

Final report of the Hearing Officer ⁽¹⁾
COMP/39.092 — Bathroom fittings and fixtures
(2011/C 348/08)

This case concerns a cartel through which producers of bathroom fittings and fixtures coordinated prices and rebates in Austria, Belgium, France, Germany, Italy and the Netherlands.

BACKGROUND

Subsequent to an immunity application under the 2002 Leniency Notice from Masco Corporation on 15 July 2004, the Commission carried out inspections at the premises of several undertakings and associations in the bathroom fittings and fixtures industry in five countries, i.e. Austria, Belgium, Germany, Italy and the Netherlands. Following the inspections also the undertakings Grohe, American Standard, Roca, Hansa and Dornbracht submitted leniency applications. The Commission granted conditional immunity to Masco on 2 March 2005.

WRITTEN PROCEDURE

Statement of objections

Following the abovementioned leniency applications and the subsequent investigation, the Commission, on 26 March 2007, issued a statement of objections (SO), which was notified to 79 legal entities belonging to 19 groups of undertakings ⁽²⁾. The Commission took the preliminary view that the addressees had participated, to a varying degree in scope and duration, in a single and continuous infringement of Article 101 of the TFEU (ex-Article 81 of the EC Treaty) and Article 53 of the EEA agreement on the market for bathroom fittings and fixtures ⁽³⁾ covering six Member States ⁽⁴⁾. According to the SO the addressees regularly co-coordinated price increases, agreed on price fixing and exchanged sensitive business information. The Commission announced its intention to adopt an infringement decision and to impose fines pursuant to Articles 7 and 23 of Regulation (EC) No 1/2003 ⁽⁵⁾.

Access to file

The parties received access to the file through a DVD. Oral statements made in the framework of the Leniency Notice were accessible at the Commission premises. During the access to file procedure information originally considered non-accessible was made available to the parties on three occasions in the form of additional DVDs.

Extensions of time period for reply to SO

The addressees of the SO were originally granted a deadline of two months to provide their written comments on the SO from the date of receipt of the Commission's file in the form of a DVD. Following requests from several parties and due to, e.g. the disclosure of additional information and an intervening holiday period, two general extensions of one month each were granted to all addressees of the SO. Exceptionally, these general extensions were granted directly by DG Competition with the Hearing Officer's endorsement. Furthermore, following reasoned and justified requests, additional extensions were granted individually to several parties by the Hearing Officer responsible at the time. Generally, the parties were granted a time period of approximately four months to respond to the SO. All parties responded on time.

⁽¹⁾ 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).

⁽²⁾ Masco, Sanitec, Grohe, American Standard, Hansa, [...], Villeroy&Boch, Duscholux, Duravit, Roca, Dornbracht, Kludi, Artweger, Rubinetteria Cisa, [...], Mamoli Rubinetteria, RAF Rubinetteria, Teorema Rubinetteria and Zuchetti Rubinetteria.

⁽³⁾ The bathroom fittings and fixtures market is comprised of three product groups: (i) taps and fittings; (ii) shower enclosures and; (iii) ceramics.

⁽⁴⁾ Austria, Belgium, France, Germany, Italy and the Netherlands.

⁽⁵⁾ Council Regulation (EC) No 1/2003 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ L 1, 4.1.2003, p. 1).

ORAL PROCEDURE

Oral hearing

All groups of undertakings, except RAF Rubinetteria SpA, exercised their right to be heard in an oral hearing, which took place on 12-14 November 2007 ⁽¹⁾.

Letter of facts

A letter of facts was sent to all parties on 9 July 2009. By that letter the Commission drew their attention to certain pieces of evidence, which had not been specifically referred to or relied upon in the SO, but on which the Commission nevertheless intended to rely upon in the final decision. The parties were at the same time also informed about the conclusions that could be drawn from that evidence in support of the objections already put forward in the SO. Although the specific pieces of evidence had not been relied upon in the SO, they had nevertheless formed part of the file already made available. The parties were afforded a time period of three weeks to respond to the letter of facts.

After the consultation of the Advisory Committee one party to the proceedings requested a second oral hearing, due to an alleged unreasonable length of the administrative proceedings.

THE DRAFT DECISION

Following the addressees' written and oral submissions, the Commission has retained its objections against 63 legal entities belonging to 17 groups of undertakings while it has decided not to pursue them against two undertakings ⁽²⁾. With regard to the undertakings retained in the draft decision, the duration of the infringement has been significantly reduced in respect to most countries and the overall duration has been reduced from almost 19 years to about 12 years.

In addition, the scope and participation in the infringement have been narrowed for several parties as compared to the SO. More particularly, only eight undertakings are held liable for participating in a single and continuous infringement for the entire product scope and for the entire geographic area, i.e. Austria, Belgium, France, Germany, Italy and the Netherlands. The remaining undertakings are only held liable for the single and continuous infringement for the countries in which their actual participation in the cartel could be established, as the evidence on the file is not sufficient to establish beyond doubt that they were aware, or should have reasonably been aware, of the full geographic coverage of the cartel arrangements. In particular, five Italian producers are only held liable for illegal contacts concerning taps and fittings and ceramics, as they were only active and aware of cartel arrangements in Italy, where collusion did not encompass shower enclosures. The remaining undertakings are however held liable for a single and continuous infringement covering all three product groups since, even if they were not active in the other product markets, they were aware of (or could reasonable have foreseen) the entire product scope of the anticompetitive arrangements. Nevertheless, for the purpose of calculating the fine, only sales effectively made in markets where they were active will be taken into account. Moreover, the decision finds that there is prescription for imposing fines in respect of the Netherlands.

Finally, with regard to the length of the administrative proceedings in this case I recall that Article 41 of the Charter of Fundamental Rights requires that every person has the right to have his or her affairs handled within a reasonable time by the institutions and bodies of the Union. While the overall procedure has lasted approximately five years and six months, more than three years have elapsed since the notification of the statement of objections and about 31 months since the oral hearing was held. It appears that the time period following the oral hearing has been significantly protracted notwithstanding the fact that the Commission during this period issued a letter of facts to which the parties were granted the opportunity to respond and has also been examining and assessing several claims for inability to pay. In any event, it can

⁽¹⁾ Although all groups of undertakings, except RAF Rubinetteria, were represented at the hearing, some legal entities belonging to the undertakings American Standard, Duscholux and Sanitec did not participate individually, i.e. Trane Inc (formerly American Standard Corporation), Duscholux AG, Allia SA/SAS, produits Céramiques de Touraine SA, Keramag Keramische Werke A.G., Keramag Vertriebsges. m.b.H., Keramag Belgium N.V. (SA), Keramag Netherlands B.V., Koralle Sanitärprodukte GmbH, Koninklijke Sphinx B.V., Sphinx Bathrooms Belgium N.V. (SA) and Pozzi-Ginori SpA.

⁽²⁾ [...]

be left open whether the time required for the Commission to adopt the current decision has breached the principle of reasonable time since there are no indications that the duration would have impaired the effective exercise of the rights of defence ⁽¹⁾.

In my opinion the draft decision relates only to objections in respect of which the parties have been afforded the opportunity to make known their views.

I consider that the right to be heard of all participants to the proceedings has been respected in this case.

Brussels, 21 June 2010.

Michael ALBERS

⁽¹⁾ Cf. ECJ judgment of 21 September 2006, case C-105/04 P, para. 35 et seq, *Nederlandse Federatieve vereniging voor de Groothandel op Elektrotechnisch Gebied (FEG)*.