Criminal charges laid against Nestle Canada, other companies for chocolate price fixing

Chocolate price fixing: Nestle, Mars face criminal charges over prices

Two of the world’s largest chocolate companies are among those facing criminal charges for allegedly conspiring to fix the price of chocolatey treats across Canada.

The charges, laid Thursday, come six years after Canada’s Competition Bureau launched an investigation into the allegations, and found evidence suggesting that a price-fixing cartel collaborated, agreed or arranged to set the prices of chocolate products.

Criminal charges have been laid against candy makers Nestlé Canada Inc. and Mars Canada Inc., and ITWAL Limited, a national network of independent wholesale distributors, after the competition bureau referred its evidence to the Public Prosecution Service of Canada.

“We are fully committed to pursuing those who engage in egregious, anti-competitive behaviour that harms Canadian consumers,” said John Pecman, interim commissioner of competition, in a statement. “Price-fixing is a serious criminal offence and today’s charges demonstrate the competition bureau’s resolve to stop cartel activity in Canada.”

Also charged Thursday were former Nestlé Canada president Robert Leonidas, former Nestlé Canada president of confectionery Sandra Martinez, and ITWAL’s president and CEO David Glenn Stevens.

Court documents unsealed in December 2007 alleged that senior executives at Hershey, Nestlé and Mars held clandestine price-fixing meetings in locations such as coffee shops, restaurants and industry conventions. The alleged conspiracy reportedly dates back as far as 2002.

Canadian consumers — who buy billions of dollars worth of chocolate each year — may never have gotten a whiff of the case if it wasn’t for a whistle-blower within the industry.

The competition bureau learned of the alleged cartel through its Immunity Program, which offers insiders who tell the regulator about an offence immunity or leniency if they co-operate with the investigation.

Hershey Canada Inc. co-operated with the probe, and the bureau said Thursday it recommended to the prosecution that it go easy on the chocolate titan.

Hershey Canada said Thursday it reached a settlement with the competition bureau, and it will plead guilty on June 21 to one count of price fixing, related to communications with its Canadian competitors in 2007.

“Hershey Canada promptly reported the conduct to the competition bureau, co-operated fully with its investigation and did not implement the planned price increase that was the subject of the 2007 communications,” the chocolate maker said in a statement.

The company also said it “regrets its involvement in the incident” and it is “confident the conduct was limited to Hershey Canada and the Canadian marketplace. The current Hershey Canada senior management team as well as the Hershey Company and its management had no involvement in this conduct.”

Nestlé Canada and Mars Canada said in separate statements that they would “vigorously defend” themselves against the charges. A statement from ITWAL was not immediately available.

Allegations of chocolate price-fixing have already been the subject of a class-action lawsuit out of Ontario against Cadbury, Hershey, Mars and Nestlé. The companies have since settled for a total of $22-million, said Charles Wright, the lawyer for the plaintiff.

A similar class-action suit in the United States is still making its way through a Pennsylvania court.

If convicted of the conspiracy charges, the accused face a possible $10-million fine and/or a prison term of up to five years. 

*National Post, with files from The Canadian Press and Reuters*

1. In your own words what is price fixing?
2. Why would a company engage in price fixing?
3. What is the immunity program? Who does it protect and why would it be needed for whistleblower’s?
4. What is the maximum penalty the companies could be facing?
5. Can you think of any other industries that price-fixing might exist?
6. Some argue that price-fixing should be legal as it is too difficult to govern and can have benefits for society. In what way do you think price-fixing has benefits for the market and society?