



EUROPEAN COMMISSION  
Competition DG

## ***CASE AT.40181 - PHILIPS***

(Only the English text is authentic)

### **ANTITRUST PROCEDURE**

### **Council Regulation (EC) 1/2003**

---

Article 7 Regulation (EC) 1/2003

Date: 24.07.2018

This text is made available for information purposes only. A summary of this decision is published in all EU languages in the Official Journal of the European Union.

Parts of this text have been edited to ensure that confidential information is not disclosed. Those parts are replaced by a non-confidential summary in square brackets or are shown as [...].



EUROPEAN  
COMMISSION

Brussels, 24.7.2018  
C(2018) 4797 final

**COMMISSION DECISION**

**of 24.7.2018**

**relating to proceedings under Article 101 of the Treaty on the Functioning of the  
European Union**

**Case AT.40181 Philips**

(Only the English text is authentic)

## TABLE OF CONTENTS

1.	Introduction .....	4
2.	The parties concerned .....	5
2.1.	Undertaking subject to the proceedings .....	5
2.2.	Retailers of Philips France's Consumer Lifestyle business.....	6
3.	The geographic and product areas concerned .....	6
4.	Procedure.....	6
5.	Facts .....	7
5.1.	Introduction .....	7
5.2.	The relevant conduct .....	7
5.2.1.	General presentation of the relevant conduct.....	7
5.2.2.	Specific instances .....	9
5.3.	Online pricing.....	11
6.	Legal assessment.....	11
6.1.	Agreements and concerted practices.....	11
6.1.1.	Principles.....	11
6.1.2.	Application to this case .....	12
6.2.	Single and continuous infringement.....	12
6.2.1.	Principles.....	12
6.2.2.	Application to this case .....	12
6.3.	Restriction of competition.....	13
6.3.1.	Principles.....	13
6.3.2.	Application to this case .....	13
6.4.	Effect on trade between Member States.....	14
6.4.1.	Principles.....	14
6.4.2.	Application to this case .....	14
6.5.	Non-applicability of Article 101(3) of the Treaty .....	14
6.5.1.	Principles.....	14
6.5.2.	Application to this case .....	15
7.	Duration of the infringement.....	15
8.	Liability .....	15
8.1.	Principles.....	15
8.2.	Application to this case .....	16
9.	Remedies and fines .....	16
9.1.	Remedies under Article 7 of Regulation (EC) No 1/2003 .....	16

9.2.	Fines under Article 23(2) of Regulation (EC) No 1/2003 - principles .....	16
9.3.	The intentional or negligent nature of the infringement .....	17
9.4.	Calculation of the fines .....	17
9.4.1.	Value of sales .....	17
9.4.2.	Gravity.....	17
9.4.3.	Duration.....	18
9.4.4.	Calculation of the basic amount.....	18
9.4.5.	Aggravating or mitigating factors .....	18
9.4.6.	Application of the 10% turnover limit .....	18
9.4.7.	Reduction of the fine in view of cooperation.....	18
9.4.8.	Conclusion: final amount of the fine.....	18

# COMMISSION DECISION

of 24.7.2018

relating to proceedings under Article 101 of the Treaty on the Functioning of the European Union

Case AT.40181 Philips

(Only the English text is authentic)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty<sup>1</sup>, and in particular Article 7(1) and Article 23(2) thereof,

Having regard to Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the EC Treaty<sup>2</sup>,

Having regard to the Commission Decision of 2 February 2017 to initiate proceedings in this case,

Having given the parties concerned the opportunity to make known their views on the objections raised on 7 June 2018 by the Commission pursuant to Article 27(1) of Regulation (EC) No 1/2003 and Article 12 of Regulation (EC) No 773/2004,

After consulting the Advisory Committee on Restrictive Practices and Dominant Positions,

Having regard to the final report of the Hearing Officer in this case,

Whereas:

## 1. INTRODUCTION

- (1) This Decision concerns Philips France S.A.S. ("Philips France") and Koninklijke Philips N.V. Philips France and Koninklijke Philips N.V. together are hereinafter referred to as "Philips".
- (2) Philips France implemented practices in relation to products sold by its Consumer Lifestyle business organisation, aimed at restricting the ability of retailers in France to determine their resale prices independently.
- (3) This Decision establishes that those practices constitute an infringement of Article 101 of the Treaty on the Functioning of the European Union ("the Treaty").

---

<sup>1</sup> OJ C 115, 9/5/2008, p.47.

<sup>2</sup> OJ L 123, 27.4.2004, p. 18

## 2. THE PARTIES CONCERNED

### 2.1. Undertaking subject to the proceedings

- (4) Koninklijke Philips N.V. is a technology company headquartered in Amsterdam. It is divided into two businesses: Health systems and Personal Health (known as Consumer Lifestyle until 2016).<sup>3</sup>
- (5) Philips' Consumer Lifestyle business had local sales organisations within the European Union.
- (6) The local sales organisation concerned by this Decision is Philips France's Consumer Lifestyle business which, between 21 November 2011 to 20 November 2013 ("the relevant period"), was operated by Philips France.
- (7) During the relevant period, Philips France's Consumer Lifestyle business included:<sup>4</sup>
  - (i) Personal Care;
  - (ii) Lifestyle Entertainment;
  - (iii) Health & Wellness; and
  - (iv) Domestic Appliances.
- (8) **Personal Care** consists of the male grooming and beauty businesses. The products offered by the male grooming business are a wide variety of shavers, beard trimmers, body groomers, hair clippers, multi-purpose trimmers, precision trimmers and hair removal systems for men. The products offered by the beauty business are a wide variety of hair dryers, hair straighteners, hair curlers, hair stylers, epilators, lady shavers and trimmers, hair removal systems for women, energy light devices, infrared lamps, wake up lights and VisaPure skin cleansing.
- (9) **Lifestyle Entertainment** consists of communication and control (home telephony), audio and multimedia, speech and processing (microphones), headphones and accessories (headsets), home cinema and home video, televisions<sup>5</sup> and OEM remote controls (universal remote controls) businesses.
- (10) **Health & Wellness** consists of mother and childcare products, sold under the Avent brand name, oral healthcare products (AirFloss products and a wide variety of electric toothbrushes) and pain management products.
- (11) **Domestic Appliances** consists of kitchen appliances, coffee machines and accessories sold under the Philips, Saeco, Gaggia, Senseo (co-branded) and Cafissimo (co-branded) brand names, garment care (irons, steamers, ironing boards and steam generators), floor care (vacuum cleaners, robots, cleaning appliances) and air purification businesses.

---

<sup>3</sup> Philips' Consumer Lifestyle business was renamed Personal Health following the de-merger of Philips Lighting N.V. and Koninklijke Philips N.V. on 1 February 2016. See [...], point 13 and [...].

<sup>4</sup> [...] and [...]. The classification as submitted in [...] also covers a category "Other".

<sup>5</sup> On 2 April 2012, Philips' television activities were divested to a joint venture named TP Vision. As of that date, Philips ceased the sales of TVs. [...], point 106. In [...], televisions appear under a separate "Other" product category.

## **2.2. Retailers of Philips France's Consumer Lifestyle business**

- (12) The main retailers of Philips France's Consumer Lifestyle business during the relevant period included online retailers and retailers with both offline and online sales.<sup>6</sup>
- (13) The products distributed by Philips France's Consumer Lifestyle business during the relevant period included products marketed under selective distribution systems, as well as under open distribution.

## **3. THE GEOGRAPHIC AND PRODUCT AREAS CONCERNED**

- (14) The geographic market covered by this Decision is France.
- (15) The products concerned by this Decision are consumer electronic products that fall within the categories of Personal Care, Lifestyle Entertainment, Health & Wellness and Domestic Appliances, as listed in section 2.1 above.

## **4. PROCEDURE**

- (16) On 3 December 2013, the Commission carried out an unannounced inspection at Philips S.p.A.'s premises in Italy and at Koninklijke Philips N.V.'s premises in the Netherlands<sup>7</sup> for suspected resale price maintenance with regard to Philips' Consumer Lifestyle products.
- (17) [...]. Following [...], Philips contacted the Commission's services and indicated its interest in cooperating with the Commission. On [...], Koninklijke Philips N.V. submitted further evidence regarding the relevant conduct.
- (18) On 10 March 2015, the Commission carried out an unannounced inspection at the premises of retailer A in France.<sup>8</sup> Retailer A is a French online retailer selling inter alia Philips products. [...].
- (19) On 2 February 2017,<sup>9</sup> the Commission initiated proceedings within the meaning of Article 2(1) of Regulation 773/2004<sup>10</sup> against Koninklijke Philips N.V. and Philips France.
- (20) On 7 February and 16 May 2017, the Commission addressed requests for information to Philips under Article 18 (1) and (2) of Regulation (EC) No 1/2003, to which Philips replied respectively on 6 March and 2 June 2017.
- (21) On [...], Philips submitted a formal offer to cooperate in Case AT.40181 in view of the adoption of a decision pursuant to Article 7 and Article 23 of Council Regulation (EC) No 1/2003 ("settlement submission")<sup>11</sup>. The settlement submission contained:
- an acknowledgement in clear and unequivocal terms of Philips France's liability for its direct participation in the infringement summarily described as regards its object,

---

<sup>6</sup> [...].

<sup>7</sup> Commission Decisions C(2013) 8515 of 25 November 2013 [...] and C(2013) 8676 of 28 November 2013 [...]. Philips S.p.A is a wholly owned subsidiary of Koninklijke Philips N.V.

<sup>8</sup> Commission Decision C(2015) 1327 of 20 February 2015 [...].

<sup>9</sup> Commission Decision C(2017) 549 final of 2.2.2017 [...].

<sup>10</sup> Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the EC Treaty (OJ L 123, 27.04.2004, p. 18).

<sup>11</sup> [...].

the main facts, its legal qualification, including its role and the duration of its participation in the infringement;

- an acknowledgement in clear and unequivocal terms of Koninklijke Philips N.V.'s liability for the infringement as the parent company of Philips France at the time of the infringement;

- an indication of the maximum amount of the fine Philips expects to be imposed by the Commission and which it would accept in the context of a cooperation procedure;

- the confirmation that Philips has been sufficiently informed of the objections the Commission envisages raising against it and that it has been given sufficient opportunity to make its views known to the Commission;

- the confirmation that Philips does not envisage requesting further access to the file or requesting to be heard again in an oral hearing, unless the Commission does not reflect its settlement submission in the Statement of Objections and the decision;

- the agreement to receive the Statement of Objections and the final decision pursuant to Articles 7 and 23 of Regulation (EC) No 1/2003 in English.

(22) Philips made the settlement submission conditional upon the imposition of a fine by the Commission which does not exceed the amount as specified in that submission.

(23) On 7 June 2018, the Commission adopted a Statement of Objections addressed to Philips, which replied to the Statement of Objections by confirming that it reflected the content of its settlement submission.

## **5. FACTS**

### **5.1. Introduction**

(24) During the relevant period, Philips France's Consumer Lifestyle business regularly monitored the resale prices of retailers and regularly requested and obtained the agreement of retailers to increase these resale prices. This was achieved by way of putting commercial pressure on lowest-pricing retailers and, in some cases, by taking retaliatory measures against non-compliant retailers.

### **5.2. The relevant conduct**

#### *5.2.1. General presentation of the relevant conduct*

(25) During the relevant period, employees of Philips France, including its senior management, closely monitored the retail prices of retailers and regularly contacted those (typically online) retailers with lower prices, requesting them to increase resale prices. Several sales account managers were involved in regularly approaching retailers to get their resale prices increased.<sup>12</sup>

(26) Account managers also regularly and actively monitored the retailers' resale prices, with a view to detecting low pricing retailers and approaching them before other retailers would complain about them to Philips France's Consumer Lifestyle business.<sup>13</sup>

(27) Regarding the level of involvement and awareness within the Philips Consumer Lifestyle organisation in France, senior sales account managers instructed and/or

---

<sup>12</sup> [...].

<sup>13</sup> [...].



approved junior account staff to approach retailers to get their resale prices increased, and senior management of the French Consumer Lifestyle organisation had at least been aware of these practices within the organisation.<sup>14</sup>

- (28) Retailer A also confirmed that Philips France was active in the monitoring of resale prices in the Sound / Music product category for home cinema products sold in France, and that Philips France frequently communicated price increase requests to retailer A, which retailer A understood it had to apply.
- (29) Interventions by Philips France's Consumer Lifestyle Business were either prompted by complaints from retailers regarding their competitors' resale prices or initiated by Philips France's Consumer Lifestyle Business. As a result of these interventions and, in various cases, of retaliatory measures, retailers regularly agreed to those requests and increased their resale prices. This is confirmed by various internal Philips France e-mails in the Commission's file.
- (30) First, employees of Philips France regularly circulated so called "*P.Q.s*", i.e. "*Photo Quotidienne*" ("*Daily Image*") or "*Tableau veille des prix*" ("*Price monitoring table*") with the daily review of the resale prices of the most relevant products, per retailer. For example, on 21 November 2011, [...] of Philips France's Consumer Lifestyle business sends her colleagues an overview of resale prices by various retailers ("*tableau veille des prix*") for several products (a shaver, two blenders and a [...] coffee machine), highlighting the recommended resale price for each of those products and asking them to take action ("*Action les amis!*"). As Philips acknowledges, the [...] "*was encouraging her colleagues to take action, apparently to increase certain retail prices.*"<sup>15</sup>
- (31) Second, in the follow-up to the circulation of the resale price reviews referred to in the previous paragraph, employees of Philips France, including its senior management, took immediate action with lowest-pricing retailers. This can be illustrated by the following three examples:

(i) In an e-mail entitled "*P.Q.*" and sent on 12 February 2013,<sup>16</sup> [...] of Philips France's Consumer Lifestyle business informs all concerned colleagues that his interventions with four retailers have been successful. In response to this message, a few hours later, [...] of Philips France's Consumer Lifestyle business circulates the message that now retailer B and retailer C are also "OK". Philips acknowledges that from the context of the e-mail exchanges, [...] had successfully convinced these retailers to increase their prices for certain products.<sup>17</sup>

(ii) In an e-mail entitled "*Photo Quotidienne – 310 [sic] Juillet 2012 – PEM*" sent on 31 July 2012, a [...] of Philips France's Consumer Lifestyle business reminds his colleagues, including the management, that the different colours of highlights of resale prices on the daily reviews have been amended as follows:

*"ATTENTION :*

*Les codes couleurs ont été modifiés. Désormais, le vert signifie que le prix pratiqué est supérieur au prix cible. La couleur orange marquera les produits*

---

<sup>14</sup> [...].

<sup>15</sup> [...],[...].

<sup>16</sup> [...].

<sup>17</sup> [...].

*dont le prix se situe à moins de 5% du prix cible, le rouge permettra lui d'identifier les produits dont le prix est inférieur de plus de 5% Vs prix cible.*"<sup>18</sup>

(iii) In a chat conversation of 12 April 2012, a [...] explicitly acknowledges that her work mainly consists of price fixing by getting retailers to raise their prices: *"so, you're not enjoying the job?" "no, not really, it's not account management – it's price fixing mainly - seriously, i have to call customers so they put up their prices. It's crazy!!!!!"*<sup>19</sup>

(32) Third, beyond the regular contacts and pressure on retailers, Philips France's Consumer Lifestyle business took retaliatory measures with retailers that regularly undercut desired price levels.<sup>20</sup>

(33) Fourth, the top management of Philips France's Consumer Lifestyle business was fully aware of the above practices, often even actively participating in, or steering, those practices.<sup>21</sup>

#### 5.2.2. *Specific instances*

(34) The examples set out in this Section demonstrate direct interventions by Philips France's Consumer Lifestyle Business aimed at getting particular retailers to increase their resale prices, regularly followed by (the confirmation of) the implementation of the requested price adjustment. Certain exchanges set out in this Section also demonstrate the intention of Philips France's Consumer Lifestyle business to control resale prices throughout its distribution network in France.

(35) First, on 11 December 2011, [...] of Philips France's Consumer Lifestyle business reacts to a screenshot of the website of a pure online retailer, retailer D, showing a promotional action of retailer D on a Philips iron (-14% on the resale price). The e-mail confirms that he will *"take care"* of the issue with retailer D in a meeting the day after (title: "RDV [retailer D] 14/12", i.e. "Meeting [retailer D] 14 December") and asks the key account managers to take care of other retailers, such as retailer A and retailer E.<sup>22</sup>

(36) Second, on 6 February 2012, [...] informed his colleagues of the fact that all "PEM" ("petit électroménager", i.e. "small domestic appliances") products are aligned on the recommended resale price and that none of the products is offered at a price lower than that of retailer B. [...] of Philips France's Consumer Lifestyle business is in copy of the e-mail. In response, [...] of Philips France's Consumer Lifestyle business

---

<sup>18</sup> [...]. Free translation: *"WARNING: the colour codes have changed. From now on, green means that the actual price is higher than the target price. Orange colour will highlight those products whose price is less than 5% below the target price, while red colour will allow identifying those products whose price is more than 5% below the target price."*

<sup>19</sup> [...]; [...].

<sup>20</sup> [...]; [...]. Similar retaliatory measures are referred to in [...]: referring to a promotion by a French online retailer on a shaver, a senior key account manager concludes that *"he would be very clear the next day with [...] that the relationship was at stake."* See also [...]. [...]: *"the Director of Sales M&OP suggested considering making future orders of this product by [retailer K] impossible. On the same day, KAM E replied that [retailer K] had confirmed that the product would be removed from its website that afternoon. Later that day, Sr KAM B appeared to have congratulated KAM E on this development."*

<sup>21</sup> See for instance, the incidents referred to in paragraphs (35), (36), (39), (40) of the present Decision.

<sup>22</sup> [...]. Further incidents with the involvement of the Director of Sales and Pricing can be found for instance in [...] and [...].

warns the international key account manager that he should avoid similar statements in writing ("*A éviter par écrit...*").<sup>23</sup>

- (37) Third, in May 2012, [...] of Philips France's Consumer Lifestyle business contacts an Italian retailer, retailer F, which is selling [...] headset products in France at a price lower than the recommended retail price. The contact results in retailer F adjusting its price to the requested price level ("*as anticipated we fixed the issue with [retailer F] and now the correct prices are available on their website*").<sup>24</sup>
- (38) Fourth, in August 2012, a representative of retailer H sends an e-mail to [...] of Philips France's Consumer Lifestyle business entitled "*URGENT: Please call me*". The e-mail contains a screenshot of the website of retailer I (a French pure online retailer) showing a Philips iron offered for EUR 198.
- (39) The [...] immediately forwards the e-mail to his colleague, with [...] and a [...]in copy.
- (40) Less than half an hour later, the [...] circulates a screenshot showing that retailer I has raised the price of the iron to EUR 248. In reply, the [...] of Philips France's Consumer Lifestyle business thanks her and congratulates everyone for the great teamwork ("*Quel travail d'équipe. Merci [...].*").
- (41) Still on the same day, the [...] warns that the price of retailer J has fallen. She adds that she would look into the reason of the price decrease ("*[retailer J] vient de chuter, mais on ne sait pas pourquoi! on investigue.*"). An hour later, a Philips employee replies "[retailer D]", meaning that it is retailer D's, i.e. a French online retailer's, low price that retailer J is following by adjusting its price to that of retailer D.
- (42) In her response two minutes later, the [...] gives the instruction to stop deliveries to retailer D ("*C [sic] le moment d'arrêter les livraisons*").<sup>25</sup>
- (43) Fifth, in September 2012, a [...] contacts the French retailer G that is selling Philips [...] coffee machines at a price lower than the recommended retail price. The contact results in retailer G adjusting its price as requested.<sup>26</sup>
- (44) Sixth, in June 2013, a senior [...] contacts retailer E, another French retailer, asking it to put an end to its sales promotion on a [...] hair removal system, sold at EUR 449,99 in promotion to a certain category of customers ("4-star customers") instead of EUR 499,99. Retailer E agrees to end this promotion.<sup>27</sup>
- (45) Seventh, on 20 November 2013,<sup>28</sup> a [...] contacts retailer B with a view to increasing the price of the shaver identified on retailer B's website as priced too low. After the contact, retailer B increases the resale price of the shaver.<sup>29</sup>

---

<sup>23</sup> [...].

<sup>24</sup> [...].

<sup>25</sup> [...].

<sup>26</sup> [...].

<sup>27</sup> [...].

<sup>28</sup> [...].

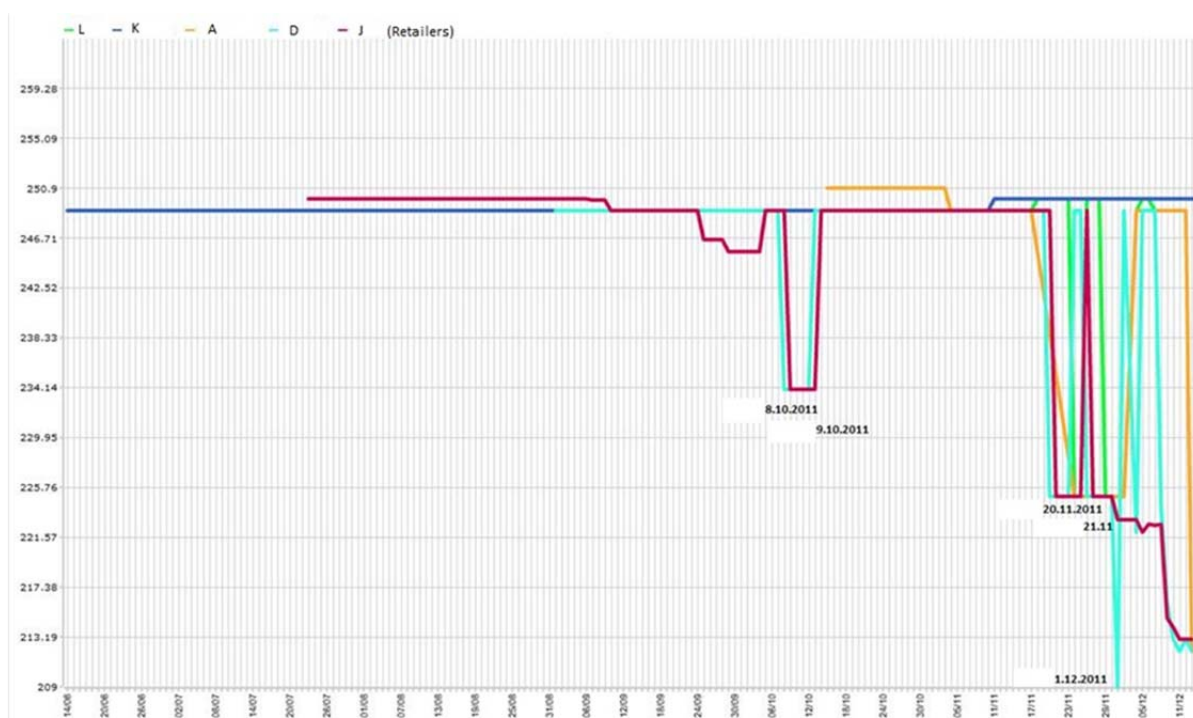
<sup>29</sup> [...].

In French in the document: "*sortir le [...] de chez [retailer B], ça évitera les tensions entre les deux enseignes*". [...].

### 5.3. Online pricing

- (46) By closely monitoring the resale prices of its retailers and intervening with lowest-pricing retailers to get their prices increased, Philips France's Consumer Lifestyle business sought to avoid or slow down online price "erosion" across its entire (online) retail network.<sup>30</sup>
- (47) Many retailers typically adjusted the price of products of Philips France's Consumer Lifestyle business when competing retailers decreased their prices. This is confirmed by Diagram 1 on online price adjustments, circulated internally within the Philips France's Consumer Lifestyle business, indicating the impact on retailer J's prices of retailer D, one of the price mavericks of products of Philips France's Consumer Lifestyle business:<sup>31</sup>

Diagram 1 – Online price adjustments



## 6. LEGAL ASSESSMENT

- (48) Article 101(1) of the Treaty prohibits, as incompatible with the internal market, agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the internal market, unless they meet the conditions for an exemption pursuant to Article 101(3) of the Treaty.

### 6.1. Agreements and concerted practices

#### 6.1.1. Principles

- (49) Article 101(1) of the Treaty prohibits agreements between undertakings, decisions by associations of undertakings and concerted practices.

<sup>30</sup> See for instance, [...]; [...].

<sup>31</sup> [...].

(50) For the purposes of Article 101(1) of the Treaty, in order for there to be an agreement between undertakings, it is sufficient that at least two undertakings have expressed their joint intention to conduct themselves on the market in a specific way.<sup>32</sup> Although Article 101(1) draws a distinction between the concept of concerted practices and the concept of agreements between undertakings, the object is to bring within the prohibition established by that Article a form of co-ordination between undertakings by which, without having reached the stage where an agreement properly so-called has been concluded, they knowingly substitute practical co-operation between them for the risks of competition.<sup>33</sup>

#### 6.1.2. *Application to this case*

(51) The conduct described in Section 5 constitutes one or more agreements and/or concerted practices within the meaning of Article 101(1) of the Treaty. It presents all the characteristics of agreements and/or concerted practices entered into between Philips France and a number of independent retailers<sup>34</sup>.

(52) Via that conduct, Philips France's Consumer Lifestyle business and its retailers expressed their joint intention to act on the market in such a way as to limit resale price competition.

### 6.2. **Single and continuous infringement**

#### 6.2.1. *Principles*

(53) An infringement of Article 101 of the Treaty may consist not only in an isolated act but also in a series of acts or a course of conduct, even if one or more aspects of that series of acts or course of conduct could also, in itself and taken in isolation, constitute an infringement of that Article. Accordingly, if the different actions form part of an "overall plan", because their identical object distorts competition within the internal market, the Commission is entitled to impute responsibility for those actions on the basis of participation in the infringement considered as a whole.<sup>35</sup>

#### 6.2.2. *Application to this case*

(54) The Commission concludes that the conduct described in section 5 constitutes a single and continuous infringement.

(55) The agreements or concerted practices described in Section 5 were all in pursuit of an identical anti-competitive objective, namely to achieve an increase in the resale price of products of Philips France's Consumer Lifestyle business.

(56) The evidence demonstrates that such resale price maintenance formed part of an overall business strategy implemented by Philips France's Consumer Lifestyle business aimed at increasing the resale price of products above the price level that the retailers set independently. Beyond that immediate purpose, the broader objective of the continuous price monitoring and resale price maintenance by Philips France's

---

<sup>32</sup> Judgement of 11 January 1990, *Sandoz Prodotti Farmaceutici v Commission*, C-277/87, EU:C:1990:6, paragraph 13; Judgement of 26 October 2000, *Bayer v Commission*, T-41/96, EU:T:2000:242, paragraphs 67 and 173.

<sup>33</sup> Judgement of 14 July 1972, *ICI v Commission*, 48/69, EU:C:1972:70, paragraph 64; Judgement of 4 June 2009, *T-Mobile Netherlands and Others*, C-8/08, EU:C:2009:343, paragraph 26.

<sup>34</sup> See for instance [...]; [...]; [...]; [...]; [...].

<sup>35</sup> Judgement of 7 January 2004, *Aalborg and others v Commission*, Joined Cases C-204/00 P, C-205/00 P, C-211/00 P, C-217/00 P and C-219/00 P, EU:C:2004:6, paragraph 258; Judgement of 21 September 2006, *Technische Unie v Commission*, C-113/04 P, EU:C:2006:593, paragraph 178.

Consumer Lifestyle business was to avoid the possibility that, by (automatically) adjusting to the prices of the lowest-pricing retailers, market prices of other retailers would also (automatically) fall, generating a wider price decrease in the market.<sup>36</sup>

- (57) The existence of a single and continuous infringement is further supported by the fact that the conduct of Philips France's Consumer Lifestyle business followed the same pattern throughout the relevant period, the individuals involved were essentially the same and there was a continuity and similarity of method.
- (58) Such an overall plan is also confirmed by Philips' acknowledgement that [...] there had been a recurring pattern of conduct which violated Philips' General Business Principles and which amounted to, or resulted in, resale price maintenance.<sup>37</sup>

### **6.3. Restriction of competition**

#### *6.3.1. Principles*

- (59) To come within the prohibition laid down in Article 101(1) of the Treaty, an agreement, a decision by an association of undertakings or a concerted practice must have as its object or effect the prevention, restriction or distortion of competition in the internal market.
- (60) Certain types of coordination between undertakings reveal a sufficient degree of harm to competition that it may be found that there is no need to examine their effects.<sup>38</sup> That case-law arises from the fact that certain types of coordination between undertakings can be regarded, by their very nature, as being harmful to the proper functioning of normal competition.<sup>39</sup>
- (61) Consequently, certain collusive behaviour, such as resale price maintenance,<sup>40</sup> may be considered so likely to have negative effects, in particular on the price, quantity or quality of the goods and services, that it can be considered redundant, for the purposes of applying Article 101(1) of the Treaty, to prove that it has actual effects on the market.<sup>41</sup>

#### *6.3.2. Application to this case*

- (62) The Commission concludes that, through the conduct described in Section 5, Philips France's Consumer Lifestyle business restricted the ability of its retailers to determine their resale prices independently.

---

<sup>36</sup> See section 5.3 above on online pricing.

<sup>37</sup> [...].

<sup>38</sup> Judgement of 11 September 2014, *CB v Commission*, C-67/13 P, EU:C:2014:2204, paragraph 49; Judgement of 19 March 2015, *Dole Food and Dole Fresh Fruit Europe v Commission*, C-286/13 P, EU:C:2015:184, paragraph 113.

<sup>39</sup> Judgement of 11 September 2014, *CB v Commission*, C-67/13 P, EU:C:2014:2204, paragraph 50; Judgement of 19 March 2015, *Dole Food and Dole Fresh Fruit Europe v Commission*, C-286/13 P, EU:C:2015:184, paragraph 114.

<sup>40</sup> Judgement of 3 July 1985, *Binon v AMP*, 243/83, EU:C:1985:284, paragraph 44; Judgement of 1 October 1987, *VVR v Sociale Dienst van de Plaatselijke en Gewestelijke Overheidsdiensten*, 311/8, EU:C:1987:418, paragraph 17; Judgement of 19 April 1988, *SPRL Louis Erauw-Jacquery v La Hesbignonne SC*, 27/87, EU:C:1988:183, paragraph 15.

<sup>41</sup> Judgement of 11 September 2014, *CB v Commission*, C-67/13 P, EU:C:2014:2204, paragraph 51; Judgement of 19 March 2015, *Dole Food and Dole Fresh Fruit Europe v Commission*, C-286/13 P, EU:C:2015:184, paragraph 114.

- (63) Such conduct, by its very nature, restricts competition within the meaning of Article 101(1) of the Treaty.<sup>42</sup>
- (64) Price monitoring and adjustment software programmes multiply the impact of price interventions. Consequently, by closely monitoring the resale prices of its retailers and intervening with lowest-pricing retailers to get their prices increased, Philips France's Consumer Lifestyle business could avoid online price "erosion" across, potentially, its entire (online) retail network.

#### **6.4. Effect on trade between Member States**

##### *6.4.1. Principles*

- (65) Article 101(1) of the Treaty is aimed at agreements and concerted practices which might harm the attainment of an internal market between the Member States, whether by partitioning national markets or by affecting the structure of competition within the internal market.<sup>43</sup>

##### *6.4.2. Application to this case*

- (66) The Commission concludes that the conduct described in Section 5 was capable of affecting trade between Member States.
- (67) During the relevant period, retailers of Philips France's Consumer Lifestyle business were selling its products to customers in various Member States.
- (68) This is confirmed by retailer A, which although based in France, sold and shipped products to various Member States.<sup>44</sup>

#### **6.5. Non-applicability of Article 101(3) of the Treaty**

##### *6.5.1. Principles*

- (69) Pursuant to Article 4(a) of the Vertical Block Exemption Regulation ("VBER"),<sup>45</sup> the exemption provided for by the VBER does not apply to vertical agreements which, directly or indirectly, in isolation or in combination with other factors under the control of the parties, have as their object the restriction of the buyer's ability to determine its sale price, without prejudice to the possibility of the supplier to impose a maximum sale price or recommend a sale price, provided that they do not amount to a fixed or minimum sale price as a result of pressure from, or incentives offered by, any of the parties.
- (70) Moreover, Article 101(1) of the Treaty may be declared inapplicable pursuant to Article 101(3) of the Treaty where an agreement or concerted practice contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and which does not (a) impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objects; and (b) afford such undertakings

---

<sup>42</sup> See case-law referred to in footnotes 40 and 41 above.

<sup>43</sup> Judgement of 15 March 2000, a.o. *Cimenteries CBR v Commission*, T-25/95, EU:T:2000:77, paragraph 3930; Judgement of 28 April 1998, *Javico v Yves Saint Laurent Parfums*, C-306/96, EU:C:1998:173, paragraphs 16 and 17.

<sup>44</sup> [...].

<sup>45</sup> Commission Regulation (EU) No 330/2010 of 20 April 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices, OJ L 102, 23.4.2010, p. 1.

the possibility of eliminating competition in respect of a substantial part of the products in question.

#### 6.5.2. *Application to this case*

- (71) The Commission concludes that the conduct of Philips France's Consumer Lifestyle business was neither exempted under the VBER nor met the conditions for exemption provided for in Article 101(3) of the Treaty.
- (72) The conduct of Philips France's Consumer Lifestyle business was not exempted under the VBER because that conduct had as its object to restrict the ability of retailers of Philips France's Consumer Lifestyle business to determine their sale price.
- (73) The conduct of Philips France's Consumer Lifestyle business also did not meet the conditions for exemption provided for in Article 101(3) of the Treaty. In particular, there are no indications that the conduct of Philips France's Consumer Lifestyle business was indispensable to alleviate the repercussions of free-riding between online and offline sales channels.<sup>46</sup>

### 7. DURATION OF THE INFRINGEMENT

- (74) The infringement started on 21 November 2011 and ended on 20 November 2013.<sup>47</sup>

### 8. LIABILITY

#### 8.1. Principles

- (75) Union competition law refers to the activities of undertakings and the concept of an undertaking covers any entity engaged in an economic activity, irrespective of its legal status and the way in which it is financed.<sup>48</sup>
- (76) When an entity infringes Union competition rules, it falls, according to the principle of personal responsibility, to that entity to answer for that infringement. However, the infringement must be imputed unequivocally to a legal person on whom fines may be imposed, and the statement of objections must be addressed to that person. Where several legal persons may be held liable for an infringement committed by one and the same undertaking, they must be regarded as jointly and severally liable for the infringement.
- (77) The conduct of a subsidiary may be imputed to the parent company, even if the parent company does not participate directly in the infringement, where the parent company and the subsidiary form a "single economic unit" and therefore form a single "undertaking" for the purposes of Union competition law. In particular this may be the case where a subsidiary, despite having a separate legal personality, does not decide independently upon its own conduct on the market, but carries out, in all material respects, the instructions given to it by the parent company, regard being had in particular to the economic, organisational and legal links between those two legal entities.<sup>49</sup>

---

<sup>46</sup> See Guidelines on vertical restraints, OJ C 130, 19.5.2010, p.1., paragraph 225.

<sup>47</sup> See recitals (30) and (46) above.

<sup>48</sup> Judgement of 13 June 2013, *Versalis v Commission*, C-511/11 P, EU:C:2013:386, paragraph 51.

<sup>49</sup> Judgement of 29 September 2011, *Elf Aquitaine v Commission*, C-521/09 P, EU:C:2011:620, paragraph 54.



- (78) In the specific case in which a parent holds all or almost all of the capital in a subsidiary that has committed an infringement of Union competition rules, there is a rebuttable presumption that that parent company in fact exercises a decisive influence over its subsidiary. In such a situation, it is sufficient for the Commission to prove that all or almost all of the capital in the subsidiary is held by the parent company in order to take the view that that presumption applies.<sup>50</sup>

## **8.2. Application to this case**

- (79) The Commission concludes that having regard to the body of evidence and the facts described in Section 5, and to Philips' clear and unequivocal acknowledgement of the facts and the legal qualification thereof, liability for the infringement should be imputed to the following legal entities:

- (a) Philips France for its direct participation in the infringement;
- (b) Koninklijke Philips N.V. as jointly and severally liable with Philips France for the single and continuous infringement as the parent company of its indirectly wholly-owned subsidiary Philips France.<sup>51</sup>

## **9. REMEDIES AND FINES**

### **9.1. Remedies under Article 7 of Regulation (EC) No 1/2003**

- (80) Where the Commission finds that there is an infringement of Article 101 of the Treaty, it may by decision require the undertaking concerned to bring such infringement to an end in accordance with Article 7 of Regulation (EC) No 1/2003.
- (81) The Commission concludes that it is appropriate to require Philips to bring the infringement to an end (if it has not already done so) and to refrain from any measure that has the same or a similar object or effect.

### **9.2. Fines under Article 23(2) of Regulation (EC) No 1/2003 - principles**

- (82) Under Article 23(2) of Regulation (EC) No 1/2003, the Commission may by decision impose upon undertakings fines where, either intentionally or negligently, they infringe Article 101 of the Treaty.<sup>52</sup> For each undertaking participating in the infringement, the fine cannot exceed 10% of its total turnover in the preceding business year.
- (83) Pursuant to Article 23(3) of Regulation (EC) No 1/2003, the Commission must, in fixing the amount of fine, have regard both to the gravity and to the duration of the infringement. In setting the fines to be imposed, the Commission will also refer to

---

<sup>50</sup> Judgement of 10 September 2009, *Akzo Nobel and others v Commission*, C-97/08 P, EU:C:2009:536, paragraph 60.

<sup>51</sup> During the relevant period, Koninklijke Philips N.V. indirectly held 100% of the shares in Philips France: (i) Koninklijke Philips N.V. held 41.22% of the shares in Compagnie Française Philips S.A.S.; (ii) Compagnie Française Philips S.A.S. held 100% of the shares in Philips France SAS; and (iii) Philips Radio B.V. and Dordtse Metaalindustrie "Johan de Witt BV" each held 29.39% of the shares in Compagnie Française Philips SAS; and (iv) Koninklijke Philips N.V. held 100% of the shares in Philips Radio B.V. and Dordtse Metaalindustrie "Johan de Witt BV".

<sup>52</sup> Under Article 5 of Council Regulation (EC) No 2894/94 of 28 November 1994 concerning arrangements of implementing the Agreement on the European Economic Area "the Community rules giving effect to the principles set out in Articles 85 and 86 [now Articles 101 and 102 of the Treaty] of the EC Treaty [...] shall apply *mutatis mutandis*." (OJ L 305, 30.11.1994, page 6).

the principles laid down in its Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation (EC) No 1/2003<sup>53</sup> ("Guidelines on fines").

- (84) The basic amount of the fine is to be set by reference to the value of sales to which the infringement directly or indirectly relates in the relevant geographic area within the EEA.<sup>54</sup> The basic amount consists of a percentage of the value of sales of up to a maximum 30%<sup>55</sup>, depending on the degree of gravity of the infringement, multiplied by the number of years of the infringement.<sup>56</sup>
- (85) In calculating the value of sales, the Commission normally takes into account the sales made by the undertakings during the last full business year of their participation in the infringement.<sup>57</sup>
- (86) In assessing the gravity of the infringement, the Commission has regard to a number of factors, such as the nature of the infringement, the market shares of the undertaking concerned, the geographic scope of the infringement and whether or not the infringement has been implemented.
- (87) The Commission may take into account circumstances that result in an increase or decrease in the basic amount. It will do so on the basis of an overall assessment which takes account of all the relevant circumstances.<sup>58</sup>
- (88) The Commission pays particular attention to the need to ensure that fines have a sufficiently deterrent effect.<sup>59</sup>

### **9.3. The intentional or negligent nature of the infringement**

- (89) The Commission concludes that, based on the facts described in Section 5, the single and continuous infringement was committed intentionally.

### **9.4. Calculation of the fines**

#### *9.4.1. Value of sales*

- (90) Based on the principles outlined in Section 9.2 and on the information provided by Philips, the Commission takes into account the value of sales of the Philips France's Consumer Lifestyle business in 2012, which is the last full business year of the participation of Philips in the infringement, for the purposes of calculating the fine.
- (91) Accordingly, the Commission takes into account the value of sales of EUR [350 000 000 – 400 000 000].

#### *9.4.2. Gravity*

- (92) Resale price maintenance, by its very nature, restricts competition within the meaning of Article 101(1) of the Treaty. However, vertical agreements and concerted practices such as resale price maintenance are, by their nature, often less damaging to competition than horizontal agreements.<sup>60</sup> Taking account of these factors and in

---

<sup>53</sup> OJ C 210, 1.9.2006, p. 2.

<sup>54</sup> Point 13 of the Guidelines on fines.

<sup>55</sup> Point 21 of the Guidelines on fines.

<sup>56</sup> Point 19 of the Guidelines on fines.

<sup>57</sup> Point 13 of the Guidelines on fines.

<sup>58</sup> Point 27 of the Guidelines on fines.

<sup>59</sup> Point 30 of the Guidelines on fines.

<sup>60</sup> Judgement of 14 March 2013, *Allianz Hungária Biztosító and Others*, C-32/11, EU:C:2013:160, paragraph 43.

light of the specific circumstances of the case, as described in Section 5, the proportion of the values of sales to be taken into account is set at 7%.

9.4.3. *Duration*

(93) The Commission takes into account the duration of the infringement, as set out in Section 7 above.

9.4.4. *Calculation of the basic amount*

(94) Applying the criteria set out above, the basic amount of the fine to be imposed in relation to the single and continuous infringement amounts to EUR [45 000 000 – 55 000 000].

9.4.5. *Aggravating or mitigating factors*

(95) The Commission concludes that there are no aggravating or mitigating circumstances for the single and continuous infringement.

9.4.6. *Application of the 10% turnover limit*

(96) The fine for the infringement does not exceed 10% of Philips' total turnover relating to the business year preceding the date of adoption of this Decision pursuant to Article 23(2) of Regulation (EC) No 1/2003.

9.4.7. *Reduction of the fine in view of cooperation*

(97) In order to reflect that Philips has effectively cooperated with the Commission beyond its legal obligation to do so, the fine that would otherwise have been imposed should, pursuant to point 37 of the Guidelines on fines, be reduced by 40%.

(98) Philips has cooperated with the Commission beyond its legal obligation to do so by: (i) providing additional evidence representing significant added value with respect to the evidence already in the Commission's possession as that evidence strengthened to a large extent the Commission's ability to prove the infringement; (ii) acknowledging the infringement of Article 101 of the Treaty in relation to the conduct; and (iii) waiving certain procedural rights, resulting in administrative efficiencies.

9.4.8. *Conclusion: final amount of the fine*

(99) In conclusion, the final amount of the fine to be imposed for the infringement pursuant to Article 23(2)(a) of Regulation (EC) No 1/2003 for the infringement amounts to EUR 29 828 000.

HAS ADOPTED THIS DECISION:

*Article 1*

Philips France S.A.S. and Koninklijke Philips N.V. infringed Article 101 of the Treaty by participating from 21 November 2011 until 20 November 2013 in a single and continuous infringement aimed at restricting the ability of retailers of Philips France's Consumer Lifestyle business to determine their resale prices independently.

*Article 2*

For the infringement referred to in Article 1, a fine of EUR 29 828 000 is imposed on Philips France S.A.S. and Koninklijke Philips N.V., jointly and severally.

The fine shall be credited, in euros, within a period of three months of the date of notification of this Decision, to the following bank account held in the name of the European Commission:

BANQUE ET CAISSE D'EPARGNE DE L'ETAT  
1-2, Place de Metz  
L-1930 Luxembourg

IBAN: LU02 0019 3155 9887 1000  
BIC: BCEELULL  
Ref.: European Commission – BUFI/AT.40181

After the expiry of that period, interest shall automatically be payable at the interest rate applied by the European Central Bank to its main refinancing operations on the first day of the month in which this Decision is adopted, plus 3.5 percentage points.

Where an undertaking referred to in Article 1 lodges an appeal, that undertaking shall cover the fine by the due date, either by providing an acceptable financial guarantee or by making a provisional payment of the fine in accordance with Article 90 of Commission Delegated Regulation (EU) No 1268/2012.<sup>61</sup>

#### *Article 3*

Philips France S.A.S. and Koninklijke Philips N.V. shall immediately bring to an end the infringement referred to in Article 1 insofar as they have not already done so.

They shall refrain from repeating any act or conduct described in Article 1, and from any act or conduct having the same or similar object or effect.

#### *Article 4*

This Decision is addressed to

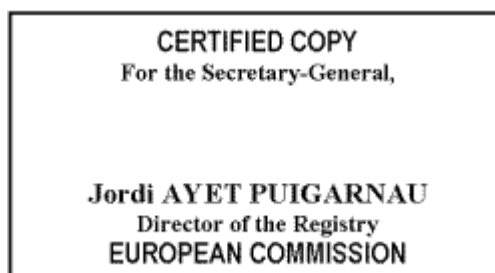
Philips France S.A.S., Rue de Verdun 33, 92150 Suresnes, France,  
Koninklijke Philips N.V., Amstelplein 2, 1096 BC Amsterdam, The Netherlands.

This Decision shall be enforceable pursuant to Article 299 of the Treaty.

Done at Brussels, 24.7.2018

*For the Commission*

*Margrethe VESTAGER*  
*Member of the Commission*



---

<sup>61</sup> OJ L 362, 31.12.2012, p. 1.