

II

(Acts adopted under the EC Treaty/Euratom Treaty whose publication is not obligatory)

DECISIONS

COMMISSION

COMMISSION DECISION

of 20 September 2006

relating to a proceeding under Article 81 of the Treaty establishing the European Community and Article 53 of the EEA Agreement

(Case COMP/F/38.121 — Fittings)

(notified under document number C(2006) 4180)

(Only the English, German, Spanish, Italian and French versions are authentic)

(Text with EEA relevance)

(2007/691/EC)

SUMMARY OF THE INFRINGEMENT

- (1) The Decision was addressed to Aalberts Industries NV, Aquatis France SAS, Simplex Armaturen + Fittings GmbH & Co. KG, VSH Italia Srl, Yorkshire Fittings Limited, Advanced Fluid Connections plc, IBP Limited, International Building Products France SA, International Building Products GmbH, Delta plc, Aldway Nine Limited, Delta Engineering Holdings Limited, Druryway Samba Limited, Flowflex Holdings Ltd, Flowflex Components Ltd, IMI plc, IMI Kynoch Ltd, Mueller Industries Inc, Mueller Europe Ltd, WTC Holding Company Inc, Pegler Ltd, Tomkins plc, FRA.BO SpA, Supergrif SL, SANHA Kaimer GmbH & Co. KG, Kaimer GmbH & Co. Holdings KG, SANHA Italia srl, Viega GmbH & Co. KG, Legris Industries SA and Comap SA.
- (2) The above 30 legal entities (belonging to 11 undertakings, with some legal entities held liable as parent companies) committed an infringement of Article 81 of the EC Treaty and Article 53 of the EEA Agreement by participating in a single and continuous infringement between 31 December 1988 and 1 April 2004 in the fittings industry in the EEA. Not all the undertakings participated to the infringement for its entire duration.
- (3) The infringement's main features included: competitors discussing prices, agreeing, implementing and monitoring price agreements as well as discounts and rebates, agreeing on implementation mechanisms, allocating of markets and customers, exchanging commercially

important and confidential market and/or company relevant information, participating in regular meetings and having other contacts to agree to the above restrictions and monitor implementation within the EEA.

THE FITTINGS INDUSTRY

- (4) The product concerned is copper fittings including copper alloy fittings (such as gunmetal, brass and other copper-based alloys). A fitting connects tubes used in the transportation of water, air, gas, etc. for plumbing, heating, sanitation and other purposes. There are various types of fittings such as end-feed, solder ring, compression, press and push-fit. All these types are implicated in this Decision.
- (5) The investigation showed that the cartel covered the whole of the EEA. The 2003 EEA market value for copper and copper alloy fittings was approximately EUR 525 million for about 960 million pieces.

PROCEDURE

- (6) In January 2001 the company Mueller Industries Inc informed the Commission of the existence of a cartel in the Fittings industry (and in other related industries in the copper tubes market) and expressed the wish to cooperate with the Commission under the 1996 Leniency Notice. Mueller provided the Commission with evidence that enabled the carrying out of inspections.

(7) On 22 and 23 March 2001, the Commission carried out the first unannounced inspections concerning both copper tubes and fittings. Thereafter, in April 2001, it was decided to separate the cases into copper plumbing tubes (38.069), industrial tubes (38.240) and fittings (38.121). Subsequently, on 24 and 25 April 2001, the Commission carried out further unannounced on-site inspections at the premises of the Delta group. The latter inspections covered only fittings. In the copper tubes sector the Commission adopted two decisions imposing fines in the industrial tubes case (in 2003) and the copper plumbing tubes case (in 2004).

(8) In September 2003, after the inspections and after having sent letters requesting information, the IMI group applied for leniency. This leniency application was followed by those of the Delta group (March 2004) and Frabo (July 2004). The last leniency application was submitted by Oystertec/Advanced Fluid Connections plc, in May 2005.

(9) The Statement of Objections was addressed to 30 undertakings belonging to 11 undertakings and to one association of undertakings. All parties but Flowflex, Comap and Supergrif exercised their right to be heard and participated in the oral hearing which was held on 25 and 26 January 2006.

FUNCTIONING OF THE CARTEL

(10) Whilst there are indications that the first anti-competitive contacts between the UK producers of fittings occurred prior to 1988, evidence in the possession of the Commission demonstrates on a solid and lasting basis that December 1988 was the starting date of the infringement. On this basis the Commission considered that the collusive arrangements started in the UK among UK manufacturers on 31 December 1988. As to the behaviour of fittings manufacturers at pan-European level, due to the loose form and exploratory nature of contacts before January 1991, the Commission limited its assessment under competition rules to the period from 31 January 1991, date of the first 'Super-EFMA' meeting, when the competitors agreed on prices and when the pan-European arrangements were evidenced as an organised and structured scheme.

(11) Further evidence in the Commission's file shows that this infringement continued even after the Commission inspections in March and April 2001, as far as Comap, IBP/Oystertec (Advanced Fluid Connections) and Frabo are concerned until April 2004 and to a lesser extent as far as Delta is concerned. With regard to Aalberts, it participated in the infringement after the inspections between June 2003 and April 2004. This is the first cartel case which for certain participant companies continued for three years after the inspections.

(12) The overall structure of the anti-competitive arrangements for the fittings products shows that they can be considered as one single infringement whereby competitors discussed prices, agreed, implemented and monitored price agreements as well as discounts and rebates, agreed on implementation mechanisms, allocated markets and customers and exchanged commercially important and confidential market information.

FINES

Basic amount

Gravity

(13) Regarding the gravity of the infringement, impact on the market and its geographic scope, the infringement must be qualified as very serious.

Differential treatment

(14) As there was considerable disparity between each undertaking's weighting in terms of turnover in the cartelised industry, the Commission has applied differential treatment (groupings) to take account of each undertaking's weighting: this approach seeks to differentiate how each undertaking's weighting damaged competition.

(15) The undertakings have been divided into six categories according to their relative importance. As the basis for determining the relative importance of the undertakings in this infringement, the Commission took into account the respective market shares of each undertaking with the product concerned. The individual weight of the participants in the infringement was compared on the basis of their product market shares in the EEA for all the undertakings, in the year 2000, except Aalberts and Advanced Fluid Connections, for which the year 2003 was taken as the basis of differentiation. The Commission chose 2000 because it was the most recent year of the infringement in which all the undertakings to which this Decision was addressed were active in the cartel except the two undertakings mentioned.

(16) Accordingly Viegner and Aalberts were placed in the first category. IMI and Delta were placed in the second category, Advanced Fluid Connections in the third, Legris Industries in the fourth, SANHA Kaimer, Flowflex, Frabo and Mueller in the fifth and Pegler in the sixth category.

Sufficient deterrence

(17) In order to set the amount of the fine at a level which ensures that it has sufficient deterrent effect the Commission considered it appropriate to apply a multiplication factor to the fine imposed on Tomkins/Pegler. In 2005, the most recent financial year preceding the Decision, the total turnover of Tomkins, Pegler's mother company, was EUR 4,65 billion.

- (18) Accordingly and in line with previous decisions, the Commission considered it appropriate to multiply the fine for Tomkins.

Duration

- (19) Individual multiplying factors were also applied according to the duration of the infringement by each legal entity.

AGGRAVATING CIRCUMSTANCES

Participation in the infringement after the inspections

- (20) The Decision established that Oystertec/Advanced Fluid Connections, Comap, Frabo and to a lesser extent Delta did not terminate the infringement immediately after the inspections. These undertakings participated in the infringement after the inspections had taken place. As far as Aalberts is concerned, it is established that it participated in the infringement after the inspections between June 2003 and April 2004. This behaviour is a blatant disregard of the competition rules. When the Commission conducts an inspection in a cartel case, it officially alerts the undertakings concerned that competition rules may have been infringed. In the overwhelming majority of cases, experience has shown that the inspections spur the undertakings to immediately put an end to the infringement, providing thereby immediate relief for the consumers, while awaiting the Commission's decision in the case. In this sense, the inspections have the function to deter the undertakings involved from continuing the infringement. Therefore, for the period after the inspections, undertakings should immediately stop any infringing behaviour. Nonetheless, these undertakings disregarded the inspections and certain of them continued as much as three years after.

- (21) This justified an increase in the basic amount of the fine to be imposed on Aalberts, Advanced Fluid Connections, Comap, Frabo and Delta.

- (22) However, as far as Frabo is concerned, the Decision recognises that its contribution in this regard was particularly decisive. Frabo was the first company to disclose the anti-competitive behaviour after the inspections and provided the link for the years before and after the inspections. Thus, the Commission was able to establish continuity between the two periods which without Frabo's contribution, could not have been proven. Having regard to this circumstance and in line with the principle of fairness, Frabo was not penalised given it disclosed this post-inspection arrangement. Consequently, Frabo was exempted from this aggravating factor.

Misleading information

- (23) Furthermore in its reply to the Statement of Objections, Advanced Fluid Connections provided the Commission with misleading information. In a statement annexed to the reply to the Statement of Objections an employee of Advanced Fluid Connections stated that he did not have any telephone contacts with Frabo in the period between 2001 and 2005. Several telephone bills provided by Frabo show, contrary to this statement, that between April 2002 and July 2003, Frabo contacted Advanced Fluid Connections via mobile phone at least 28 times.
- (24) This aggravating circumstance justified an increase in the basic amount of the fine to be imposed on Advanced Fluid Connections.

ATTENUATING CIRCUMSTANCES

- (25) Several undertakings claimed some or all of the following attenuating circumstances: early termination of the infringement, a minor/passive role, the absence of an effective implementation of the practices, the implementation of compliance programs, absence of benefit, difficulties in the Fittings industry. These claims are all rejected as being unfounded except for the minor/passive role claimed by Flowflex. The basic amount for Flowflex was therefore reduced by 10 %.

Cooperation outside the leniency notice

- (26) The Decision considered that Frabo's cooperation qualified for an attenuating factor in this regard. Frabo was the first to disclose the duration of the cartel after the inspections, and, in particular, it was the first to provide evidence and explanations to prove continuity of the infringement after the inspections and until April 2004. Prior to Frabo's leniency application, the Commission could not have established the duration and continuity of the infringement from March 2001 until April 2004.
- (27) Frabo should not be penalised for its cooperation by imposing on it a higher fine than the one that it would have had to pay without its cooperation. Therefore the basic amount of Frabo's fine was reduced by the hypothetical amount of the fine that would have been imposed on Frabo for a three year infringement.

APPLICATION OF THE 10 % TURNOVER LIMIT

- (28) Where appropriate, the 10 % worldwide turnover limit of Article 23(2) of Council Regulation (EC) No 1/2003⁽¹⁾ was applied to the fines calculated.

⁽¹⁾ OJ L 1, 4.1.2003, p. 1. Regulation as last amended by Regulation (EC) No 1419/2006 (OJ L 269, 28.9.2006, p. 1).

APPLICATION OF THE 1996 LENIENCY NOTICE

- (29) Mueller, IMI, Delta, Frabo and Advanced Fluid Connections co-operated with the Commission at different stages of the investigation with a view to receiving the favourable treatment set out in the 1996 Leniency Notice, applicable to the present case.

Exemption from fines

- (30) Mueller was the first undertaking to inform the Commission about the existence of a cartel in the fittings sector affecting the EEA market in the 1990s. The evidence Mueller provided enabled the Commission to establish the existence, content and the participants of a number of cartel meetings and other contacts held in particular between 1991 and 2000 as well as to undertake inspections on 22 March 2001 and thereafter. Mueller therefore qualified for total exemption from any fine.

Reduction of fines

- (31) On 18 September 2003 IMI approached the Commission with a view to submitting a leniency application. IMI materially contributed to establishing the existence of the infringement, and after having received the Statement of Objections, IMI informed the Commission that it confirmed the facts presented in its leniency submissions. IMI's cooperation was rewarded with a 50 % reduction of the fine.
- (32) On 10 March 2004, Delta submitted a leniency application. Delta's application was followed by other written submissions, a meeting and the presentation of oral statements. To a great extent, Delta corroborated the facts presented by IMI in its leniency submissions. Delta's cooperation was rewarded with a 20 % reduction of the fine.
- (33) On 19 July 2004, Frabo submitted a leniency application. To a great extent Frabo corroborated the facts presented by IMI and Delta in their leniency submissions. Frabo was the first to disclose that the infringement continued for the period after the inspections and until April 2004. In addition, Frabo's information was also used to draft requests for information that contributed to trigger Advanced Fluid Connections' leniency submission, in which it provided evidence on participation in the infringement after the inspection. Based on the foregoing, Frabo's cooperation was rewarded with a 20 % reduction of the fine.
- (34) On 24 May 2005, Advanced Fluid Connections (Oystertec) submitted a leniency application. To a great extent Advanced Fluid Connections corroborated the facts presented by Frabo in its leniency submission. However, in its reply to the Statement of Objections

and during the Oral Hearing, Advanced Fluid Connections strongly contested that the Commission had established continuity between the periods before and after the inspections until April 2004. Finally, as indicated above, Advanced Fluid Connections misled the Commission and attempted to weaken its ability to prove the infringement. Therefore, after due consideration of all these circumstances, the Commission did not grant Advanced Fluid Connections a reduction of the fine

CLOSURE OF PROCEEDINGS

- (35) In view of the elements brought forward by the undertakings and the association of undertakings in their replies to the Statement of Objections and at the Oral Hearing, the Commission had evidence that implicated the Fédération Française des Négociants en Appareils Sanitaires, Chauffage-Climatisation et Canalisations (FNAS) indirectly in an agreement reached on 16 February 2004 to increase prices.
- (36) However there was not sufficient evidence indicating that FNAS actively accepted the task entrusted to it by the manufacturers and that it indeed facilitated the implementation of the agreement.
- (37) Consequently, the Commission came to the conclusion that FNAS was not part of the agreement or any other anti-competitive arrangements. Therefore the proceedings against the Fédération Française des Négociants en Appareils Sanitaires, Chauffage-Climatisation et Canalisations (FNAS) were closed.

DECISION

- (38) The addressees of the Decision and the duration of their involvement were as follows:
- Aalberts Industries NV, from 25 June 2003 until 1 April 2004,
 - Aquatis France SAS, from 31 January 1991 until 22 March 2001 (IMI) and from 25 June 2003 until 1 April 2004 (Aalberts),
 - Simplex Armaturen + Fittings GmbH & Co. KG, from 31 January 1991 until 22 March 2001 (IMI) and from 25 June 2003 until 1 April 2004 (Aalberts),
 - VSH Italia Srl, from 15 March 1994 until 22 March 2001,
 - Yorkshire Fittings Limited, from 31 December 1988 until 22 March 2001,

- Advanced Fluid Connections plc, from 23 November 2001 until 1 April 2004,
- IBP Limited, from 23 November 2001 until 1 April 2004,
- International Building Products France SA, from 4 April 1998 until 23 November 2001 (Delta) and from 23 November 2001 until 1 April 2004 (Advanced Fluid Connections),
- International Building Products GmbH, from 31 January 1991 until 23 November 2001,
- Delta plc, from 31 December 1988 until 23 November 2001,
- Aldway Nine Limited, from 28 July 1999 until 23 November 2001,
- Delta Engineering Holdings Limited, from 31 December 1988 until 23 November 2001,
- Druryway Samba Limited, from 31 December 1988 until 23 November 2001,
- Flowflex Holdings Ltd, from 1 April 1989 until 22 March 2001,
- Flowflex Components Ltd, from 31 December 1988 until 22 March 2001,
- FRA.BO SpA, from 30 July 1996 until 1 April 2004,
- IMI plc, from 31 December 1988 until 22 March 2001,
- IMI Kynoch Ltd, from 31 December 1988 until 22 March 2001,
- Legris Industries SA, from 31 January 1991 until 1 April 2004,
- Comap SA, from 31 January 1991 until 1 April 2004,
- Mueller Industries Inc., from 12 December 1991 until 12 December 2000,
- Mueller Europe Ltd., from 28 February 1997 until 12 December 2000,
- WTC Holding Company, Inc., from 28 February 1997 until 12 December 2000,
- Pegler Ltd, from 31 December 1988 until 22 March 2001,
- SANHA Kaimer GmbH & Co. KG, from 30 July 1996 until 22 March 2001,
- Kaimer GmbH & Co. Holdings KG, from 30 July 1996 until 22 March 2001,
- SANHA Italia srl, from 1 January 1998 until 22 March 2001,
- Supergrif SL, from 22 July 1991 until 23 November 2001,
- Tomkins plc, from 31 December 1988 until 22 March 2001,
- Viega GmbH & Co. KG, from 12 December 1991 until 22 March 2001.

(39) Following the above recitals, the following fines were imposed:

- (a) Aalberts Industries NV: EUR 100,80 million
of which jointly and severally with:
 - (i) Aquatis France SAS: EUR 55,15 million; and
 - (ii) Simplex Armaturen + Fittings GmbH & Co. KG: EUR 55,15 million

- (b) 1. IMI plc jointly and severally with IMI Kynoch Ltd: EUR 48,30 million
of which jointly and severally with:
 - (i) Yorkshire Fittings Limited: EUR 9,64 million; and
 - (ii) VSH Italia Srl: EUR 0,42 million; and
 - (iii) Aquatis France SAS: EUR 48,30 million; and
 - (iv) Simplex Armaturen + Fittings GmbH & Co. KG: EUR 48,30 million

2. Aquatis France SAS and Simplex Armaturen + Fittings GmbH & Co. KG are jointly and severally liable for the additional amount of:
- (c) Advanced Fluid Connections plc: EUR 18,08 million
of which jointly and severally with:
 - (i) IBP Limited: EUR 11,26 million; and
 - (ii) International Building Products France SA: EUR 5,63 million
 - (d) Delta plc jointly and severally with Delta Engineering Holdings Limited: EUR 28,31 million
of which jointly and severally with:
 - (i) Druryway Samba Limited: EUR 28,31 million; and
 - (ii) International Building Products GmbH: EUR 2,81 million; and
 - (iii) International Building Products France SA: EUR 5,63 million; and
 - (iv) Aldway Nine Limited: EUR 28,31 million; and
 - (v) Supergrif SL: EUR 0,59 million
 - (e) Flowflex Holdings Ltd EUR 1,34 million
jointly and severally with Flowflex Components Ltd:
 - (f) FRA.BO SpA: EUR 1,58 million
 - (g) Legris Industries SA: EUR 46,80 million
of which jointly and severally
with Comap SA: EUR 18,56 million
 - (h) Tomkins plc EUR 5,25 million
jointly and severally with Pegler Ltd:
 - (i) Kaimer GmbH & Co. Holdings KG: EUR 7,97 million
of which jointly and severally with:
 - (i) SANHA Kaimer GmbH & Co. KG: EUR 7,97 million; and
 - (ii) SANHA Italia srl: EUR 7,15 million
 - (j) Viega GmbH & Co. KG: EUR 54,29 million
- (40) The undertakings listed in recital 38 were ordered to bring to an end immediately the infringement referred to in recital 3, insofar as they had not already done so and to refrain from repeating any act or conduct described in recital 3, and from any act or conduct having an identical or similar object or effect.
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