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Professional Haircare in Spain

*A 20 years old cartel based on the exchange of sensitive
market information*

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Support to China's Sustainable Trade and Investment System

支持中国可持续贸易和投资体系

Background of the case

- **February 2008:** HENKEL filed an application for leniency
- **June 2008:** inspections carried out at several companies and at the premises of the Spanish Perfumery and Cosmetics National Association (STANPA)
- **July 2008:** some appeals were filed and the period had to be suspended until December 2009, when the National Court rejected the appeal
- **December 2009:** WELLA filed an application for the reduction of the fine
- **February 2010:** The Investigation Directorate (ID) issued the Statement of Objections, stating that eight companies (L'OREAL, WELLA, COLOMER, EUGENE, LENDA, MONTIBELLO, HENKEL, DSP and STAMPA) had infringed Competition Law (LDC) by running a cartel from Feb 1989 to Feb 2008
- **July 2010:** The ID issued the proposal of resolution, including sanctions and in **September 2010** the file was submitted to the Council for the final decision
- **March 2011:** The Council adopted its resolution, which upheld almost all the ID findings and proposal

Parties and market

- **Parties:** 8 companies operating in the different segments of the cosmetics market, and which are the leading operators in the Spanish professional hairdressing products, accounting for more than 70% of the relevant market throughout the period of the infringement. The group, known as the G8, consists of multinationals and medium Spanish companies.
- **The Association:** founded in 1952 is the business association for the perfumery and cosmetics products in Spain and has more than 200 members, representing more than 90% of the market.
- **The Market:** The accused companies operated in different cosmetics markets, but the relevant market of the case, where the infringement was conducted is

Haircare products for professional hairdressers sold to hairdressing saloons, with a small proportion of the output being sold to final consumers by hairdressers.

Facts

Documents in the case evidenced 40 meetings (not contested by the parties), beginning with the one held on 8 February 1989 and concluding on 28 February 2008. Those meetings were held regularly every six months, organised under a rotation presidency

The meetings involved exchange of sensitive information such as recent price increases and estimated future price hikes, as well as the projected date, discounts, payment calendars and methods and financing, per diems, incentives for sales staff, sales of different products, number of customers,... The data were exchanged in writing by submitting “panels” with different formats

The minutes of the cartel meetings also mention an agreement not to recruit each other's sales staff, referred to as “gentlemen's pact”

STANPA joined the cartel at the meeting of 24 February 2004, replacing a chartered public accountant engaged prior thereto by the cartel to collect, process and prepare the information received from the cartel companies in order to be exchanged between them

Facts

The exchanged information consisted of exhaustive spreadsheets for each company with the following information:

- Sales volume
- Sales growth
 - Due to price hike
 - Due to volume increase
- Percentage of sales to the wholesale channel
- Discounts granted to the wholesale channel
- Date and percentage of the last price increase
- Date and percentage of the next price increase
- Sales representatives' fix salary
- Sales representatives' incentives (percentage)
- Sales representatives' per diems
- Number of sales representatives
- Number of technicians
- Average number of days granted to customers for payment
- Number and percentage of unpaid customers

It also included detailed spreadsheets for each company with information for each of the agreed family products: sales volume (net and gross) and units.

Substantive issues. *Nature of the cartel*

The CNC Council believes that:

The eight companies **coordinated their actions** from February 1989 to February 2008 **through regular, stable and systematic meetings** organised on a rotating basis twice a year. This did not change when STANPA joined the cartel.

The facts demonstrate the **perfect operation of the agreement** between the companies **to exchange information**.

The detailed information gathered in proven facts in the case record, which provide exhaustive evidence of the activity of the eight companies in **coordinating their actions** over a period of nearly 20 years, points to a **very clear pattern of concerted action**.

During the period of the infringing conduct, the **sensitive data** exchanged included recent price increases and **planned future increases**, completed with the projected date, discounts, payment calendars and methods and financing, per diems, incentives for sales staff, etc.

The minutes of the cartel meetings also mentioned an **agreement not to recruit each other's sales staff**, referred to as “gentlemen's pact”.

Substantive issues. *Nature of Infringement*

The CNC Council agrees that the evidence shows this was **a single and continuous conduct** that, **by the nature of the information exchanged** and of the **pursued objective of coordinating commercial strategies**, prices and entry by new operators, thereby distorting competition, for the benefit of the members coordinating the group, **constitutes a violation** by object of article 1 of the LDC, **and qualifies as a cartel**.

The systematic exchange of current and future prices **can have no other purpose than to seriously affect competition** by eliminating any strategic uncertainty, independence of commercial policies and the incentive to compete against each other on price, quality or service.

These eight companies, with a market share of more than 70%, **had the capacity to**, and in fact did, organise a cartel and **control a market** in which they all maintained their positions, without displaying genuine competition between them during those years.

To determine that a practice is intended to fix prices it is not even necessary that the prices have actually been fixed: **it is sufficient that the parties to the agreement have been able to rely on the rest of the participants following a common strategy of collaboration** to increase or keep prices at a certain level, in an “atmosphere of mutual certainty”

Substantive issues. *Market effects and liability of Association*

The CNC Council considers proven that the exchanges of information between competitors analysed constitute **an infringement by object** because the companies, by mere fact of exchanging that strategic information, and all the more over such a lengthy period of time, are **knowingly replacing the risks of competition with cooperation**, voluntarily relinquishing their independent conduct in the market, thereby **reducing the play of competition**.

The anti-competitive object having been demonstrated, **it is not necessary to determine whether the practice did or did not have effects**, as this would only be significant for purposes of deciding the size of the fine to be levied in each case, but not for the legal assessment of the conduct.

STANPA is considered to be **a co-perpetrator**, together with the rest of the accused, for a violation of article 1 of the LDC. This conclusion is grounded in the **association's demonstrated pursuit of an active role in organising and monitoring the proper implementation of the cartel arrangements**, making a considerable contribution to keeping it in effect.

Fines

The CNC Council decided to impose the following fines, taking into account that it is one of the most serious infringements of Competition Law, and that the conduct was maintained during nearly 20 years:

L'OREAL ESPAÑA	23,2 M€	
WELLA	12 M€	REDUCTION NOT GRANTED
COLOMER	8,7 M€	
EUGENE	2,2 M€	
MONTIBELLO	2,5 M€	
LENDAN	1 M€	
HENKEL	9,8 M€	EXEMPTED, LENIENCY ACCEPTED
DSP	0,3 M€	
STANPA	0,9 M€	

The ceiling of 10% of the previous year global turnover was applied to four companies.