Summary of Commission Decision

of 9 July 2019

relating to proceedings under Article 101 of the Treaty on the Functioning of the European Union and Article 53 of the Agreement on the European Economic Area

(Case AT.40432 — Character merchandise)

(notified under document number C(2019) 5087 final)

(Only the English text is authentic)

(Text with EEA relevance)

(2019/C 386/08)

On 9 July 2019, the Commission adopted a decision relating to a proceeding under Article 101 of the Treaty on the Functioning of the European Union and Article 53 of the Agreement on the European Economic Area. In accordance with the provisions of Article 30 of Council Regulation (EC) No 1/2003 ([1]), the Commission herewith publishes the names of the parties and the main content of the decision, including any penalties imposed, having regard to the legitimate interest of undertakings in the protection of their business secrets.

1. INTRODUCTION

(1) The decision is addressed to Sanrio Company, Ltd., as well as to its European subsidiaries Sanrio GmbH and Mister Men Limited (hereinafter 'Sanrio'), for infringing Article 101 of the Treaty on the Functioning of the European Union (the 'Treaty') and Article 53 of the Agreement on the European Economic Area ('EEA Agreement').

(2) Sanrio — which includes Hello Kitty among its proprietary characters — designs, licenses, produces and sells products focusing on the Japanese 'kawaii' artistic and cultural style. Since 5 December 2011, Sanrio is also the licensor for the Mister Men characters. Between 1 January 2008 and 21 December 2018, Sanrio participated in a single and continuous infringement that involved the implementation and enforcement within the EEA of a series of practices restricting active, passive and online cross-border sales of licensed merchandise.

2. CASE DESCRIPTION

2.1. The products concerned

(3) The decision concerns Sanrio's activities as a licensor for its own proprietary characters. Sanrio licenses its characters to other undertakings that produce and distribute various merchandise products including the licensed characters. The decision concerns products of a varied nature, for example stationery, school supplies, gifts and accessories, which are sold primarily, but not exclusively, for children.

(4) Sanrio typically licenses its proprietary characters either directly or through an agent. Regardless of the system used for the granting of licences, agreements with the licensee also typically include provisions governing the distribution of the products on which the licensed intellectual property right will be applied. Other elements consistently present in Sanrio's merchandising agreements include:

a) Territorial scope: Sanrio generally grants all licences in the EEA for one or more specific countries on a non-exclusive basis.

b) Financial compensation to be paid by the licensee: Sanrio's licensing agreements provide for licensees to pay Sanrio a certain amount in consideration for the grant of the licence for the intellectual property rights.

(5) These licensing agreements, and more broadly, the relationships that are built on the basis of those agreements, are the focus of the decision.

([1]) OJ L 1, 4.1.2003, p. 1. Regulation as amended by Regulation (EC) No 411/2004 (OJ L 68, 6.3.2004, p. 1).

2.2. **Procedure**

(6) In September 2016, the Commission conducted unannounced inspections at Sanrio GmbH's office in Milan, Italy.

(7) By decision of 14 June 2017, the Commission initiated proceedings in accordance with Article 2(1) of Commission Regulation (EC) No 773/2004 against Sanrio Company, Ltd. and all legal entities directly or indirectly controlled by it, including Sanrio GmbH. The purpose of the initiation of proceedings was to investigate whether Sanrio had in place agreements and/or applied practices preventing or restricting the sale of licensed merchandise in the EEA. On 29 May 2019, the Commission adopted a further decision to initiate proceedings in accordance with Article 2(1) of that Regulation against Mister Men Limited.

(8) Subsequently, Sanrio submitted a formal offer to cooperate in view of the adoption of a decision pursuant to Article 7 and Article 23 of Council Regulation (EC) No 1/2003 (the 'settlement submission').

(9) On 29 May 2019, the Commission adopted a statement of objections addressed to Sanrio. On 11 June 2019, Sanrio submitted its reply to the Statement of Objections.

(10) The Advisory Committee on Restrictive Practices and Dominant Positions issued a favourable opinion on 5 July 2019.

(11) The Hearing Officer issued its final report on the case on 8 July 2019.

(12) The Commission adopted this decision on 9 July 2019.

2.3. **Summary of the infringement**

(13) A series of practices restricting active and passive cross-border sales of licensed merchandise were put in place throughout Sanrio's merchandising business. These practices concerned both offline and online sales of licensed merchandise products throughout the EEA. The following main types of restrictions are covered by the decision:

a) Direct measures restricting out-of-territory sales by licensees, such as (i) prohibitions of out-of-territory passive sales; (ii) prohibitions of out-of-territory active sales; (iii) prohibitions of out-of-territory online sales; (iv) obligations to refer orders for out-of-territory sales to Sanrio; (v) use of language requirements to restrict out-of-territory sales.

b) Indirect measures restricting out-of-territory sales by licensees: a series of measures were also at times implemented as an indirect way to encourage compliance with the out-of-territory restrictions. These measures included the conduct of audits and the non-renewal of contracts.

(14) Through this set of practices, Sanrio restricted licensees' ability to sell licensed merchandise cross-border. This single and continuous infringement contributed to restoring the divisions between national markets and might have led to a reduction in the choice available for consumers and to increased prices directly deriving from the lower level of competition. This conduct constitutes, by its very nature, a restriction of competition by object within the meaning of Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement.

(15) The decision also finds that the conduct does not meet the conditions for exemption provided for in Article 101(3) of the Treaty and Article 53(3) of the EEA Agreement.

2.4. **Addressees and duration**

(16) The decision is addressed to Sanrio Company, Ltd., the ultimate parent company of the Sanrio group of companies, as well as to certain of its subsidiaries involved in the merchandising business: Sanrio GmbH and Mister Men Limited.

(17) The duration of the single and continuous infringement spans from 1 January 2008 to 21 December 2018, date when Sanrio sent a last set of letters informing its licensees about the inapplicability of any out-of-territory restrictions in its agreements.

2.5. **Remedies and fines**

(18) The decision finds that Sanrio brought the infringement to an end on 21 December 2018 and requires Sanrio to refrain from any agreement or concerted practice which might have the same or a similar object or effect. The Commission also considers that the infringement was committed intentionally, and if not at least negligently, and that a fine needs to be imposed.

2.5.1. *Basic amount of the fine*

(19) For the purposes of calculating the fine, the decision uses the amount of royalties collected by Sanrio during the last full year of the infringement (2017). The value of sales is based on the royalties received by Sanrio from its licensees for sales of licensed merchandise products in the EEA. These royalties (including minimum guarantees) represent Sanrio's revenues from its licensed merchandise business and are paid to Sanrio in exchange for the use of the intellectual property rights licensed.

(20) Out-of-territory restrictions, by their very nature, restrict competition within the meaning of Article 101(1) of the Treaty. However, vertical restraints are generally less harmful than horizontal ones. The 'gravity percentage' is set at 8 % of Sanrio's value of sales.

2.5.2. *Aggravating or mitigating circumstances*

(21) There are no aggravating or mitigating circumstances in this case.

2.5.3. *Deterrence*

(22) The Commission does not apply a deterrence multiplier because Sanrio's worldwide turnover levels do not warrant it.

2.5.4. *Application of the 10 % turnover limit*

(23) The calculated fine does not exceed 10 % of Sanrio's total worldwide turnover.

2.5.5. *Reduction of the fine in view of cooperation*

(24) In exchange for its cooperation the decision grants a 40 % reduction on the fine pursuant to point 37 of the Guidelines on Fines. Sanrio, in its settlement submission, acknowledged the facts, their legal qualification and liability for the infringement as described. Sanrio showed interest in cooperation at an early stage, diligently cooperated throughout the process and provided additional evidence that allowed to extend the duration of the infringement.

3. **CONCLUSION**

(25) Sanrio infringed Article 101(1) of the Treaty and Article 53 of the EEA Agreement by participating in a single and continuous infringement regarding licensed merchandise. The infringement covered the whole of the European Economic Area, and consisted in the implementation and enforcement of a series of agreements and practices aimed at restricting cross-border sales of licensed merchandise, both offline and online.

(26) The final amount of the fine to be imposed on Sanrio pursuant to Article 23(2)(a) of Regulation (EC) No 1/2003 should be EUR 6 222 000.

(27) Sanrio Company, Ltd. and Sanrio GmbH should be held jointly and severally liable for the total amount of this fine, while Mister Men Limited should only be held jointly and severally liable for EUR 3 993 000, proportionally reflecting the part of the relevant period starting on 5 December 2011, date on which it was acquired by Sanrio Company, Ltd.