.

Leniency Program

The Council may exempt an undertaking from any fine or grant a reduction of a fine where that undertaking cooperates with the Council and facilitates the investigation. The benefit of leniency is subject to compliance with specific conditions laid down in the amended Competition Act of 23 October 2011 and in particular that of "*genuine, full and continuous*" cooperation by the leniency applicant, from the time of filing its application until the final decision. Companies or their legal counsel can apply for leniency directly by contacting the Council either by telephone on (+352) 247 84174 or *via* its website:

<https://concurrence.public.lu/fr/support/contact.html>

Action for damages

Any person, natural or legal, who is the victim of anti-competitive behaviour is entitled to bring an action before the Luxembourg courts in order to obtain compensation for the damage suffered. The Council's final decision is then the irrefutable proof that the behaviour has taken place and is illegal. The fine imposed by the Council is distinct from any damages that national courts may award.