

Food & Beverages

Impact

Food and beverages are possibly the most sensitive products in consumers' baskets. Any price increase or lack of innovation will have direct visible consequences for every European citizen's wallet, their health and on the country's inflation rate. In recent years, food prices have regularly created headlines, prompting investigations into the functioning of the sector and forcing visible action whenever possible, often through competition law enforcement.

After the hike in food prices 2007 and early 2008 the European Council, in an unprecedented move, spurred the Commission into examining the functioning of the food supply chain in Europe. In its first report, published in December 2008, the Commission called for a "vigorous and coherent enforcement of competition rules in the food supply markets by both the Commission and national competition authorities".

National competition authorities have prioritised the food & beverages sector, by acting on a case by case basis or by launching sector inquiries. Apart from clear-cut cartel and resale price maintenance cases, authorities have repeatedly announced their willingness to intervene in more nuanced areas such as buying alliances, the use of private labels, tying and bundling or joint commercialisation agreements. With the ongoing consolidation in the sector, merger control remains equally high on the authorities' agenda.

Competition law infringements can lead to high fines, strong behavioural or structural remedies, damage claims and nullity of contracts. It is therefore of utmost importance for companies active anywhere from the stable to the table to ensure compliance with competition law and to make use of it when on the victim's side.

Unique Insight

With offices across Europe, Bird & Bird possesses the pan-European reach to act in any EU jurisdiction, whether at national or at Community level. Our offices in China, Singapore and Hong-Kong regularly cover various Asian competition laws, such as the recently introduced Chinese Anti-Monopoly Law.

Bird & Bird's competition law practice has particular expertise on the competition law and intellectual property interface and regularly acts in the food and the life sciences sector.

Examples of recent competition cases in the food & beverages sector in 2009 and 2010 include:

- The Spanish Competition Authority fined beverage & food, bakery, sweets and egg & poultry associations for recommending price increases; it also investigated Jerez wine, grape and must producers, frozen-dough manufacturers, horticultural trade associations, Galician mussel producers and members of the rice industry.
- The German Competition Authority handed close to EUR 160 million fines to three companies and six individuals in the coffee-roaster industry; it also raided sausages producers, confectionery producers and retailers over allegations of resale price maintenance; a major German retailer is investigated on suspicions that it abused its buyer power as a food trader;
- A major chocolate spread producer and several supermarket chains are being investigated in Belgium over allegations of concerted price increases and illegal exchange of information in a so-called "hub-and-spoke" cartel.
- The Dutch NMa has launched an investigation in a possible flour cartel.
- A major coffee company has been fined close to EUR 30 million for having imposed anticompetitive loyalty rebates and exclusive supply agreements in Greece; the Greek authority is also investigating a possible cartel in the fish sector.
- The European Commission has carried out unannounced inspections at the premises of companies active in the North Sea shrimps and related products in several member states. The sector had already been the target of the Dutch NMa in recent years.
- Several pasta producers have been fined by the Italian Competition Authority for price-fixing issues.
- The United Kingdom's OFT has opened an investigation against large retailers in relation with milk prices.



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