

# Co-ordination and information exchange

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Laure Dosogne Varaire

Case handler

Autorité de la concurrence



## Introduction and principles

Two main types of information exchanges:

- 1st type: occurs within the framework of an express cartel case;
- 2nd type: « *concerted practices* »: no actual agreement
  - Infringement « by object »;
  - Infringement « by effect ».

## Concerted practices: restriction by object

- The information relates to « *individualized data regarding intended future prices or quantities* » (EU Commission guidelines 2010);
- Rationale: « *it is particularly likely to lead to a collusive outcome* » (EU Commission guidelines 2010);
- First decision in France: 18 December 2014

## Concerted practices: restriction by effect

- The information exchange « *must be likely to have an appreciable adverse impact on one (or several) of the parameters of competition* » (EU Commission guidelines 2010);
- Fundamental case reference: ECJ 1998, « *UK Tractors* »: detailed data on past sales figures.

## Restriction by effect: exemple of a French decision

- « Parisian luxury hotel » case (25 November 2005):
  - Information exchanges between 6 hotels in Paris;
  - Information related to occupation rate, average prices per room, incomes relating to each available room (past information);
  - Exchanges took place in the form of regular meetings and email correspondence;
  - Analysis of the market structure : oligopoly (increase of transparency + enabled hotels to ensure their respective performance levels did not differ too much).

Restriction by object: exemple of a French decision

Concerted practices between producers in the  
home and personal care sectors

DECISION OF 18 DECEMBER 2014

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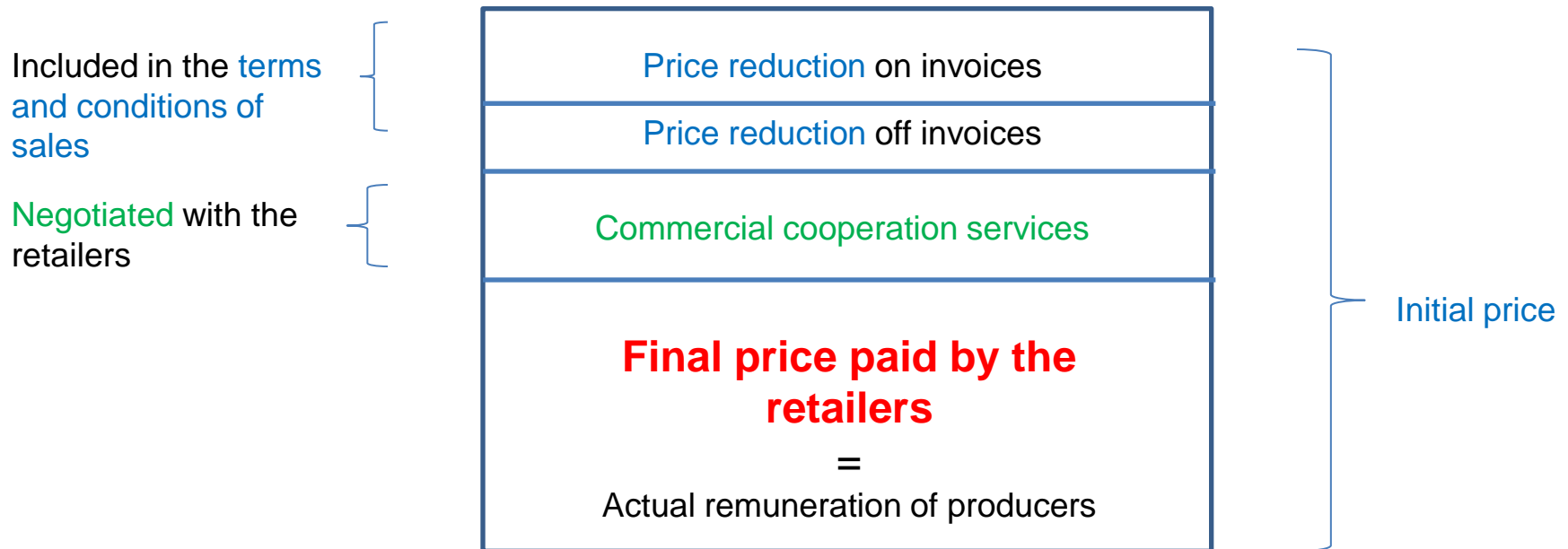


## Sectors concerned by the practices

Two sectors with a great diversity of products:

- Home care sector:
  - Fabric softeners
  - Stain removers
  - Hand dishwashing detergents
  - Dishwashers tabs
  - Household cleaners
  - Air fresheners
  - ...
- Personal care sector:
  - Shower gels
  - Shampoos
  - Hair-conditioners
  - Toothpaste
  - Shaving foams
  - ...

## Price negotiations between the producers and the retailers



**Negotiations:** repeated discussions about **commercial cooperation services**

**Sept./Oct.:** Sending out of **terms and conditions of sales: initial price and price reductions**

**March/April:** End of the process: **Final price paid by the retailers**



## Description of the information exchanged

Repeated/frequent exchanges between sales employees and sales managers (all producers) relating to:

- initial prices increases;
- Price reduction changes;
- Price of commercial cooperation services increases;
- Terms and conditions;
- Global turnovers.

# Nature of the information exchanged

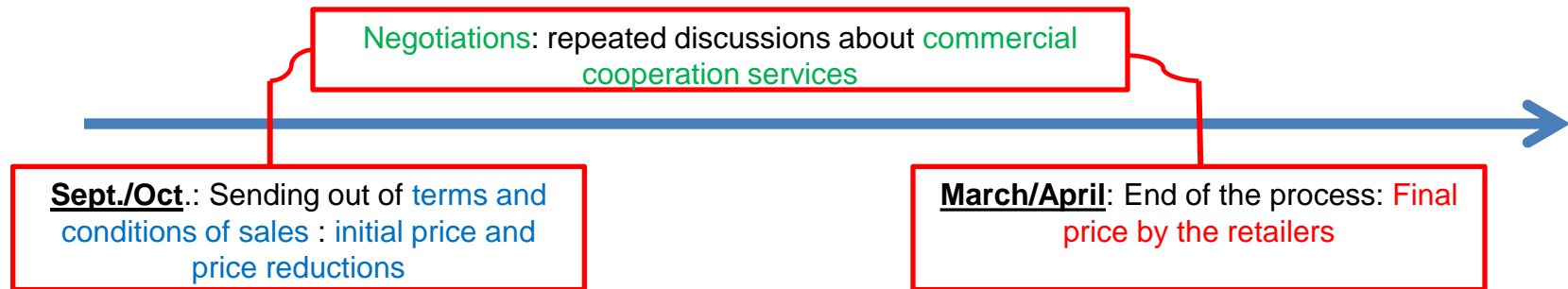
## 1. Strategic information :

- Internal data about the undertakings' commercial strategies;
  - Difficulty due to the characteristics of the information exchanged: global nature of the information
    - Information related to the overall undertakings' commercial strategies in the home care and personal care sectors, and not related to each product;
    - BUT negotiation process in the sector: discussion about the whole sector, and not about each product.
- Despite their global nature, information exchanged constituted the basis of the negotiations with the retailers.

# Nature of the information exchanged

## 2. Future/past information :

Reminder about the negotiation process (timing):



Main characteristics of the information exchanged:

- Evolution of items during the negotiation process ;
- Some future information;
- Majority were exchanged before the final price was fixed;
- Past information about terms and conditions of sales and global turnover in order to control/monitor the behavior of competitors.

## Qualification of the case: restriction by object

- Alternative nature of the qualification by object or by effect : no need for a double qualification;
- Analysis of the nature of the practice: repeated exchanges about precised and individualized data of a strategic nature, before the final price was definitely negotiated between retailers and producers
  - decreasing of the global uncertainty in both sectors concerned, leading to a final price paid by the retailers which is higher than in a normal competitive situation.
- Anticompetitive object reinforced by the economic and legal context;
- Anticompetitive intention (secret practices);
- Anticompetitive effects of the practices analyzed only when the Authority had to calculate the fine.

Thank you for your attention !