

Unclassified

CCNM/GF/COMP(2001)4



Organisation de Coopération et de Développement Economiques
Organisation for Economic Co-operation and Development

05-Oct-2001

English - Or. English

**CENTRE FOR CO-OPERATION WITH NON-MEMBERS
DIRECTORATE FOR FINANCIAL, FISCAL AND ENTERPRISE AFFAIRS**

CCNM/GF/COMP(2001)4
Unclassified

OECD Global Forum on Competition

SUMMARY OF CARTEL CASES DESCRIBED BY INVITEES

(Session IV)

-- Note by the Secretariat --

This note is submitted FOR INFORMATION under session IV of the Forum agenda.

JT00113944

Document complet disponible sur OLIS dans son format d'origine
Complete document available on OLIS in its original format

English - Or. English

SUMMARY OF CARTEL CASES DESCRIBED BY INVITEES

1. For the convenience of all participants, this note contains a brief summary of the cartel cases contributed by invitees. It is not anticipated that any of these cases will be formally presented at the Forum, but during the discussion of hard core cartels in Session IV some participants may wish to mention and ask about either their own cases or the cases submitted by others.

Bulgaria

2. Bulgaria provided a summary of three cases and some general information on sanctions

- *Transportation on additional destinations:* fourteen companies that provide intermediate service “transportation on additional destinations” were prosecuted for their participation in price fixing. There are three forms of public transportation in Sofia: fixed route bus service, regular taxi service, and an intermediate service in which the beginning and end points are fixed but the vehicles may vary their routs. The investigation was prompted by announcement provided in a newspaper in January 2000. The companies announced that they would increase prices for the transportation services. The price increase of BGL 0,20 (approximately EUR 0,10) was agreed during a meeting in café. The Commission on Protection of Competition decided, that the conduct of independent companies, aimed at simultaneous and identical raise of the price could be defined as “concerted practice”. The companies were fined a total of BGL 92,000 (approximately EUR 47,000).
- *Phone cards:* two companies were prosecuted for their participation in a price fixing conspiracy relating to sales of phone cards. The prices for phone cards set by Bulphone Bulgarian Corporation for Telecommunications and Informatics J.- St. Co. and Radio and Telecommunications Ltd were the same. They were co-ordinated during regular meetings of the companies. Both companies had a common shareholder that acted as an intermediary in price co-ordination. The duration of the agreement was one year. The Commission on Protection of Competition made a prohibiting order and imposed both companies fines of total amount of BGL18,000 (approximately EUR 9,000).
- *Gasification:* two companies were convicted of a conspiracy relating to the provision of services in the area of gasification. There was a contract signed by Overgas Holding J.-St. Co. and Bulgaria 2002 J.-St.Co. Holding. The contract included non-compete clauses for a period of 5 years. In addition, the agreement provided that Overgas Holding J.- St. Co. should pay Bulgaria 2002 J.-St.Co. Holding certain compensation for this restraint. The Commission on Protection of Competition issued a prohibiting order and imposed both companies fines of total amount of BGL 50,000 (approximately EUR 25,500).
- The response to the questionnaire says that according to the Law on the Protection of Competition, the Commission on Protection of Competition can impose a fine on a legal person for violations of the Law to the amount of BGL 5,000,000 (EUR 2,500,000) to BGL 300,000,000 (EUR 150,000,000), and for an individual accordingly to the amount of BGL 1,000,000 (EUR 500,000) to BGL 10,000,000 (EUR 5,000,000).

China

3. China described three cases in its response and some general information on sanctions.

- *Brickyard*: five groups of companies were convicted of participating in a bid rigging conspiracy affecting the operation of a brickyard plant in Zhejiang Province. In July 1999, there was a public tender to the right to operate the plant. The minimum bid was RMB 180,000 (approximately EUR 23,400). The highest bid would win a tender. In order to force down the price, representatives of the groups met and determined the bid winner and the winning price. They also decided that the bid winner would pay the other four groups a total of RMB 200,000 (approximately EUR 26,000) as compensation. The agreed winner won the bid with RMB 180,088 (approximately EUR 23,411). The municipal administration for industry and commerce in Zhejiang Province made a decision, declaring that the bid was invalid. In addition, the respondents were fined of RMB 50,000 (approximately EUR 6,500) each.
- *School building*: ten construction companies were prosecuted for bid rigging on contract for the construction of a school building. In 1998, the school signed a contract with No.2 Construction Company without announcement of a tender. After the construction was started, it was decided to revise the original design plan and to announce a tender. Ten construction companies including No.2 Construction Company agreed that No.2 Construction Company would get the contract in exchange for payments to the other companies. They also assigned one of the companies to calculate the bidding prices of all candidates. No.2 Construction Company won the bid at a higher price than before. The administration for industry and commerce issued a decision, declaring that the bid was invalid. The illegal gains of RMB 9,000 (approximately EUR 1,170) of No.2 Construction Company were confiscated.
- *Engineering construction*: two companies were prosecuted by the municipal administration for industry and commerce in Jiangxi Province for colluding on their bids in response to public tenders. On October 9, 1998, two construction companies agreed in exchange for a management fee that one of the companies would act as agent of the other company in exercising its operating rights in the construction engineering businesses. Thereafter, the “agent” participated in bidding for construction projects in the name of the two companies at the same time and often won the bids. This case was ongoing at the time of the response to the questionnaire.
- The Law for Countering Unfair Competition of 1993 provides that the maximum amount of penalty for the offences is RMB 200,000 (approximately EUR 26,000). Penalties are calculated on the basis of illegal gains.

Estonia

4. Estonia submitted a description of three cases and general information on sanctions and general information on sanctions. It made no submission regarding sanctions. Fines in Estonia are imposed by courts.

- *Milk products*: there was a meeting of four leading milk processors and ten wholesalers of milk products in Estonia held in Rakvere city on 28 January 2000. The purpose of the meeting was to agree on reduction of sell-off and purchasing prices of milk products. Although no agreement was concluded during the meeting, exchange of information about

sell-off prices of milk products and deduction rates influenced behaviour of the processors and the wholesalers to act similarly with their competitors. The exchange of the information is prohibited by the Competition Act when it distorts competition. The Competition Board issued a prohibiting order.

- *Taxi services:* three companies were prosecuted for participating in a price fixing conspiracy involving the provision of taxi services in the city of Parnu. The investigation was prompted by announcements provided in newspapers. In 1999, the companies set the uniform discounted tariff of 5 EEK/km (approximately 0,32EUR/km) to customers, the owners of loyal customer cards of the companies. The share of the companies involved comprised over 40% of the taxi service market. After the evaluation, the Competition Board ordered the three companies to cease the practice and submitted the case to the court. The District Court imposed fines of amount of nearly EEK 10,000 (EUR 639) on each of the respondents.
- *Road transport:* The Association of Estonian International Road Carriers was prosecuted for participating in a price fixing involving the provision of international transport services. In October 1999, the Association established a special Commission which compiled a uniform pricing policy (minimum price levels) for road transport services and proposed road carriers to apply them. The Commission also proposed to exclude from the Association the carriers who did not comply with the price rates calculated by the Commission. The proposals were published both in the newspaper of the Association and in the main business daily newspaper. The Competition Board issued a proscriptive order, and the Association ceased its practices and made appropriate announcements in the newspapers. No sanctions were applied in this case.

Indonesia

5. Indonesia has had only one cartel case. It described that case in its questionnaire response and also submitted a copy of the complete decision of the Business Competition Supervisory Commission. It also submitted general information on sanctions.

- *Caltex:* four companies were prosecuted for participation in bid rigging involving the supply of pipe and pipe processing services. Three pipe processors were found to have exchanged their prices with each other at a meeting in a hotel the evening before the bids were opened. Caltex, an oil company, which announced a tender, was held responsible for failing to ensure fair bidding. The bid rigging conspiracy was formed in May 2000. Material evidence was contained in statements of a complainant, as well as in the testimony of witnesses from the respondents. As Caltex was the first case ever brought by the Commission, no fines or other sanctions were imposed. Instead, the Commission ordered that the contract between Caltex and the apparent lowest bidder be dissolved and that entire tender process be redone.
- According to Articles 47 and 48 of the Law Number 5 of 1999, the Commission for the Supervision of Business Competition can impose civil fines up to Rupiah 25 billion (EUR 2,875,000) for violations of the law or criminal fines up to Rupiah 100 billion (EUR 11,500,000), and prison terms of up to six months.

Kenya

6. Kenya made no submission regarding cartel cases.

Latvia

7. Latvia described two cartel cases in its questionnaire response and general information on sanctions.

- *Aviation:* Two companies were prosecuted for their participation in a conspiracy relating to international air transportation. On August 1, 1998 the Latvian company “Airbaltic” and the Russian company “Transaero” concluded an agreement on co-operation in the organisation of passenger flights between Riga and Moscow. The agreement provided that no party to the agreement should operate regular flights between Latvia and Russia, except for the flights provided in the agreement. In addition, the agreement provided that Airbaltic should pay certain payments on condition that Transaero agrees not to compete with Airbaltic by offering regular transportation to/from Latvia and inside Latvia. The term of the agreement was 10 years, but it was in force for less than one year. The Competition Council was empowered to impose fines only on “Airbaltic”. The amount of the fine was of 0,7% of the respondent’s total turnover of 1998.
- *Courier post:* Two companies were prosecuted for participating in a conspiracy involving the provision of international courier post services. On September 23, 1999, the state-owned company “Latvijas Pasts” and DHL International Limited concluded an agreement containing restrictive terms that potentially threatened competition. After the investigation was started, the parties terminated the violation by excluding the competition restrictive clauses. As there was no practical effect on competition ascertained, no sanctions were applied in this case.
- Under the Latvian competition law, the Competition Council may impose a fine of up to 10% of the respondent’s annual turnover.

Peru

8. Peru submitted a description of two cartels in its report and also submitted an extensive description of its “chicken cartel” case. It also provided information on cartels in its questionnaire response and general information on sanctions.

- *Building and construction:* three companies were convicted of participating in bid rigging on a contract for the construction of a secondary electricity net in Puerto Maldonado City. The tender was called by an electric power distribution company Electro Sur Este in November 1997. Later, Electro Sur Este accused the building and construction companies of bid rigging. The claim was based on evidence from the documents presented by the three bidders. The documents contained the same redaction and the same format, they also presented the same orthographic errors, the same time of construction and almost the same price bid. These facts were investigated and confirmed by the Technical Secretariat. In addition, the Free Competition Commission considered some indirect evidence in this case. After the evaluation, the Commission ordered the three companies to cease the practice and imposed fines of amount of nearly EUR 1,800 on each of the respondents.
- *Taxi Tours:* A number of companies were prosecuted for their participation in a price fixing involving transportation services in the city Lima. In December 1999, the companies which were members of an association informed local authorities of their agreement to increase prices. The local authorities accused the companies of competition restricting practices and submitted direct evidences to the competition authority in a form of copies of the documents

containing the communication and the decision of the Union to increase the price of tickets. As a result of the investigation, it was proven that the companies participated in the agreement of fixing jointly the price of transportation service. The outcome of the case was a signed document in which the companies expressed their commitment to cease the restrictive practices. Only one company, which did not sign the document, was sanctioned with a fine of amount of about EUR 900.

- If the violation is graded as very serious, the Commission on Free Competition may impose a fine exceeding 1,000 UITs (approximately EUR 900,000) provided that it does not exceed 10% of the respondent's gross sales or income.

Romania

9. Romania submitted a description of one cartel case in its report. It also provided information on one more cartel in its questionnaire response, but no general information on sanctions.

- *Mineral water:* National Company of Mineral Waters (NCMW) and members of the Employers' Association "APENIM" were convicted of participating in a price fixing conspiracy relating to the bottling of mineral water in Romania. The price of the extracted mineral water was set through negotiations between NCMW and the companies within "APENIM" in 1997. The agreement indirectly affected the decision-making independence of the other companies, non-members of "APENIM". The Competition Council imposed fines on NCMW and on the bottling undertakings involved in the anti-competitive practice.
- *Drugs:* Members of Pharmacists Association were convicted of participating in a conspiracy relating to pharmaceutical distribution in Romania. In 1997, the pharmacists concluded an agreement aimed at sharing the estimated amount of all sales in the drug distribution market (approximately EUR 430 million per year) and not allowing other competitors enter the market. The restrictive agreement coincided with the date of setting up the association and existed until December 2000. The Pharmacists Association together with the Ministry of Health also established a number of barriers on market entrance. Since the price of drugs is regulated in Romania, the effects on prices and selling amount could not be estimated in this case. The fine imposed according to the Competition Law has been calculated as a percentage of profit of the Pharmacists Association.

Slovenia

10. Slovenia's submission described two cartel cases and general information on sanctions.

- *Electric energy:* in 2000, five major producers of electric energy were convicted of participating in a price fixing conspiracy relating to the provision of electric energy in Slovenia. The conspirators agreed on a joint offer to eligible customers that specified the terms of sales including a set price. One of the conspirators was chosen as a co-ordinator of actions among the companies. There was direct evidence of the collusion. The cartel was prohibited by the Office.
- *Cultural events:* two companies were convicted of their participation in conspiracy relating to the organisation of cultural events in Slovenia. In November 2000, the companies concluded an agreement on mutual co-operation, which aimed at preventing competition in the national market. The agreement contained clauses not to compete with each other, and not to allow

other participants to enter the market. The Office issued the decision, declaring that the agreement was invalid and asked the court to impose fines.

- According to Articles 52 of Prevention of the Restriction of Competition Act, a monetary fine of SIT 10,000,000 (EUR 45,000) to SIT 30,000,000 (EUR 135,000) can be imposed on a legal person, and on an individual, SIT 3,000,000 (EUR 13,500) to SIT 15,000,000 (EUR 67,500).

South Africa

11. South Africa provided one case in its questionnaire response and general information on sanctions.

- *Description of agreement:* there was a complaint of farmers of citrus fruits about a joint conduct of members of the Association relating to the purchase, packaging and sale of citrus fruits. In 1999, the Association enacted a decision fixing of trading conditions. This case was ongoing at the time of the response to the questionnaire.
- The Competition Tribunal can impose a fine of up to 10% of the firm's annual turnover.

Chinese Taipei

12. Chinese Taipei submitted a description of three cartel cases in its report. It also provided information on cartels in its questionnaire response and general information on sanctions.

- *Wheat:* the Flour Association was convicted of organising a buyers' cartel involving wheat products. In 1997 and 1998, the Flour Association instituted a total quantity control and quota system among 32 flour producers, by means of, among other, "purchase allocation meetings". It improperly intervened in each member's inventory management and obstructed fair competition among enterprises. The Fair Trade Commission issued the decision to cease these practices, and imposed the Flour Association a fine of NT\$20 million (EUR 620,000).
- *Mobile cranes:* six companies were prosecuted for bid rigging on a contract for the procurement of truck-mounted mobile cranes from Taiwan Power Company in 1998. They knowingly, and through mutual communications, apportioned the number, suppliers, and amounts of the winning bids before the bid opening. These acts violated Article 14 of the Fair Trade Law, which prohibits concerted acts. The Commission ordered them to cease the concerted practices. The case also included another violation of the Law committed by Taiwan Power Company that improperly restricted the criteria to bid on its contract. The company was ordered to cease its actions.
- *Liquefied Petroleum Gas:* twenty seven companies were convicted of participating in a price fixing conspiracy relating to delivery of liquefied petroleum gas (LPG) in southern Taiwan. The companies involved in this case were all at the "filling station" level within the vertical distribution structure of the household LPG market, and were competitors in their respective Kaohsiung-Pintung and Tainan markets. The alleged concerted practices were operated through continued meetings to set fees and agreements to divide customers, which had the effect of restraining trading counterparts, prices and other business activities. The 19 filling stations involved in this case accounted for 97% of the total volume sold in the Kaohsiung-

Pintung area, and the eight stations in the Tainan area accounted for over 80% of the volume sold there. The conduct of the operators involved had violated Article 14 of the Fair Trade Law. The respondents were fined amounts ranging from NT\$1 million to 15 million (EUR 31,000 to 465,000), and totaling NT\$133 million (EUR 4,123,000).

- The maximum penalty for violating the Fair Trade Law is up to NT\$100 million (EUR 3,100,000) and/or up to three years imprisonment.

Thailand

13. Thailand made no submission on cartel cases and general information on sanctions.

- Penalties for violations of the Competition Act include jail terms of between one to three years and/or fines ranging from two to six million baht (EUR 48,000 to EUR 144,000). The penalties may be applied to a legal person, and to an individual.

Ukraine

14. Ukraine described two agreements in its response and general information on sanctions.

- *Electronic cash-machines:* three companies were prosecuted for participating in a price fixing conspiracy involving the provision of technical services for electronic cash-machines in the city of Donetsk region. In June 1999, two companies forced their competitor, whose prices were comparatively lower, not to compete on prices. At their meeting the respondents agreed on a so-called “sole” tariff for the services. The effect of the agreement was to raise the price by 5-10 hryvnias (approximately EUR 1,0-2,0) per unit. The respondents in this case were fined. When the agreement broke down, prices fell again.
- *Kaolin:* in October 2000, two competing distributors, “Prommasheksport” and “Gepard”, concluded a contract specifying amounts of sales of the product. This agreement was found unlawful. It apparently came to light during a later review of a proposed acquisition by “Prommasheksport” of a firm in which “Gepard” had an interest.

15. Ukraine made no submission regarding sanctions.

Zambia

16. Zambia described two cartel agreements in its report. It also provided information on cartels in its questionnaire response.

- *Poultry:* two companies were convicted of their participation in a conspiracy involving the poultry sector. Hybrid Poultry Farm (HPF), the dominant producer of day old chicks (market share 60%) in Zambia, and Galaunia Holdings Limited (GH), the largest buyer in poultry sector, made the agreements on sales and purchase, which included provisions foreclosing competition both in the day old chicks, table birds (broiler) and frozen chicken. The agreements on sale of Mariandale Farm, which specialised in the raising of day old chicks into table birds, and the poultry processing factory to GH, included exclusive dealing clauses and conditions, including a requirement that GH could not begin to sell day old chicks in

competition with HPF. The Board of Commissioners made a decision, declaring that the agreements were invalid.

- *Oil:* nine oil-marketing companies were prosecuted for participating in a price fixing conspiracy involving the provision of refined petroleum products. The companies acted collectively in price adjustments since 1997. They selected one company to apply for a price adjustment to the Sector Regulator who sets a price cap. They held regular meetings where exchanges of information regarding sales volumes and prices take place. The cartel leaders also forced other companies to comply with standard behaviour on prices. The Zambia Competition Commission has prepared documentation, received minutes of the meetings, the nature of shared information with a view to lodge the case with High Court of Zambia for prosecution.
- In Zambia sanctions are applicable to all kinds of agreements. Administrative sanctions involve ordering the termination/revocation of an agreement, civil sanctions involve payment of 100,000 penalty units, which are equivalent ZK 18 million (approximately EUR 5,220). Criminal nature of cartels may lead to a penalty of ZK 18 million (EUR 5,220) and/or an imprisonment of up to 5 years in jail.