



Summary of decision concerning Samsung Electronics Benelux B.V.

Chapter 1 of the decision of the Netherlands Authority for Consumers and Markets (ACM) within the meaning of Section 56 of the Dutch Competition Act (Mw) concerning Samsung Electronics Benelux B.V. ACM/UIT/560625

Our reference : ACM/INT/434425
Case number : ACM/20/040569
Date : 14 September 2021

1. With this decision, the Netherlands Authority for Consumers and Markets (ACM) imposes a fine of 39,875,500 euros on Samsung Electronics Benelux B.V. for coordinating the retail prices of Samsung television sets together with various retailers. This coordination took place from January 2013 through December 2018. As such, Samsung violated the cartel prohibition laid down in Section 6 of the Dutch Competition Act and in Article 101 of the Treaty on the Functioning of the European Union.
2. Communications between Samsung associates and retailers reveal that, during the violation period, Samsung actively exercised influence on the online retail prices of retailers, and expected the retailers to stick to the prices communicated by Samsung. The retailers agreed to comply, but it was Samsung that played the central role in the coordination.
3. Samsung monitored retailers' prices, amongst others via price-comparison websites and the retailers' online stores, among other sources. It collected these price data by using so-called spider software, and it carefully analyzed the price fluctuations of its own television models. If Samsung saw that retail prices were diverging too much from the market price desired by Samsung, Samsung contacted the retailers, urging them to adjust their retail prices. Samsung associates discussed internally which retailers should be contacted. They contacted them over email or WhatsApp, among other channels. In their interactions with retailers, Samsung informed them that it had also communicated the same price to competitor retailers, often with the underlying message that they, too, would raise their prices. On the basis of these communications, retailers were able to trust that they would not price themselves out of the market if they set their prices at the levels desired by Samsung.

Several examples:

Samsung asks a retailer to raise its online retail price for a television model to 329 euros. Samsung also informs the retailers that "*all other partners have been advised*".¹ The retailer in question informs Samsung: "*Done, visible in 15 min*".²

Email from Samsung to a retailer:
"*Hi [...]*,"

¹ Translator's note: original quote is in Dutch.

² Translator's note: original quote is in Dutch, except for the word 'done'.

*Recommended price [model]: Eur 999
all partners will be advised this week”.*

A screenshot in the email reveals that the retailer in question and several other retailers currently offer the model at a lower price.

Reply from the retailer: *“Done, visible in 15 minutes”*.³

Samsung contacts a retailer in connection with a television model, and informs them: *“[...] switches⁴ today to 429 euros .. can you also match this?”*

Samsung subsequently says: *“Also more margin 😊”*

After a while, Samsung informs them that they will also contact a third retailer: *“[...] will, of course, get the same advice”.*

Samsung subsequently asks the first retailer: *“Will this work?”*

Reply: *“has been adjusted”.*

Samsung: *“Great! 👍👍👍”*.⁵

4. Retailers regularly complained to Samsung about the pricing of Samsung television sets by other retailers. Documents reveal that Samsung would then follow up such complaints by contacting the retailer in question, and asking them to adjust their price to the level desired by Samsung. Samsung subsequently reported back to the retailer that had filed the complaint. On other occasions, Samsung asked retailers to wait with following a price (often too low a price) of a competitor retailer until Samsung had contacted this retailer.

Several examples

A retailer sends Samsung a picture that reveals that a competitor does not charge the desired price for a television set.

Samsung: *“Ugh. Will do something about this .. again”*

Retailer: *“Thanks. Such a waste this.”*⁶

Later that day, the Samsung account manager in question sends the following advice to fellow account managers: *“Please urgently advise 1299 euro!”*⁷

A retailer raises the price of a television set to the level desired by Samsung, and informs

Samsung: *“I can still see several competitors that have not yet switched regarding [model]!”*

Samsung's reply: *“We have seen this, too, we're working on it!”*⁸

Samsung to retailer: *“The price situation regarding the [...] is still not optimal ... it's really unnecessary to 'burn' money with that model. Would you take another look at it? Recommend to sell for 799 euros. Thanks in advance.”*

Retailer: *“thanks for the tip”*

³ Translator's note: original quote is in Dutch, except for the word 'done'.

⁴ Translator's note: in the original Dutch version, the Dutch verb “schakelen” (to switch) is used, which is insider jargon for adjusting the online price.

⁵ Translator's note: original quote is in Dutch.

⁶ Translator's note: original quote is in Dutch.

⁷ Translator's note: original quote is in English.

⁸ Translator's note: original quote is in Dutch.

Samsung: *"You're welcome. Removing the spider on this model would definitely help ;-)
We obviously also advised the others."*⁹

Samsung to retailer: *"Can I, once again, give you several price recommendations? As soon as possible please. [models and prices]. Please hold these until the weekend. Many already switched yesterday, and the rest will follow as soon as possible. Thanks!"*

Reply from retailer: *"Done"*¹⁰

5. These practices exhibited by Samsung and the various retailers involved all Samsung television sets. In the contracts with retailers, it says that Samsung uses recommended prices, and that retailers are free to set their own retail prices. Providing suggested price recommendations as well as Samsung's monitoring of retail prices do not, in and of themselves, violate the cartel prohibition if retailers are genuinely free to set their own retail prices. However, the interactions between Samsung and individual retailers clearly went further than simply providing suggested list prices or non-binding price recommendations. Samsung de facto announced market prices, and acted accordingly, instead of letting retailers set their own retail prices independently.
6. With these practices, Samsung sought to prevent a downward price spiral. As such, it unlawfully intervened directly in the competitive dynamics between retailers. According to ACM, there was no commercial need or reason for this price coordination. Above all, the practices served to maintain the retailers' margins as well as Samsung's margins. This conduct restricts competition, and is prohibited.
7. In its opinion, Samsung disputed the conclusion that its conduct was prohibited. According to Samsung, it merely gave retailers advice, and did not pressurize anyone nor did it create any incentives to adjust the prices to the recommended prices. Furthermore, Samsung alleged that, besides the general announcements of recommended retail prices, it merely communicated recommended prices reactively and on an *ad hoc* basis. Samsung claimed it always made clear that retailers were completely free to set their own prices, and that it never forced retailers to charge its prices. Its practices, therefore, Samsung asserted, did not violate the cartel prohibition.
8. ACM does not follow Samsung's arguments. Samsung's monitoring practices, its internal coordination, as well as its external communications were aimed at controlling and minimizing any price deviations across the range of Samsung television sets. Samsung, as the one pulling all the strings, contacted individual retailers so frequently about their retail prices and about the planned prices of other retailers that this can be considered systematic coordination between Samsung and these retailers.
9. The objective of Samsung's conduct was to restrict competition. In addition to the direct interventions in prices of retailers (by reminding retailers over and over again of Samsung's desired retail price), a certain climate emerged in which retailers were discouraged from taking the initiative in lowering prices. In its decision, ACM establishes that Samsung acted illegally vis-à-vis seven retailers (including major ones) that, when combined, accounted for a large majority of the total sales of Samsung television sets in the Netherlands. This price coordination was at the expense of

⁹ Translator's note: original quote is in Dutch.

¹⁰ Translator's note: original quote is in Dutch, except for the words 'thanks' and 'done'.

consumers. Samsung's 'oversight' of all price fluctuations took place in a market that was already very transparent because of the ease with which products and their prices can be found online, as well as the activities of comparison sites.

10. With this decision, ACM imposes a fine on Samsung. When setting the fine, ACM took into account that Samsung systematically intervened in the retail prices of television sets. As a major competitor on the television market, Samsung should have known that such conduct was illegal. The fine also reflects the fact that these practices had lasted for years, thereby generating a large turnover. ACM notes that one mitigating circumstance is that this case concerned price coordination that did not involve any sanctions (or the threat thereof) or incentives (financial or otherwise). In addition, ACM also takes into account that this is the first time that ACM imposes a fine for this type of violation. Samsung is fined 39,875,500 euros.