



St. Gallen, 31 October 2019

Press Release

regarding the decisions of 30 October 2019 on the matters B-3938/2013, B-3954/2013, B-3962/2013, B-3975/2013, B-4011/2013, B-4012/2013, B-4014/2013, B-4019/2013 and B-4669/2013

French-language book marketers-distributors sanctioned

The Federal Administrative Court confirms the sanctions handed down by the Competition Commission to five marketers-distributors of books written in French that operate in Switzerland, due to impediments to parallel imports. It reduces the sanctions handed down regarding four of them. The sanctions amount to approximately CHF 14.3 million.

The Federal Administrative Court (FAC) concludes that nine companies reached agreements with their sales partners with the effect of preventing passive sales from other approved suppliers and thus eliminating competition on the market for the supply of books written in French.

Workings of the market

On the market for books written in French, the work of publishers is focused first and foremost on book production. Marketers (in French “diffuseur”) then manage the commercialisation and represent the publishers. Finally, distributors (in French “distributeurs”) are essentially responsible for order entries, processing deliveries and managing returns. Some marketers have incorporated distribution; others subcontract it to an external distributor.

Swiss marketers-distributors are thus entering into a business relationship with, upstream, publishers and/or marketers-distributors in France and, downstream, Swiss retailers and bookshops. Contracts with the upstream sales partners often include territorial exclusivity agreements, the effect of which is that each book title is generally only marketed in Switzerland by a single marketer-distributor. These exclusivity agreements do not raise any concerns in respect of competition law, as long as ‘passive’ sales – those solicited by Swiss retailers and bookshops from other suppliers abroad – remain possible.

Impediments to parallel imports

Nevertheless, due to agreements made between the nine marketers-distributors concerned and their sales partners, Swiss retailers and bookshops were unable to obtain supplies abroad, in particular in France, between 2005 and 2011. Multiple contractual clauses required, among other things, that sales partners undertake not to permit sales in Switzerland or to take all necessary measures to

ensure that the exclusivity of Swiss marketers-distributors is respected.

Furthermore, during the Competition Commission (Comco)'s investigation, Swiss retailers and bookshops imported practically no books written in French without going through Swiss marketers-distributors, and nearly all of the few attempts to obtain supplies in France failed. Since there was a sufficient difference in price between the French and Swiss markets, it would have been in the interest of Swiss retailers and bookshops to obtain supplies in France. That such procurement was impossible is due to these agreements made between Swiss marketers-distributors and their sales partners. These agreements thus had the effect of prohibiting passive sales.

Illegal character of agreements

As such a prohibition is subject to Art. 5, par. 4 of the Cartel Act, the agreements made by the companies Albert le Grand S.A., Dargaud (Suisse) S.A., Diffulivre S.A., Diffusion Transat SA, Éditions Glénat (Suisse) S.A., Interforum Suisse SA, Les éditions des 5 frontières SA, Les Editions Flammarion S.A. and Servidis SA are presumed to eliminate effective competition. This presumption has not been rebutted. The FAC thus comes to the conclusion that these agreements are illegal and are to be sanctioned. It therefore confirms the Comco's decision on this point.

The FAC, however, reduces the sanctions handed down against the four marketers-distributors. The total sum of the sanctions amounts to approximately CHF 14.3 million.

The FAC held instruction hearings and public debates in certain cases. The judgements gave rise to an internal deliberation on 30 October 2019. The full statements of reasons for the judgements will be sent to the parties and published at a later date. These judgments may then be appealed to the Federal Supreme Court.

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About the Federal Administrative Court

Located in St. Gallen, the Federal Administrative Court (FAC) was established in 2007. With its staff of 355 employees (305.5 FTE) and its 76 judges (68.4 FTE) it is the largest federal court in Switzerland. The Federal Administrative Court has jurisdiction to hear appeals against decisions rendered by Swiss federal authorities. In specific matters, the FAC may grant review on decisions rendered by cantonal authorities. Recourse actions are also reviewed by the Court. The FAC is composed of six divisions. It renders an average of 7,500 judgments every year.