

LEGAL @LERT

July 2014

German Antimonopoly Office fines physical persons for the participation in the multimillion cartel on the grocery market

According to the information published on 15 July 2014 on the official web page of the German Antimonopoly Office (*Bundeskartellamt*), Bundeskartellamt imposed financial penalties in the total amount of approx. **338 million euro** for the price-fixing cartel between manufacturers of sausages. 21 companies, as well as **33 persons**, responsible for the illegal fixing of prices between competing entities were fined.

Five years of the antimonopoly proceedings

In the course of the proceedings, that lasted more than five years, the officers of Bundeskartellamt gathered a very wide evidentiary material, in the light of which it was confirmed, that at least from 2003 the manufacturers exchanged information about the increase of prices on the product market in question. For that purpose, the manufacturers held regular informal meetings within the so-called “Atlantic Group” named after their first meeting place, the Hotel Atlantic in Hamburg. Besides that, the manufacturers had concluded several agreements, to jointly implement price increases for the sale of sausage products to the retail trade. The conditions of those agreements were also the result of the informal arrangements (made mostly by phone).

Artificial overstate of prices on the market

The agreements resulted in the artificial overstate of selling prices within the specific categories of product groups offered by the manufacturers to retail sellers. Owing to the arrangements, the manufacturers could have achieved higher prices, without the fear of the competition from other market participants.

33 physical persons were fined

The element, which raises the biggest emotions in the discussed case is the amount of fines imposed on the companies, as well as on the specific physical persons, who participated in the illegal arrangements. According to the § 81 of the German Act against Restraints of Competition (*Gesetz gegen Wettbewerbsbeschränkungen*), Bundeskartellamt may impose on physical persons, who intentionally, or by negligence violated the competition law, a financial penalty of up to **EUR 1,000,000.00**, whereas entrepreneurs may be fined with a penalty of up to 10% of the total (worldwide) turnover of the capital group, to which a specific entrepreneur belongs. When imposing fines, Bundeskartellamt may take into account mitigating circumstances, such as the period of infringement, its relevance and negative effects for the competition, the level of turnover generated by an entrepreneur from the sales of products covered by the infringement, as well as the fact of cooperation of an entrepreneur in the course of the proceedings, in particular in a situation when the *leniency* application was submitted.



Amendment of the Polish antimonopoly law: fines of up to PLN 2,000,000.00 for physical persons

The above circumstances are particularly relevant in the context of changes, which soon may be noticeable for the Polish entrepreneurs. On **18 January 2015** the act that amends Polish regulations on protection of competition will come into force. The amendment introduces specific legal mechanisms, that will permit the Polish Antimonopoly Office to eliminate the market damaging practices, and limit the risks of its appraisal, by a way of, *inter alia* **imposing by the Polish President of the Polish Antimonopoly Office of the financial penalties of up to PLN 2,000,000.00 on physical persons managing the entrepreneur's activity for the violation by the entrepreneur of the regulations prohibiting the conclusion of competition limiting agreements**, including cartels.

The above means, that after the amendment comes into force, the Polish Antimonopoly Office shall dispose of the preventive and repressive measures, analogous to those of Bundeskartellamt.

We will, thus have to wait to see what course shall the Polish Antimonopoly Office take in the discussed area.

Konrad Schampera, Jarosław Fidala.



Konrad Schampera, Rechtsanwalt, Managing Partner at SDZLEGAL SCHINDHELM, manages the department responsible for the contacts with the foreign clients, specializes in the international law, in particular German law

Contact: konrad.schampera@sdzlegal.pl, T: +48 71 32651-40



Jarosław Fidala, lawyer, Associate at SDZLEGAL SCHINDHELM, member of the Department of Companies Law and Competition Law, specializes in the competition law, and competition compliance

Contact: jaroslaw.fidala@sdzlegal.pl, T: +48 71 32651-40