

Sweet and sour deal for vinegar producers: first cartel settlement by ACM

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The Dutch competition regulator ACM for the first time applied a procedure similar to the European Commission's cartel settlement regime: it lowered by 10% cartel fines imposed on two natural-vinegar producers in return for an acknowledgement of their involvement in and their liability for the cartel. The vinegar producers' employees made use of the same procedure to have their personal fines reduced. This is a new possibility that companies and their employees should take into account when considering their defence options in cartel investigations.

The ACM imposed a fine of EUR 1.8 million on natural-vinegar producer Burg for participating in a cartel from 2001 until 2012. The EUR 4.6 million fine of Kühne, the other cartel participant, was reversed because it was the first to apply for leniency. All fines were reduced by 10% in return for the producers cooperating with "a simplified adoption of the statement of objections" by acknowledging their participation in both the cartel and their liability for it. Similar to the European Commission's settlement procedure, the producers submitted a written declaration containing:

- an acknowledgement of the main facts and circumstances and their legal classification as laid down in the ACM's decision
- an acknowledgement in clear and unequivocal terms of their liability for the infringement
- a confirmation that they agreed with the ACM's fining method and the resulting fine
- a confirmation that they had given sufficient opportunity to make their views known to the ACM and had had ample opportunity to access the file.

The ACM can impose fines of up to EUR 450,000 on individuals who have instructed or have exercised de facto leadership in regard to anti-competitive conduct. The two individuals employed by Burg received fines of EUR 16,000 and EUR 54,000. According to the ACM, the individuals worked at different levels within the organisation and oversaw the implementation of the cartel arrangements. Both employees submitted a written declaration similar to that of the vinegar producers to obtain a 10% discount on their fines. The fines imposed on three of Kühne's employees for their cartel involvement were reduced to EUR 0 as a result of the leniency application.

This is the first time the ACM has applied a 10% fine reduction for acknowledging a cartel infringement. It is a new possibility that companies and their employees should take into account when considering their defence options in cartel investigations.
