

JUDGMENT OF THE GENERAL COURT (Eighth Chamber)

24 March 2011 *

In Case T-385/06,

Aalberts Industries NV, established in Utrecht (Netherlands),

Comap SA, formerly Aquatis France SAS, established in La Chapelle-Saint-Mesmin (France),

Simplex Armaturen + Fittings GmbH & Co. KG, established in Argenbühl-Eisenharz (Germany),

represented initially by R. Wesseling and M. van der Woude, and subsequently by R. Wesseling, lawyers,

applicants,

* Language of the case: English.

V

European Commission, represented by A. Nijenhuis, V. Bottka and R. Sauer, acting as Agents,

defendant,

APPLICATION for annulment of Commission Decision C(2006) 4180 of 20 September 2006 relating to a proceeding under Article 81 [EC] and Article 53 of the EEA Agreement (Case COMP/F-1/38.121 — Fittings), and also, in the alternative, for a reduction in the fine imposed on the applicants in that decision,

THE GENERAL COURT (Eighth Chamber),

composed of M.E. Martins Ribeiro, President, N. Wahl (Rapporteur) and A. Dittrich, Judges,

Registrar: T. Weiler, Administrator,

having regard to the written procedure and further to the hearing on 2 February 2010,

gives the following

Judgment

Background to the dispute and the contested decision

- ¹ By Decision C(2006) 4180 of 20 September 2006 relating to a proceeding under Article 81 [EC] and Article 53 of the EEA Agreement (Case COMP/F-1/38.121 — Fittings) (summary published in OJ 2007 L 283, p. 63; ‘the contested decision’), the Commission of the European Communities found that a number of undertakings had infringed Article 81(1) EC and Article 53 of the Agreement on the European Economic Area (EEA) by participating, over various periods between 31 December 1988 and 1 April 2004, in a single, complex and continuous infringement of the Community competition rules taking the form of a complex of anti-competitive agreements and concerted practices in the market for copper and copper alloy fittings, which covered the territory of the EEA. The infringement consisted in fixing prices, agreeing on price lists, agreeing on discounts and rebates, agreeing on implementation mechanisms for introducing price increases, allocating national markets, allocating customers and exchanging other commercial information and also in participating in regular meetings and in maintaining other contacts intended to facilitate the infringement.
- ² The applicants, Aalberts Industries NV (‘Aalberts’), Comap SA, formerly Aquatis France SAS (‘Aquatis’), and Simplex Armaturen + Fittings GmbH & Co. KG (‘Simplex’), are among the addressees of the contested decision.

- 3 Aalberts is the parent company of an international industrial group listed on the Euronext Securities Market in Amsterdam (Netherlands). It controls, directly or indirectly, a number of undertakings active in the fittings production or distribution sector. On 30 August 2002 Aalberts acquired the entire fittings production and distribution business of IMI plc, although the business was collectively known as 'Yorkshire Fittings Group'. The transaction involved, inter alia, the acquisition of all the shares in Raccord Orléanais SA (which subsequently became Aquatis) and in R. Woeste & Co. Yorkshire GmbH (which subsequently became Simplex). Those two undertakings were integrated within one of the two main businesses of the Aalberts group, Flow Control.
- 4 In March 2006, Comap, an addressee of the contested decision by virtue of its participation in the infringement under the control of Legris Industries SA and the applicant in Case T-377/06, was transferred to the Aalberts group. By email of 16 April 2007, the Court was informed that all of Aquatis's assets and liabilities had been transferred to Comap and that Aquatis had ceased to exist as a legal entity. In order to harmonise references to the latter with those used in the contested decision, this judgment will also refer to Aquatis.
- 5 On 9 January 2001, Mueller Industries Inc., another producer of copper fittings, informed the Commission of the existence of a cartel in the fittings sector and in other related industries in the copper tubes market, and expressed its willingness to co-operate with the Commission under the terms of the Commission Notice on the non-imposition or reduction of fines in cartel cases (OJ 1996 C 207, p. 4; 'the 1996 Leniency Notice') (recital 114 to the contested decision).
- 6 On 22 and 23 March 2001, in the framework of an investigation concerning copper tubes and fittings, the Commission, pursuant to Article 14(3) of Council Regulation

No 17 of 6 February 1962, First Regulation implementing Articles [81 EC] and [82 EC] (O), English Special Edition 1959-1962, p. 87), carried out unannounced inspections at the premises of a number of undertakings, including IMI which was the parent company of Raccord Orléanais and R. Woeste & Co. Yorkshire at that time (recital 119 to the contested decision).

- 7 Following those first inspections, the Commission, in April 2001, split the investigation relating to copper tubes into three different proceedings, namely the proceedings relating to Case COMP/E-1/38.069 (Copper Plumbing Tubes), Case COMP/F-1/38.121 (Fittings) and Case COMP/E-1/38.240 (Industrial Tubes), respectively (recital 120 to the contested decision).
- 8 On 24 and 25 April 2001, the Commission carried out further unannounced inspections at the premises of Delta plc, a company at the head of an international engineering group whose 'Engineering' division encompassed a number of fittings manufacturers. Those inspections related solely to fittings (recital 121 to the contested decision).
- 9 From February/March 2002, the Commission sent the parties concerned a number of requests for information pursuant to Article 11 of Regulation No 17, and then pursuant to Article 18 of Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 [EC] and 82 [EC] (O) 2003 L 1, p. 1) (recital 122 to the contested decision).
- 10 In September 2003, IMI submitted an application for leniency under the 1996 Leniency Notice. That application was followed by applications from the Delta group (March 2004) and FRA.BO SpA (July 2004). The final leniency application was submitted in May 2005 by Advanced Fluid Connections plc ('AFC'). FRA.BO provided,

inter alia, information drawing the Commission's attention to the fact that the infringement had continued during the period from 2001 to 2004, that is to say, after the Commission's inspections (recitals 115 to 118 to the contested decision).

- 11 On 22 September 2005, the Commission initiated an infringement proceeding in the framework of Case COMP/F-1/38.121 (Fittings) and adopted a statement of objections, which was then notified to the applicants (recitals 123 and 124 to the contested decision).
- 12 On 20 September 2006 the Commission adopted the contested decision.
- 13 In Article 1 of the contested decision, the Commission found that the applicants had participated in the infringement for the following periods:
 - from 25 June 2003 to 1 April 2004, as regards Aalberts;
 - from 31 January 1991 to 22 March 2001, as members of the IMI group, and from 25 June 2003 to 1 April 2004, as members of the Aalberts group, as regards Aquatis and Simplex.
- 14 For that infringement, the Commission imposed the following fines on the applicants in Article 2(a) and (b) of the contested decision:

‘(a) [Aalberts]: EUR 100.80 million

of which jointly and severally with:

[Aquatis]: EUR 55.15 million; and

[Simplex]: EUR 55.15 million

(b) 1. [IMI], jointly and severally with IMI Kynoch Ltd: EUR 48.30 million

of which jointly and severally with:

...

[Aquatis]: EUR 48.30 million; and

[Simplex]: EUR 48.30 million

2. [Aquatis] and [Simplex] are jointly and severally liable for the additional amount of: EUR 2.04 million.'

¹⁵ Under Article 3 of the contested decision, the undertakings referred to in Article 1 were required immediately to bring to an end the infringement in so far as they had not already done so, and to refrain from any act or conduct described in Article 1 and from any act or conduct having the same or similar object or effect.

- ¹⁶ For the purposes of setting the amount of the fine imposed on each undertaking, the Commission applied, in the contested decision, the method set out in the Guidelines on the method of setting fines imposed pursuant to Article 15(2) of Regulation No 17 and Article 65(5) [CS] (OJ 1998 C 9, p. 3; ‘the 1998 Guidelines’).
- ¹⁷ As regards, first of all, the fixing of the starting amount of the fine by reference to the gravity of the infringement, the Commission characterised the infringement as very serious, on account of its nature and its geographic scope (recital 755 to the contested decision).
- ¹⁸ Taking the view, next, that there was considerable disparity between the undertakings concerned, the Commission applied differentiated treatment, taking as its basis their relative importance on the relevant market as determined by their market shares. On that basis, the Commission divided the undertakings concerned into six categories, relying on the respective turnover — in the EEA in the year 2000 — of each of the undertakings with the product concerned by the present proceedings, except in regard to Aalberts and AFC, for which the year 2003 was taken into consideration (recital 758 to the contested decision).
- ¹⁹ Aalberts was placed in the first category, for which the starting amount was set at EUR 60 million, while IMI was placed in the second category, for which the starting amount was set at EUR 46 million (recital 765 to the contested decision).
- ²⁰ Next, the Commission increased the starting amount of the fine imposed on each of the undertakings in question by 10 % per annum of participation in the cartel and, where appropriate, by 5 % for each period of between six months and one year. As regards the period between 31 December 1988 and 31 January 1991, the Commission considered it appropriate, on account of the limited geographic scope of the cartel at that time, to increase the fine by 5 % per annum (recital 775 to the contested decision).

- 21 Finally, the fact that participation in the infringement continued after the Commission's inspections, that is during the period between 25 June 2003 and 1 April 2004, was regarded as an aggravating circumstance for which an increase of 60% of the basic amount of the fine imposed on the applicants was justified (recitals 779 and 782 to the contested decision).

Procedure and forms of order sought by the parties

- 22 By application lodged at the Registry of the Court on 14 December 2006, the applicants brought the present action.
- 23 Upon hearing the Report of the Judge-Rapporteur, the General Court (Eighth Chamber) decided to open the oral procedure and, by way of measures of organisation of procedure, requested the Commission to lodge certain documents. The Commission complied with that request within the period allowed.
- 24 The parties presented oral argument and their answers to the questions put by the Court at the hearing on 2 February 2010.
- 25 The applicants claim that the Court should:
- annul Article 1, Article 2(a) and (b)(2) and Article 3 of the contested decision, in so far as those provisions concern them;
 - in the alternative, significantly reduce the amount of the fine imposed on them;

- order the Commission to pay the costs.

²⁶ The Commission contends that the Court should:

- dismiss the action;
- order the applicants to pay the costs.

Law

²⁷ In support of the action, the applicants put forward five pleas in law, alleging, respectively:

- the unlawfulness of the imputation of liability for the infringement to Aalberts as the parent company;
- that there was no infringement of Article 81 EC;
- that the applicants did not participate in the single, complex and continuous infringement referred to in Article 1 of the contested decision;

— breach of Article 23(2) of Regulation No 1/2003 and of the 1998 Guidelines;

— breach of Article 2 of Regulation No 1/2003 and of Article 11(2) of Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 [EC] and 82 [EC] (OJ 2004 L 123, p. 18).

²⁸ In the present case, the Court considers it appropriate to begin by examining the second and third pleas in law.

Second plea: there was no infringement of Article 81 EC

Arguments of the parties

²⁹ The applicants maintain that the Commission has not proved to the requisite legal standard that the contacts between Aquatis and Simplex and their competitors, which the Commission took into account in the contested decision, constituted an infringement of Article 81 EC.

³⁰ In that regard the applicants observe, first of all, that the finding in Article 1 of the contested decision as to Aquatis's alleged participation in the infringement during the period from 25 June 2003 to 1 April 2004 was based exclusively on its participation in

five meetings of the Logistics Committee of the Fédération Française des Négociants en Appareils Sanitaires, Chauffage, Climatisation et Canalisations (FNAS) held between 25 June 2003 and 20 January 2004 and a telephone conference on 16 February 2004 which also took place within the context of FNAS.

- 31 First, the applicants state that the meetings of the FNAS Logistics Committee were convened at the request of French wholesalers, who had expressed the desire to offer their customers packages containing smaller numbers of fittings, which would have entailed additional costs and therefore an increase in the price of the products. Apart from the technical issues relating to the putting in place of the new packaging and related organisational issues, the meetings also addressed financial matters connected with the new packaging of the fittings. Contrary to the Commission's assertion, those meetings did not have an anti-competitive object. In the applicants' submission, AFC's observation in its leniency application is to the same effect.
- 32 Second, not only do the applicants emphasise the fact that the evidence on which the Commission relied in support of its finding that there was an anti-competitive agreement consists of minutes of meetings drawn up by a representative of the FNAS Logistics Committee and not signed by the representatives of the companies that participated in those meetings, but they also dispute the Commission's interpretation of those minutes.
- 33 In the applicants' submission, those minutes show that the discussions within the working group of the FNAS Logistics Committee did not result in the conclusion of an agreement and did not involve any exchange of confidential information.

- 34 As regards Simplex, the applicants claim that the alleged participation in the infringement during the period from 25 June 2003 to 1 April 2004 is based on only two events, namely a telephone conversation with FRA.BO on 25 February 2004 and a discussion at a trade fair in Essen (Germany) on 18 March 2004.
- 35 As regards, first of all, the telephone conversation between Ms P. (FRA.BO) and Mr W. (Simplex), the applicants observe that the only contemporaneous document on which the Commission relies as against Simplex consists of the notes taken in Ms P.'s diary, dated 25 February 2004. Those notes are ambiguous and no conclusion can be drawn from them. The ambiguity of the notes and of FRA.BO's explanation led the Commission to find, in recital 511 to the contested decision, that the price increase had been confirmed by Simplex's independent importer (Mr D.). Such an interpretation would imply that Mr W. had informed Ms P., on 25 February 2004, that Mr D. had decided to increase his prices by 5 % with effect from 1 March 2004. In so far as that was the position, the information relating to the commercial policy of Mr D., and not to that of the applicants, would already have been communicated on the market. The Commission's alternative explanation, put forward in the defence, that the expression 'confirmed by [D.]' probably referred to a statement by Mr W. that the price increase would apply to the sales that Simplex made via Mr D. shows that in that respect also the Commission failed to undertake an analysis of the facts and of the allegations made.
- 36 As regards, second, the conversation at the Essen trade fair on 18 March 2004 between Mr Ha. (IBP Ltd) and Mr H. and Mr Be., respectively a consultant and an employee of Simplex, the applicants submit that the only evidence is the recollection of Mr Ha. According to him, he had brief discussions with Mr H. and Mr Be. and also with Mr K. (Comap) who had asked him what IBP proposed to do about price increases, to which he had replied that IBP planned to increase prices at the end of the month. He also stated that he had already informed his customers of the impending price increases, so that the information was no longer confidential.

- 37 In that regard, the applicants claim that, in the first place, Mr Ha's statement is not corroborated by any other evidence and, in the second place, the thrust of the statement was disputed by Mr H. and Mr Be., whose statements are corroborated by the fact that well before 18 March 2004 Simplex had already decided upon and implemented a price increase by communicating that information to its customers. In the applicants' submission, there was therefore no reason for Mr H. or Mr Be. to inquire about Mr Ha's intentions.
- 38 In addition, there is no indication in Mr Ha's unilateral statement concerning a proposed price increase that there was an agreement or concerted practice within the meaning of Article 81 EC. Nor can the information provided by Mr Ha. be considered commercially sensitive, as that information was already known on the market.
- 39 Last, the applicants emphasise that there is no evidence relating to other periods. In that context, the applicants refer to the alleged contacts between Ms P. and employees of Comap, Simplex and Aquatis. They claim that those contacts amounted to 'three [innocuous] conversations' that did not lead to any infringement of Article 81 EC.
- 40 The Commission contends that, as regards the evidence of collusion in the context of the FNAS meetings in which Aquatis participated, it based its findings on the minutes of those meetings. There is, moreover, no reason to doubt the credibility of those minutes.
- 41 As for Simplex, the Commission takes the view that the notes in Ms P's diary are clear and leave no doubt as to the terms of the discussion between her and Mr W., namely the 5 % price increase in Greece.

- 42 As regards the exchange of views at the Essen trade fair on 18 March 2004, the Commission also emphasises that the contact between Mr Ha. and the Simplex representatives was not 'unilateral', since Mr Ha. stated, in response to a question from the Simplex representatives, that IBP had planned to increase prices at the end of the month. From a commercial aspect, moreover, that was sensitive information and rather specific as regards the date of implementation. Even if Simplex had already decided that it would increase its prices, as the applicants claim, the attempt to reduce uncertainty as to the success of its own conduct on the market is anti-competitive as it is contrary to the requirement of independent conduct on the market.
- 43 Last, the Commission observes that the only conclusion that can be drawn from the evidence relating to the FNAS meetings, the Essen trade fair and the discussions concerning the Greek market is that the applicants again began to participate in the single, complex and continuous infringement that had begun in 1988.

Findings of the Court

- 44 As a preliminary point, the Court observes, as regards proof of an infringement of Article 81(1) EC, that the Commission must produce sufficiently precise and consistent evidence to support the firm conviction that the alleged infringement took place (see, to that effect, Joined Cases 29/83 and 30/83 *CRAM and Rheinzink v Commission* [1984] ECR 1679, paragraph 20). Any doubt in the mind of the Courts of the European Union ('Courts of the Union') must operate to the advantage of the undertaking to which the decision finding the infringement was addressed. The Courts of the Union cannot therefore conclude that the Commission has established the infringement at issue to the requisite legal standard if they still entertain any doubts on that point, in

particular in proceedings for annulment of a decision imposing a fine (Case T-38/02 *Groupe Danone v Commission* [2005] ECR II-4407, paragraph 215).

⁴⁵ It has also consistently been held that it is not necessary for every item of evidence produced by the Commission to satisfy those criteria in relation to every aspect of the infringement. It is sufficient if the body of evidence relied on by the institution, viewed as a whole, meets that requirement (see Joined Cases T-67/00, T-68/00, T-71/00 and T-78/00 *JFE Engineering and Others v Commission* [2004] ECR II-2501, paragraph 180 and the case-law cited).

⁴⁶ Furthermore, it is normal for the activities which anti-competitive agreements entail to take place in a clandestine fashion, for meetings to be held in secret and for the associated documentation to be reduced to a minimum. It follows that, even if the Commission discovers evidence explicitly showing unlawful contact between traders, such as the minutes of meetings, it will normally be only fragmentary and sparse, so that it is often necessary to reconstitute certain details by deduction. Accordingly, in most cases, the existence of an anti-competitive practice or agreement must be inferred from a number of coincidences and indicia which, taken together, may, in the absence of another plausible explanation, constitute evidence of an infringement of the competition rules (Joined Cases C-204/00 P, C-205/00 P, C-211/00 P, C-213/00 P, C-217/00 P and C-219/00 P *Aalborg Portland and Others v Commission* [2004] ECR I-123, paragraphs 55 to 57, and Joined Cases C-403/04 P and C-405/04 P *Sumitomo Metal Industries and Nippon Steel v Commission* [2007] ECR I-729, paragraph 51).

⁴⁷ In that regard, it must be noted that the statements made in the context of the leniency policy play an important role. Those statements made on behalf of undertakings

have a probative value that is not insignificant, since they entail considerable legal and economic risks (see, to that effect, *JFE Engineering and Others v Commission*, cited in paragraph 45 above, paragraphs 205 and 211, and *Sumitomo Metal Industries and Nippon Steel v Commission*, cited in paragraph 46 above, paragraph 103). However, an admission by one undertaking accused of having participated in a cartel, the accuracy of which is contested by several other undertakings similarly accused, cannot be regarded as constituting adequate proof of an infringement committed by the latter unless it is supported by other evidence (see *JFE Engineering and Others v Commission*, cited in paragraph 45 above, paragraph 219 and the case-law cited).

⁴⁸ In the present case, it is undisputed that the conduct alleged by the Commission — the participation in FNAS meetings, the contact between an employee of one of the applicants and a representative of FRA.BO and the contacts made at the trade fair in Essen — occurred. By contrast the applicants dispute the anti-competitive nature of that conduct, which is a prerequisite for a finding of an infringement of Article 81 EC.

⁴⁹ Accordingly, it is necessary to determine whether the conduct identified after the Commission's inspections in March 2001 must be classified as anti-competitive contact.

⁵⁰ With regard to Simplex, it must be recalled that the Commission relied on two events as against Simplex in order to conclude that Simplex had participated in the infringement alleged in Article 1 of the contested decision during the period between 25 June 2003 and 1 April 2004 ('the period at issue'), namely telephone contact between Ms P. (FRA.BO) and Mr W. (Simplex) during the first half of 2004 and a meeting at the Essen trade fair on 18 March 2004.

- 51 According to recital 511 to the contested decision, in April 2004, Mr W. informed FRA.BO of a possible price increase of 5 % on the Greek market. He asked FRA.BO to contact him with a view to agreeing to this increase. Prior to that contact, during a telephone conversation on 25 February 2004, Mr W. had informed Ms P. that a 5 % price increase was about to come into effect on 1 March 2004. That increase was confirmed by Mr D., Simplex's Greek importer.
- 52 It must, first of all, be stated that the Commission's conclusion that Simplex had participated in the cartel throughout the period at issue is not supported by any evidence in relation to 2003. The Commission relied exclusively on the events mentioned above, which all occurred in 2004.
- 53 Admittedly, it is apparent from FRA.BO's leniency application, as summarised in recital 506 to the contested decision, that FRA.BO stated that the exchange of sensitive information between competitors, particularly through bilateral contacts, had continued after the Commission's inspections. FRA.BO observed, in particular, that 'the contacts [had] occurred with a number of people and especially with [Mr W.] (IMI/Aalberts) and [Mr L.] from Comap'.
- 54 However, it must be noted that FRA.BO did not submit any documentary proof that Simplex had had frequent telephone conversations with its representatives. Mr W.'s name is not mentioned in the lists of telephone calls of Ms P. and Ms B. (FRA.BO) relating to the years 2002 to 2004, which were annexed to FRA.BO's reply to the statement of objections.
- 55 Next, it must be noted that the 2004 diary of Ms P. (FRA.BO) contains some handwritten notes, only one of which concerns Simplex, namely that relating to telephone contact with Mr W. on 25 February 2004. In that context, it must be observed that

the Commission referred in the contested decision to contact at the end of April, probably on 29 April 2004, between Mr W. and Ms P. Leaving aside the fact that that alleged contact occurred after the date of the end of the infringement determined by the Commission in the contested decision, it must be observed that those handwritten notes do not indicate that the contact in question was with Mr W. Furthermore, even on the assumption that the contact in question was with Mr W., the handwritten notes do not state that he announced a price increase in relation to the Greek market.

56 It has become apparent that FRA.BO confused various handwritten notes when it applied for leniency. FRA.BO's initial observations of 14 July 2004 show that it had stated that a director of IMI, Mr W., had informed it at the end of April 2004 of a possible price increase on the Greek market, and that it had asked to discuss this several days later with a view to reaching an agreement (*mettersi d'accordo*). The reference to the conclusion of an agreement appeared in a third handwritten note in Ms P's diary, namely that relating to a telephone conversation which had taken place on 29 April 2004 with just Mr B., on the one hand, and Mr Hu., on the other, and should have been put in the context of a supplier-customer relationship (*Aquatis/Raccord Orléanais* and FRA.BO).

57 By its submission of 25 January 2005, FRA.BO amended its position and stated that a telephone conversation between Mr W. and Ms P. had taken place on 25 February 2004, during which a price increase on the Greek market had been discussed. Mr W. had also announced that the 5 % price increase had been confirmed with effect from 1 March 2004 in relation to Mr D.

58 It is apparent from paragraph 508 of the statement of objections that the Commission did not take into account the confusion that had arisen between the three different handwritten notes referred to in paragraphs 55 and 56 above. Similarly, notwithstanding the applicants' comments about that confusion in their reply to the statement of

objections, the Commission did not correct that error in recital 511 to the contested decision, other than in regard to some minor changes (see paragraph 51 above).

- 59 Therefore, it must be held that the only evidence relating to the contact between Simplex and FRA.BO during the period at issue is the handwritten note of 25 February 2004 in the diary of Ms P. (FRA.BO), referred to in recital 511 to the contested decision, which contains the statement ‘Spoke to [W.] x increase in Greece confirmed x [D.] + 5 from 1 March 2004.’
- 60 In that regard, it must be observed that the handwritten notes of 25 February 2004 indicate that there was indeed a discussion about prices that day. However, the handwritten notes are not clear as to the identity of the person who decided to increase prices. It is conceivable that it was Simplex’s independent importer (Mr D.) who had decided to increase his prices by 5 % with effect from 1 March 2004.
- 61 Given that the contact with Mr W. was the subject of just one handwritten note in Ms P’s diary, mentioned in paragraph 59 above, that handwritten note is not sufficient in itself to prove that Simplex participated in the infringement alleged in the present case. It is conceivable that that contact could be regarded as an isolated incident. Furthermore, as has already been found above, that single handwritten note could not demonstrate Simplex’s involvement in the cartel in 2003 either.
- 62 As regards the second event relied on as against Simplex, namely the meeting of Mr Ha. (IBP) with two Simplex representatives at the Essen trade fair on 18 March 2004, referred to in recital 520 to the contested decision, it is apparent from Mr Ha’s statement of 28 November 2005, annexed to AFC’s reply to the statement of objections and corrected subsequently in regard to the date of that event (the trade fair

having been held in March 2004 and not in 2002 as had been stated in the leniency application), that he had replied to a question linked to IBP's prices. Mr Ha. stated that he remembered having had a brief discussion with Mr H. and Mr Be. (Simplex) and another with Mr K. He made the following statement in that regard:

'They had asked me what IBP Germany was planning to do about prices and I told them that we planned to increase prices at the month end. The increase was due to increased raw material costs. There was no discussion as to how much the increase would be, or when it would take place, just that we would do so. By then, I believed I had already been telling customers that there would be an increase, so that information would no longer have been confidential. Rumours might have been circulating and that is what might have prompted them separately to have asked me about IBP's price increase. They would not have been able to confirm this by asking customers for a copy of IBP Germany's official price increase letter because it was not issued until 30 March 2004 ...'

⁶³ However, it must be observed that the applicants deny that there was any anti-competitive contact. Accordingly, during the administrative procedure they produced two statements which contradict that of Mr Ha.

⁶⁴ The applicants produced the statement of Mr H., who declared:

'I do recall Mr [Ha.] passing by at the Woeste stand and talking to him for a short while. I did not ask Mr [Ha.] about a possible price increase of IBP Germany. In my recollection Mr [Ha.] did also not report on his own initiative about such price increase.'

- ⁶⁵ Likewise the applicants produced the statement of Mr Be., who explained that, although he no longer recalled with any certainty having met Mr Ha. at that trade fair, he could not rule out having seen him, even if he had no memory of having talked specifically about prices.
- ⁶⁶ In that context, it must be recalled that it has consistently been held that a statement made in connection with a leniency application is not sufficient evidence in itself if the accuracy of that statement has been contested (see paragraph 47 above).
- ⁶⁷ The Court considers that, contrary to the Commission's contention at the hearing, Mr Ha's statement is not more credible than those of Mr H. and Mr Be., two representatives of one of the applicants. The fact that both IBP and the former subsidiaries of IMI had an anti-competitive approach in the past, characterised by discussions about prices, is not sufficient, so far as concerns the events at the trade fair, for greater value to be attached to Mr Ha's statement than to that relied on by the applicants. Consequently it must be concluded that, in the absence of other evidence, the allegedly anti-competitive substance of the contact between an IBP representative and representatives of the applicants has not been proved to the requisite legal standard.
- ⁶⁸ It follows from the foregoing that Simplex's participation in an infringement of Article 81 EC during the period at issue has not been proved to the requisite legal standard.
- ⁶⁹ Accordingly, Article 1 of the contested decision must be annulled in so far as the Commission found that Simplex had participated in a single, complex and continuous infringement during the period at issue.

- ⁷⁰ With regard to the alleged participation of Aquatis in the infringement, the Court considers it appropriate to consider that issue in the context of its analysis of the third plea.

Third plea: lack of participation in the single, complex and continuous infringement referred to in Article 1 of the contested decision

Arguments of the parties

- ⁷¹ The applicants claim that the Commission has not proved the existence of a single, complex and continuous infringement that continued after the inspections in March 2001; that it has failed to establish an objective link between Aquatis's conduct and an 'overall restrictive scheme'; and that it has not demonstrated that Aquatis was or ought to have been aware of such a scheme.
- ⁷² The applicants observe that in March 2001 the Commission's inspections meant the end of the 'Super EFMA' meetings held before or after the meetings of the European Fittings Manufacturers Association (EFMA) and of the 'long-lasting cartel'. None the less, the Commission continued to believe that Raccord Orléanais (which subsequently became Aquatis) had infringed Article 81 EC between June 2003 and 1 April 2004. According to the Commission, the contacts reported by FRA.BO proved that the single, complex and continuous infringement had not ceased.

73 In that context, the applicants observe that recourse to the concept of a single, complex and continuous infringement constitutes an exception to the rule that the Commission has to prove the precise way in which an undertaking participated in an infringement. That, like any other exception to a fundamental rule, implies a narrow interpretation. In the present case, the Commission's approach runs counter to the presumption of innocence, as it would lead to a situation in which any set of apparently independent contacts between competitors could be treated as a single, complex and continuous infringement.

74 The applicants also refer to Case T-295/94 *Buchmann v Commission* [1998] ECR II-813, paragraph 121, and Joined Cases T-305/94 to T-307/94, T-313/94 to T-316/94, T-318/94, T-325/94, T-328/94, T-329/94 and T-335/94 *Limburgse Vinyl Maatschappij and Others v Commission* [1999] ECR II-931, paragraph 773. It follows, in the applicants' submission, that it was necessary, first of all, to establish what the 'common scheme' comprised and to what extent it effectively continued after the inspections in 2001. Next, it had to be demonstrated that the applicants' conduct was linked to that 'common scheme'; and, last, the Commission should have proved that Aquatis knew or could reasonably have known that, through its conduct, it was participating in a single, complex and continuous infringement which had begun before the Commission's inspections.

75 First, the applicants contend that the structure and implementation of the single, complex and continuous infringement and the events that occurred after 2001 are completely different.

76 The "Super-EFMA" cartel, as it operated before the inspections in March 2001, was characterised by being organised at three levels — the pan-European level, national or regional levels and bilaterally — and concerned discussions and agreements on

price structures and price lists for specific markets. A total of 27 producers of copper fittings in 13 Member States had been involved and, of those, three (IBP, IMI and Comap) had been responsible for the organisation and administration of 'Super EFMA' meetings. In addition, these meetings were held not only before the EFMA meetings but also whenever market developments so required.

77 By contrast, the alleged continuation of the single, complex and continuous infringement between March 2001 and April 2004 is characterised, according to the Commission, by telephone contact between AFC and FRA.BO and between Comap and FRA.BO, by three telephone calls between the 'companies related to Aalberts and FRA.BO'; by three bilateral contacts between Comap and FRA.BO, by two bilateral contacts between IBP and Simplex and between IBP and Comap at a trade fair in March 2004, and by meetings of the FNAS Logistics Committee on the subject of packaging of products to which producers of copper fittings in France were invited.

78 The applicants deny that the aforementioned contacts and the series of meetings of wholesalers in France prove to the requisite legal standard that there was a single, complex and continuous infringement of Article 81 EC and that that 'alleged infringement' is the same infringement as the one that took place before the Commission's inspections. In that regard, the applicants emphasise that many undertakings, including IMI, as the Commission has established, had ceased to participate in the 'alleged infringement' after the Commission's inspections. Moreover, the industry was completely restructured in 2003. Likewise, most of the key individuals who had been involved in the organisation and functioning of the 'high-level' meetings such as those that took place during the period preceding the Commission's inspections were not involved in the organisation and functioning of the alleged anti-competitive contacts during the period after those inspections. In addition, a cartel in the copper fittings sector made sense only if it covered all Member States, which was not the position

after 2001, irrespective of how the elements put forward in recital 566 to the contested decision are read or interpreted.

⁷⁹ Second, in the event that the Court should consider that the Commission has succeeded in proving that the general cartel scheme had continued after March 2001, the applicants contend that the Commission has not established that Aquatis's conduct was linked to that scheme.

⁸⁰ Nor, third, has the Commission established that Aquatis was or ought to have been aware that in making contact with competitors in the context of the FNAS meetings it was joining the "Super-EFMA" cartel'. In the contested decision, the Commission confined itself to stating that the applicants were aware of the inspections, which they do not deny. The applicants emphasise however that, in August 2002, when Aalberts acquired the whole of the fittings production and distribution business from IMI, it satisfied itself that IMI and its subsidiaries, including Raccord Orléanais, now part of Aquatis, and R. Woeste & Co. Yorkshire, now part of Simplex, had effectively ceased to participate in the infringement.

⁸¹ The Commission contends that it explained at length in the contested decision the reason why there was in this case a single infringement, first until 2001 (recitals 559 to 563 to the contested decision) and then after 2001 (recitals 564 to 591 to the contested decision). More particularly, recitals 564 to 597 to the contested decision contain a very detailed examination of the continuation of the infringement. The Commission adds that there can be no doubt that the applicants' conduct during the period after 2001 pursued the same anti-competitive objective as that pursued by the other undertakings that participated in the overall cartel.

82 Furthermore, the condition that the applicants 'knew, or must have known, that the collusion in which [they] participated was part of an overall plan' and the condition that they were 'aware of the unlawful conduct of the other participants, or could reasonably foresee such conduct, and [were] prepared to accept the risk', are met. In that regard, the Commission observes that liability was imputed to Aalberts for the activities of its two subsidiaries, Aquatis and Simplex, which are the legal successors to Raccord Orléanais and R. Woeste & Co. Yorkshire, and that some of those involved in those activities had already participated in the single, complex and continuous infringement before the inspections.

Findings of the Court

83 It is necessary to consider, first of all, whether the conduct constituting the alleged infringement after the Commission's inspections in March 2001 represents a continuation of the single, complex and continuous infringement before those inspections.

84 If so, the question arises whether Aquatis's participation in the FNAS meetings forms part of that single, complex and continuous infringement.

85 In light of the conclusion reached in regard to Simplex in paragraphs 68 and 69 above, consideration of the third plea is relevant only in regard to Aquatis.

86 The notion of a single infringement covers a situation in which several undertakings participated in an infringement in which continuous conduct in pursuit of a single

economic aim was intended to distort competition, and also individual infringements linked to one another by the same object (all the elements sharing the same purpose) and the same subjects (the same undertakings, who are aware that they are participating in the common object) (see, to that effect, Case T-53/03 *BPB v Commission* [2008] ECR II-1333, paragraph 257). That interpretation cannot be challenged on the ground that one or several elements of that series of acts or continuous conduct could also constitute in themselves an infringement of Article 81 EC (*BPB v Commission*, paragraph 252).

⁸⁷ When the different actions form part of an 'overall plan' because their identical object distorts competition within the common market, the Commission is entitled to impute responsibility for those actions on the basis of participation in the infringement considered as a whole (*Aalborg Portland and Others v Commission*, cited in paragraph 46 above, paragraph 258).

⁸⁸ It must also be made clear that the concept of a single objective cannot be determined by a general reference to the distortion of competition on the market concerned by the infringement, since an impact on competition, whether it is the object or the effect of the conduct in question, constitutes an element inherent in any conduct covered by Article 81(1) EC. Such a definition of the concept of a single objective is likely to deprive the concept of a single and continuous infringement of part of its meaning, since it would have the consequence that different instances of conduct which relate to a particular economic sector and are prohibited under Article 81(1) EC would have to be systematically characterised as constituent elements of a single infringement. Thus, for the purposes of characterising various instances of conduct as a single and continuous infringement, it is necessary to establish whether they are complementary, in that each of them is intended to deal with one or more consequences of the normal pattern of competition, and whether, through interaction, they contribute to the attainment of the set of anti-competitive effects desired by those responsible, within the framework of a global plan having a single objective. In that regard, it will be necessary to take into account any circumstance capable of establishing or of casting doubt on that link, such as the period of implementation, the content, including the methods used, and, correlatively, the objective of the various actions in question

(see, to that effect, Joined Cases T-101/05 and T-111/05 *BASF and UCB v Commission* [2007] ECR II-4949, paragraphs 179 to 181).

⁸⁹ Furthermore, in order to establish that an undertaking participated in an anti-competitive agreement, the Commission must show that the undertaking intended to contribute by its own conduct to the common objectives pursued by all the participants and that it was aware of the actual conduct planned or put into effect by other undertakings in pursuit of those same objectives, or that it could reasonably have foreseen it, and that it was prepared to take the risk (Case C-49/92 P *Commission v Anic Partecipazioni* [1999] ECR I-4125, paragraph 87).

⁹⁰ Last, the fact that an undertaking did not participate in all aspects of a cartel is not relevant to the establishment of the existence of an infringement with regard to that undertaking. That factor must be taken into consideration only when the gravity of the infringement is assessed and if and when it comes to determining the amount of the fine (*Aalborg Portland and Others v Commission*, cited in paragraph 46 above, paragraph 86).

⁹¹ In the present case, as regards the period before March 2001 it must be noted that, according to the contested decision, the cartel consisted in the regular organisation over a number of years of multilateral and bilateral contacts between competing producers, the object of which was the establishment of unlawful practices by which the functioning of the fittings market was artificially affected, in particular in relation to prices.

- ⁹² According to the contested decision, within the framework of that overall cartel, meetings and other anti-competitive contacts had taken place at a pan-European level as well as at national level, every country having its own process for price co-ordination and its own local arrangements complementing the arrangements adopted at European level (recitals 129, 140 and 559 to the contested decision).
- ⁹³ The operation of the cartel was based, first, on ‘high-level’ meetings dealing with strategy and pricing for a number of countries; second, on meetings covering only one or a few national territories, often with a view to implementing decisions that had been taken at the higher level; and, third, discussions on a bilateral level (recital 147 to the contested decision).
- ⁹⁴ According to the contested decision, the anti-competitive arrangements had taken place before, during or after the meetings of the British Plumbing Fittings Manufacturers Association (BPFMA), those of EFMA, ad hoc meetings and meetings of other associations or those which took place at trade fairs (recitals 140 to 141 to the contested decision).
- ⁹⁵ The ‘high-level’ meetings were usually organised on the occasion of EFMA meetings in the spring or autumn of each year. The autumn meetings usually involved discussions on the setting of prices, whereas the spring meetings were more concerned with monitoring the progress of the implementation of pricing agreed the previous year (recital 148 to the contested decision).
- ⁹⁶ Discussions relating to price increases usually resulted, according to the contested decision, in an agreement on the level of the increase and the way in which it should

be applied, and sought to determine implementation dates and the company that would first introduce the increase, often the market leader of the relevant geographic market (recitals 149 and 159 to the contested decision).

⁹⁷ The meetings also concerned credit terms and discounts, customer categories and pricing differentials, customer allocation between suppliers, the sharing of information about increases or decreases in volume and prices achieved within the cartel, discussions on cross-supply, complaints by one cartel member about others and coordination against manufacturers or distributors that were not members of the cartel and collusive bids in response to calls for tender (recital 161 to the contested decision).

⁹⁸ The participants in the 'high-level' meetings were, according to the contested decision, the managing directors, commercial or sales directors and certain other commercial managers, and it is specified that IMI, IBP and Comap were always present at that type of meeting (recital 156 to the contested decision).

⁹⁹ The 'high-level' meetings were followed by more targeted meetings at national level which related to the preparation and implementation of decisions and the 'high-level' meetings. According to the contested decision, the participants in the national-level meetings were usually commercial or sales directors or certain other local commercial managers, who informed the participants in the 'high-level' meetings of the success or failure of price changes and market conditions (recital 157 to the contested decision).

¹⁰⁰ Last, bilateral meetings and larger unofficial meetings were also organised.

- 101 The alleged conduct that occurred after March 2001 is characterised, according to the contested decision, also by contacts in connection with trade associations (FNAS meetings), bilateral contacts concerning the parameters of competition and contacts at trade fairs (Essen trade fair) (recitals 599 to 602 to the contested decision).
- 102 Admittedly, it is indisputable that, as regards the period after March 2001, the cartel was characterised by an 'organisation' that was structurally relatively flexible and consisted, in essence, in ad hoc bilateral contacts. Similarly, there was no coordination of the 'high-level' strategy or, therefore, of implementation at a national level of decisions taken at pan-European level.
- 103 It is also indisputable that, as is apparent from the contested decision, the number of participants in the cartel before the inspections in March 2001 was nine and that after those inspections it was four.
- 104 Last, it must be noted that although, before 2001, the cartel was pan-European in that it covered 13 countries, the participants' unlawful conduct was confined after 2001 to the German, Greek, Spanish, French and Italian markets, and there was no obvious link between them.
- 105 However, since the objective of the anti-competitive practices remained the same, namely collusion on prices in relation to fittings, the fact that certain characteristics or the intensity of those practices changed is not conclusive. It may well be that the cartel became less structured after the Commission's inspections, and the intensity of its activities more variable. Nevertheless, the fact that a cartel might have experienced periods of activity of varying intensity does not mean that the cartel has come to an end.

- 106 The Commission was therefore entitled to find that the cartel had continued after its inspections in March 2001 and to conclude that there was a single, complex and continuous infringement.
- 107 Accordingly, it is necessary to consider whether, by participating in the meetings held in the framework of the working group of the FNAS Logistics Committee with a view to introducing new packaging for fittings and, more particularly, by discussing the associated costs, Aquatis participated in that single, complex and continuous infringement.
- 108 It must be recalled that, in the contested decision, the Commission claimed that Aquatis had participated during the period at issue in a single, complex and continuous infringement described in Article 1 of the decision and covering the entire 'pan-European' market.
- 109 As is apparent from paragraph 101 above, the constituent elements of the single, complex and continuous infringement after March 2001 were bilateral contacts, contacts at a trade fair and contacts in the context of FNAS meetings to coordinate pricing.
- 110 In that regard, it is common ground that during the period at issue Aquatis participated only in FNAS meetings and not in two other parts of the infringement. It must be noted in that context that Aquatis's participation in the FNAS meetings, the object of which was the same as that of the two other parts of the single, complex and continuous infringement, namely the coordination of pricing, is not sufficient in itself to show that it participated in the infringement, unless it is established that it knew, or must have known, that its conduct was part of an overall plan and, moreover, that the overall plan included all the constituent elements of the cartel (see, to that effect, *Commission v Anic Parecipazioni*, cited in paragraph 89 above, paragraph 83,

and Joined Cases T-25/95, T-26/95, T-30/95 to T-32/95, T-34/95 to T-39/95, T-42/95 to T-46/95, T-48/95, T-50/95 to T-65/95, T-68/95 to T-71/95, T-87/95, T-88/95, T-103/95 and T-104/95 *Cimenteries CBR and Others v Commission* [2000] ECR II-491, paragraphs 4027 and 4112).

- 111 In the present case, the Court must therefore ascertain whether Aquatis knew or must have known when it participated in the FNAS meetings that it was joining the circle of participants in the pan-European cartel. Only if it is established that Aquatis was aware of the existence of the two other constituent elements of the infringement can its participation in the agreement relating to the French market be regarded as expressing its participation in the infringement.
- 112 However, it must be observed that the Commission has not demonstrated that Aquatis was aware of the anti-competitive activities of the other undertakings when it took part in the FNAS meetings or that it could reasonably have foreseen those activities, and therefore that its conduct was part of an overall plan including all the constituent elements of the cartel.
- 113 In order to demonstrate Aquatis's knowledge of the constituent elements of the infringement, the Commission referred only to the fact that Aquatis had participated in the cartel from 1991 to March 2001. That is not sufficient, however, to demonstrate that Aquatis rejoined the cartel.
- 114 In that regard, first, it must be noted that when it was controlled by IMI, its former parent company, Aquatis had ended its participation in the infringement immediately after the Commission's inspections in March 2001. There is nothing to indicate that Aquatis was aware of the continuation of that infringement by IBP, Comap and FRA.BO.

- 115 Furthermore, in light of the specific objective of the working group of the FNAS Logistics Committee, namely the possibility of new packaging, it is difficult to associate directly the meetings held in that context with the cartel that had begun before March 2001. The fact that certain producers discussed responsibility for the associated costs cannot alter that finding.
- 116 Second, it must be held that, contrary to the Commission's finding in recitals 575 and 584 to the contested decision, the discussions within the FNAS meetings related only to the French market. As the Commission itself admitted at the hearing, it does not in any way follow from the minutes of those meetings that they related also to 'Spain, Italy, the United Kingdom, Germany and the European market in general', which would have meant, according to the Commission, that they had a pan-European dimension. Consequently, it must be held that the collusion in the FNAS meetings was not pan-European in scope.
- 117 Third, given that those meetings related only to the French market and that there is no evidence to suggest that those meetings were used by the other participants as a framework for discussing or coordinating the pricing of fittings on other national markets, it has not been established that Aquatis could reasonably have foreseen that those meetings were part of a wider infringement that was part of an overall plan.
- 118 Admittedly, it must be noted that there was bilateral contact on 29 April 2004 between a representative of Aquatis and a representative of FRA.BO in the context of a supplier-customer relationship (see paragraph 56 above). However, besides the fact that it occurred outside the infringement period, such contact is not relevant in terms of competition law, unless it is established that anti-competitive matters were raised during that commercial contact. However, there is nothing in the handwritten notes in Ms P's diary to indicate that that was the case.

- 119 Consequently, it must be held that it has not been established that Aquatis was aware of the fact that it had, through its conduct, joined a cartel made up of different parts that had a common purpose or the cartel in which it had already participated before March 2001 and which was ongoing.
- 120 Article 1 of the contested decision must, therefore, be annulled with regard to all the applicants in so far as the Commission found that they had participated during the period at issue in a single, complex and continuous infringement by taking part in a complex of agreements and concerted practices in the market for copper and copper alloy fittings, as described in that provision.
- 121 That being the case, it is not necessary to rule on the other pleas, namely the first plea, alleging the unlawfulness of the imputation of liability for the infringement to Aalberts as the parent company; the fourth plea, alleging a number of errors in the calculation of the fine imposed on the applicants; or the fifth plea, alleging breach of their rights of defence.
- 122 Having regard to all the foregoing, the fine in the amount of EUR 100.8 million imposed on Aalberts, jointly and severally with Aquatis and Simplex as to EUR 55.15 million, must be cancelled, as must the amount of EUR 2.04 million for the payment of which Aquatis and Simplex were held jointly and severally liable, since its calculation was based on an erroneous finding.
- 123 It must be observed that the Commission calculated a basic amount for the fine imposed for Aquatis's and Simplex's participation in the cartel when they were controlled by IMI — a starting amount of EUR 46 million, increased by 100% for duration — and for their alleged participation in the infringement when they were controlled by

Aalberts — a starting amount of EUR 60 million, increased by 5 % for duration. To take account of aggravating circumstances, that second amount was increased by 60 %. As a result the total fine was EUR 192.8 million (EUR 92 million + EUR 100.8 million). That total amount was then reduced to EUR 105.5 million to take account of the ceiling of 10 % of Aalberts' turnover, then allocated proportionally depending on whether their participation in the infringement had been established while they were controlled by IMI (EUR 50.34 million) or by Aalberts (EUR 55.15 million).

¹²⁴ Although IMI was granted a 50 % reduction of the fine under the Commission Notice on the non-imposition or reduction of fines in cartel cases, the basic amount of the fine imposed on it — EUR 96.6 million (a starting amount of EUR 46 million, increased by 110 % for duration) — was reduced to EUR 48.30 million. Given that IMI did not submit its leniency application until September 2003, its two former subsidiaries were unable to benefit from the 50 % reduction in the amount of the fine that was granted to IMI. Consequently, the Commission held Aquatis and Simplex jointly and severally liable for the payment of EUR 2.04 million (50.34 – 48.30), for which neither IMI nor Aalberts was liable.

¹²⁵ It must, moreover, be borne in mind that if several addressees constituted the 'undertaking' at the date when the contested decision was adopted, the 10 % ceiling referred to in Article 23(2) of Regulation No 1/2003 can be calculated on the basis of the overall turnover of that undertaking. By contrast, if that economic entity was divided into two separate entities at the time when the decision was adopted, each addressee of the decision is entitled to have that ceiling applied to it individually (judgment of 15 June 2005 in Joined Cases T-71/03, T-74/03, T-87/03 and T-91/03 *Tokai Carbon*

and Others v Commission, not published in the ECR, paragraph 390). Given that the applicants have applied only for annulment of Article 2(a) and (b)(2) of the contested decision, it is not necessary to consider whether the fact that IMI was divided into several separate entities before the contested decision was adopted should have had an impact on the ceiling of the fine imposed on Simplex and Aquatis in Article 2(b)(1) of the contested decision.

Costs

- ¹²⁶ Under Article 87(2) of the Rules of Procedure of the General Court, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Commission has been unsuccessful, it must be ordered to pay the costs, in accordance with the form of order sought by the applicants.

On those grounds,

THE GENERAL COURT (Eighth Chamber)

hereby:

- 1. Annuls Article 1 of Commission Decision C(2006) 4180 of 20 September 2006 relating to a proceeding under Article 81 [EC] and Article 53 of the EEA Agreement (Case COMP/F-1/38.121 — Fittings) in so far as it finds that Aalberts Industries NV, Comap SA, formerly Aquatis France SAS, and Simplex**

Armaturen + Fittings GmbH & Co. KG participated in the infringement during the period from 25 June 2003 to 1 April 2004;

2. Annuls Article 2(a) and (b)(2) of Decision C(2006) 4180;

3. Orders the European Commission to pay the costs.

Martins Ribeiro

Wahl

Dittrich

Delivered in open court in Luxembourg on 24 March 2011.

[Signatures]