Final Report of the Hearing Officer [1]

Steel Abrasives (Pometon)

(AT.39792)

(2016/C 366/03)

This case concerns an infringement of Article 101(1) of the Treaty on the Functioning of the European Union and Article 53 of the EEA Agreement consisting of price coordination throughout the EEA in the steel abrasives sector.

This case is a hybrid cartel case. The Commission has already adopted, on 2 April 2014, a decision addressed to four undertakings which opted for the cartel settlement procedure ('the Settlement Decision') [2]. The present draft decision is addressed to Pometon SpA. ('Pometon'), which did not introduce a settlement submission.

On 3 December 2014 the Commission adopted a statement of objections ('SO') against Pometon which was notified to Pometon on 5 December 2014. In the SO the Commission expressed its preliminary view that Pometon coordinated the price of steel abrasives in the EEA. In particular, the SO preliminarily concluded that Pometon colluded with other parties on a key component of the price steel abrasives, the scrap surcharge, in the EEA and also agreed with those parties not to compete on price with respect to individual customers. The Commission found that the alleged infringement took place from 3 October 2003 until 16 May 2007. In the SO the Commission indicated its intention to impose fines on Pometon pursuant to Article 23(2) of Regulation (EC) No 1/2003 [3].

Pometon was given access to the file at the Commission premises on 18 and 19 December 2014 as well as via CD-ROM on 19 December 2014 and it was granted a deadline of six weeks to reply to the SO which was extended, upon its request, by two weeks until 16 February 2015. Pometon replied to the SO on 13 February 2015 with a request to be heard orally.

During the oral hearing, which took place on 17 April 2015, Pometon raised, in addition to the arguments developed in its written response to the SO, concerns in relation to the impartial treatment of its case and the presumption of innocence. Firstly, Pometon complained that the Settlement Decision contained unnecessary references to it. Secondly, Pometon complained that on 23 December 2014 the Commission published on its website a provisional non-confidential version of the Settlement Decision from which the name of Pometon was not redacted. That version remained accessible on the Commission's website until 6 January 2015, when it was replaced by a new provisional non-confidential version, in which the name of Pometon was replaced by '[another undertaking]'. The Director of the Cartel Directorate responded to Pometon's second argument during the hearing, and apologised for the human mistake at the origin of the inadvertent disclosure, while assuring Pometon that the incident would not change the impartial assessment by the Commission of Pometon's case.

As the General Court has recently confirmed [4], in a hybrid cartel case, the settlement procedure for the settling parties and the standard procedure for the non-settling parties are two separate procedures. No conclusions as to the guilt of Pometon can thus be drawn from the Settlement Decision. Moreover, it appears from recital 29 and the document referred to in footnote 32 of the Settlement Decision that the starting date for the participation of the settling party MTS [5] in the infringement, as found in the Settlement Decision, is based on an email from a manager of Pometon of that date. This made it inevitable to mention that Pometon was one of the participants of the meeting of 3 October 2003 and of the subsequent contacts. Furthermore, the Settlement Decision indicates in footnote 4 that it is not addressed to Pometon, that the references to Pometon in the factual descriptions were used exclusively to establish the liability of the settling parties, and that the proceedings against Pometon were still pending. I thus consider that Pometon's right to respect of the presumption of innocence has not been violated by the references to Pometon in the Settlement Decision.

Finally, in my view, the apology and assurance given by the Commission services at the oral hearing constitute an adequate response to the inadvertent disclosure of Pometon's name in the provisional non-confidential version of the Settlement Decision published on 23 December 2014, given that the disclosure resulted from a human error.

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[1] Pursuant to Articles 16 and 17 of Decision 2011/695/EU of the President of the European Commission of 13 October 2011 on the function and terms of reference of the hearing officer in certain competition proceedings (OJ L 275, 20.10.2011, p. 29) ('Decision 2011/695/EU').

[2] See Commission Decision C(2014) 2074 final of 2 April 2014, Summary publication in OJ C 362, 14.10.2014, p. 8 and the Final Report of the Hearing Officer (OJ C 362, 14.10.2014, p. 7).

[3] Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ L 1, 4.1.2003, p. 1).

[4] Judgment in *Timab Industries and CFPR* v *Commission*, T-456/10, EU:T:2015:296, paragraphs 71 and 72.

[5] Metalltechnik Schmidt GmbH & Co. KG.

Pursuant to Article 16 of Decision 2011/695/EU, I have examined whether the draft decision deals only with objections in respect of which Pometon has been afforded the opportunity of making known its views. I conclude that it does.

Overall, I conclude that the effective exercise of procedural rights has been respected in this case.

Brussels, 24 May 2016.

Wouter WILS