

Case T-377/06

Comap SA

v

European Commission

(Competition — Agreements, decisions and concerted practices — Copper and copper alloy fittings sector — Decision finding an infringement of Article 81 EC — Duration of participation in the infringement — Fines — Determination of the starting amount of the fine — Proportionality)

Judgment of the General Court (Eighth Chamber), 24 March 2011 II - 1120

Summary of the Judgment

1. *Competition — Agreements, decisions and concerted practices — Proof (Art. 81(1) EC)*
2. *Competition — Agreements, decisions and concerted practices — Agreements between undertakings — Proof (Art. 81(1) EC)*
3. *Competition — Administrative procedure — Commission decision finding an infringement — Burden of proving the infringement and its duration on the Commission (Art. 81(1) EC)*

4. *Competition — Agreements, decisions and concerted practices — Concerted practice — Concept — Coordination and cooperation incompatible with the obligation on each undertaking to determine independently its conduct on the market*
(Art. 81(1) EC)
5. *Competition — Agreements, decisions and concerted practices — Participation of an undertaking in anti-competitive initiatives — Whether tacit approval without public distancing is sufficient to render the undertaking liable*
(Art. 81(1) EC)
6. *Competition — Agreements, decisions and concerted practices — Prohibition — Infringements — Agreements and concerted practices capable of being treated as constituting a single infringement — Meaning*
(Art. 81(1) EC)
7. *Competition — Agreements, decisions and concerted practices — Agreements between undertakings — Undertaking having participated in an anti-competitive agreement — Conduct deviating from that agreed within the cartel*
(Art. 81(1) EC)
8. *Competition — Fines — Amount — Determination — Criteria — Reduction of the fine for cooperation of the fined undertaking — Conditions*
(Council Regulation No 1/2003, Art. 23(2); Commission Communication 96/C 207/04, Section D)

1. As regards proof of an infringement of Article 81(1) EC, the Commission must provide sufficiently precise and consistent evidence to support the firm conviction that the alleged infringement took place. Any doubt in the mind of the Courts of the European Union must operate to the advantage of the undertaking to which the decision finding the infringement was addressed. The Court

cannot therefore conclude that the Commission has established the infringement at issue to the requisite legal standard if it still entertains any doubts on that point, in particular in proceedings for annulment of a decision imposing a fine. However, it is not necessary for every item of evidence produced by the Commission to satisfy those criteria in relation to every aspect of the infringement.

It is sufficient if the body of evidence relied on by the institution, viewed as a whole, meets that requirement.

accused of having participated in a cartel, the accuracy of which is contested by several other undertakings similarly accused, cannot be regarded as constituting adequate proof of an infringement committed by the latter unless it is supported by other evidence.

Furthermore, it is normal for the activities which anti-competitive agreements entail to take place clandestinely, for meetings to be held in secret and for the associated documentation to be reduced to a minimum. It follows that, even if the Commission discovers evidence explicitly showing unlawful contact between traders, such as the minutes of meetings, it will normally be only fragmentary and sparse, so that it is often necessary to reconstitute certain details by deduction. Accordingly, in most cases, the existence of an anti-competitive practice or agreement must be inferred from a number of coincidences and indicia which, taken together, may, in the absence of another plausible explanation, constitute evidence of an infringement of the competition rules.

(see para. 59)

(see paras 56-58)

2. The statements made in the context of the leniency policy play an important role. Those statements made on behalf of undertakings have a probative value that is not insignificant, since they entail considerable legal and economic risks. However, an admission by one undertaking

3. The duration of the infringement is an intrinsic element of an infringement under Article 81(1) EC, the burden of proof of which is borne by the Commission. If there is no evidence directly establishing the duration of an infringement, the Commission must adduce at least evidence of facts sufficiently proximate in time for it to be reasonable to accept that that infringement continued uninterrupted between two specific dates.

(see para. 60)

4. An exchange of information does not necessarily have to be reciprocal for the principle of autonomous conduct on the market to be undermined. The disclosure of sensitive information removes uncertainty as to the future conduct of a competitor and thus directly or indirectly influences the strategy of the recipient of the information.

(see para. 70)

those practices changed after inspections by the Commission is not relevant to the continuation of the cartel, since the objective of the anti-competitive practices remained the same, namely collusion on prices in relation to fittings. It may well be that a cartel becomes less structured after the Commission's inspections, and the intensity of its activities more variable. Nevertheless, the fact that a cartel might have experienced periods of activity of varying intensity does not mean that the cartel has come to an end.

5. The notion of public distancing as a means of excluding liability must be interpreted narrowly. The communication that is intended to constitute a public distancing from an anti-competitive practice must be expressed firmly and unambiguously, so that the other participants in the cartel fully understand the intention of the undertaking concerned. If there has been no clear distancing, the Commission can take the view that the infringement has not been brought to an end.

(see paras 82, 85)

(see paras 75-76, 102)

7. Non-compliance with a cartel does not in any way alter the fact of its existence. Cartel members remain competitors, each of whom can be tempted, at any time, to profit from the discipline of the others in relation to the prices agreed by the cartel by lowering its own prices with the aim of increasing its market share, while maintaining a general level of pricing that is relatively high.

6. As regards conduct consisting in the regular organisation over a number of years of multilateral and bilateral contacts between competing producers, with the object of establishing unlawful practices by which the functioning of the copper fittings market is artificially affected, in particular in relation to prices, the fact that certain characteristics or the intensity of

(see paras 98-99)

8. A reduction in the fine on the ground of cooperation during the administrative proceeding is justified only if the conduct of the undertaking in question enabled the Commission to establish the existence of an infringement more easily and, where relevant, to bring it to an end. A reduction in the amount of the fine under the 1996 Leniency Notice can be justified only where the information provided and, more generally, the conduct of the undertaking concerned might be considered to demonstrate genuine cooperation on its part.

(see para. 114)