

Final report of the Hearing Officer in case COMP/38.543 — International removal services

(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)

(2009/C 188/06)

The draft Decision gives rise to the following observations:

INTRODUCTION

In late August of 2003, the Commission decided to carry out inspections in Belgium in September 2003 at the premises of Allied Arthur Pierre, Interdean, Transworld and Ziegler. Following these inspections, Allied Arthur Pierre applied for immunity, or failing the availability of immunity, reduction of the potential fine, pursuant to the Commission's 2002 Notice on immunity from fines and reduction of fines in cartel cases. Since the Commission had already carried out a targeted inspection and obtained evidence of the cartel, immunity was not available. However, based on [*] ⁽¹⁾, the Commission intended to grant a reduction of the fine of between 30-50 % to Allied Arthur Pierre.

In February, September, October 2005 as well as in July and October 2007 the Commission sent requests for information under Article 18 of Council Regulation (EC) No 1/2003 to the undertakings concerned, as well as to competitors and a professional organisation of removal companies in Belgium.

The Commission came to the preliminary conclusion that the addressees of the draft Decision had participated in a cartel in international removal services in Belgium, whereby the undertakings involved fixed prices, shared customers and manipulated the submission of bids, thereby infringing Article 81 of the Treaty establishing the European Community and of Article 53 of the EEA Agreement. The duration of the cartel was 19 years, from at least 1984 until 2003.

Statement of Objections and the time to reply

The Statement of Objections ("SO") was sent on 19 October 2006 to 32 addressees: Allied Arthur Pierre NV; North American International Holding Corporation; North American Van Lines Inc.; Sirva Inc.; Exel International Holdings (Belgium) NV; Exel International Holdings (Netherlands I) BV; Exel International Holdings (Netherlands II) BV; Exel International Holdings Limited; Exel Investments Limited; Realcause Limited; Amcrisp Limited; Interdean AG; Interdean Group Limited; Interdean Holding BV; Interdean International Limited; Interdean NV; Interdean SA; Iriben Limited; Rondspant BV; Team Relocations NV; Team Relocations Limited; Trans Euro Limited; Amertranseuro International Holdings Limited; [*]; Mozer Moving International SPRL; Gosselin World Wide Moving NV; Stichting Administratiekantoor Portielje; Compas International Movers NV; Transworld International NV; Putters International NV; Verhuizingen Coppens NV; and Ziegler SA.

The addressees received the SO between 20 and 23 October 2006, with a two-month deadline to reply. Upon their reasoned requests, extensions were granted to Coppens until 15 January 2007; to Gosselin until 22 January 2007; and to Stichting and Interdean until 22 January 2007. All of the parties replied within the designated time limits.

Access to File

The parties had access to the file in the form of a DVD, which was sent upon request to all parties. Other documents in the file were made available at the Commission premises, and 28 undertakings took the opportunity to examine these. None of the parties addressed any issues relating to access to file to the Hearing Officer, with the exception of Ziegler. Ziegler made a written request to the Hearing Officer for access to the other parties' replies to the SO. The Hearing Officer denied access, taking the view that information received after notification of the SO does not form part of the investigation file and, as such, is not accessible. Parties only have the right of access to other parties' replies to the SO if information contained therein is inculpatory and the Commission relies upon it in a final decision, or if it has exculpatory value ⁽²⁾.

⁽¹⁾ Parts of this text have been edited to ensure that confidential information is not disclosed; those parts are enclosed in square brackets and marked with an asterisk.

⁽²⁾ CFI judgment of 27 September 2006 in case No T-43/02, *Jungbunzlauer*.

Oral Hearing

The Oral Hearing was held on 22 March 2007. All of the parties or their representatives attended the hearing, except for the Exel group of companies (parent companies of Allied Arthur Pierre), [*], Mozer, Putters, and Gosselin and Stichting.

Letter of Facts

Subsequent to the hearing, [*] evidence [*]. The Commission found this additional evidence to be useful in supporting the arguments made in the SO. Therefore, a Letter of Facts was sent on 23 August 2007 to all parties, setting out the nature of the evidence and explaining the way in which the Commission intended to use it in the draft Decision, together with a CD-ROM containing the additional pages of evidence. The parties were given two weeks to respond to the Letter of Facts.

The new evidence did not lead to any additional or new objections against the parties, but merely corroborated and supported the evidence already in the Commission's investigation file.

THE DRAFT DECISION

[*] The durations of the infringement as indicated in the draft Decision with regard to two undertakings are shorter than those set out 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.

I conclude that the rights of the parties to be heard have been respected in the present case.

Brussels, 25 February 2008.

Karen WILLIAMS
