

Summary of Commission Decision**of 17 June 2015****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.40055 — Parking heaters)***(notified under document C(2015) 3981)***(Only the English text is authentic)**

(2015/C 425/09)

On 17 June 2015, 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 concerning the supply of fuel-operated parking heaters and fuel-operated auxiliary heaters for cars and trucks.
- (2) Fuel-operated parking heaters heat a parked car and truck and/or pre-warm its engine. Fuel-operated auxiliary heaters support the heating system of modern cars and trucks that do not produce enough waste heat to keep a running car and truck warm. Fuel-operated parking heaters and fuel-operated auxiliary heaters are referred to as 'parking heaters' in this summary.
- (3) The Decision is addressed to Webasto ⁽²⁾ and Eberspächer ⁽³⁾ (hereinafter jointly referred to as 'parties').

2. CASE DESCRIPTION**2.1. Procedure**

- (4) Following the immunity application of Webasto, the Commission carried out a targeted inspection at the premises of Eberspächer in July 2013. In the immediate aftermath of the inspection, Eberspächer applied for leniency in August 2013.
- (5) On 24 July 2014, the Commission initiated proceedings pursuant to Article 11(6) of Regulation (EC) No 1/2003 against the parties with a view to engaging in settlement discussions with them. Settlement meetings took place between 10 September 2014 and 10 March 2015. Subsequently, the parties submitted to the Commission their formal request to settle pursuant to Article 10a(2) of Regulation (EC) No 773/2004 ⁽⁴⁾.
- (6) The Commission adopted the Statement of Objections on 6 May 2015 and both parties unequivocally confirmed that it corresponded to the content of their settlement submissions and that they therefore remained committed to following the settlement procedure.
- (7) The Advisory Committee on Restrictive Practices and Dominant Positions issued a favourable opinion on 15 June 2015. The Commission adopted the Decision on 17 June 2015.

2.2. Addressees and duration

- (8) The following undertakings have infringed Article 101 of the Treaty and Article 53 of the EEA Agreement, by participating, during the periods indicated below, in anticompetitive practices in respect to the supply of parking heaters.

⁽¹⁾ OJ L 1, 4.1.2003, p. 1.

⁽²⁾ The relevant legal entities are Webasto SE, Webasto Thermo & Comfort SE and Webasto Fahrzeugtechnik GmbH.

⁽³⁾ The relevant legal entities are Eberspächer Gruppe GmbH & Co. KG, Eberspächer Climate Control Systems GmbH & Co. KG and Eberspächer GmbH.

⁽⁴⁾ 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.

Undertaking	Period of participation
Webasto	13 September 2001-15 September 2011
Eberspächer	13 September 2001-15 September 2011

2.3. Summary of the infringement

- (9) The parties coordinated prices and allocated customers with regard to Requests for Quotations ('RFQs') issued by OEM⁽¹⁾ and semi-OEM⁽²⁾ customers that manufacture cars and trucks in the EEA. The parties further supplemented their price coordination and allocation activities by regular exchanges of sensitive market information, including information concerning prices that had been submitted in the framework of their replies to RFQs.
- (10) The conduct also extended to aftermarket sales to car and truck brand dealers and independent dealers in Germany and Austria and took the form, for example, of harmonising annual price lists and the amount of discounts.
- (11) The parties' anticompetitive practices formed a single and continuous infringement of Article 101 of the Treaty and Article 53 of the EEA Agreement.

2.4. Remedies

- (12) The Decision applies the 2006 Guidelines on Fines⁽³⁾.

2.4.1. Basic amount of the fine

- (13) In setting the fines, the Commission took into account the sales of parking heaters supplied to car and truck manufacturers in the EEA (OEM and semi-OEM customers) and the sales of parking heaters in the aftermarket in Germany and Austria made by the parties during the last full business year of the infringement (2010).
- (14) The basic amount of the fine is set at 18 % of the value of sales as defined under point (13) above, multiplied by the number of years of participation in the infringement and by adding the additional amount of 18 % of the value of sales.

2.4.2. Adjustments to the basic amount

- (15) The Commission did not apply any aggravating or mitigating circumstances in this case.
- (16) The Commission did not increase the fines for deterrence either.

2.4.3. Application of the 10 % turnover limit

- (17) The basic amount of Webasto was capped at 10 % of its total turnover in the business year preceding the adoption of the Decision (2014).

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

- (18) The Commission granted full immunity from the fine to Webasto and a 45 % reduction of the fine to Eberspächer.

2.4.5. Application of the Settlement Notice

- (19) As a result of the application of the Settlement Notice, the amount of the fine for Eberspächer was reduced by 10 %. The reduction was added to its leniency reward.

⁽¹⁾ Original equipment manufacturer.

⁽²⁾ For the purpose of the Decision, semi-OEM means that the parking heater is not included on the production line, where the car or truck is assembled but is built-in by the OEM upon the specific request of the customer, for example in a separate fabrication hall.

⁽³⁾ OJ C 210, 1.9.2006, p. 2.

3. CONCLUSION

(20) The following fine was imposed pursuant to Article 23(2) of Regulation (EC) No 1/2003:

- Webasto SE, Webasto Thermo & Comfort SE and Webasto Fahrzeugtechnik GmbH jointly and severally liable: EUR 0,
 - Eberspächer Gruppe GmbH & Co. KG, Eberspächer Climate Control Systems GmbH & Co. KG and Eberspächer GmbH jointly and severally liable: EUR 68 175 000.
-