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Competition authorities have a new “top model”

ON JULY 17, 2017 JULY 17, 2017 / BY
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Until recently, the fashion industry had never been an obvious sector of focus for competition authorities. However, in the past few months, national competition authorities from Italy, the United Kingdom and France have been particularly attentive to this industry, initiating

investigations for competition law infringements which culminated in the imposition of fines on several entities, reminding us all that competition law applies to all sectors of the economy.

In November 2016, the Italian *Autorità Garante della Concorrenza e del Mercato* concluded that eight major modelling agencies, representing 80% of Italy’s market share, including Elite Model Management, Major Model Management and the association of the fashion industry – Assem, had participated in a cartel during the relevant period from May 2007 to March 2015. The activity occurred in the context of negotiations with customers, including fashion houses, luxury car dealers, consumer goods brands and advertising companies on services ranging from runway shows to photoshoots for catalogues and promotional events.

The investigation was triggered by a leniency application put forward by IMG Italy, S.r.L on 18th September 2014. Following a thorough investigation, the Italian Competition Authority applied a total fine of €4.5 million on the investigated entities[i]. The evidence provided by IMG was considered to be decisive for the investigation. In particular, IMG provided useful elements for understanding the nature of the cartel, the purposes it pursued, and the ways in which it was achieved, and therefore was granted total immunity by the *Autorità*.

In the UK, the Competition and Markets Authority (CMA) investigated the Association of Model Agents (AMA) and well-known modelling agencies – FM Models, Models 1, Premier, Storm and Viva (all of them members of AMA’s Council during the relevant period) – for the exchange of confidential and commercially sensitive information and price collusion when negotiating with luxury brands, online sales channels and consumer brands.

The alleged anti-competitive conduct occurred in the context of negotiations with customers, including well-known high-street chains, online fashion retailers and consumer goods brands on topics ranging from magazine shoots to advertising campaigns. It was found that the agencies fixed prices for model’s services and agreed on pricing strategies among themselves, as well as on fixing minimum prices or a common approach to pricing.

AMA and AMA’s Council played a central role in these events, being used as a vehicle by the Parties to help meet their aim of coordinating prices and commercial strategies. The Association encouraged its members to resist lower prices and regularly issued memos – the “AMA Alerts” – urging its members to resist prices offered by clients which AMA considered to be too low. AMA would use these memos to comment on the fees and other terms and conditions being offered by a particular customer for a modelling assignment. The Model Agency

Parties actively participated in this procedure, helping with the drafting of the AMA Alerts, discussing its content by e-mail or during meetings and even suggesting the inclusion of key information.

Although the CMA found that AMA had been circulating memos to its members commenting on fees and other contractual terms and conditions since 2001, it decided to take enforcement action only in respect to the most recent period – from April 2013 until March 2015 – as it corresponded to the period in which the CMA had the greatest volume of evidence.

In assessing the scope of the relevant product market, the CMA found that these practices did not apply to the so-called “top models”, as they tended to be subject to significantly lower agency fees than other models, due to their higher *bargaining power*.

On December 2016 the UK Competition and Markets Authority applied a total fine of £1.5 million pounds on five modelling agencies – Premier Storm, Viva, Models 1, and FM Models[[ii](#)].

In France, prestigious modelling agencies such as IMG, Elite Model Management, Next Model Management, and Marilyn Agency among others, were accused of price collusion[[iii](#)]. The investigation was triggered by a complaint stemming from the directorate of the French Ministry of the Economy for the protection of the consumers and competition, who found pricing schedules on websites of fashion-modelling trade unions.

After initiating an investigation, the *Autorité de la Concurrence* concluded that 37 modeling agencies and Synam (*Syndicat National des Agences de Mannequins* – the National Union of Model Agencies) had colluded to fix prices over a period of 10 years.

Synam had a central role in these practices. The *Syndicat* was accused of developing and distributing price lists in order to direct the pricing and commercial policy of modelling agencies (with little or no margin for negotiations) for photo shoots, advertising campaigns and runway shows. In September 2016, 35 of the 37 investigated entities were fined between €1000 and €600,000.

Modelling agencies Smith & Smith Characters, Marilyn Agency and Metropolitan Models appealed to the *Cour d'Appel de Paris*. In its decision dated 6 July 2017, the Court reduced Marilyn Agency's fine from €600,000 to €300,000, and Smith & Smith Characters' fine from €20,000 to €15,000, but it rejected Metropolitan Model's case[[iv](#)].

In all the above cases, Competition Authorities' found classic hub and spoke cartel infringements in which model agencies used their respective trade associations as vehicles to exchange commercially sensitive information and to fix prices.

Furthermore, under Directive 2014/104/EU on antitrust damages actions, the victims of these cartels are entitled to file damages claims against the infringing parties for the harm suffered as a result of the infringement of competition law. This Directive has already been transposed into several Member States legal systems', including Italy, the UK and France (according to European Commission's website, on 14 June 2017, Austria, Belgium, Denmark, Estonia, Finland, France, Germany, Hungary, Ireland, Italy, Lithuania, Luxembourg, the Netherlands, Poland, Romania, Slovakia, Slovenia, Spain, Sweden and the United Kingdom had transposed the Directive).

It was made public that the Italian, UK and French authorities have communicated between themselves regarding these particular investigations. It is paramount to emphasize that competition authorities of the European Union's Member States regularly communicate, interact and collaborate with each other with the main objective of consistently applying competition law within the European Union. Having said that, it is safe to assume that any such communication may arise the interest of the authorities of other Member States in the fashion industry, and consequently result in further investigations into the sector.

[i] Decision of the Italian Competition Authority:

http://www.agcm.it/component/joomdoc/allegati-news/I789_ch_istr_sanz.pdf/download.html

(http://www.agcm.it/component/joomdoc/allegati-news/I789_ch_istr_sanz.pdf/download.html)

[ii] CMA's press release:

<https://www.gov.uk/government/news/model-agencies-fined-15-million-for-price-collusion>

(<https://www.gov.uk/government/news/model-agencies-fined-15-million-for-price-collusion>); CMA's decision:

<https://assets.publishing.service.gov.uk/media/58d8eb1840f0b606e700030/modelling-sector-infringement-decision.pdf>

(<https://assets.publishing.service.gov.uk/media/58d8eb1840f0b606e700030/modelling-sector-infringement-decision.pdf>)

[iii] French Competition Authority's decision:

<http://www.autoritedelaconurrence.fr/user/avisdec.php?numero=16D20>

(<http://www.autoritedelaconurrence.fr/user/avisdec.php?numero=16D20>)

[iv] Decision from Paris Court of Appeal:

http://www.autoritedelaconurrence.fr/doc/ca_16d20.pdf

(http://www.autoritedelaconurrence.fr/doc/ca_16d20.pdf)

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