

Summary of Commission Decision
of 8 February 2017
relating to a proceeding under Article 101 of the TFEU and Article 53 of the EEA Agreement
(Case AT.40018 — Car battery recycling)
(notified under document C(2017) 2223)
(Only the English text is authentic)
(2017/C 396/06)

On 8 February 2017, the Commission adopted a decision relating to a proceeding under Article 101 of the Treaty on the Functioning of the European Union, followed by a correcting Decision on 6 April 2017 under the same reference. 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 which lasted from 23 September 2009 until 26 September 2012 and consisted in the coordination of pricing behaviour between undertakings active in the sector of lead recycling that affected trade in Belgium, Germany, France and the Netherlands.
- (2) The Decision is addressed to the following entities: Campine NV and Campine Recycling NV (collectively referred to as 'Campine'); Eco-Bat Technologies Ltd; Berzelius Metall GmbH and Société de traitement chimique des métaux SAS (collectively referred to as 'Eco-Bat'); Johnson Controls, Inc.; Johnson Controls Tolling GmbH & Co. KG and Johnson Controls Recycling GmbH (collectively referred to as 'JCI'); Recylex SA, Fonderie et manufacture de métaux SA and Harz-Metall GmbH (collectively referred to as 'Recylex').

2. CASE DESCRIPTION

2.1. Procedure

- (3) The case was initiated by an immunity application submitted by JCI on 22 June 2012. The Commission granted JCI conditional immunity from fines on 13 September 2012. From 26 until 28 September 2012, the Commission carried out unannounced inspections at the premises of various undertakings in Belgium, Germany and France. Eco-Bat applied for leniency on 27 September 2012, Recylex on 23 October 2012, and Campine on 4 December 2012.
- (4) On 24 June 2015, the Commission initiated proceedings under Article 2(1) of Commission Regulation (EC) No 773/2004⁽²⁾ and adopted a statement of objections ('SO') against the addressees of the Decision. The addressees of the SO made use of their rights of access to the documents in the Commission's file. They also set out in writing to the Commission their views on the objections raised against them and presented these at an oral hearing on 17 and 18 November 2015.
- (5) On 8 February 2017, the Commission adopted the Decision and, on 6 April 2017, adopted a correcting Decision.

2.2. Summary of the infringement

- (6) Between 23 September 2009 and 26 September 2012, Campine, Eco-Bat, JCI and Recylex participated in a cartel which consisted in the coordination of pricing behaviour (target prices, maximum prices or fixed-amount price reductions) for the purchase of scrap lead-acid automotive batteries in Belgium, Germany, France and the Netherlands, which were used for the production of recycled lead.
- (7) The objective of the cartel was to prevent, restrict or distort competition for the purchase of scrap lead-acid automotive batteries by fixing the purchase prices of such products in order to reduce purchase prices or prevent their increase. The parties coordinated their behaviour through contacts relating to prices, future market conduct, and negotiations with suppliers.

⁽¹⁾ 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).

⁽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).

- (8) The four cartel participants reached agreements to reduce or to maintain the prices offered to suppliers at a certain level or to reduce them by a certain amount, sometimes in phased reductions over a set period of time. They exchanged information and agreed on prices offered to specific suppliers, on maximum price levels and target prices, and on expected price evolutions and purchasing intentions. In addition to exchanging information on current or future prices offered to suppliers, on some occasions, the participants provided information to each other on expected volumes of purchases, on current levels of stocks, or levels of activity. They also informed each other on the prices offered to third-party collectors or dealers, as those collectors or dealers were also directly in competition with them for the purchase of scrap batteries.
- (9) The majority of anti-competitive contacts took place on a bilateral basis, mainly through telephone calls, emails, or text messages. Some contacts also took place in person, either through bilateral meetings or, less frequently, through multilateral meetings. The individuals who participated in those contacts held responsibilities at different levels within each participating undertaking, primarily at senior management level.

2.3. Remedies

2.3.1. Basic amount of the fine

- (10) In setting the basic amount of the fines, the Commission took into account the value of purchases of scrap lead-acid automotive batteries acquired by each undertaking in the period covering the full business year 2011 from scrap collectors, scrap dealers or traders located in Germany, Belgium, France and the Netherlands, including purchases of scrap lead-acid automotive batteries directly from retail points at which disused batteries are returned.
- (11) Having taken into account that the infringement consisted in horizontal price fixing, which is, by its very nature, among the most harmful restrictions of competition, the Commission set the gravity percentage at 15 %.
- (12) The Commission took into account the following durations of participation in the infringement:
- Campine: from 23 September 2009 until 26 September 2012,
 - Eco-Bat: from 23 September 2009 until 26 September 2012 ⁽¹⁾,
 - JCI: from 23 September 2009 until 22 June 2012,
 - Recylex: from 23 September 2009 until 26 September 2012.

2.3.2. Adjustments to the basic amount

- (13) The Commission granted Campine a 5 % reduction of the basic amount of its fine on account of mitigating circumstances as Campine had a more minor or peripheral role in the infringement compared to the other addressees of the Decision.

2.3.3. Increase pursuant to point 37 of the Guidelines on fines

- (14) As this case concerns a purchasing cartel, the Commission applied point 37 of the Guidelines on fines to increase the amount of the fine for each addressee by 10 %, to address the fact that the standard methodology for setting the basic amount of the fines for a purchasing cartel may underestimate the economic significance of the infringement and lead to under-deterrence. This is due to the particularity of the infringement in this case that the more the parties pursued the objective of reducing prices or preventing their increase, the more this would result in reducing the value of purchases taken into account for calculating the basic amount of the fine.

2.3.4. Application of the 2006 Leniency Notice

- (15) The Commission granted JCI full immunity from fines.
- (16) The Commission granted Eco-Bat a 50 % reduction of its fine.
- (17) The Commission granted Recylex a 30 % reduction of its fine.
- (18) The Commission did not grant Campine any reduction of its fine.

2.3.5. Ability to pay pursuant to point 35 of the Guidelines on fines

- (19) Recylex submitted an application for a reduction of its fine on the grounds of inability to pay. The Commission assessed the application submitted by Recylex and concluded that it should be rejected.

⁽¹⁾ The period of participation in the infringement of Société de traitement chimique des métaux SAS is from 18 January 2011 until 26 September 2012.

3. CONCLUSION

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

- Campine NV and Campine Recycling NV, jointly and severally liable for: EUR 8 158 000,
 - Eco-Bat Technologies Ltd and Berzelius Metall GmbH, jointly and severally liable for: EUR 32 712 000 of which Eco-Bat Technologies Ltd, Berzelius Metall GmbH and Société de traitement chimique des métaux SAS, jointly and severally liable for: EUR 21 944 000,
 - Johnson Controls, Inc., Johnson Controls Tolling GmbH & Co. KG and Johnson Controls Recycling GmbH, jointly and severally liable for: EUR 0,
 - Recylex SA, Fonderie et manufacture de métaux SA and Harz-Metall GmbH, jointly and severally liable for: EUR 26 739 000.
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