Final report of the Hearing Officer in Case COMP/38354 — Industrial bags


(2007/C 251/08)

The draft decision gives rise to the following observations:

Introduction

The present case arises out of contacts from BPI concerning a cartel relating to plastic industrial bags pursuant to the 1996 Leniency Notice, subsequent inspections carried out by the Commission in June 2002 at the premises of several Community manufacturers of plastic industrial bags and follow up requests for information. The Commission discovered evidence that undertakings had taken part in a potential infringement of Article 81 of the EC Treaty.

Statement of Objections and access to file

A Statement of Objections (SO) was sent on 29 April 2004 to 43 addressees, namely:

— Plásticos Españoles SA (Aspla) and Armando Álvarez SA,
— Comhipac BV, Francepac SA, British Polythene Industries plc (BPI), BPI Europe BV, BPI International Limited and BPI International (No 2) Limited (BPI),
— Bonar Technical Fabrics NV, Bonar International SA, Bonar International Holdings Ltd and Low & Bonar plc,
— Fardem Packaging BV, Combattant Holding BV and Kendrion NV (Fardem'),
— Trioplast Wittenheim SA, Trioplanex France SA and Trioplast Industrier AB,
— FLS Plast A/S and FLS Industries A/S,
— Cofira-Film and Cofira-Sac (formerly Cofira-Sepso) (‘Cofira’),
— Rosenlew Saint Frères Emballage SA, UPM Kymmene Groupe and UPM-Kymmene Oyj,
— Conditionnement et Industrie SA, today known as Bernay Film Plastique (‘Ceisa’),
— Bischof + Klein France, Bischof + Klein GmbH & Co. KG and Bischof + Klein Beteiligungen GmbH (‘B&K’),
— Nordfolien GmbH (Nordfen Deutschland Steinfeld GmbH) and Nordenia International AG,
— RKW AG Rheinische Kunststoffwerke, Renolit AG and JM Gesellschaft für industrielle Beteiligung GmbH & Co. KG (‘RKW’),
— Sachsa Verpackung GmbH, Gasogne Deutschland GmbH and Groupe Gasogne (‘Sachsa’),
— Koninklijke Verpakkingssindustrie Stempher CV and Stempher BV (‘Stempher’),
— Greif France, Greif France Holdings, Greif Coordination Center and Van Leer-Muno BVBA (‘Greif’).

Access to file was provided by means of two CD-ROMs with all the documents contained in the Commission’s file received by the parties on 3 or 4 May 2004.

Some documents mentioned in the SO were missing from the CD-ROMs. These documents were made available and, where appropriate, additional time to reply was granted.
Prior to the hearing, RKW requested access to all 1998 and earlier market information submitted by parties in response to requests for information from the Commission, claiming that such information could no longer be considered confidential. Only one company, Stempher, objected to the disclosure of this information. Following correspondence with Stempher on this issue, I adopted a formal decision pursuant to Article 9(3) of the Mandate (1) on 3 November 2004 notifying Stempher that its annual turnover figures, volume and market shares pre 1999 did not contain business secrets and would be disclosed by the Commission. Stempher did not take any further steps at that point so the information in question was made available to all the parties.

The Parties' reply and oral hearing

The initial deadline to reply to the SO was 28 June or 29 June 2004 according to the date of receipt by the parties.

Upon request, limited extensions were granted to Aspla, Cofira, Sachsa, Fardem, Nordenia and Nordfolien, FL Industries A/S and RKW. Replies were received between 24 June 2004 and 9 July 2004 (i.e. within the time allowed).

Virtually all parties requested an oral hearing or expressed their wish to participate in the hearing. The oral hearing took place on 26, 27 and 28 July 2004. All addressees of the SO, except Ceisa, attended.

At the hearing, Aspla complained that I had refused their request for a postponement of the hearing for reasons of illness of their main legal representative. Given the large number of parties involved, I considered that a last-minute postponement was not a practical option and informed Aspla accordingly. I was satisfied that their rights of defence had not been violated (2).

A number of parties argued both in their written replies and at the hearing that BPI had continued the infringement following submission of the Leniency Application, by having participated in an Internet auction relating to the customer Kali und Salz, and also that BPI had actually instigated and/or led the cartel. RKW, B&K and Nordfolien were asked to furnish details of their accusations in writing within a given time limit after the hearing. BPI had access to extracts relating to the Kali & Salz issue in the replies to the SO of the parties concerned, and to letters from those parties because these statements could jeopardize the possible benefit of its application for immunity under Section B of the 1996 Leniency Notice. However, I did not see any ground to grant access to the replies of the other parties on this issue nor to BPI's arguments in respect of its alleged role as a leader of the cartel as had been further requested.

Subsequently, RKW requested further access to the Commission's file in respect of access to turnover figures of all addressees of the SO for the year 2001. They claimed to have a legitimate interest to be able to verify data that provides the basis for the market shares in the SO since market shares are of significance for the calculation of the basic amount of the fine. I refused their request by letter dated 23 May 2005 on the basis that, in order to protect other parties' legitimate interest in confidentiality, only limited forms of disclosure are accepted and that, in this case, RKW's rights of defence were sufficiently protected by the information already contained in the SO.

Draft final decision

A number of initial addressees of the SO are not addressed in the draft final decision because they have been found to be intermediary holding companies not involved in commercial activities or because they had not participated in the infringement or have been liquidated.

Where the legal entity which took part in the infringement has ceased to exist and has been absorbed by another company, said successor company has been held responsible for the total duration of the infringement committed by the economic unit concerned.

(1) Decision 2001/462/EC, ECSC.
(2) Case T-86/95, Compagnie Générale Maritime et autres, of 28 February 2002 at paragraph 466.
Objections have been dropped in respect of Greif following their written and oral replies to the SO.

Additional representations submitted by one of the addressees concerning its financial situation were given due consideration by the Commission services.

The draft decision submitted to the Commission deals only with 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 have been fully respected in this case.


Karen WILLIAMS