

Final report of the hearing officer in Case COMP/F/38.645 — Methacrylates

(pursuant to Articles 15 and 16 of Commission Decision (2001/462/EC, ECSC) of 23 May 2001 on the terms of reference of Hearing Officers in certain competition proceedings — OJ L 162, 19.06.2001, p.21)

(2006/C 285/02)

(Text with EEA relevance)

The draft decision gives rise to the following observations:

Introduction

The present case arises out of an application for immunity made by Degussa pursuant to the Leniency Notice, concerning a cartel relating to methacrylates products, subsequent inspections carried out by the Commission in March 2003 at the premises of Atofina, Barlo, Degussa and Lucite, further leniency applications made by Atofina, Lucite and ICI and numerous follow-up requests for information. The Commission came to the conclusion that undertakings had taken part in a potential infringement of Article 81 of the EC Treaty and Article 53(1) of the EEA Treaty.

Statement of Objections and access to file

A Statement of Objections ('SO') was sent on 17 August 2005 to the following addressees:

Degussa AG, Röhm GmbH & Co. KG, Para-Chemie GmbH (collectively 'Degussa'); BASF AG; ICI Plc; Total SA and Elf Aquitaine SA; Arkema SA, Altuglas International SA, Altumax Europe SAS (collectively 'Atofina'); Lucite International Ltd, Lucite International UK Ltd (collectively 'Lucite'); Quinn Barlo Limited, Quinn Plastics NV, Quinn Plastics GmbH, Quinn Plastics SA (collectively 'Barlo'); Repsol YPF; Repsol Quimica SA Repsol Bronderslev A/S, Repsol Polivar SpA (collectively 'Repsol').

Access to file was provided by means of a CD-ROM containing all the documents in the Commission's file. Certain documents were missing from the file provided by the Commission or had been provided in an unreadable form. This issue was rapidly resolved for all parties without any need for any further extension of the deadline to reply to the SO for this reason.

The Parties' replies and oral hearing

The initial deadline to reply to the SO was 19 October 2005 for all parties. Upon request, limited extensions were granted to ICI, Repsol YPF, Repsol Quimica and Lucite. Replies were received between 19 October 2005 and 4 November 2005 (i.e. within the time allowed).

ICI, Quinn, Repsol Quimica and Repsol YPF requested an oral hearing, and all others expressed their wish to participate in the hearing. The oral hearing took place on 15 and 16 December 2005. All addressees of the SO attended.

Repsol Quimica and Lucite requested access to the replies of the other addressees to the SO assuming that they contained elements that might be useful to their defence. Since the replies of parties to the SO do not form part of the investigation file, their requests were rejected by the Commission services. I later confirmed this position in respect of Repsol Quimica, adopting a Decision pursuant to Article 8 of the Hearing Officer's Mandate. During the hearing, all parties were assured that if new exculpatory evidence was found, or new inculpatory evidence that the Commission intended to rely upon in its final decision, they would be given the opportunity to comment on this evidence later and their rights of defence would, therefore, be fully guaranteed.

However, shortly before the oral hearing, a non-confidential version of Degussa's reply was communicated to all the parties. The Commission services had asked Degussa to clarify two issues in its reply to the Statement of Objections for purposes of the investigation that were of relevance to other parties. Degussa provided the requested information, which was communicated to all parties together with the non-confidential version of Degussa's reply to the SO, thus allowing comments by the parties.

Draft Final Decision

In light of the parties' replies to the SO and the statements made at the oral hearing, the objections set forth in the SO have been modified in the draft final decision. First of all, the allegations concerning Repsol, BASF and Quinn Plastics SA have been dropped on the basis of insufficient evidence. Therefore, the draft decision is not addressed to them.

Secondly, the products covered by the infringement have been reduced to three: PMMA-moulding compounds, PMMA-solid sheet and PMMA-sanitary ware. Sufficient proof was not obtained to corroborate the allegations made by the immunity applicant with regard to MMA, and therefore the Commission proposes to drop the objections regarding MMA. Furthermore, objections have been dropped against Quinn Barlo Ltd, Quinn Plastics NV and Quinn Plastics GmbH in relation to PMMA-moulding compounds.

Thirdly, the duration of the infringement with respect to the various parties is shorter than alleged in the SO.

The draft decision submitted to the Commission only contains objections in respect of which the parties have been afforded the opportunity of making known their views.

In the light of the above, I consider that the rights of the parties to be heard have been respected in this case.

Brussels, 19 May 2006

Karen WILLIAMS
