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The Paris Commercial Court dismisses the follow-on action brought by Intermarché AI against L'Oréal France

On 30 May 2025, the Paris Commercial Court dismissed a follow-on action brought by ITM Alimentaire International (the central organisation of 'Les Mousquetaires Intermarché') against L'Oréal France (TAE, Paris ch. 1-6, 30 May 2025, RG no. 2025030759), following the decision of the French Competition Authority (ALDC, 18 December 2014, no. 14-D-19) concerning practices implemented in the home care, insecticide, and personal care product sectors.

The personal care cartel: one of the FCA's most emblematic cases of the 2010s

In decision no. 14-D-19, issued on 18 December 2014, the French Competition Authority ('FCA') sanctioned several personal care manufacturers (Colgate-Palmolive, Henkel, L'Oréal, Unilever, Procter & Gamble, Reckitt Benckiser, Sara Lee, Laboratoires Vendôme, Gillette, Beiersdorf and Vania) for engaging in concerted practices.

Between 2003 and 2005, the French legislator intervened to curb the prevailing 'inflationary spiral' and reduce consumer prices. In response, leading personal care manufacturers coordinated their commercial policies towards their distributors, to prevent intensified competition and a sustained drop in consumer prices.

The cartel aimed to align supplier positions during commercial negotiations with distributors. Each supplier disclosed its intention to raise prices and increase remuneration for commercial cooperation services (i.e., services designed to promote the marketing of the supplier's products). This conduct distorted normal negotiations with distributors and maintained artificially high sales prices to distributors, which were ultimately passed on to consumers.

The FCA considered the practices particularly serious due to their secretive nature and inherent characteristics.

The total fines imposed on the personal care manufacturers amounted to 7 billion EUR. L'Oréal was fined over 189 million EUR for participating in the cartel for one year and one month.

The decision was upheld by the Paris Court of Appeal on 27 October 2016 and by the French Supreme Court on 27 March 2019, but only with respect to L'Oréal France's unlawful conduct. The courts did not uphold the fine.

The action for damages by ITM AI against L'Oréal France

On 28 August 2019, ITM Alimentaire International ('ITM AI') brought a 'follow-on' action against L'Oréal France before the Paris Commercial Court, seeking 21.6 million EUR in damages for L'Oréal France's anticompetitive conduct. The damage estimate was prepared with the assistance of an economics consultancy.

Inapplicability of the Damages Directive

The claim was based on civil tort liability (Article 1240 of the French Civil Code), requiring proof of fault, damage, and causation. Because the alleged conduct occurred between 2003 and 2006, ITM AI could not benefit from the presumptions provided by Directive 2014/104/EU on damages actions for competition law infringements (the 'Damages Directive').

Recognition of L'Oréal's civil fault

The Paris Commercial Court acknowledged that the FCA's decision was final (as confirmed by the Paris Court of Appeal) and held that the collusive practices identified by the FCA constituted a civil fault under Article 1240 of the French Civil Code. L'Oréal did not contest this finding.

ITM AI's failure to prove its damage

ITM AI sought compensation for lost margin (front-end and off-invoice) on L'Oréal personal care products, estimated at 21.6 million EUR. Its economists used a counterfactual approach, comparing overall margin realised by ITM AI on products from eleven suppliers not involved in the cartel, deemed sufficiently comparable to L'Oréal products.

However, after reviewing both parties' economic analyses, the Paris Commercial Court concluded that ITM AI had failed to demonstrate any loss of margin and rejected the compensation claim.

Conclusion

This case underscores the challenges faced by companies seeking cartel-related damages, especially when they cannot rely on the presumptions of the Damages Directive and the conduct occurred many years prior. Please note that this judgment is subject to appeal.