

## The *Marine Hoses* cartel

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### 1. Introduction

On 28 January 2009, the Commission adopted a decision relating to proceedings under Article 81 of the EC Treaty imposing a fine of over EUR 131 million<sup>(1)</sup> on six producers of marine hoses.

There was a key novelty in the marine hoses case: it was the first to involve a search in a private home (see below). Otherwise, the marine hoses cartel was a textbook bid-rigging case. The arrangement between the companies was a classic cartel with price-fixing and quotas, which the case team dealt with in little more than two years.

### 2. The marine hoses industry

Marine hoses are used to load sweet or processed crude oil and other petroleum products from offshore facilities (for example, buoys, floating production, storage and offloading systems) onto vessels and to offload them back to offshore or onshore facilities (for example, buoys or jetties).

### 3. Procedure

Yokohama applied for immunity under the Commission's 2006 Leniency Notice<sup>(2)</sup> on 22 December 2006.

On 2 May 2007, the Commission launched surprise inspections on the premises of Dunlop Oil & Marine, Trelleborg, Parker ITR, Manuli and PW Consulting and at the home of the owner/manager of the latter. In the months which followed, a series of requests for information were sent to the parties involved and other undertakings that might be able to provide details.

These were the first inspections by the Commission under Article 21 of Regulation (EC) No 1/2003 which allows searches in private homes. In this case, the decision to conduct such an inspection proved to be justified: abundant evidence of the cartel, including evidence of a cartel dating back to as long ago as 1986, was found in the home, but not at any of the other sites inspected.

According to the recitals of Regulation 1/2003 'Experience has shown that there are cases where business records are kept in the homes of directors

or other people working for an undertaking. In order to safeguard the effectiveness of inspections, therefore, officials and other persons authorised by the Commission should be empowered to enter any premises where business records may be kept, including private homes.' The marine hoses inspections show that this idea was indeed correct and that such inspections can be very successful.

The Commission had carefully coordinated its inspections with the US and UK authorities. The former arrested at the same time a number of individuals involved in the cartel in Houston, Texas. They had just held a meeting at which they discussed price-fixing of marine hoses. Subsequently, most of the individuals and companies involved pleaded guilty and agreed to long prison terms and large fines<sup>(3)</sup>. The latter pursued the employees involved under UK criminal law resulting in a number of criminal convictions."

### 4. Functioning of the cartel

The investigation by the Commission uncovered evidence that during the relevant period the parties concerned by the decision had been participating in anticompetitive arrangements which consisted of:

- (a) allocating tenders,
- (b) fixing prices,
- (c) fixing quotas,
- (d) fixing sales conditions,
- (e) sharing the market geographically, and
- (f) exchanging sensitive information on prices, sales volumes and procurement tenders.

Evidence uncovered revealed that, at least since 1986, members of the marine hoses cartel had been running a scheme to share out amongst themselves the tenders awarded by their customers. Under the scheme, any member of the cartel who received an inquiry from a customer would report it to the cartel coordinator, who, in turn, would allocate the customer to a 'champion', which means the member of the cartel who was supposed to win the tender. To make sure that the tender was awarded to the 'champion', in the tendering procedure the cartel agreed on the prices that each of them should quote so

<sup>(1)</sup> Case COMP/39406 *Marine Hoses*.

<sup>(2)</sup> Commission Notice on immunity from fines and reduction of fines in cartel cases (OJ C 298, 8.12.2006, p. 17).

<sup>(3)</sup> See the US Department of Justice press releases at <http://www.justice.gov/opa/pr/2008/July/08-at-663.html>

that all their bids would be above the price quoted by the champion.

Moreover the cartel members agreed on a number of measures to facilitate the implementation of the cartel: reference prices, quotas and sales conditions backed up by penalties to compensate any cartel members who lost tenders which the cartel had allocated to them to another member of the cartel.

The marine hoses cartel was, therefore, in many ways a textbook example. In one important sense, however, it was different. An ex-employee of one of the undertakings involved in the cartel performed the role of coordinator. Cartel members communicated with the coordinator regularly by fax, e-mail and, sometimes, telephone for each new tender. The coordinator gave members market share reports, market development reports and specific instructions on their bids. In addition, the coordinator selected a 'champion' for each contract. This 'champion' would win the tender, while other members of the cartel would submit 'cover bids' so as not to give away the cartel.

## 5. Remedies

Under the 2006 Guidelines on fines<sup>(4)</sup>, when determining the basic amount of the fine to be imposed, the Commission starts from the value of the undertaking's sales of the goods or services to which the infringement relates in the relevant geographic area within the EEA.

The Commission calculates the fines to be imposed on each undertaking concerned on the basis of the value of sales of each. As this was a worldwide cartel and EEA sales do not reflect the strength of the different parties, it is appropriate, in line with Point 18 of the Guidelines on fines, to apply the world market share of each undertaking to the total sales within the EEA. The criteria that were considered to determine the percentage of the undertakings' sales were the nature of the infringement, the combined market share of the cartel members, the geographic scope of the cartel and the degree to which the cartel was implemented. On this basis, the percentage for the variable amount and the additional amount ('entry fee') was set.

Although the cartel lasted from April 1986 to May 2007, a period of two years of only limited activity on the part of the cartel was excluded when calculating the fines. Therefore, for the purpose of setting

the fines, the cartel was considered to have operated for more than 19 years, so the variable amount was multiplied by up to 19.

There were no mitigating circumstances and no aggravating circumstances (such as recidivism) other than leadership. The fines of two undertakings were increased because they played the leading role.

Yokohama was the first undertaking to submit information and evidence which opened the door for the Commission to carry out a targeted inspection in connection with the alleged cartel. The fine imposed on Yokohama was reduced by 100 %. Manuli was granted a 30 % reduction. Parker ITR's and Bridgestone's contributions were not considered as being of 'significant added value'. Therefore the Commission did not grant these two companies any reduction of their fine.

## 6. Decision

The following fines were imposed (with the duration of the infringement indicated in brackets):

- Bridgestone Corporation (1 April 1986 to 2 May 2007): EUR 58.5 million, of which EUR 48.1 million jointly and severally with Bridgestone Industrial Limited (19 December 1989 to 2 May 2007).
- Yokohama Rubber Company Limited, immunity applicant (from 1 April 1986 to 1 June 2006): EUR 0.
- Dunlop Oil & Marine Ltd (12 December 1997 to 2 May 2007): EUR 18 million, of which EUR 16 million jointly and severally with Conti-Tech AG (28 July 2000 to 2 May 2007), of which EUR 7.1 million jointly and severally with Continental AG (9 March 2005 to 2 May 2007).
- Trelleborg Industrie SAS (1 April 1986 to 2 May 2007): EUR 24.5 million, of which EUR 12.2 million jointly and severally with Trelleborg AB (28 March 1996 to 2 May 2007).
- Parker ITR Srl (1 April 1986 to 2 May 2007): EUR 25.61 million, of which EUR 8.32 million jointly and severally with Parker Hannifin Corporation (31 January 2002 to 2 May 2007).
- Manuli Rubber Industries SpA (1 April 1986 to 1 August 1992 and 3 September 1996 to 2 May 2007): EUR 4.9 million.

<sup>(4)</sup> Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation No 1/2003, OJ C 210, 1.9.2006, p. 2.