SUMMARY OF COMMISSION DECISION
of 21 September 2023
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.40760 – HAND GRENADES)
(Notified under document number C(2023) 6290 final)
(Text with EEA relevance)

On 21 September 2023, 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, 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(1) of the Treaty on the Functioning of the European Union and Article 53(1) of the EEA Agreement. The infringement consisted in market sharing in relation to the sale of military hand grenades (‘hand grenades’) in the European Economic Area (‘EEA’).

(2) The Decision is addressed to the following legal entities (referred to collectively as ‘addressees’ or individually as ‘addressee’): SwissP Defence AG and RUAG International Holding AG (together ‘RUAG’), and Diehl Defence GmbH & Co. KG and Diehl Stiftung & Co. KG (together ‘Diehl’).

2. CASE DESCRIPTION

2.1. Procedure

(3) Following an immunity application by RUAG on 15 April 2021, the Commission carried out an unannounced inspection at the premises of Diehl between 23 November and 25 November 2021.

(4) On 24 February 2022, Diehl applied for immunity or, in the alternative, for reduction of fines.

(5) On 18 January 2023, the Commission initiated proceedings under Article 11(6) of Regulation (EC) No 1/2003 against the addressees of the Decision with a view to engaging in settlement discussions with them under the Settlement Notice. Settlement discussions with the addressees took place between February and May 2023. Each addressee then submitted its formal request to settle pursuant to Article 10a(2) of Regulation (EC) No 773/2004.

\(^{(1)}\) OJ L 1, 4.1.2003, p. 1.
(6) On 3 July 2023, the Commission adopted a statement of objections addressed to the addressees. The addressees replied to the statement of objections confirming that it corresponded to the content of their settlement submissions and that they remained committed to following the settlement procedure.

(7) The Advisory Committee on Restrictive Practices and Dominant Positions issued a favourable opinion on 18 September 2023.

(8) On 18 September 2023, the Hearing Officer issued a final report in this case.


2.2. Summary of the infringement

(10) The Decision concerns an infringement relating to the sale of hand grenades.

(11) The conduct consisted in the allocation of national markets between the addressees for the sale of hand grenades. This also included exchange of competitively sensitive information. Following the allocation of the national markets, only the designated addressee would be entitled to sell hand grenades in the national market concerned. If any of the addressees intended to sell its hand grenades in the national market allocated to the other addressee, it was required to ask for the latter’s consent in advance.

(12) The market allocation concerned both sales via tenders and replies to direct requests for an offer by national authorities.

(13) The infringement covered by the Decision was EEA-wide and lasted from 7 November 2007 until 23 November 2021.

2.3. Addressees and duration

(14) The addressees of the Decision are held liable for the infringement for the following durations:

<table>
<thead>
<tr>
<th>Addressees</th>
<th>Duration</th>
</tr>
</thead>
<tbody>
<tr>
<td>SwissP Defence AG (for its direct participation) and RUAG International Holding AG (as the parent of SwissP Defence AG, formerly RUAG Ammotec AG)</td>
<td>7 November 2007 – 15 April 2021</td>
</tr>
<tr>
<td>Diehl Defence GmbH &amp; Co. KG (for its direct participation) and Diehl Stiftung &amp; Co. KG (as the parent of Diehl Defence GmbH &amp; Co. KG)</td>
<td>7 November 2007 – 23 November 2021</td>
</tr>
</tbody>
</table>

2.4. Remedies

(15) The Decision applies the 2006 Guidelines on Fines (').

2.4.1. Basic amount of the fine

(16) In setting the fines, the Commission took into account the annual average of each addressee’s sales of hand grenades within the EEA during the entire infringement period, the fact that cartels are, by their very nature, among the most harmful restrictions of competition, the duration of the infringement, the fact that the infringement covered the EEA and an additional amount to deter undertakings from entering into such practices.

(*) In July 2022, RUAG Ammotec AG was acquired by another company and was renamed SwissP Defence AG.

2.4.2. Adjustments to the basic amount

(17) The Commission did not apply any aggravating or mitigating circumstances.

2.4.3. Point 37 of the 2006 Guidelines on Fines

(18) In order to achieve sufficient deterrence, the Commission applied, under point 37 of the 2006 Guidelines on Fines, an increase of the amount of the fine by a multiplying factor of 3.75 for both addressees. This led to a fine which is sufficiently deterrent and proportionate, considering both the economic strength of the parties and the specificities of the infringement as well as each of the addressees’ role in the infringement.

2.4.4. Application of the 10 % turnover limit

(19) The fines imposed (before the application of the leniency and settlement reductions) did not exceed 10 % of their total worldwide turnover in the business year preceding the date of the Decision.

2.4.5. Application of the 2006 Leniency Notice

(20) The Commission granted RUAG full immunity from fines. The Commission granted Diehl a 50 % reduction of its fine.

2.4.6. Application of the Settlement Notice

(21) As a result of the application of the Settlement Notice, the amount of the fines was further reduced by 10 %.

3. CONCLUSION

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

(a) SwissP Defence AG (formerly RUAG Ammotec AG) and RUAG International Holding AG, jointly and severally: EUR 0

(b) Diehl Defence GmbH & Co. KG (formerly Diehl BGT Defence GmbH & Co. KG) and Diehl Stiftung & Co. KG, jointly and severally: EUR 1 200 000.