DISTRIBUTION ARRANGEMENTS (STICKERS): THE TOPPS CASE

Subject: Distribution arrangements
Differential pricing
Import restrictions
Parallel imports

Industry: Stickers, cards
(Implications for other industries)

Parties: Topps Europe Ltd (a subsidiary of Topps Company Inc)

Source: Commission Statement IP/03/866, dated 19 June 2003

(Note. This appears to be a classic case of using distribution arrangements to restrict imports and prevent parallel trade between Member States. By requiring its distributors to trace back parallel imports and monitor the final destination of Pokémon products, Topps kept a grip on the import and export market within the European Union and were able to charge unduly high prices in some Member States as compared with others. Distributors who did not comply with this policy were threatened with supply cuts. Topps has two months in which to respond.)

The Commission has decided to open formal proceedings against Topps, a company which produces collectible stickers and cards popular with young children, for impeding cross-border trade in products bearing the image of the Pokémon cartoon characters. In the period investigated by the Commission it was found that the cards, produced under a licence from trade mark owner Nintendo (which is not involved in the present proceedings), were 2.5 times more expensive in Finland than in Portugal. The evidence obtained by the Commission showed that Topps and its distributors put in place an elaborate strategy to prevent imports from low-price to high-price countries, a practice which distorted competition within the European Union's single market at the expense of European households. In the Commission's view, agreements and behaviour designed to prevent cross-border trade have the effect of keeping consumer prices artificially high and constitute a breach of antitrust rules. The Commission said that it had fought such illicit behaviour in the past and would continue to do so vigorously.

This case concerns a series of agreements or concerted practices (or both) put in place by Topps Europe Ltd together with three other European subsidiaries of the Topps Company Inc. of the United States, and several of its distributors in the United Kingdom, Italy, Finland, Germany, France and Spain. The objective was to achieve "a complete ban on exports", as acknowledged by Topps Europe, from low to high-price countries.

Behaviour of this kind, which is detailed in a Statement of Objections sent to five companies of the Topps group, constitutes a hardcore violation of Article 81 of

the EC Treaty and is thought to have taken place for most of the year 2000. The Commission's investigation was triggered by a complaint at the end of that year.

The product concerned is collectible cards and stickers bearing Pokémon figures. (Pokemon started as a game created from the Nintendo Game Boy videogame console in 1996: it is the general name given to the 250 characters – Pikachu and others – which feature in the game and are printed on the cards.) Topps has obtained a licence to use Pokémon for the production of collectibles from trademark owner Nintendo of Japan. Collecting stickers and cards as well as exchanging them is a favourite pastime of young consumers, especially when they bear the picture of their heroes in the / fields of cinema or literature or in the sports area. These products are usually sold in packs of several units at groceries and newsagent's stores and are directed at children. The European market for stickers, cards and other collectible products bought by children was worth more than €600 million in the European Economic Area in 2000, according to estimates by the Commission.

The craze for Pokémon cards reached European playgrounds in the autumn of 1999. In 2000 the price invoiced by Topps to its distributors in the different Member States of the European Communities varied widely, with the French distributors charging twice as much as distributors in Spain for the same volumes. The biggest difference (243%) was found when comparing invoice prices for the Finnish and Portuguese distributors, the latter benefiting from the best rates. This, of course, created the conditions for parallel imports, that is, products destined for one country ending up in another.

According to the strong evidence and detailed information in the Commission file, in 2000 Topps involved its distributors in a strategy designed to prevent wholesalers and retailers in countries where Pokémon products were sold at a comparably high price (such as Finland and France) from importing those products from low-priced countries (such as Spain, Portugal and Italy). To prevent parallel trade, Topps repeatedly asked its distributors in several Member States to help it trace back parallel imports and monitor the final destination of Pokémon products. Those who did not comply with this distribution policy were threatened with supply cuts. As a result of this unlawful partitioning of the European market, families in high-price countries paid more for those products than they would have done if competitive market forces had been at play.

After it received a request for information from the Commission in November 2000, Topps said it would be taking steps to bring its distribution arrangements into compliance with competition rules. There is no evidence that it has since engaged in anti-competitive behaviour. Restrictions of parallel trade represent an infringement of Article 81 of the EC Treaty. Experience has proved that parallel trade leads to efficiency gains and lower prices in the EU and is therefore beneficial to consumers.

Statements of objections are the first formal step in antitrust investigations. The companies now have two months to reply to the Commission's objections and can also request an oral hearing. ■