Commission fines companies for colluding on raw tobacco prices in Spain

Carlota REYNERS FONTANA, Directorate-General Competition, unit B-2
Massimo DE LUCA, Directorate-General Competition, unit B-2
Rafael MORILLAS, Directorate-General Competition, unit F-1

On 20th October 2004, the European Commission adopted a prohibition decision imposing a total fine of €20 million to five companies active in the raw tobacco processing market for colluding on the prices paid to and the quantities of tobacco bought from Spanish producers of raw tobacco. The Commission also imposed a symbolic fine to the producers’ representatives for agreeing minimum prices and price brackets. Following an investigation which started in 2001, the Commission established that the infringements lasted from 1996 to 2001.

Regulatory framework

The production of raw tobacco is subject to both Community and national legislation.

The common organisation of the market in raw tobacco (‘CMO in raw tobacco’) requires each producer or producers’ group and each processor to enter into ‘cultivation contracts’ at the beginning of each year’s campaign. These contracts must include the prices or price brackets for each quality grade of the tobacco as agreed by the parties to the contract. Such ‘contract prices’ constitute the framework to be used at delivery of tobacco to fix its final price.

In Spain, a Law of 1982 and a Royal Decree of 1985 discipline the bargaining and the conclusion of ‘standard’ cultivation contracts between producers’ representatives and processors. This regulatory framework (to include the action taken by the Agriculture Ministry thereafter) at least encouraged collective negotiations of ‘contract prices’ in the form of both minimum prices and price brackets between producers’ representatives and processors. Since 2000, a new law clarifies that parties to the cultivation contract must agree contract prices individually.

Summary of the infringements

The processors’ cartel: The four Spanish processors of raw tobacco (Compañía española de tabaco en rama SA (Cetarsa), Agroexpansión SA, World Wide Tobacco España SA (WWTE) and Tabacos españoles SL (TAES)) as well as the Italian processor Deltafina SpA, agreed, either directly or, from 1999 onwards, through their association ANETAB, the (maximum) average price they would pay to producers at delivery for each variety of tobacco and the quantities of tobacco that each of them could buy. By so doing, the processors aimed at avoiding that final transaction prices at delivery may be pushed above the level they would consider acceptable. Since 1998, they put in place a sophisticated monitoring and enforcement mechanism made of regular exchanges of information about prices and quantities throughout the campaign and transfers of tobacco at the end of it from processors that would purchase more tobacco than agreed to those that would purchase less. From 1999 to 2001, processors also agreed between themselves price brackets for each quality grade of the tobacco and minimum average prices per producer and per producers group for each tobacco variety (the ‘contract prices’) which they would then jointly offer to producer representatives during the negotiation of the annual standard cultivation contract.

The producers’ cartel: The three agricultural unions representing the tobacco producers in Spain (ASAJA, UPA and COAG) as well as the cooperatives confederation CCAE agreed between themselves on the ‘contract prices’ (see above) which they would then jointly propose to processors during the negotiation of the standard cultivation contract. By their very nature, minimum average prices would still be open to increase following negotiation at delivery.

(1) The CMO of raw tobacco was established in 1970 and replaced in 1992 by a new Regulation which was substantially amended in 1998. A complete overhaul of the tobacco CMO was adopted in April 2004 to take effect from 2006.

(2) Asociación agraria de jóvenes agricultores (ASAJA), Unión de pequeños agricultores (UPA), Coordinadora de organizaciones de agricultores y ganaderos (COAG) and Confederación de cooperativas agrarias de España (CCAE).
In the decision, the Commission finds that these practices constitute two separate (single and continuous) infringements of Article 81 of the Treaty.

The practices cannot be exempted under Council Regulation No 26 of 4 April 1962, which provides for certain derogations from competition rules in respect of the production of and trade in agricultural products since they cannot be regarded as ‘necessary’ for the attainment of the objectives of the Common Agricultural Policy. In fact, the 1992 reform of the CMO in raw tobacco was precisely designed to enhance price competition.

The decision also concludes that neither the Spanish regulatory framework nor the Ministerial practice required the processors to agree on maximum average delivery prices for raw tobacco or to share out quantities of tobacco to be bought by each processor. Nor did such regulatory framework require processors and producers to agree collectively on ‘contract prices’ or otherwise remove all possibility of competitive behaviour on their part. Consequently, the conducts at issue are caught by Article 81 of the Treaty.

**Calculation of the fines**

The Commission characterised the conducts in question as ‘very serious’ infringements of the competition rules. However, it also took account of the relatively limited size of the market (approx. €25 million) when setting the starting amount of the fines (the highest starting amount was set at €8 million).

Fines were adjusted in consideration of the contribution to the illegal conduct of, and the market position enjoyed by, each party involved. Bearing this in mind, the decision concluded that Deltafina should receive the highest starting amount for its prominent market position. Its position was further aggravated by the fact that it also acted as the cartel leader. The contribution to the illegal conduct by the Spanish processors was broadly taken as being similar. The starting amounts however took into account the different size and the market shares of each processor involved. Cetarsa is the leading Spanish first processor (67% market share during the last year of the infringement) and received the highest starting amount of the fine. Agroexpansión and WWTE had both market shares of approx. 15% each and received the same starting amount of the fine. Taes, by far the smallest processor involved, received the lowest starting amount of the fine. Further adjustment was made in the case of WWTE and Agroexpansión to reflect their belonging to multinational groups of considerable economic and financial strength.

The decision concludes that only a symbolic fine of €1,000 to each producers' representative is appropriate in consideration of the fact that the national regulatory framework and the involvement of the Agriculture Ministry engendered a considerable degree of uncertainty as to the legality of their conduct. Such regulatory framework was also considered in respect of the processors but only as a mitigating circumstance as their conduct exceeded by far the scope of such framework.

The 10% worldwide turnover limit mentioned in Article 15(2) of Regulation 17 was applied to Cetarsa to limit the fine imposed on it.

The Commission notice on the non-imposition of fines in cartel cases of 1996 was applicable in this case and in particular section D since all the processors came forward only after the Commission's inspections. Reductions of the fines were granted to all in accordance with the value of their individual cooperation.

The decision finally finds that the parent companies of WWTE (Standard Commercial Corporation, Standard Commercial Tobacco Co. Inc. and Trans-Continental Leaf Tobacco Corporation Ltd.) and of Agroexpansión (Dimon Inc.) exercised decisive influence on their subsidiaries during the period considered and are therefore found to be jointly and severally liable for the fines imposed on their subsidiaries.