

Top French court dismisses L'Oréal appeal against €189.5 million fine

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France's Supreme Court has rejected L'Oréal's challenge against a fine for colluding to strengthen the bargaining power of suppliers and increase prices in two markets.

The Court of Cassation recently upheld an [earlier ruling](#) against the cosmetics behemoth by the Paris Court of Appeal in 2020, ending proceedings nine years after the watchdog's infringement decision was published.

In a decision penned on 18 October, it confirmed the lower court's finding that France's Competition Authority had not erred in its penalty calculation by including the sales of a L'Oréal subsidiary that was not targeted by the infringement decision.

L'Oréal was contacted for comment. The enforcer declined to comment.

In 2014, the competition watchdog collectively [fined](#) a swathe of companies, including Colgate-Palmolive, Henkel, Unilever, and Procter & Gamble, close to €1 billion across two consumer goods markets.

Fines against eight companies running a cartel in the personal hygiene market totalled €345 million, while 11 companies in the cleaning products market were fined €606 million in total.

L'Oréal received the largest individual fine of €189.5 million, while its subsidiary Lascad was held jointly liable for €45.5 million as it was found to have also participated in the cartel.

In June 2020, the Paris Court of Appeal rejected L'Oréal's argument that the enforcer should not have included the turnover of its other subsidiary Gemey Maybelline Garnier (GMB) in its calculation.

But it lowered the fine against Lascad to €40.7 million, due to its reduced involvement in the cartel.

L'Oréal challenged the Parisian court's conclusion, again arguing that the authority was prohibited from including GMB's sales when calculating the fine as it had not reached a conclusion that the subsidiary was involved in the infringement.

But the Supreme Court ruled that the appellate court had correctly concluded that GMB's sales figures could be included in the penalty calculation, whether or not GMB was targeted in the infringement decision, as the subsidiary's sales were "related to" the anticompetitive behaviour.

The enforcer's penalty guidelines state that when weighing the seriousness of the facts and the significance of the damage caused to the economy, the watchdog can take into account the value of products or services "related to" the infringement, among other things.

The lower court had found that the illegal information exchange defined the commercial policy for the entire L'Oréal group personal care and hygiene products, affecting the GMB's prices.

The Supreme Court held that even though GMB did not directly participate in the cartel, its sales were affected by the parent company's conspiracy. The lower court was therefore correct, based on the competition authority's penalty guidelines, to include it in the fine calculation, it held.

L'Oréal had also argued that the lower court should have applied a different method to determine the value of sales, pointing to changes to the country's commercial code introduced in 2019.

But the Supreme Court upheld the lower court's finding that these changes were not designed to modify the conditions for imposing penalties for anticompetitive practices under the commercial code, and therefore also dismissed this part of the appeal.

It dismissed L'Oréal's challenge in full and ordered the company to pay the French competition authority €3,000.

Romain Maulin, a partner at Maulin Avocats in Paris, said the Supreme Court ruling "now fully opens the door" for private antitrust litigation against the company over the conduct.

Noting that Carrefour has unsuccessfully attempted to seek damages against fellow cartel members Vania and Johnson & Johnson, he said it is "very much likely" the French retailer will launch proceedings against L'Oréal now the competition watchdog's decision is final.

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