

Final report of the Hearing Officer on the procedure in the Case COMP/38.337 — PO/Thread

(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, 19.6.2001, p. 21)

(2008/C 21/07)

The draft decision gives rise to the following observations:

Introduction

The present case essentially arises out of inspections carried out by the Commission on 7 and 8 November 2001 pursuant to Article 14(3) of Council Regulation No 17 of 6 February 1962, first Regulation implementing Articles 85 and 86 of the EC Treaty ⁽¹⁾, at the premises of several Community producers of haberdashery products ⁽²⁾. By means of these inspections and the subsequent investigation, the Commission discovered evidence of the following three cartel agreements and concerted practices:

- a cartel on the market in thread for industrial customers in Benelux and the Nordic countries ⁽³⁾,
- a cartel on the market in thread for industrial customers in the United Kingdom,
- a cartel on the market in thread for automotive customers in the European Economic Area (EEA).

This evidence seemed to indicate infringements of Article 81(1) of the EC Treaty committed by the following undertakings ⁽⁴⁾: Ackermann Nähgarne GmbH & Co, Amann und Söhne GmbH & Co KG, Barbour Threads Ltd, Belgian Sewing Thread NV, Bieze Stork BV, Bisto Holding BV, Coats Ltd, Flovest NV, Gütermann AG, Hicking Pentecost plc and Zwicky & Co AG (concerning the cartel in the Benelux and the Nordic countries); American & Efird Inc., American & Efird Ltd, Barbour Threads Ltd, Coats UK Ltd, Coats Ltd, Dollfus, Mieg et Cie SA, Donisthorpe & Company Ltd, Gütermann AG, Hicking Pentecost plc, Oxley Threads Ltd and Perivale Gütermann Ltd (concerning the cartel in the United Kingdom); Amann und Söhne GmbH & Co KG, Barbour Threads Ltd, Coats Ltd, Cousin Filterie SA, Hicking Pentecost plc, Gütermann AG and Oxley Threads Ltd (concerning the cartel in the EEA).

Statement of objections and access to file

On 18 March 2004, the Commission addressed a Statement of Objections ('SO') in accordance with Article 2 of Commission Regulation (EC) No 2842/98 ⁽⁵⁾ to the aforementioned companies.

Access to the file was provided by means of a CD-ROM with all the documents relating to the thread business in the Commission's file COMP/38.036 ⁽⁶⁾ and all the documents in the Commission's file COMP/38.337, sent to the parties on 7 April 2004.

Due to a technical problem, the CD-ROM was only partially accessible. Access to the missing information was made available in the following weeks.

Due to an administrative error, some price related information submitted by Belgian Sewing Thread BV contained in the Commission's file was disclosed to the other parties without prior notification to Belgian Sewing Thread BV. Due to the same error, other price related information the disclosure of which had been accepted by Belgian Sewing Thread BV, was only sent to the parties on 9 July 2005. The parties were afforded the opportunity of making known their views in writing on these documents within three additional weeks upon receipt. Furthermore, the relevant Commission services apologised to Belgian Sewing Thread BV.

The parties' reply and the oral hearing

The deadline to reply to the SO was 27 May 2005. Upon request, I granted extensions to Coats Ltd, American & Efird Inc., American & Efird Ltd, Gütermann AG, Perivale Gütermann Ltd, Zwicky & Co AG, Dollfus Mieg & Cie, Belgian Sewing Thread NV, Amann und Söhne GmbH & Co and Oxley Threads Limited, Bieze Stork BV.

⁽¹⁾ OJ L 13, 21.2.1962, p. 204/62.

⁽²⁾ See Commission Decision of 26 October 2004, Case 38.338 — PO/Needles.

⁽³⁾ Denmark, Finland, Sweden and Norway.

⁽⁴⁾ Also referred to in the following as 'the parties'.

⁽⁵⁾ OJ L 354, 30.12.1998, p. 18.

⁽⁶⁾ The file COMP/38.036 contained the documents received before the inspection, documents copied during the inspection and documents received just after the inspection.

Replies to the Statement of Objections were received between 18 May and 21 June 2004.

Upon request to be heard orally in this case, an oral hearing took place on 19 and 20 July 2004.

On 24 September 2004, each party was provided with a non-confidential version of the replies of the others and with the comments made by the others at the Oral Hearing. The parties were informed that the Commission might use the elements contained in these replies in its final decision. The parties were granted two weeks upon receipt to submit further comments. Most of them took advantage of this opportunity.

The draft final decision

After having given the undertakings the opportunity to make known their view on the objections raised by the Commission, the Commission decided to close the proceedings against American & Efir Inc. and American & Efir Ltd since it did not have enough evidence of American & Efir's participation in the cartel in the United Kingdom. For the same reason, the Commission decided to close proceedings against Gütermann AG in the cartel for automotive thread. Since Flovest's only activities turned out to be holding the shares of BST without being involved in the commercial policy of its subsidiary, the Commission also decided to close proceedings against Flovest NV. Furthermore, a number of other adjustments were made in the light of the parties' replies.

The draft decision submitted to the Commission only contains objections about which the parties have had the opportunity to state their views.

In the light of the above, I consider that the right of the parties to be heard has been fully respected in this case.

Brussels, 12 September 2005.

Karen WILLIAMS
