

**Summary of Commission Decision**  
**of 7 December 2011**  
**relating to a proceeding under Article 101 of the Treaty <sup>(1)</sup> and Article 53 of the EEA Agreement**  
**(Case COMP/39.600 — Refrigeration compressors)**

(notified under document C(2011) 8923)

(Only the English text is authentic)

(Text with EEA relevance)

(2012/C 122/04)

On 7 December 2011, the Commission adopted a decision relating to a proceeding under Article 101 of the Treaty and Article 53 of the EEA Agreement. In accordance with the provisions of Article 30 of Council Regulation (EC) No 1/2003 <sup>(2)</sup>, the Commission herewith publishes the names of the parties and the main content of the decision, including any penalties imposed, having regard to the legitimate interest of undertakings in the protection of their business secrets.

## 1. INTRODUCTION

- (1) The Decision relates to a single and continuous infringement of Article 101 of the Treaty and Article 53 of the EEA Agreement relating to the production and sale of household and commercial compressors (maximum 1,5 HP). The Decision is addressed to the following undertakings: (i) ACC <sup>(3)</sup>; (ii) Danfoss <sup>(4)</sup>; (iii) Embraco <sup>(5)</sup>; (iv) Panasonic <sup>(6)</sup>; and (v) Tecumseh <sup>(7)</sup>.

## 2. CASE DESCRIPTION

### 2.1. Procedure

- (2) Following the immunity application of Tecumseh, the Commission carried out unannounced inspections in February 2009 at the premises of ACC, Danfoss and Embraco.
- (3) Panasonic, ACC, Embraco and Danfoss applied for a reduction of fines. Requests for information were sent by the Commission as of November 2009.
- (4) The Commission initiated proceedings in this case on 13 October 2010. Settlement discussions took place between 15 November 2010 and 14 September 2011. Subsequently, the cartel members submitted to the Commission their formal request to settle pursuant to Article 10a(2) of Regulation (EC) No 773/2004. On

11 October 2011, the Commission adopted a statement of objections and the parties all confirmed that its content reflected their submissions and that they remained committed to follow the settlement procedure. The Advisory Committee on restrictive practices and dominant positions issued a favourable opinion on 5 December 2011 and the Commission adopted the Decision on 7 December 2011.

### 2.2. Addressees and duration of the infringement

- (5) The following undertakings infringed Article 101 of the Treaty and Article 53 of the EEA Agreement by participating, during the periods indicated below, in anti-competitive activities with respect to the production and sale of household and commercial compressors (maximum 1,5 HP):
- (a) ACC, Danfoss, Embraco and Tecumseh from 13 April 2004 to 9 October 2007;
- (b) Panasonic from 13 April 2004 to 15 November 2006.

### 2.3. Summary of the infringement

- (6) ACC, Danfoss, Embraco, Panasonic and Tecumseh participated in an EEA-wide cartel relating to the production and sale of household and commercial compressors (maximum 1,5 HP) which was aimed at coordinating European pricing policies and keeping market shares stable in an attempt to recover cost increases.
- (7) The cartel members held bilateral, trilateral and multilateral meetings. Multilateral meetings took place in Europe between Tecumseh, Embraco, ACC and Danfoss (Panasonic attended on one occasion only). The parties convened these meetings 'in turn' (with the exception of Panasonic). The meetings were usually held in hotels located in the Frankfurt and Munich airports, sometimes under a fictitious name. In the course of the multilateral meetings, the cartel members discussed and agreed upon

<sup>(1)</sup> With effect from 1 December 2009, Articles 81 and 82 of the EC Treaty have become Articles 101 and 102, respectively, of the Treaty on the Functioning of the European Union ('the Treaty'). The two sets of provisions are, in substance, identical. References to Articles 101 and 102 of the Treaty should be understood as references to Articles 81 and 82, respectively, of the EC Treaty where appropriate.

<sup>(2)</sup> OJ L 1, 4.1.2003, p. 1.

<sup>(3)</sup> The relevant companies are Appliances Components Companies SpA and Elettromeccanica SpA.

<sup>(4)</sup> The relevant companies are Danfoss A/S and Danfoss Flensburg GmbH (formerly Danfoss Compressors GmbH).

<sup>(5)</sup> The relevant companies are Whirlpool SA and Embraco Europe S.r.l.

<sup>(6)</sup> The relevant company is Panasonic Corporation.

<sup>(7)</sup> The relevant companies are Tecumseh Products Company Inc., Tecumseh do Brasil Ltda. and Tecumseh Europe SA.

the need to increase prices of their compressor products in Europe to cover the increase in material costs. They discussed general ranges of price increases recently achieved for companies in Europe and agreed on timing and general ranges of target price increases in Europe. On certain occasions, the cartel members discussed the terms of their contracts with certain European customers and agreed not to enter into fixed term contracts and/or not to compromise price levels for the purpose of increasing sales volumes. They exchanged sensitive commercial information on capacity, production and sales trends relating to the European market.

- (8) Overall, the cartel lasted from 13 April 2004 until 9 October 2007 (15 November 2006 for Panasonic).

#### 2.4. Remedies

- (9) The Decision applies the 2006 Guidelines on fines<sup>(1)</sup>. With the exception of Tecumseh, the Decision imposes fines on all relevant companies of the undertakings listed under point 5 above.

##### 2.4.1. Basic amount of the fine

- (10) The basic amount of fine is set at 17 % of the undertakings' sales of household and commercial compressors (maximum 1,5 HP) in the EEA.
- (11) The basic amount is multiplied by the number of years of participation in the infringement in order to take fully into account the duration of the participation for each undertaking in the infringement individually.
- (12) The duration of the undertakings' involvement in the alleged infringement is for ACC, Danfoss, Embraco and Tecumseh three years and five months and for Panasonic two years and seven months.

##### 2.4.2. Adjustments to the basic amount

###### 2.4.2.1. Aggravating circumstances

- (13) There are no aggravating circumstances in this case.

###### 2.4.2.2. Mitigating circumstances

- (14) Due to mitigating circumstances, the fines for two undertakings are reduced.
- (15) Panasonic receives a reduction of the fine, as this company contributed only to a lesser extent maintaining the cartel and its involvement in the infringement was limited. The fine imposed on Embraco is reduced for cooperation outside leniency, because Embraco provided the Commission with evidence in relation to commercial refrigerators for a substantial period of the infringement, which allowed the Commission to take into account that

period as regards the commercial aspect of the single and continuous infringement for the purposes of calculating the fine for the relevant companies.

##### 2.4.2.3. Specific increase for deterrence

- (16) In this case, a multiplier for deterrence was applied to Panasonic in view of its world-wide turnover.

##### 2.4.3. Application of the 10 % turnover limit

- (17) ACC's adjusted basic amount of the fine exceeds 10 % of its total turnover. Therefore, ACC's fine is capped at 10 % of its total turnover in 2010.

##### 2.4.4. Application of the 2006 Leniency Notice

- (18) Tecumseh is granted immunity from fines. The following reductions of the fine were granted to the other undertakings: Panasonic 40 %, ACC 25 %, Embraco 20 % and Danfoss 15 %.

##### 2.4.5. Application of the Settlement Notice

- (19) As a result of the application of the Settlement Notice, the amount of the fine to be imposed on ACC, Embraco, Danfoss and Panasonic is reduced by 10 %.

##### 2.4.6. Ability to pay

- (20) One of the undertakings in this case invoked its 'inability to pay' under point 35 of the 2006 Guidelines on the method of setting the fines. The Commission reviewed this application and carefully analysed the available financial data. As a result of this assessment, the Commission accepted the application and granted a reduction of the fine.

### 3. FINES IMPOSED BY THE DECISION

- (21) For the single and continuous infringement dealt with in this Decision, the following fines are imposed:
- (a) on Tecumseh Products Company Inc., Tecumseh do Brasil Ltda. and Tecumseh Europe SA, jointly and severally: EUR 0;
  - (b) on Appliances Components Companies SpA and Elettromeccanica SpA, jointly and severally: EUR 9 000 000;
  - (c) on Danfoss A/S and Danfoss Flensburg GmbH (formerly Danfoss Compressors GmbH), jointly and severally: EUR 90 000 000;
  - (d) on Whirlpool SA and Embraco Europe S.r.l., jointly and severally: EUR 54 530 000; and
  - (e) on Panasonic Corporation (formerly Matsushita): EUR 7 668 000.

<sup>(1)</sup> OJ C 210, 1.9.2006, p. 2.