



Damage Resulting From Anti-Competitive Practices

SITUATION

On 18 December 2014, the French Competition Authority (Autorité de la concurrence) issued a decision (n°14-D-19) in which it sanctioned a cartel between manufacturers of cleaning and hygiene products concerning their commercial policy with mass retailers, and in particular their back-margin policy.

A retail group commenced proceedings against one of the manufacturers before the Paris Commercial Court claiming a loss of back margin estimated at several million euros.

OUR ROLE

FTI Consulting was instructed by the respondent, to analyse the damage claimed. Our work focused on the following aspects:

- qualitative analysis of the impact of the information exchanged, taking into account the weak bargaining power of our client (modest size compared to the other members of the cartel);
- review of the documentation at the time on the conduct of the annual negotiations to compare the back margins obtained with the rebate claimed by the distributor;
- comparison of the annual back margin negotiated with that observed in the retail sector in general;

— analysis of the methodology (economic model) used by the opposing expert.

Finally, we prepared a detailed expert report outlining our analyses and conclusions for the court.

OUR IMPACT



Our analyses made it possible to demonstrate, on the basis of factual documents exchanged at the time of the events, that the back margin granted to the distributor had been in line with its requirements each year and that the facts complained of had therefore not impacted the specific negotiations with our client.

This positive approach could usefully be opposed to the theoretical model proposed by the opposing expert, thus enabling our client to settle under very favourable conditions.



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