

1. This is a summary of the decision of the Board of the Netherlands Competition Authority (hereafter: the Board), dated December 16, 2010, of case number 6306.
2. In the decision, the Board has fined three Dutch flour producers (Meneba, Ranks and Krijger), three Belgian flour producers (Dossche, Brabomills and Ceres) and eight German flour producers (Grain Millers, Werhahn, Flechtorfer, Okermühle, VK Mühlen, Saalemühle, Milser Mühle and Gebr. Engelke). These producers are guilty of agreements and concerted practices that, in combination and individually, violate the prohibition of cartels, as laid down in Section 6, paragraph 1, of the Dutch Competition Act, and in Article 101, paragraph 1, of the Treaty on the Functioning of the European Union.
3. Below is a summary of the behaviors that the Board has established. The first behavior concerns a non-aggression pact. In addition, the flour producers jointly responded to an *ad hoc* challenge on four other occasions (hereafter to be referred to as “Van Ooijen”, “Compensating Ranks”, “UNO” and “Bakkersland”).
4. The Board has established that these five behaviors are mutually intertwined and that they are the result of a mutual understanding between the flour producers in order to stabilize the market. This understanding lasted in any case from September 12, 2001 through March 16, 2007.

#### *Behavior*

##### Non-aggression pact

5. Through numerous meetings and relationships, the flour producers came to an agreement not to attack each other's positions with customers. To honor this agreement, the flour producers adopted a passive stance towards new customers, and had contact with each other (mostly on a bilateral basis), discussing prices and volumes that they would give specific customers, according to the producers themselves. The Board has established that Werhahn, Meneba, Grain Millers, Ranks, Dossche, Ceres, Gebr. Engelke and Flechtorfer took part in this non-aggression pact.

##### Van Ooijen

6. Van Ooijen was a flour trader, positioning himself as a low-cost trader in the artisan segment. When Van Ooijen was put up for sale in 2002, the other players in the artisan segment, which were Krijger, Meneba, Koopmans, Ranks and Dossche, decided to jointly buy up Van Ooijen's business activities. Krijger was the one that would actually acquire Van Ooijen. Meneba, Koopmans, Ranks and Dossche co-financed the acquisition in a low-profile manner, without officially acting as buyer or becoming owner. Through this behavior, the abovementioned undertakings sought to push low-cost trader Van Ooijen off the market, and expected that the pressure coming from low-cost trader Krijger would decrease.

##### Compensating Ranks

7. Around May 2003, Bake Five, an organization that brings together large, industrial bakeries in the Netherlands, decided to contract Ceres and Dossche as its two main suppliers. Such a decision came at the expense of Ranks, among others, which lost a substantial share of its turnover. Ranks threatened to recapture lost volume by underbidding its competitors, unless it would be compensated for its

production facilities 'standing idle'. As a result, Ranks and Meneba agreed to give Ranks an amount of EUR 1 to 2 million for one year in compensation. Meneba in its turn settled this amount with several German (Werhahn, Gebr. Engelke, Flechtorfer, Grain Millers and VK Mühlen) and Belgian (Dossche) flour producers. Ceres was also involved in the agreement, though it did not participate in the compensation. Through this behavior, the abovementioned undertakings sought to prevent Ranks from recapturing lost volume by underbidding other suppliers.

#### UNO

8. In 1999, a large new flour mill was opened in the Dutch city of Bergen op Zoom (hereafter referred to as UNO). In mid-2003, the companies behind UNO went bankrupt. In April 2004, Meneba, Ceres, Brabomills and Dossche agreed to buy (via a third party) UNO's factory buildings and appurtenances and to sell these separately to each other and to others. They also agreed that UNO's buildings would no longer be used for milling purposes. Various German undertakings (Werhahn, Grain Millers, Gebr. Engelke, VK Mühlen, Flechtorfer, Okermühle, Saalemühle and Milser Mühle) co-financed the acquisition. Through this behavior, the abovementioned undertakings sought to prevent the UNO production facilities from ever being used again.

#### Bakkersland

9. In the second half of 2006, Meneba, Werhahn, Grain Millers and Gebr. Engelke consulted each other about how to keep the peace and quiet on the Dutch market. These discussions failed. Meneba and Werhahn then tried to convince Brabomills to transfer volume to Werhahn. Meneba and Grain Millers later talked to Ceres about the fact that it was growing too fast in the Netherlands.

#### *Mutual understanding*

10. The Board has established that the five behaviors are just as many demonstrations of a mutual understanding to stabilize the market. This understanding has been the result of the flour market's characteristics, a market where negative price spirals can easily start due to shifts in volume.
11. The non-aggression pact reduced the chance that one flour mill would capture large volumes from another one. Through its behavior with regard to "Van Ooijen", the undertakings involved sought to reduce excess capacity and to raise their margins. This reduced the likelihood of setting off a chain reaction of underbidding. The compensation of Ranks had the intention of minimizing the effects of the volume shifts (that have nevertheless occurred). The intention behind the acquisition and dismantling of the UNO factory was to prevent any future volume shifts. In the discussions with regard to Bakkersland, the undertakings involved sought to keep the peace and quiet on the market.
12. Seen in this context, the five elements thus give evidence of factual continuity and unity. The Board has therefore concluded that there is a single violation of the prohibition of cartels.
13. In the opinion of the Board, the following undertakings sought to contribute to the common goal of this violation: Meneba, Werhahn, Grain Millers, Ranks, Dossche, Gebr. Engelke, Flechtorfer and Ceres. Other undertakings participated in one or several behaviors: Krijger, VK Mühlen, Brabomills, Okermühle, Saalemühle and Milser Mühle. However, according to the Board, these undertakings could not, in all

reasonableness, have been expected to anticipate the other undertakings' behaviors. The Board has deemed their contribution to the individual behaviors as a separate violation in its own right of the prohibition of cartels.

*Setting the fine*

14. De Board has deemed the one single violation – the five behaviors combined – as a very serious violation (the seriousness of the violation is 2.75. For these kinds of violations, the figure is usually anywhere between 1.5 and 3). In cases where an undertaking was not involved in one or multiple actions during the period of its involvement in this violation, the Board has used this as a mitigating circumstance. Meneba had a leadership role in this violation, Werhahn coordinated the German undertakings; The Board has therefore increased the fines on Meneba and Werhahn by 50% and 20%, respectively.
15. The undertakings that were not involved with the one single violation, are fined for the actions in which they did take part. Each individual behavior in itself is considered by the Board a very serious violation. For Ranks, the seriousness of the violation has been set at 3; for UNO, the seriousness of the violation has been set at 2.25 and the seriousness of the violation for the harmonization concerning a specific customer by Krijger has been set at 2.
16. The fines on three undertakings have been reduced because these undertakings had applied for leniency with respect to the violation they had taken part in. The fine on Werhahn has thus been reduced by 80%, the fine on Grain Millers by 30%, and the fine on Meneba by 10%.
17. The fines have been set as follows:

Undertaking	Fine
Meneba	€ 9,000,000
Grain Millers	€ 2,868,000
Werhahn	€ 3,992,000
Dossche	€ 22,804,000
Ranks	€ 13,135,000
Flechtorfer	€ 908,000
Ceres	€ 12,928,000
Gebr. Engelke	€ 7,705,000
VK Mühlen	€ 2,373,000
Brabomills	€ 4,673,000
Okermühle	€ 392,000
Milser Mühle	€ 392,000
Saalemühle	€ 392,000
Krijger	€ 71,000
Total	€ 81,633,000