

Summary of Commission Decision
of 27 November 2013
relating to a proceeding under Article 101 of the TFEU
(Case AT.39633 — Shrimps)
(notified under document C(2013) 8286)
(Only the Dutch and German texts are authentic)
(2014/C 453/08)

On 27 November 2013, the Commission adopted a decision relating to a proceeding under Article 101 of the Treaty on the Functioning of the European Union. In accordance with the provisions of Article 30 of Council Regulation (EC) No 1/2003⁽¹⁾, 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. A non-confidential version of the decision is available on the Competition Directorate-General website at the following address: <http://ec.europa.eu/competition/antitrust/cases/>

INTRODUCTION

- (1) The Decision imposes fines on four traders of North Sea shrimps (Heiploeg, Klaas Puul and Kok Seafood from the Netherlands and Stührk from Germany) for infringing Article 101 of the TFEU.
- (2) In the period between June 2000 and January 2009 Heiploeg and Klaas Puul participated in an agreement to fix prices and share sales volumes of North Sea shrimps in the EU, and in particular in Belgium, France, Germany and the Netherlands. Kok Seafood participated at least as from February 2005 and Stührk was involved in price fixing in Germany in the period between March 2003 and November 2007.

PROCEDURE

- (3) The case was opened on the basis of an immunity application of Klaas Puul. The Commission obtained further evidence from inspections that took place in March 2009 in Belgium, the Netherlands, Germany and Denmark. The Commission also sent out several requests for information to all the undertakings involved in these anti-competitive arrangements.
- (4) A Statement of Objections was issued on 12 July 2012, following which all undertakings involved were given the possibility to receive access to the file and defend themselves against the preliminary view of the Commission in writing and during an Oral Hearing that took place on 7 February 2013.
- (5) The Advisory Committee on Restrictive Practices and Dominant Positions issued a favourable opinion on 14 and 25 November 2013, the Hearing Officer issued his final report on 25 November 2013 and the Commission adopted the Decision on 27 November 2013.

SUMMARY OF THE INFRINGEMENT

- (6) The decision concerns a single and continuous infringement of Article 101 of the TFEU. The infringement consisted of price fixing, market sharing and exchanges of sensitive commercial information between traders of North Sea shrimps.
- (7) The agreements and concerted practices formed part of an overall scheme which laid down the lines of participants' action on the market and restricted their individual commercial conduct with the aim of pursuing an identical anti-competitive objective and a single economic aim, namely to jointly influence the price level for North Sea shrimps, limit competition and stabilise the market.
- (8) All participants aimed at achieving increases or at least the stabilisation of downstream sales prices for North Sea shrimps by way of coordinating price offers to customers. Benchmark price fixing was used to ensure this objective, where needed supported by ancillary collusive action, be that concerning purchase prices, market sharing and customer allocations and specific actions towards potential competitors. These ancillary arrangements further limited or reduced competition in the North Sea shrimps trade.

⁽¹⁾ OJ L 1, 4.1.2003, p. 1.

- (9) The anti-competitive arrangements took place notably in Belgium, Germany, the Netherlands, France and Denmark, but affected the North Sea shrimps trade in the entire EU because they were connected in terms of prices and commercial strategy.
- (10) The cartel described in this Decision operated by way of bilateral contacts. In these informal contacts, every aspect of the business could come up for discussion, including the sales price level, prices paid to fishermen, competition and customers.
- (11) All four undertakings that are the subject of this Decision contributed in their own way to the idea of limited competition in a stable market with a coordinated price level. Heiploeg and Klaas Puul were in close contact with each other on all aspects of the cartel, at different levels and in different countries. Stührk exchanged price information with Heiploeg and took this information into account for its own commercial decisions, at least in Germany. The role of Kok Seafood was mainly limited to accepting a contract with Heiploeg under which it was remunerated for supplying shrimps to Heiploeg in function of the cartelised Heiploeg price and that came with the hidden clause that Kok Seafood should not come to the market as a viable competitor.
- (12) The infringing behaviour lasted from at least 21 June 2000 until 13 January 2009 and for each addressee an individual duration of the infringement period was established.
- (13) Each addressee is held liable according to its own involvement in the cartel arrangements, i.e. either as a direct participant, or, in the case of a parent company, because the behaviour of the subsidiary is imputed to the parent given that the parent exercised decisive influence over the conduct of subsidiaries during the period of the infringement.
- (14) The decision is addressed to the following entities and for the following individual duration: Heiploeg BV, Goldfish BV and Heiploeg Beheer BV (21.6.2000-13.1.2009), Heiploeg Holding BV (3.2.2006-13.1.2009); Klaas Puul BV, Klaas Puul Beheer BV and Klaas Puul Holding BV (21.6.2000-13.1.2009); Stührk Delikatessen Import GmbH & Co KG (14.3.2003-5.11.2007); L. Kok International Seafood BV and Holding L.J.M. Kok BV (11.2.2005-13.1.2009).

REMEDIES

- (15) In setting the fines, the Decision applies the 2006 Guidelines on Fines as well as the provisions of the 2006 Leniency Notice.
- (16) The basic amount is set between 15 and 30 % of the undertaking's average value of sales of North Sea shrimps of the financial years covered by the individual infringement period in the relevant geographic area. This geographic area is the EU for Heiploeg, Klaas Puul and Kok Seafood and Germany for Stührk. Account was taken of the very serious nature of the infringement and the high combined market share of the cartel participants.
- (17) The basic amount is multiplied by the number of years of participation in the infringement taking fully into account the duration of the participation for each undertaking in the infringement individually.
- (18) In addition, a percentage between 15 and 25 % of the undertakings value of sales is added in order to deter the undertakings from even entering into horizontal price-fixing and market-sharing agreements.
- (19) Attenuating circumstances taken into account for reducing the amount of the fines are the substantially limited participation of Stührk and Kok Seafood and the cooperation of Stührk outside leniency with the Commission investigation. The fines were also reduced on the basis of point 37 of the Guidelines on Fines to take into account in the specific circumstances of the case that all undertakings involved were to a different but large extent dealing with North-Sea shrimps.
- (20) Where necessary, the amount of the fines was further reduced to the legal maximum of 10 % of the worldwide turnover of the undertaking in the financial year before the adoption.
- (21) As regards the application of the 2006 Leniency Notice, Klaas Puul is granted immunity from fines.
- (22) One undertaking claimed inability to pay the fine. This claim was analysed based on point 35 of the 2006 Guidelines on Fines and was rejected.

FINES IMPOSED

— Heiploeg BV, Goldfish BV and Heiploeg Beheer BV, jointly and severally	EUR 14 262 000
— Heiploeg BV, Goldfish BV, Heiploeg Beheer BV, Heiploeg Holding BV, jointly and severally	EUR 12 820 000
— Klaas Puul BV, Klaas Puul Beheer BV, Klaas Puul Holding BV, jointly and severally	EUR 0
— Stührk Delikatessen Import GmbH & Co KG	EUR 1 132 000
— L. Kok International Seafood BV and Holding L.J.M. Kok BV, jointly and severally	EUR 502 000
