

Unclassified

DAF/COMP/GF/WD(2006)22



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

12-Jan-2006

English - Or. English

DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE

DAF/COMP/GF/WD(2006)22
Unclassified

Global Forum on Competition

CARTEL CASE STUDIES

Case submitted by Latvia

-- Session III --

This case is submitted by Latvia in view of its discussion in GFC Sub-Session 1 on Thursday 9 February 2006 (from 9:15 am).

JT00200042

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CARTEL AGREEMENT AMONG HENS' EGG PRODUCERS

LATVIA

1. Summary

1. On December 20, 2002 the Latvian Competition Council established that a cartel agreement existed between Latvian hens' egg producers. The Competition Council based its decision on following evidence: information contained in explanations of suspected undertakings, a fax containing information that prices would be discussed in a meeting of the Association of Egg Producers (hereinafter - Association), invoices showing a trend of price increases after Association meetings, and information about the increased surplus of eggs during the periods of the cartel agreement.

2. The factual and legal context

2. On the 1st of April, 2003 the newspaper KOMMEPCAHT BALTIC DAILY published an article describing a decision of the joint stock company "Omega" to raise its prices by 1 centime (approx. 1,5 eurocents) for 10 eggs. The article also stated that the Association of Egg Producers had recommended that all its members increase egg prices. The abovementioned information was the basis for the Competition Council's decision to initiate an investigation of a potential cartel agreement. Twelve Latvian egg producers are members of the Association, and the Competition Council directed its investigation towards them. Although the price increase for eggs was not large, the Latvian competition legislation prohibits price fixing agreements between competitors regardless of their actual effect in the market.

3. Article 11 of the Latvian Competition Law provides that

„(1) Agreements between market participants which have as their object or effect the prevention, restriction or distortion of competition within the territory of Latvia are prohibited and they are null and void from the moment of being entered into, including agreements regarding:

1) the direct or indirect fixing of prices and tariffs in any manner, or provisions of their formation, as well as regarding the exchange of information relating to prices or sale provisions;”

4. Article 1 of the Latvian Competition Law provides the definition of agreement:

“1) agreement – a contract between two or more market participants or concerted practices in which market participants participate, as well as a decision taken by a registered or unregistered grouping (association, union and the like) of market participants or by an authorised official of such a grouping.”

5. The relevant product market is hens' eggs, because there are no close substitutes for this product. The relevant geographic market is Latvia, because there are no substantial egg imports and exports. The share of imported eggs of total Latvian egg consumption is less than 5%.

6. The market share of "Omega" in 2002 was 50%; three other egg producers had market shares from 8 to 11% each, and eight other undertakings had market shares of 4% or less.

3. Investigation of the case

7. Under the Latvian Competition Law which was in force at the time of the investigation the Competition Council had no inspection powers, and the only means for investigating this case was to request that the information be provided.

8. Officials of the Competition Council on the same day and at the same moment visited the three egg producers and carried out interviews with each of the managers. The interviewed undertakings were informed of the purpose of the interviews -- that the Competition Council suspected a possible cartel agreement in the hens' egg market. Later the Competition Council carried out interviews with all egg producers.

9. The interviewees were asked about the problems that were solved within the Association, and several mentioned that discussions and decisions about raising egg prices were the most important issues taken up in these meetings. Some undertakings mentioned that they had received a recommendation not to sell eggs below the margin of 0,2 centimes per egg less than Omega's prices. The interviews disclosed that there were two time periods in which the potential cartel agreement may have had an effect: from June to August, 2002 and from March to April 2003. There were five Association meetings in time period of July-August 2002 and one meeting in March-April 2003. Regarding the July-August 2002 period, several undertakings said that there had been a decrease of egg prices in summer of 2002 and that they achieved an increase of prices with assistance of Association.

10. Regarding the March-April 2003 period, some egg producers said that in an Association meeting of March 14, 2003 they agreed to raise the prices of eggs before Easter. Easter in the year 2003 was on 20th of April for all three of the Christian confessions in Latvia. Some of the smaller producers said that they received a fax from Omega on March 5 inviting them to an Association meeting. They said that they regularly exchanged faxes with Omega containing information about their prices.

11. The Competition Council requested protocols of Association meetings and the Association submitted a copy of the abovementioned fax. The fax was signed by president of Omega in the capacity of president of Association. It listed issues for the agenda of the meeting, one of which was "price policy (the increase of prices is planned starting from April 1, 2003)." After the list of the agenda topics there was the following:

. . . additionally we inform you that [Omega] is not planning any low price actions in April of this year which means that we will not participate in any actions offered by retailers. Refusing to support the actions offered by retailers, which mostly take place as low price actions, we ensure stable market and good income. Therefore, in order to ensure successful trade in Easter we invite you not to support the actions of retailers of above-mentioned nature.

12. The official protocols of Association meetings did not contain any information which would indicate that price issue was discussed.

13. The Competition Council checked all invoices for the supply of eggs during the relevant time periods, beginning one month before each period, for 3-8 randomly selected customers of every egg producer. These invoices confirmed that prices increased in the relevant periods, that they tended to increase after the Association meetings and that the smaller producers tended to maintain their prices 2 centimes lower than Omega's prices. The prices of one undertaking did not conform to these trends, however, causing the Competition Council to conclude that this firm did not participate in the cartel.

14. In the abovementioned interviews the producers claimed that the principal determinant of prices is demand. The Competition Council conducted the analysis of supply and demand trends relating to every producer of eggs in the two relevant periods. The Council established that almost all egg producers had surpluses of eggs in the period of July-August, 2002, casting doubt on the producers' economic justifications for their price increases. Similarly, there were surpluses of eggs and apparently no increase in demand in the March-April 2003 period, when the prices were increased, except that the demand increased shortly before Easter. In these periods there were no increases of prices of petrol, electricity, grain, or other inputs into egg production.

4. The outcome of the case

15. The Competition Council, considering all of the above evidence as a whole, took the decision that a concerted practice of price fixing and exchange of information existed between 11 Latvian egg producers in the periods of July-August 2002 and March-April 2003 and, therefore, that they violated Article 11, Section 1, Subsection 1 of the Latvian Competition Law. The Competition Council imposed a fine on each egg producer involved in the infringement.

16. The Council established that the object of the concerted practice was to prevent, restrict or distort competition in the territory of Latvia. As noted above, under Latvian law it was not necessary that the Council analyse the effect of the agreement on the Latvian market.

17. The Competition Council stated that every undertaking must determine its commercial policy independently. Although enterprises are not prohibited from adapting unilaterally to the conduct of competitors, any direct or indirect contact between undertakings, the object or effect of which is to coordinate or to influence their conduct in the market, is forbidden. The Competition Council established that the evidence shows that the increase of prices was discussed in Association meetings and that exchanges of information took place in the relevant periods. Therefore the egg producers had the ability to act in the market on the basis of their awareness of their competitors' future conduct. The undertakings acted in accordance with the information received in Association meetings and prices were increased.

18. The decision of the Competition Council was appealed in the courts and the appeal is pending.