

Summary of Commission Decision

of 2 April 2014

relating to a proceeding under Article 101 of the Treaty on the Functioning of the European Union and Article 53 of the EEA Agreement

(Case AT.39792 — Steel Abrasives)

(notified under document C(2014) 2074 final)

(Only the English text is authentic)

(2014/C 362/07)

On 2 April 2014, the Commission adopted a decision relating to a proceeding under Article 101 of the Treaty on the Functioning of the European Union and Article 53 of the EEA Agreement. 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.

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 in the sector of steel abrasives. Steel abrasives are loose steel particles, either in round (steel shot) or angular (steel grit) form, with their main applications in the steel, automotive, metallurgy, petrochemical and stone cutting industries. They are produced by the atomisation of molten steel from steel scrap, followed by a series of thermal and mechanical treatments in order to give them final characteristics. The anti-competitive conduct identified in this case covers both steel shot and steel grit in all their grades. The Decision is addressed to the following entities: (i) Ervin Industries Inc. and Ervin Amasteel (Ervin); (ii) WHA Holding SAS and Winoa SA (Winoa); (iii) Metalltechnik Schmidt GmbH & Co. KG (MTS) and (iv) Eisenwerk Würth GmbH (Würth).

2. CASE DESCRIPTION

2.1. Procedure

- (2) Following the immunity application by Ervin, the Commission carried out unannounced inspections between 15 and 17 June 2010 at the premises of various producers of steel abrasives.
- (3) During the investigation, the Commission also sent several requests for information under Article 18 of Regulation (EC) No 1/2003.
- (4) On 16 January 2013, the Commission initiated proceedings pursuant to Article 11(6) of Regulation (EC) No 1/2003 against the addressees of the Decision and another party with a view to engaging in settlement discussions with them. Settlement meetings took place between February 2013 and December 2013. Subsequently, Ervin, Winoa, MTS and Würth submitted to the Commission their formal requests to settle pursuant to Article 10a(2) of Regulation (EC) No 773/2004 ⁽²⁾.
- (5) On 13 February 2014, the Commission adopted a Statement of Objections addressed to Ervin, Winoa, MTS and Würth. All these parties confirmed that it reflected the contents of their submissions and that they therefore remained committed to following the settlement procedure. The Advisory Committee on Restrictive Practices and Dominant Positions issued a favourable opinion on 31 March 2014 and the Commission adopted the Decision on 2 April 2014.

2.2. Addressees and duration

- (6) The addressees of the Decision have participated in a cartel and/or bear liability for it, infringing therefore Article 101 of the Treaty, during the periods indicated below:

Entity	Duration
Ervin Industries Inc. Ervin Amasteel	3 October 2003-30 March 2010
Winoa SA WHA Holding SAS	3 October 2003-15 June 2010 6 October 2005-15 June 2010

⁽¹⁾ OJ L 1, 4.1.2003, p. 1.

⁽²⁾ Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the EC Treaty (OJ L 123, 27.4.2004, p. 18).

Entity	Duration
Metalltechnik Schmidt GmbH & Co. KG	15 October 2003-15 June 2010
Eisenwerk Würth GmbH	19 January 2004-15 June 2010

- (7) Ervin Industries Inc. is jointly and severally liable as parent company for the participation of its subsidiary Ervin Amasteel. WHA Holding SAS and Winoa SA are also liable for the behaviour of their directly or indirectly wholly owned relevant subsidiaries and WHA Holding SAS is also jointly and severally liable for the behaviour of Winoa SA.

2.3. Summary of the infringement

- (8) The Decision concerns a cartel, the ultimate aim of which was to coordinate prices of steel abrasives and to restrict price competition. In order to achieve their aim the parties engaged in frequent anticompetitive contacts on bilateral, as well as multilateral, bases. Those contacts were used by the parties to discuss the key price components applicable to all their EEA steel abrasives sales and in particular to:
- (a) coordinate the introduction of a uniform calculation model for a common scrap surcharge — a variable surcharge that would be applicable to the price of all steel abrasives in the EEA; the common surcharge was applicable throughout the entire period of the infringement;
 - (b) introduce an energy surcharge;
 - (c) coordinate behaviour with respect to individual customers; the parties discussed (mainly through bilateral contacts) which parameters of competition would be allowed between them as regards individual customers: in principle price competition was restricted, which limited competition only to quality and services. With the ultimate aim to limit price competition, in some instances parties also allocated customers.
- (9) The geographic scope of the conduct as regards all parties was EEA-wide during the entire period of their participation.

2.4. Remedies

- (10) The Decision applies the 2006 Guidelines on Fines⁽¹⁾. With the exception of Ervin, the Decision imposes fines on all the entities listed under point (6) above.

2.4.1. Basic amount of the fine

- (11) In setting the fines, the Commission took into account the sales of the participating entities in the markets concerned in the last year prior to the end of the cartel, the fact that price coordination arrangements are amongst the most harmful restrictions of competition, the duration of the cartel and an additional amount to deter undertakings from entering into price coordination practices.

2.4.2. Adjustments to the basic amount

- (12) The Commission did not apply any aggravating circumstances. However, the Commission considered that mitigating circumstances applied for MTS and Würth, since evidence showed that they contributed to a lesser extent than other parties in some of the arrangements for maintaining the cartel.

2.4.3. Adaption of the adjusted basic amount

- (13) In view of the specific circumstances of this case, the Commission exercised its discretion in accordance with point 37 of the 2006 Fines Guidelines and adapted the fines in a way that takes into account the proportion of the sales of the cartelised product in the total turnover and the differences between the parties in view of their individual participation in the infringement.

2.4.4. Application of the 10 % turnover limit

- (14) In this case, none of the fines exceeded 10 % of an undertaking's total turnover for 2012.

2.4.5. Application of the 2006 Leniency Notice: reduction of fines

- (15) The Commission granted full immunity from the fine to Ervin.

⁽¹⁾ OJ C 210, 1.9.2006, p. 2.

2.4.6. *Application of the Settlement Notice*

- (16) As a result of the application of the Settlement Notice, the amount of the fines imposed on all addressees was reduced by 10 %.

3. **CONCLUSION**

- (17) The following fines were imposed pursuant to Article 23(2) of Regulation (EC) No 1/2003:
- (a) Ervin Industries Inc. and Ervin Amasteel, jointly and severally: EUR 0;
 - (b) Winoa SA: EUR 8 046 000;
 - (c) Winoa SA and WHA Holding SAS, jointly and severally: EUR 19 519 000;
 - (d) Metalltechnik Schmidt GmbH & Co. KG: EUR 2 079 000;
 - (e) Eisenwerk Würth GmbH: EUR 1 063 000.
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