

The Belgian Competition Council finds a non-profit association guilty of price fixing but does not impose any fine (AIAB)

Belgique, Ententes, Resale price maintenance, Association of undertakings, Fixed price system, Professional association, Other services

1. Parties The present case arose from a complaint lodged by Review Applications of Communication ("RAC"), a firm active in communications applications before the Belgian Competition Council ("the Council"), against a non-profit association, the Association of Interior Architects of Belgium ("AIAB") which boasts 180 members, mostly active in the Flemish region of Belgium.

2. Facts In its complaint, RAC claimed that AIAB's "deontological standard" for the fees of interior architects entailed an unlawful horizontal price-fixing agreement, in violation of article 2 of the law on the protection of economic competition ("LPEC"), which is the national equivalent to article 81 EC.

In a nutshell, the AIAB's "deontological standard" is a price-calculation proxy, that calculates the fees to be charged for interior design services on the basis of the category of work involved (e.g. restauration of office buildings, of monuments, etc.). Whilst, in principle, the "deontological standard" was only binding on the members of the AIAB, it was in practice pervasively used by other interior architects, which were not member of the AIAB (and, in particular, by the interior architect hired by RAC).

In 2005, the AIAB decided to terminate the "deontological standard". Whilst these changes were announced to AIAB's members RAC claims nonetheless that the practice was subsequently maintained, in practice.

3. The decision

The main findings of the Council are twofold.

First, the Council held that EC competition law was not applicable in this case. Since the impugned conduct did not cover the entire country, but was merely regional in scope, it could not affect trade between Member States. In support of this conclusion, the Council noted that the membership of the association was not compulsory. Hence, under the most optimistic assumption, the scheme could only cover a part of interior architects services in Flanders. In addition, AIAB only counted a limited number of members, as a result of what there was still scope for effective competition on the national market.

Second, regarding the substantive assessment of the conduct at stake, the Council encountered no difficulty in reaching a determination of unlawful price-fixing under Article 2 LPCE. The Council considered that the "deontological standard"'s purpose was to harmonize, or at least "influence" the pricing practices (and in particular, the calculation of prices) of its members on the market. AIAB's members were indeed required to make use of the "deontological standard". These findings clearly demonstrated the intention of AIAB to influence its members' price policies.

4. Comment It is not the first time professional associations are involved in antitrust infringement proceedings in Belgium

and, in the present case, the reasoning of the Council comes as no surprise [1].

The most striking feature of the Council's decision lies, perhaps, in the cumulative effects of these cases which indicate that whilst the Council is adamant on eradicating price-fixing activities of professional associations, it is meanwhile remarkably reluctant to sanction them. In support of this "no-fault" approach, the Council relied this time on the fact that AIAB's price-fixing practice had started in 1992 and ended in April 2005 when, following the European Commission's Decision to sanction a similar deontological standard used by the Belgian association of architects, AIAB amended its deontological standard with a view to delete all references to the honorary wages [2].

Accordingly, the Council decided to apply the old - and ineffective - Belgian competition law, which did not provide for sanctions against anticompetitive behaviour. The Council dismissed RAC's allegations that the deontological standard was still applied in practice. The only obligation imposed by the Council was the publication of the decision on AIAB's website and a link to the integral text of the case for a period of six months. AIAB was also ordered to notify the Council's decision to its members.

[1] In this Review, see, for recent examples, Nicolas Petit and Robbe Verbeke, *The Belgian Competition Council bans a price-coordination mechanism in the retail bakery markets (VEBIC)*, e-Competitions, n° 21559 and Alexandre Defossez and Anke De Boeck, *The Belgian Competition Council holds unlawful minimum tariffs imposed to its members by a professional association on both national and EU provisions but without imposing any fine (Veterinaries Association)*, e-Competitions, n° 15040

[2] Commission Decision of 24 June 2004, relating to a proceeding under Article 81 of the EC Treaty, Case COMP/38.549 - Barème d'honoraires de l'Ordre des Architectes belges (Orde van Architecten).

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