COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 20.09.2006
C(2006) 4180 final

COMMISSION DECISION

of 20 September 2006

relating to a proceeding under Article 81 of the EC Treaty and Article 53 of the EEA Agreement

(Case COMP/F-1/38.121 – FITTINGS)

(ONLY THE ENGLISH, FRENCH, GERMAN, ITALIAN AND SPANISH TEXTS ARE AUTHENTIC)

(Text with EEA relevance)

VERSION TO BE NOTIFIED TO:

Aalberts Industries NV
Aquatis France SAS
Simplex Armaturen + Fittings GmbH & Co. KG
VSH Italia S.r.l.
Yorkshire Fittings Limited
Advanced Fluid Connections plc
IBP Limited
International Building Products France SA
International Building Products GmbH
Delta plc
Aldway Nine Limited
Delta Engineering Holdings Limited
Druryway Samba Limited
Flowflex Holdings Ltd
Flowflex Components Ltd
IMI plc
IMI Kynoch Ltd
Mueller Industries Inc
Mueller Europe Ltd
WTC Holding Company Inc

Pegler Ltd
Tomkins plc

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THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to the Agreement on the European Economic Area,

Having regard to 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[1], and in particular Article 7(1) and Article 23(2) thereof,

Having regard to the Commission decision of 23 September 2005 to initiate proceedings in this case,

Having given the undertakings and associations of undertakings concerned the opportunity to make known their views on the objections raised by the Commission pursuant to Article 27(1) of Regulation No 1/2003 and Article 12 of 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[2],

After consulting the Advisory Committee on Restrictive Practices and Dominant Positions[3],

Having regard to the final report of the Hearing Officer in this case[4],

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1 OJ L 1, 4.1.2003, p.1. Regulation as amended by Regulation (EC) No 411/2004 (OJ L 68, 6.3.2004, p.1).

2 OJ L 123, 27.4.2004, p. 18.

3 OJ C 255, 27.10.2007, p. 34.

4 OJ C 255, 27.10.2007, p. 36.

Whereas:

1. INTRODUCTION

(1) The Commission initiated proceedings for infringement of Article 81 of the Treaty and Article 53 of the EEA Agreement against the following undertakings :

- Aalberts Industries NV and its subsidiaries:
  - Aquatis France SAS
  - Simplex Armaturen + Fittings GmbH & Co. KG
  - VSH Italia Srl
  - Yorkshire Fittings Limited
- Advanced Fluid Connections plc and its subsidiaries:
  - IBP Limited
  - International Building Products France SA
  - International Building Products GmbH
- Delta plc and its subsidiaries:
  - Aldway Nine Limited
  - Delta Engineering Holdings Limited
  - Druryway Samba Limited
- Flowflex Holdings Ltd and its subsidiary:
  - Flowflex Components Ltd
- FRA.BO S.p.A
- IMI plc and its subsidiary:
  - IMI Kynoch Ltd
- Legris Industries SA
- Comap SA
- Mueller Industries Inc. and its subsidiaries:
  - Mueller Europe Ltd
  - WTC Holding Company, Inc
- Pegler Ltd

- SANHA Kaimer GmbH & Co. KG and its subsidiaries:
  - Kaimer GmbH & Co. Holdings KG
  - Sanha Italia srl
- Supergrif SL
- Tomkins plc
- Viega GmbH & Co. KG

(2) Proceedings were initiated against the producers and suppliers of fittings listed in recital (1) for entering into agreements, covering virtually the whole of the EEA territory, by means of which they engaged in the following practices in the market for copper and copper alloy fittings: 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.

(3) The Commission initiated an investigation into the fittings industry after it received an application for immunity from fines in January 2001 from Mueller Industries Inc.

2. THE INDUSTRY SUBJECT TO THE PROCEEDING

2.1. The product

(4) The product concerned is copper fittings including copper alloy fittings. A fitting connects tubes used in the transportation of water, air, gas, etc. for plumbing, heating, sanitation and other purposes. It is a final product. Fittings may be distinguished according to their characteristics and what they are made of: fittings of copper, or fittings of copper alloys such as gunmetal, brass, and other copper based alloys.

(5) There are various types of fittings such as end-feed, solder ring, compression, press and push-fit.

(6) Capillary End feed Fittings or End feed Fittings are fittings soldered to the tube. The main brands are: “Endex”, “Endbraze”, “E-brand”, “RO”, “Eclipse”, “RYW”, “IBP”, “Delcop”, “Sudo”, “Viega”, “Sanha”, ”Flowflex”, and “Centrebrand”.

(7) Other types of fittings include: Solder Ring (Brands ”Yorkshire”, “Triflow”, and “Rabco”); Compression (Brands “Kuterlite”, “Conex”, “Prestex”, “Flowflex”, “VSH”, “FPL”, “Vatette”, “Westco”, “Ravani”, and “Jevco”); Press (Brands “Viega”, “Mapress”, “Yorkshire Pressfit”, “IBP-press”, “Sudo-press”, and “SHK”) and Push-fit (brands are: “Tectite”, “Cuprofit”, “Judofit” and “Idap”).

(8) The main substitute for copper and copper alloy fittings in the European market is plastic fittings. According to a professional periodical[5], in 1997-1998, copper was still

[5] Heating Ventilating & Plumbing, May 1998, p. 77.

the dominant material for heating, hot and cold water applications as compared to plastics, which nonetheless have shown strong growth since the 1990s.

(9) This Decision concerns copper fittings, including copper alloy fittings. The product concerned will be referred to interchangeably as "fittings" or "copper fittings".

2.2. The market players

2.2.1. Undertakings subject to these proceedings

2.2.1.1. Aalberts, IMI

- *Company information*

(10) Aalberts Industries N.V. (hereinafter "Aalberts") is an international industrial group, listed on the Euronext Securities Market in Amsterdam since 1987. Aalberts Industries has two main activities: Industrial Services and Flow Control. The Industrial Services activities are grouped in two separate business areas: industrial products and material technology. The Flow Control activities are also grouped in two separate business areas: (i) water, gas and heating and (ii) dispense systems. Each separate business area consists of several companies. Aalberts' subsidiaries involved in the fittings business are grouped under the business area of Flow Control. Apart from the companies listed below, Aalberts owns either directly or indirectly several more companies active in the production or distribution of fittings throughout Europe and North America, such as Morel S.A.S, Presrac S.A.S and VSH Fittings B.V.. In August 2002, Aalberts bought the fittings activities of IMI (see recitals (11) and (12)) and on 26 August 2005 Aalberts bought the United Kingdom based undertaking Pegler Ltd.

(11) IMI plc (hereinafter "IMI" or "IMI Group") is an international engineering group, a UK public company quoted on the London Stock Exchange. It operates as a holding company located in Birmingham, United Kingdom. Prior to 1992, IMI divided its activities into five business areas: Building Products, Drinks Dispense, Fluid Controls, Special Engineering and Refined and Wrought Products. On 1 January 1992, the Group was reorganised into four business areas, with the loss of the Refined and Wrought metals division. In 1998, the Building Products business was renamed as Hydronic Controls and the Special Engineering business as Energy Controls. In 2001, following a strategic review, IMI decided to focus on two main business areas, Fluid Controls (pneumatics, service valves and indoor climate) and Retail Dispense (beverage dispense and merchandising systems). As part of a divestment programme substantially all of the group's interests in copper plumbing fittings production were sold to Aalberts in August 2002. More specifically, on 30 August 2002, IMI Yorkshire Fittings Ltd was sold to Aalberts.

(12) The legal entities that were mainly involved in the production and/or the sale of copper plumbing fittings in the EU/EEA (which are produced from copper or copper alloy such as brass and gunmetal) were:

- IMI Yorkshire Fittings Ltd (hereinafter "YF"), IMI's subsidiary involved in fittings. The company manufactures and sells copper plumbing fittings for Europe and worldwide. It leads in the copper capillary fittings market in volume and turnover terms. It produces brands such as Endex and Yorkshire. The company

was an IMI subsidiary in 1987. It was sold to Aalberts Indutries NV on 30 August 2002 by Kynoch Ltd (another subsidiary of IMI). The company is now called Yorkshire Fittings Ltd under Aalberts' ownership.

- Raccord Orléanais SA (hereinafter "RO"): RO is a manufacturing and sales company, which manufactures copper plumbing fittings for France, and to a lesser extent Spain and Italy. RO was acquired by IMI in 1988, and sold by IMI France SARL (a subsidiary of IMI) to Aalberts Industries NV on 30 August 2002. Under Aalberts' ownership the company first changed its name into Raccord Orléanais SAS until 1 January 2005, when it merged with Presrac SAS and Morel SAS into Aquatis France SAS.

- R Woeste & Co Yorkshire GmbH (hereinafter "RYW"): RYW is a manufacturing and sales company, which manufactures copper plumbing fittings for Germany, Italy and Spain. In October 1988, IMI bought out the manufacturing and sales businesses of the German producer RYW. Before 1988, YF held a 50 % interest in the RYW manufacturing business but held no interest in the sales business. RYW was sold by IMI Beteiligungs GmbH (a subsidiary of IMI plc) to Aalberts Industries NV on 30 August 2002 and was renamed Woeste Yorkshire. Subsequent to this transaction, the manufacturing facilities at RYW were closed. The company has retained its sales activities. In 2004, Woeste Yorkshire and Hage Haustechnik were merged into Simplex Armaturen + Fittings GmbH & Co. KG.

- Woeste SL (hereinafter "WSL") was a distributor of YF Group copper plumbing fittings in Spain. WSL was incorporated by IMI in 1993 and sold by IMI Overseas Investment Ltd (a subsidiary of IMI plc) to Aalberts Industries NV on 30 August 2002. Under Aalberts' ownership, the company was called Woeste 'Yorkshire' SL. In December 2004, the company ceased to exist.

- IMI Componenti Termoidrosanitari Srl (hereinafter "CT"): Distributor of YF Group copper plumbing fittings in Italy. It was incorporated by IMI in 1993 and sold by IMI Overseas Investment Ltd (a subsidiary of IMI plc) to Aalberts Industries NV on 30 August 2002. The company changed its name to Woeste 'Yorkshire' Componenti Srl under Aalberts' ownership and is now called VSH Italia Srl.

- Eclipse NV (hereinafter "Eclipse") is a former manufacturer of copper plumbing fittings for the Benelux and other continental European territories. Eclipse was acquired by IMI in 1992. Its manufacturing sites were closed in 1993, and sales activities were taken over progressively by RO. The business was finally closed in June 1998.

(13) It should be noted that IMI is one of two companies that produces both copper tubes and fittings for sale in Europe. The other is Mueller Industries Inc.

– Turnover

(14) Turnover data, volume figures and market share of Aalberts and IMI can be found in the Annex to this Decision.

- *Individuals involved*

[Recital (15) is deleted, including any cross references to this recital and relevant footnotes]

- *Reporting structure*

[Recitals (16)-(19) are deleted, including any cross references to these recitals and relevant footnotes].

- *Distribution method*

(20) In all territories where the YF Group existed, YF products were sold directly to wholesalers/merchants. Each of the companies had a sales director responsible for a sales force covering sales to wholesalers/merchants and specifications with contractors in the countries concerned. YF, RO, and RYW also handled exports to other parts of Europe under the direction of an export manager/director. However, in all territories where the YF Group did not have a company incorporated as a separate legal entity, the products normally reached the market via an agent or distributor some of whom were part of the IMI group and some of whom were independent. A small proportion of the YF Group`s sales went to OEM (original equipment manufacturer) accounts.

(21) Throughout this Decision IMI plc will be referred to as IMI. IMI's various subsidiaries will be referred to as YF or IMI/YF (Yorkshire Fittings Ltd.), as RO or IMI RO (Raccord Orléanais SA), as RYW (R Woeste & Co Yorkshire GmbH), as WSL (Woeste SL), as CT or IMI CT (IMI Componenti Termoidrosanitari Srl) and as Eclipse (Eclipse NV) whereas Aalberts Industries NV will be referred to as Aalberts.

2.2.1.2. Advanced Fluid Connections (Oystertec), Delta, IBP

- *Company information*

(22) Delta plc (hereinafter "Delta") is a company at the head of an international engineering group, with headquarters in the United Kingdom. Delta's shares are listed on the London Stock Exchange. Until November 2001, Delta was a holding company for a diverse range of international businesses. These businesses were, by 1998, managed within four distinct divisions: Cables, Electrical, Engineering (initially termed Fluid Controls) and Industrial Products. Several plumbing fittings manufacturers were organised under the Engineering division. The plumbing division's main product range was fittings. Fittings accounted for well over half of the division's sales, with copper fittings being the largest part of this.

(23) A number of Delta's subsidiaries[6] (hereinafter "Delta" or "Delta Group") were involved in the fittings business. From 1985 until March 1988, some of Delta's subsidiaries involved in the production of fittings were organised under the control of Delta Fluid Controls Limited, which itself was a 100 % subsidiary of Delta plc. Under Delta Fluid Controls Limited, the most important producers of fittings were Conex Sanbra Ltd ("Conex", focusing on compression fittings), Delta Capillary Products Ltd ("DCP", focusing on copper end-feed), and since 1987 Triflow Ltd ("Triflow",

[6] It should be noted that unless otherwise specified, all subsidiaries of Delta were wholly owned.

specialising in the solder-ring business) and Nibco International Ltd. ("Nibco"). At this time, the UK fittings business was managed by Delta plc as an integrated business.

(24) Delta plc controlled a number of companies involved in the production of fittings through subsidiaries other than Delta Fluid Controls Limited and thereafter Delta Engineering Holdings Ltd. For instance, Banninger (UK) Ltd, Delcop Fittings Ltd and Delbex Ltd. were until 2001 under the control of D&T Holdings Ltd, which itself was a 100% subsidiary of Delta plc. Some other fittings companies, such as Bänninger GmbH ("Bänninger"), Accessorios de Tuberia de Cobre SA ("Atcosa"), International Building Products GmbH, International Building Products France SA and Sourdillon-Airindex SA were subsidiaries of a number of other subsidiaries including Delta Electrical and Engineering Holdings B.V., which in turn was part of a chain of other subsidiary companies wholly-owned by Delta plc.

(25) On 7 March 1988, Delta Fluid Controls Limited changed its name to Delta Engineering Holdings Ltd (hereinafter "DEHL"). From 1988 and until 2001, DEHL was a wholly-owned subsidiary of Delta plc. Delta plc controlled the appointment of DEHL's directors. DEHL controlled a number of subsidiaries involved in the production of fittings. The managing directors of DEHL's subsidiaries reported to the Divisional Managing Director of DEHL who in turn was responsible to and reported to the CEO of Delta plc.

(26) In 1987, the fittings business expanded to the continental European fittings market. This was done through a number of Delta subsidiaries such as Bänninger and Atcosa and through the acquisition of Nibco.

(27) In 1988, International Building Products Limited was created as a wholly owned subsidiary of DEHL. In 1989 and in 1994, IBP Limited and IBP Group Services Limited were also created respectively as subsidiaries of DEHL (hereinafter "IBP" •r "IBP Group"). IBP's responsibility was to operate on a European-wide basis. IBP produces primarily metric metal fittings for European markets, with manufacturing facilities in Germany, Spain, England, Scotland, France and Poland and distribution facilities throughout Europe. IBP's headquarters are located in Tipton, England. IBP possesses and operates among others the following brands: >B< Bänninger, Conex, >B< press, Cuprofit and Triflow.

(28) Between 1988 and 1994, Delta's fittings business was operated in two parts, the UK fittings business and the continental European business. Until 1994, whilst DEHL's subsidiaries reported to and were controlled by DEHL, they were managed as a separate unit from other companies (like Conex Sanbra Ltd). In 1994, the fittings businesses were restructured into a single operating unit, divided into four parts covering Northern, Central, Southern and Eastern Europe. Some of the subsidiaries involved in the fittings production were subsidiaries of DEHL and some of them (e.g. Atcosa, Banninger GmbH, Banninger Italia, Building Products Benelux B.V., International Building Products France SA, etc.) were subsidiaries of other companies such as Delta Group Overseas Limited, Delta Group International Holdings Limited, D&T Holdings Ltd which in turn were wholly owned by Delta plc. This legal structure remained the same until 2001.

(29) Delta states that from about 1994, for the companies which were owned by Delta's plc subsidiaries other than DEHL, reporting, management and control were retained

within the fittings division and these companies were accountable to the board of DEHL (the "Divisional Board"). From 1994, except in one or two cases, all the companies within the plumbing and fittings divisions were at all times wholly-owned subsidiaries of Delta plc but were responsible to and reported to DEHL's Divisional Board. DEHL controlled the appointment of the board for all its subsidiaries in the fittings division. In practical terms, DEHL also controlled the appointment of directors to the overseas companies in the fittings division.

(30) In 1999, the DEHL and IBP boards became one under a single Managing Director and Finance Director.

(31) In December 2000, DEHL transferred and procured the transfer of all the assets and undertakings of the fittings division to DEHL's immediate holding company, Delta Industries Ltd. Delta Industries Ltd was itself a wholly owned subsidiary of Delta plc. Until the sale of the fittings division to Oystertec on 23 November 2001, all the relevant companies were wholly-owned subsidiaries of Delta plc at all relevant times whilst they were within the fittings division. The acquisition by Oystertec plc was a combination of equity purchase and asset purchase and comprised a number of companies within the fittings division.

- *Advanced Fluid Connections, Oystertec*

(32) On 23 November 2001, the fittings companies belonging to Delta plc were sold to Oystertec plc ("Oystertec" or "Oystertec Group"). When Oystertec acquired Delta's fittings business, it formed a new company, named IBP Limited, which is distinct from the "old" IBP Limited. The latter is now called Aldway Nine Limited and continues to be part of the Delta group.

(33) On 1 June 2005, Oystertec plc changed its name to Advanced Fluid Connections plc. Since the acquisition, Oystertec has been the holding company for this group. Its revenue streams come mainly from two divisions – the Plumbing Division and the Industrial Division – respectively headed by IBP Ltd and Europower Ltd. These two companies are wholly-owned subsidiaries of Oystertec. The fittings business is wholly owned by IBP Ltd and IBP Ltd is wholly-owned by Oystertec plc. Following its acquisition, IBP's business remained focused on the manufacture and supply of plumbing fittings (copper, copper alloy, brass and bronze) under the trading name IBP. International Building Products France SA and International Building Products GmbH are IBP's Ltd subsidiaries and form part of Oystertec plc.

(34) At least two members of the Management Board of the plumbing division of IBP Ltd were concurrently directors of Advanced Fluid Connections plc. **[*deleted*]**

(35) On 24 March 2006, Advanced Fluid Connections was placed under administrative receivership. On 25 March 2006, the receivership administrators sold all the assets of Advanced Fluid Connections to Celestial Wing Ltd. Celestial Wing Ltd is a 100% subsidiary of a private equity fund, namely Endless LLP. The assets included IBP Limited, International Building Products France SA and International Building Products GmbH, which were transferred as autonomous companies. These three companies continue to trade normally under Celestial Wing Ltd.

– *Turnover*

(36) Turnover data, volume figures and market share of Advanced Fluid Connections and Delta can be found in the Annex to this Decision.

- Individuals involved

[Recital (37) is deleted, including any cross references to this recital and relevant footnotes

]*- Distribution method*

(38) The DEHL fittings division was organised on a country legal entity basis. The management structure followed either the legal structure or the internal "profit centres" structure. This meant that there were senior sales managers in the larger Member States who were responsible for the selling organisation in these territories and for export activities, having under their responsibility both the internal sales administration teams and the external selling organisation. Depending on the territory, the external team consisted of either mainly own employees (e.g. United Kingdom, Germany) or the company's agents (e.g. Italy), with sales to the smaller Member States handled normally by agents/distributors (e.g. Sweden, Austria, and Ireland).

(39) The DEHL fittings division sold mainly to plumbing merchants and wholesalers/distributors, DIY (do-it-yourself) providers and mail order companies.

(40) Throughout this Decision, Delta plc, IBP Ltd and DEHL will be referred to as Delta or Delta/IBP whereas Oystertec plc will be referred to as Oystertec or under its new name, Advanced Fluid Connections.

2.2.1.3. Flowflex

- Company information

(41) Flowflex Holdings Ltd is the holding company which holds the shares and the fixed assets of the group. Flowflex Holdings Ltd was incorporated on 1 April 1989 to consolidate the various holdings of the Dickinson family. Flowflex Components Ltd is a wholly owned subsidiary of Flowflex Holdings Ltd. Prior to that date, Flowflex Components Ltd was the undertaking involved in the production and distribution of plumbing fittings. Until April 1989 the companies in the group acted independently of each other, but with a common ownership via the share capital. **[*deleted*]** In this Decision, both Flowflex Holdings Limited and Flowflex Components Limited will be referred to as "Flowflex".

(42) The UK, EU and Export Sales Administration Department is based at Flowflex Components's Head Office in Buxton. The persons responsible are the Sales Director and a Sales Manager who use sales distribution channels via wholesalers in all markets.

– Turnover

(43) Turnover data, volume figures and market share of Flowflex can be found in the Annex to this decision.

-Individuals involved

[Recital (44) is deleted, including any cross references to this recital and relevant footnotes]*-Reporting Structure*

[Recital (45) is deleted, including any cross references to this recital and relevant footnotes]
-Distribution Method

(46) The company operates from a single production and distribution point in the United Kingdom.

(47) According to the information provided by Flowflex in its reply to the Commission's request, Flowflex did not attend the Super EFMA meetings.

2.2.1.4. FRA.BO

- Company information

(48) FRA.BO S.p.A (hereinafter "Frabo") is a public limited company with registered offices in Bordolano, Italy, which is also where its production site is based. The company's commercial and administrative offices and its warehouse are at Via Benedetto Croce 21/23, Quinzano d'Oglio (Italy). The major shareholders of the undertaking are **[*deleted*]**.

(49) Frabo has a number of subsidiaries spread over several European countries.

– Turnover

(50) Turnover data, volume figures and market share of Frabo can be found in the Annex to this decision.

- Individuals involved

[Recital (51) is deleted, including any cross references to this recital and relevant footnotes)]*- Reporting structures*

[Recital (52) is deleted, including any cross references to this recital and relevant footnotes]

- Distribution method

(53) Until 1989, Frabo sold only copper fittings purchased from ATUB, Comap and Mueller **[*deleted*]**. Its distribution network was confined to customers in Italy, mostly wholesalers, and was run by sales representatives.

(54) In 1989, Frabo began manufacturing copper fittings, expanding to cover the full range of fittings and at this point it began exporting to Germany through an importer/distributor. In 1993, Frabo France was set up. Except for Frabo Meteor and Frabo Romania, Frabo's products are sold through wholesalers and, in Italy, to final users.

2.2.1.5. Legris Industries SA, Comap SA

- *Company information*

(55) The Comap group was established in 1949. In 1986, Legris Industries SA (hereinafter Legris Industries) acquired the parent company of the group, Multifluid Energies, which was subsequently re-named Comap SA (hereinafter "Comap"). From that time on, Comap SA has been a 99.99% subsidiary of Legris Industries. Apart from the subsidiaries of Comap SA, no other subsidiary within Legris Industries is active in the sector of copper fittings. On 26 January 2006, Comap SA was acquired by Aalberts Industries[7].

(56) Comap SA and its subsidiaries are active in the business areas of fittings and regulation devices for fluids, heating and sanitary ware. Comap had 20 subsidiaries or branches and approximately 1200 employees around the world as well as nine production plants in Germany, Brazil, France, Italy and the United Kingdom. Two factories of the Comap group, namely the one in Saint-Denis de L'Hôtel (France) and that in Tipton (factory Rabco, UK) produce copper fittings. The heart of Comap activities regarding copper fittings is the production and sale of "classic" copper fittings for welding.

(57) The subsidiaries of the Comap group were owned 100 % by Comap SA, which also appointed the executives of the subsidiaries of the group. As the majority shareholder of Comap SA, Legris Industries appointed the executives of Comap SA, especially the members of the Board of Directors. **[*deleted*]** Legris Industries **[*deleted*]** is also a member of the "Conseil d'Administration" (Board of Directors) of Comap SA and Legris Industries is also represented in Comap SA's board of directors through an administrator.

(58) In the United Kingom, Comap SA started its activities in 1990 with the acquisition of Jeavons. Thereafter Comap UK Ltd acquired Rabco Ltd in 1998, a British company which specialised in the production and marketing of copper fittings of the "solder ring" type.

– *Turnover*

(59) Turnover data, volume figures and market share of Legris and Comap can be found in the Annex to this Decision.

- *Individuals involved*

[Recital (60) is deleted, including any cross references to this recital and relevant footnotes]*- Reporting structure*

(61) **[*deleted*]** The pricing policy regarding fittings is specific to each country. The commercial manager of each subsidiary of Comap reports regularly to the commercial manager of the Comap group, who himself reports to the President and CEO of Comap SA **[*deleted*]**.

- *Distribution Method*

[7] The final sale of Comap's shares took place on 27 March 2006.

(62) Until 1987, the Comap group focused its sales of copper fittings mainly on France, Germany and Spain. From 1988 onwards, Comap "Europeanised" and established a European network of distribution subsidiaries in several countries. Via this network, Comap sells its products mainly to wholesalers of heating equipment and sanitary ware. Moreover, Comap sells its product to large building stores through its company Soveg, which is specialised in this type of client. The wholesalers and large building stores then resell the same products to fitters and private customers. For a very small proportion, particularly in the countries where Comap does not have a proper commercial organisation, it sells its products to importers, who generally resell them to wholesalers. Comap does not sell its products directly to fitters or private customers.

(63) It should be noted that in response to the Commission's request for information under Article 11 of Council Regulation No 17 of 6 February 1962, First Regulation implementing Articles 85 and 86 of the Treaty[8] now Article 18 of Regulation (EC) No 1/2003), Comap provided a large amount of information. However, in the information supplied by Comap, there is no indication of any behaviour that would qualify as an infringement of competition rules. In particular, "Super EFMA"-meetings[9] are not identified as such. Further, according to Comap, discussions between competitors focused on themes of general interest to the fittings business.

2.2.1.6. Mueller

- Company information

(64) Mueller Industries Inc. (hereinafter "Mueller"), a US based company listed on the New York Stock Exchange since 1991, is a manufacturer of copper, brass, plastic and aluminium products. Mueller's headquarters are based in Memphis, Tennessee. Its products include copper tubes and fittings. Mueller is one of the two companies that produces both copper tubes and fittings for sale in Europe; as mentioned above, the other one is IMI plc.

(65) Mueller has only been involved in the production and sale of copper fittings of the end feed type since 1987. **[*deleted*]** With the exception of a few supplies in 2002 to meet orders placed before December 2001, ***[Mueller]*** discontinued sales of metric-sized copper fittings in December 2001. **[*deleted*]**

(66) In 1997, Mueller acquired Wednesbury (United Kingdom) and Desnoyers (France), thus entering the European copper tube and fitting market. Prior to that time Wednesbury had been active in both tubes and fittings up until the mid-1980s. Wednesbury discontinued its activities in fittings prior to 1987 and during the period 1987-1997 Wednesbury was active only in tubes. Wednesbury resumed the sale of fittings in early 1997. On 28 February 1997, all Wednesbury Tube's assets were acquired by Mueller. The former changed its name from Wednesbury Tube to Macrobreak Ltd, then to Wednesbury Tube Company Ltd, thereafter into Wednesbury Tube & Fittings Company Ltd and finally to Mueller Europe Ltd (hereinafter "Mueller Europe"). **[*deleted*]** Following its acquisition by Mueller, Mueller Europe was

[8] OJ 13, 21.2.1962, p. 204/62.

[9] For the meaning of Super-EFMA meetings, see recital (148).

involved in the sale of metric-sized copper fittings. Mueller Europe is owned by WTC Holding Company, Inc. which is wholly owned by Mueller.

(67) Mueller Industries Inc owned Mueller Europe Ltd. **[*deleted*]** through its wholly-owned companies WTC Holding Company, Inc. **[*deleted*]** throughout the duration of the infringement. **[*deleted*]** Mueller Industries Inc sold its copper fittings in Europe ***[deleted].***

– Turnover

(68) Turnover data, volume figures and market share of Mueller can be found in the Annex to this Decision.

- Individuals involved

[Recital (69) is deleted, including any cross references to this recital and relevant footnotes]

- Distribution method

(70) From 1991 until late 2001, Mueller sold copper fittings in Europe ***[deleted].***

2.2.1.7. Pegler, Tomkins

- Company information

(71) In 1932, Peglers Ltd was floated as a public company. In 1968, Peglers Ltd merged with Hattersley Holdings. In June 1986, Tomkins Engineering Group bought this group of companies and de-merged the group. Subsequently Peglers Ltd was renamed Pegler Ltd. Between 17 June 1986 and 31 January 2004 Pegler Ltd (hereinafter "Pegler") was a wholly-owned subsidiary of Tomkins plc. As of 1 February 2004 Pegler Ltd was sold to its management team. Subsequently, on 26 August 2005, Pegler Holdings Ltd and Pegler Ltd were acquired by Aalberts Industries. Pegler was involved in the manufacture and sale of copper alloy products including copper alloy fittings. Its brand is Prestex. Up until the sale to the management team, the power to appoint directors of Pegler Ltd. rested in Tomkins plc. Tomkins plc asserts that Pegler Ltd was run as an autonomous business, making its own decisions on technical, manufacturing and sales/marketing issues and Tomkins plc did not have any control or input into such issues.

(72) On 6 April 2004, Tomkins plc informed the Commission that it was not in a position to materially assist in the Commission's investigation. The business of Pegler Ltd was carried out on an arms' length basis with its own management controlling its operations. Tomkins plc stated that it would assist in any way it could but that the Commission should rely on information provided directly by Pegler Ltd.

– Turnover

(73) Turnover data, volume figures and market share of Pegler and Tomkins can be found in the Annex to this Decision.

- Individuals involved

[Recital (74) is deleted, including any cross references to this recital and relevant footnotes]

- Reporting structures

[Recital (75) is deleted, including any cross references to this recital and relevant footnotes]

- Distribution method

(76) The sale of fittings takes place under the responsibility of the Sales and Marketing Director. Responsibility under the Director is split into exports and UK sales. The export sales manager is responsible for exports. Exports are divided into several areas under the responsibility of export area managers. Each export area has its own commission-only agents and distributors who assume the product sale. UK sales are the domain of the UK sales manager. These sales are further managed by the regional sales managers. Each region has its sales representatives who distribute the product to the customer, that is, merchants and/or distributors.

2.2.1.8. Sanha Kaimer

- Company information

(77) The Sanha Group is a German family undertaking. Within the group the following undertakings are involved in the production and/or sales of fittings: Sanha Fittings B.V.B.A. (B-1704 Ternat, Industrielaan 7), Sanha Kaimer GmbH & Co. KG. (D-45219, Essen Teelbruch 80), Sanha Italia Srl (I- 20134 Milan, Via Cavriana 3) and Sanha Polska Sp. Z.o.o. (PL- 59-220 Legnica, ul. Poznanska 49). Hereinafter, the Sanha Group will be referred to as “Sanha” or “SHK”.

(78) Sanha Kaimer GmbH & Co. KG is wholly-owned by Kaimer GmbH & Co. Holdings KG whereas Sanha Italia Srl is wholly-owned by Kaimer Europa GmbH. Kaimer GmbH & Co. Holding KG is owned by members of the Kaimer family. The general partner- without capital share- of the company is Kaimer GmbH. Kaimer Europa GmbH is owned by Kaimer GmbH & Co. Holdings KG (50 %) and members of the Kaimer family. Sanha has a production plant in Belgium.

– Turnover

(79) Turnover data, volume figures and market share of Sanha Kaimer can be found in the Annex to this Decision.

- Individuals involved

[Recitals (80)-(81) are deleted, including any cross references to these recitals and relevant footnotes]

- Reporting structure

[Recitals (82)-(83) are deleted, including any cross references to these recitals and relevant footnotes]

2.2.1.9. Viega (Viegener)

- *Company information*

(84) Viega *GmbH & Co. KG* was founded in 1899 and within the Viega group (hereinafter "Viega" or "Viegener"), it is the company responsible for the production of fittings. ***[deleted]***.

(85) Within the Viega Group all companies are owned by Franz Viegener II. GmbH & Co. KG. On 31 March 2004, Franz Viegener II. GmbH & Co. KG was renamed Viega GmbH & Co. KG. Viega Global GmbH & Co., *Viega International GmbH* and *Viega N.A.* are holding companies without real functions in the production or trade of fittings. All the other group companies (Viega S.A.R.L.- France; Conducciones de Agua Viega SL- Spain; Viega Italia Srl- Italy; Viega A/S- Danemark; Viega Nederland B.V.- Netherlands; Viega Sp.Z.o.o.- Poland; Viega s.r.o.- Czech Republic; Viega Asia/Pacific K.K.- Japan) are marketing companies created through the Viega Group.

(86) Viega Beteiligungs GmbH is responsible for the representation and management of Viega GmbH & Co. KG. (as explained above in (85), formerly known as Franz Viegener II GmbH & Co. KG.) Viegener has two production sites for fittings in Europe in Attendorn (Germany) and in Großheringen (Germany).

– *Turnover*

(87) Turnover data, volume figures and market share of Viega can be found in the Annex to this Decision.

- *Individuals involved*

[Recitals (88 - 89) are deleted, including any cross references to these recitals and relevant footnotes]

- *Reporting structures*

[Recital (90) is deleted, including any cross references to this recital and relevant footnotes]

- *Distribution method*

(91) The products of Franz Viegener II GmbH & Co. KG are mainly distributed through wholesalers. Sales of the products are made directly to the wholesalers and the prices negotiated with them. The negotiations on prices are made through the association if the wholesalers are part of a purchasing association. The price negotiations are led by the sales manager within the country and the manager of the company in question in case of sales abroad. Besides sales to wholesalers, a small part of the production is sold directly to OEM customers.

2.2.2. Associations of undertakings

(92) The copper fittings industry is represented by a number of trade associations, most prevalent of which is the European Fittings Manufacturers Association ("EFMA").

(93) EFMA is an unincorporated Association governed by a constitution. The association's activities include promotion of the relevant products and the development of the industry and taking positions on regulatory and technical issues. It has no regular function of collecting, collating or disseminating statistical data, although one such scheme of statistical data has been developed. The secretariat, which is supplied by the secretariat of the International Wrought Copper Council (IWCC), is based in London. The association was formed in 1973.

(94) The governing bodies of the Association are the General Assembly and the Council. The General Assembly meetings are usually held twice a year - in spring and autumn - at various locations. The meeting of the Technical Committee, which preparesfor the General Assembly, is normally held the day before the General Assembly.

(95) The founding members were SA Eclipse NV, Atub SA, Haas (Etablissment H), Pont-à-Mousson SA, Raccord Orléanais SA, Bänninger GmbH, Societa Metallurgica Italiana, Gränges Metallverken, Georg Fischer Ltd, Delta Metal Co., and Yorkshire Imperial Metals Ltd. Other later members included Eclipse SA, Franz Viegener II GmbH and the Wednesbury Tube Company Ltd. (all in General Assembly 5-6 June 1979), KF SPRL (General Assembly on 10 October 1986), Delta Fluid Controls (including Delta Capillary Products and NIBCO Europe (Atcosa and Bänninger)) replacing the separate membership of Delta Capillary Products (General Assembly on 18 March 1988), Sanha Kaimer GmbH & Co. KG (General Assembly on 25 September 1998, with effect from 1 January, 1999), Frabo (General Assembly 6 October 2000[10]).

(96) By virtue of the adoption of a new constitution on 1 January, 2001 the companies - General Fittings Srl, Bra.wo, Flowflex, and Pegler Ltd - who had been the members of the European Brass Fittings Association up to its dissolution but who were not also members of EFMA became members of EFMA. EFMA members represent at least 90% of the European market. Apart from the members of EFMA, there are a large number of other manufacturers, mostly SMEs, which are active on the European market.

(97) The European Brass Fittings Industry Association (EBFIA) was another body involved in the industry. According to Pegler, at the end of 2000, EFMA and EBFIA merged. The British Plumbing Fittings Manufacturers Association ("BPFMA", formerly the CTFMA) was another association in the United Kingdom.

(98) The French Federation of Sanitary Equipment ("FNAS") is a trade association founded in 1929 whose object is to represent and defend the interests of wholesalers of sanitary, plumbing, air conditioning and warm air heating equipment at national level. For many years various committees have been set up by FNAS in order to study, follow and discuss specific topics of interest for wholesale distributors. The participants are FNAS personnel and its members including the manufacturers. On 24 April 2003 a logistics committee was set up as an initiative of wholesalers to discuss the issue of product packaging.

[10] Although Frabo was already represented at the General Assembly on 13 April 2000.

(99) There are a number of certification and quality standard organizations in the Community ensuring that sales conform to the European standard (EN1254) and to certain country-based approval schemes. These are the Deutsche Vereinigung des Gas- und Wasserfaches e.V. (DVGW) in Germany, British Standards, Kitemark and WRAS (Water Regulation Advisory Scheme) in the United Kingdom, NF or Afnor (Association Française de Normalisation) in France, KIWA (Kiwa N.V. a certification company) in the Netherlands.

2.3. Supply and Demand

(100) The largest market for copper fittings is the domestic plumbing and sanitation sector with applications such as central heating, cold and hot water plumbing and gas supply within and adjacent to buildings. Fittings are also used to transport water and refrigerants in air conditioning and refrigeration systems ("ACR systems"). The latter fittings are predominantly for industrial uses. On this basis, fittings are sold for both commercial (plumbing) purposes, usually to wholesalers, and industrial (climatisation and refrigeration) purposes. As regards the latter use, the product presents technical standards of higher, better quality than those for commercial purposes.

2.3.1. Supply

(101) The principal European manufacturers of fittings are Comap, Flowflex, Frabo, Delta, Pegler, Sanha Kaimer; Viegener and IMI. There are also various Asian manufacturers. Mueller discontinued sales of metric-sized fittings in Europe in December 2001.

(102) The size of the European market for all fittings used to connect copper plumbing tubes is approximately 1 billion units per year. According to EFMA's estimates, the Western European (Community plus Norway and Switzerland) copper and copper alloy end feed and solder ring market was estimated in 1999 to comprise some 800 million units. At the same time the same geographical market for compression fittings was estimated to comprise some 100 million units. Corresponding information was collected for the three preceding years but shows little variation from these figures, except for a decline in Germany, Austria and Switzerland and growth in Spain and Portugal.

(103) End feed, solder ring and compression copper fittings represent 26 %, 36 % and 38 % respectively of the total value of the market. Solder-ring fittings dominate the UK market, whereas end feed fittings are dominant elsewhere. Further data regarding the market shares of the main fittings producers can be found in the Annex to this Decision.

(104) The geographic scope of the fittings suppliers business is essentially Europe, including Community/EEA. There are also exports to Eastern European countries and some more limited exports outside Europe.

(105) According to Delta and other companies, transport costs amount approximately to 1,5% of the net sales price within the Community/EEA and the same approximately within the rest of Europe. Worldwide, transport costs account for 2 % of the net sales price. Based on estimates from other parties, in 2001 for sales in the EEA, roughly 2.43% of the sales price of fittings represented transport costs, whereas for sales worldwide the figure would be around 2.46%. These figures indicate that suppliers are in a position to supply the entire European market regardless of the factory location.

(106) There are no major regulatory barriers to trade within the Community/EEA. As indicated above, however, there is a number of certification and quality standard organizations in the Community ensuring that sales conform to the European standard (EN1254) and to certain country-based approval schemes such as DVGW, British Standards, Kitemark, WRAS, NF, KIWA. Requirements for conformity typically take 6-12 months with associated costs, which leads to a certain administrative burden.

2.3.2. The state of the industry

(107) Since 1985, there has been a trend towards consolidation and exits from the industry. The business depends to a very large extent on the construction market, both new-build, repairs and renovation.

(108) Consolidation is owed largely to the acquisition strategies pursued by the major European players such as Delta/IBP, IMI and Comap.

(109) Price competition for the major companies appears to originate from smaller European competitors and also from generic fittings produced in the Far East. These pressures are recognised to have been very strong throughout the 1990s and concern the European plumbing and heating markets, and in particular the underfloor heating markets.

2.3.3. Demand

(110) Customers for copper fittings are major distributors, wholesalers, agents, mail order companies as well as the retail sector (e.g. the DIY or "do-it-yourself" sector).

(111) Manufacturers of fittings tend to supply directly to wholesalers in areas where their production facilities are located or where they have their own distribution organisation. In other areas, manufacturers sell via independent distributors acting as agents or resellers to wholesalers. The distributors are usually nationally-based, private companies, while a significant number of wholesalers have operations in more than one country or at pan-European level.

(112) Distribution is directed to the construction and engineering sector. In 1995, some 86% of copper alloy fittings for the construction market were distributed through builders' merchants. This high proportion reflects the comparative fragmentation of demand within the construction industry which requires a high distribution service level. The main end users are plumbing installers and contractors in private and public building, especially housing.

2.4. Inter-state trade

(113) The copper fittings market is characterised by major trade flows between EC Member States and Contracting Parties to the EEA Agreement. A large number of copper fittings manufacturers produce in one, two or three European home markets, and sell fittings throughout Europe. Production sites of different producers are spread across Europe. In particular, fittings are produced in a number of Member States such as the

United Kingdom, France, Germany, Italy, Spain and Belgium[11]. From these units, copper fittings manufacturers supply the entire Community/EEA and the rest of Europe. Large parts of the total fittings consumption in different Member States stem from imports from other Member States, in particular the United Kingdom, France and Germany. There is consequently a *very substantial* amount of trade between Member States in the copper fittings market.

3. PROCEDURE

3.1. Chronology of leniency applicant submissions

(114) On 9 January 2001, Mueller informed the Commission of the existence of a cartel in the fittings sector and expressed its willingness to cooperate with the Commission under the terms of the Commission Notice on the non-imposition or reduction of fines in cartel cases of 1996 ("the Leniency Notice")[12]. Mueller's initial submission was followed by ***[deleted]*** further submissions.

(115) On 18 September 2003, following a request for information under Article 11 of Regulation No 17[13], IMI approached the Commission with a view to submitting a leniency application. On 19 September 2003, it sent a brief description of cartel activities and a list of meetings. On 30 September 2003, in the framework of a meeting with the Commission, it submitted a leniency application and expressed its willingness to cooperate with the Commission under the terms of the Leniency Notice. IMI's application was followed by a number of written submissions and meetings as well as interviews with its representatives.

(116) On 10 March 2004, Delta submitted a leniency application. Delta's application was followed by other written submissions, a meeting and the presentation of oral statements.

(117) On 19 July 2004, Frabo submitted a leniency application.

(118) On 24 May 2005, Oystertec submitted a leniency application. Oystertec's application was submitted after the Commission made a request for information under Article 18 of Regulation (EC) No 1/2003 and after it had asked Oystertec to provide the Commission with language waivers for its subsidiaries International Building Products France SA ("IBPF") and International Building Products GmbH ("IBPG") for the ongoing proceedings. Furthermore, in its leniency application, Oystertec specified that although it was possible, it made no admission that IBPF participated in a concerted practice between competitors in a suspected infringement of Article 81 of the Treaty; nor does it make any admission that the facts and matters presented in its leniency application constitute an infringement of Article 81 on its part. Oystertec's (now Advanced Fluid Connections plc) application was followed by the submission and presentation of written statements.

3.2. Commission investigation and requests

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[11] Comap, for example, has relevant production facilities in France and the UK, IMI has production sites in the UK, Germany, etc. see recital (56).

[12] OJ C 207, 18.7.1996, p. 4.

[13] See footnote 85.

(119) On 22 and 23 March 2001, in the framework of an investigation concerning copper tubes and fittings, the Commission carried out unannounced inspections at the premises of several undertakings, one of which was IMI, one of the addressees of this Decision. These inspections took place pursuant to Article 14(3) of Regulation No 17[14].

(120) After the first inspections, in April 2001, the investigation was separated into three different proceedings, Case COMP/E-1/38.069 (Copper Plumbing Tubes), Case COMP/E-1/38.121 (Fittings) and Case COMP/E-1/38.240 (Industrial Tubes).

(121) Subsequently, on 24 and 25 April 2001, the Commission carried out further unannounced inspections under Article 14(3) of Regulation No 17 at the premises of Delta. These inspections concerned the fittings case.

(122) Since February/March 2002, the Commission addressed several requests for information under Article 11 of Regulation No 17 and later under Article 18 of Regulation (EC) No 1/2003 to all the parties concerned.

3.3. Statement of Objections and Oral Hearing

(123) On 22 September 2005, the Commission initiated proceedings and adopted a Statement of Objections (SO) concerning an infringement of Article 81 of the EC Treaty and Article 53 of the EEA Agreement.

(124) The Statement of Objections was addressed to 30 companies and one association. The addressees were Aalberts Industries NV (and its subsidiaries Simplex Armaturen + Fittings GmbH & Co. KG, Aquatis France SAS, Yorkshire Fittings Limited and Woeste 'Yorkshire' Componenti S.r.l.), Delta plc (and its subsidiaries Delta Engineering Holdings Limited, Druryway Samba Limited and Aldway Nine Limited), Supergrif SL, Advanced Fluid Connections plc (and its subsidiaries International Building Products France SA, International Building Products GmbH and IBP Limited), Flowflex Holdings Ltd (and its subsidiary Flowflex Components Ltd), FRA.BO S.p.A, Franz Viegener II. GmbH & Co. KG, IMI plc (and its subsidiary IMI Kynoch Ltd), Legris Industries SA (and its subsidiary Comap SA), Mueller Industries Inc. (and its subsidiaries Mueller Europe Ltd. and WTC Holding Company Inc.), SANHA Kaimer GmbH & Co. KG (and its subsidiaries Kaimer GmbH & Co. Holdings KG and Sanha Italia srl), Tomkins plc, Pegler Ltd and the Fédération Française des Négociants en Appareils Sanitaires, Chauffage-Climatisation et Canalisations (FNAS).

(125) The undertakings had access to the Commission's investigation file in the form of a copy on DVD. With the DVD, the undertakings received a list specifying the documents contained in the investigation file (with consecutive page numbering) and indicating the degree of accessibility of each document. In addition, the undertakings were informed that the DVD gave the parties full access to all the documents obtained by the Commission during the investigation, except for business secrets and other confidential information.

[14] See footnote 85.

(126) An Oral Hearing on the case was held on 26 and 27 January 2006. All parties with the exception of Flowflex, Comap and Supergrif were represented in the oral hearing.

(127) After the Statement of Objections and the Oral Hearing, the parties provided a number of written submissions. These submissions were made in reply to the Statement of Objections and to those of the Commission's questions at the Oral Hearing which could not be answered on the spot following the authorisation of the Hearing Officer. In so far as certain information in these submissions has been used, this has been made available to the parties concerned. As a result, the parties have had the opportunity to comment on the relevant parts of these submissions and thus, exercise their rights of defence.

4. DESCRIPTION OF THE EVENTS

4.1. Organisation and participants

(128) This Decision concerns the behaviour of companies engaged in the production and sale of copper fittings, including copper alloy fittings.

(129) The Commission notes that meetings and other contacts between competitors took place at an overall pan-European level as well as at national level. Both types of behaviour are so intertwined that they cannot be distinguished and they are therefore considered to form part of the cartel operations[15]. To this extent both types of behaviour are subject of this Decision.

(130) The following description presents the various arrangements on an overall basis as depicted by the leniency applicants. This description will be followed by a more detailed chronology of events on a yearly basis.

4.1.1. Evidence available

(131) The evidence on which this Decision is based consists first, of numerous documents (agendas, internal notes, internal reports, notes taken during the meetings), corporate statements and witness interviews provided by the leniency applicants and second, of documents that the Commission found during the inspections. The inspection documents and the undertakings' documents constitute evidence drafted at the time the events were taking place, that is, *in tempore non suspectu.* With regard to the leniency applications, on an overall basis, all of them confirm one another for the periods to which they refer. Mueller's submissions are confirmed by those of IMI; those of IMI by those of Delta and Frabo; and Frabo's submission concerning the events after the inspections are factually confirmed by those of Oystertec. There are also several instances in the description of the events where the Commission specifically refers to events that are reported by one participant and confirmed by other undertakings, not always leniency applicants. As regards IMI's leniency application, it provided narratives describing the context and explaining a great number of handwritten notes and other documents found by the Commission during its inspections. In addition, almost the entirety of IMI's leniency submissions is based on documents drafted at the time the infringement was taking place as opposed to corporate statements and/or

[15] See recital (147).

witness interviews. Similarly, parts of Frabo's and Oystertec's submissions are based on documents drafted at the time the infringement was taking place. Finally, several undertakings do not contest a number of the Commission's factual findings (e.g. Pegler), while others such as Flowflex and Viegener confirm their participation in the anti-competitive arrangements for certain periods ***[deleted]***.

4.1.2. The origin and development of the cartel

(132) Pursuant to IMI's submissions, the key features of the cartel were that:

- It entailed, *inter alia*, price co-ordination, exchanges of confidential information and allocation of customers and markets;
- It involved primarily Delta/IBP, Comap, IMI but also other additional participants at various points in time;
- Geographically, it concerned Germany, France, Italy, Spain, Portugal, Greece, the Nordic countries, Austria, Belgium, the Netherlands and the United Kingdom (see infra at (163) et seq.);
- It covered the period between 1987 and 2001;
- The cartel in its European dimension was referred by certain participants as "pan-European" or "Super-EFMA".

(133) The Commission notes that anti-competitive arrangements were agreed upon on the occasion of, before or after EFMA, BPFMA and other associations and trade fair meetings. However, the meetings and other legitimate contacts which occurred within the framework of these associations, as opposed to those surrounding them (bilateral or multilateral arrangements), are not subject of this Decision.

(134) In its leniency application of 16 April 2004, Delta presents two arrangements, one concerning the United Kingdom and the other concerning the continental European fittings market. As regards the UK market, Delta points out that the starting point of the anti-competitive behaviour was from 1985, continuing until around 2001 with UK manufacturers discussing and agreeing on prices. In its subsequent statement of 19 January 2005, Delta adds that in the beginning, contacts had been established between **[*deleted*]** (Delta Group) and **[*deleted*]** IMI. In these first contacts, Delta advised of their intention to increase UK prices in the hope that IMI would follow the lead. This happened on a few occasions prior to 1986. The contacts were subsequently carried on and intensified by **[*deleted*]** Delta, who established close contacts with **[*deleted*]** (IMI) and subsequently with **[*deleted*]** (IMI YF) towards the end of 1988.

(135) According to Delta, the scheme was as follows: one of the leading manufacturers, namely Delta, IMI or Pegler would initiate discussions about changing their price lists. Once they had reached a consensus, they would inform the other competitors and the process of implementation would be started by one of the leading manufacturers. Invariably, the smaller competitors followed the lead of Delta, IMI and Pegler. Implementation would take place within a month or so of each other and the price increase would not correspond precisely with the other manufacturers' rates. The purpose of the coordinated changes was to "stabilise" market conditions and to avoid implementing the price increase unilaterally in light of the strong purchasing power held by UK wholesalers. The UK manufacturers had opportunities to discuss pricing with their competitors when they met at the British Plumbing Fittings Manufacturers

Association ("BPFMA", formerly the CTFMA) which met every three months as well as at customer/supplier days, during telephone calls and at trade fairs. There were also other *ad hoc* meetings.

(136) The expansion of the cartel from the United Kingdom to continental Europe is described by Delta/IBP as follows: prior to 1987 Delta's plumbing interests had been confined to direct exports of compression fittings, mainly to Scandinavia and the Benelux territories and only with limited success in the major territories (Germany, Spain, France and Italy). In order to expand, Delta, in 1987, acquired the European business interests of Nibco Inc., which produced and sold end-feed fittings on the European market.

(137) In the early 1990's, **[*deleted*]** (Delta) established some contacts with **[*deleted*]** a Dutch manufacturer of compression fittings, which also supplied the United Kingdom. **[*deleted*]** indicated that if the major UK compression fittings manufacturers increased their prices, they would follow provided that smaller competitors would also follow the increase. From this time onwards, **[*deleted*]** also advised of any price increase anticipated in the Dutch and Belgian market in order to ensure that Delta and IMI would follow. A similar process began in the Scandinavian market.

(138) After Delta expanded through IBP in the late 1980s it became more aware of plumbing developments in continental Europe including the effect that the growth of plastic plumbing and heating systems was having on copper-pipe based systems and the subsequent impact on copper fittings sales. In addition the growing tendency of wholesalers to computerize their purchase systems allowed them to compare the prices of competing copper fittings manufacturers. Overall Delta/IBP traces back the strong competition in Europe to less demand for copper fittings and market penetration from other producers due to lower production costs.

(139) According to Delta, the growing number of pan-European wholesalers at that time put pressure on the suppliers to harmonize their price lists across Europe. This price coordination followed the same structure as in the UK market, although it had a more pan-European dimension including Delta/IBP, IMI and other European manufacturers. This was so because of cross-border trading which meant that one national market could not be considered in isolation.

(140) Delta further describes that continental manufacturers were provided with an opportunity to discuss prices when they met at the EFMA meetings, the European equivalent of BPFMA meetings. The fittings manufacturers which tended to initiate price discussions were Delta/IBP, IMI and Comap together with Viegener in Germany. In addition to discussions at the continental European level, every major country had its own process for price coordination and other local arrangements complementing the European level arrangements.

(141) As to IMI, it believes that discussions and contacts between members of the industry at pan-European level started around 1988/1989. According to IMI, around 1989/1990 there was a period of developing relationships. Over time, as trust developed, the discussions concerned what could be done to improve trading terms in Europe for fittings. It then evolved into detailed meetings and agreements aimed at setting prices. The various meetings occurred on the occasion of, before or after the EFMA meetings.

There were also other high level meetings that took place outside the EFMA framework.

(142) IMI reports that the 1988/1989 discussions were between representatives of IBP, Comap and YF Group (IMI). Further, **[*deleted*]** IMI states that the first meeting where prices between competitors in Europe were agreed was on either 31 January 1991 or 1 February 1991. This was the first "Super EFMA" meeting between Comap, IBP and IMI YF. Attendees were **[*deleted*]** IMI YF and others.

(143) In its leniency application (recital (117)), Frabo submits that the cartel started in the early 1990s and lasted at least until April 2004, while certain anti-competitive contacts continued until January 2005. Frabo specifies that since April 2001 it continued to have telephone contacts with competitors, especially with IMI and Comap. It also states that exchanges of information took place regarding sales and other terms applied to customers, without, however, such exchanges amounting to a coordination of prices. IMI and Comap provided Frabo with prices and other conditions applicable to customers and invited it to follow these prices, making it clear that other competitors had agreed on the same conditions. Frabo further states that the contacts between the competitors never ceased and continued even after Frabo stopped all types of exchanges and contacts with its competitors in April 2004. According to Frabo, the competitors, in first place IMI, continued asking other participants for further exchange and coordination of prices.

(144) With regard to the period after the Commission's inspections and in particular with regard to the period from June 2003 until April 2004 and to the FNAS arrangements, Frabo's leniency application has been confirmed by Oystertec's (now Advanced Fluid Connections plc) leniency application.

4.1.3. Companies involved in the meetings

(145) IMI states that the pan-European fittings cartel involved the main European producers. These producers are Comap, Flowflex, Frabo, Delta/IBP, Pegler, Sanha Kaimer, Viegener, IMI and Mueller. All these players were involved to varying degrees, in various territories and in relation to various types of fittings.

(146) In Frabo's view, IMI and Delta/IBP played a driving role in the organisation of the arrangements. Frabo states that these companies took the important decisions, binding the smaller competitors like Frabo. Like IMI and Delta/IBP, Comap had an important role in the organisation of the cartel, that is, to contact other smaller competitors such as Viegener. IMI, Delta/IBP and Comap were instructing the competitors to apply certain prices. According to Frabo, those three companies threatened the other competitors that if, they attempted to attract a new customer which did not belong to their regular, traditional "clientèle", the three companies would lower their own prices to such an extent that the customer in question would have no other choice but to stay with its old supplier.

4.1.4. The meetings, the organisation and the decision making

4.1.4.1. Types of meetings

(147) The cartel was organised on three main bases: a) high-level meetings dealing with strategy and pricing for a number of countries; b) meetings covering only one or a few national territories often for the implementation of decisions that had been taken at the higher level; c) discussions on a bilateral level.

(148) IMI submits that high-level cartel meetings were usually organised on the occasion of EFMA meetings in the spring and autumn of each year. These meetings took place at a separate venue from the EFMA meetings and were referred to by some participants as Super-EFMA meetings or "competitor" meetings. The officials from EFMA were never involved. Usually the autumn meetings involved discussion on the setting of prices, whereas the spring meetings were more concerned with monitoring the progress of implementing the pricing agreed the previous year. Other *ad hoc* meetings were also held on the initiative of a party. These ad hoc meetings were initially organised mainly between IMI, Delta/IBP and Pegler, later with Comap replacing Pegler, as Pegler's importance in the fittings market diminished and Comap's role increased with the purchase of two fittings companies in the United Kingdom. There were certain bilateral meetings and larger unofficial meetings, as well as meetings on the occasion of trade fairs.

(149) At all the high-level meetings, the three major companies, namely Delta/IBP, IMI and Comap were always present. General strategic decisions were taken at high-level meetings. These meetings were dedicated to planning, setting out a programme of events which could then be cascaded down to the national meetings. The price change levels by country at headline level and the method of price change would be set at the high-level meetings.

(150) Concerning the EFMA, Super-EFMA or other non-EFMA meetings, Frabo states that usually after the official EFMA meetings, the competitors present would continue discussions informally, usually for about an hour. The decisions taken during the informal meeting would normally be followed by telephone contacts in order to discuss the prices and the discounts to be applied.

(151) Delta submits that it used the Super-EFMA meetings to gather information on competitors as much as to agree on courses of action. Discussions would be on a country-by-country basis. The above mentioned *ad hoc* meetings in the respective countries arose out of the European meeting organised around EFMA in order to implement the overall strategies set out at European level. As a result of the pan-European (Super-EFMA) meetings, which looked mainly at the five most important territories (the United Kingdom, France, Italy, Germany and Spain) the various representatives reported back and said what had to be done in order to sort the prices out. On the other hand, the results of the national based meetings would be discussed in one of the subsequent Super-EFMA meetings.

4.1.4.2. Implementation meetings

(152) More detailed and national level meetings followed the high-level meetings and covered development and implementation of the decisions and price list changes within the parameters set by the high-level meetings. Where the smaller markets could be handled by local sales directors, these people would attend the high-level meetings, so that there was clear understanding of what was to be achieved at local level. This was particularly relevant for the larger markets such as Germany, France and Spain,

where some of the companies were not EFMA members. Generally speaking, the implementation meetings occurred at pan-European and/or local level.

(153) Delta explains that as far as it is concerned, after the Super-EFMA meetings, the managing director would report back to the IBP and DEHL board. All reports were oral and usually never recorded in writing. Local country managers would also be informed about the agreed price changes either through marketing meetings or by a telephone call from IBP's managing director. The local country managers at times preferred not to follow Delta/IBP's policy regarding the implementation of the agreed price changes in order to maintain a good relationship with their customers.

(154) Frabo also adds that once the market leaders decided on the prices to be applied in each country, their competitors would be informed and they would implement the decisions. Frabo also claims that it never actually implemented the price increases which had been decided by its competitors. Even though it sometimes adopted new price lists which were consistent with the price lists of its competitors, it in fact counteracted the price increases by granting higher discounts to its customers.

4.1.4.3. Organisation of meetings

(155) IMI reports that meetings were convened by each of the three main members, i.e. Delta/IBP, IMI, Comap, or they were set in advance at an earlier meeting. The responsibility for the venue, booking and logistical arrangements was shared. Agendas of the meetings were set at the outset of the meeting or the matters to be discussed were settled in telephone conversations. No formal minutes were taken.

4.1.4.4. Attendees

[Recitals (156) – (158) are deleted, including any cross references to these recitals and relevant footnotes]

4.1.5. The focus of the meetings

(159) IMI submits that the subject matter of the high level meetings was a review of all the countries covered by the cartel: discussion of price increases usually entailed an agreement on the level of the increase and the way in which it should be applied as well as discussion on implementation dates and the company that would first introduce the increase. Price increases took two forms: either a price list restructuring or a "plussage" or "linear" increases. In some cases, the focus was on just the setting of new pricing. Other subjects dealt with at the meetings included review of market conditions and progress on implementation of pricing.

(160) In this connection, Frabo reports that the market leader in each European country would set up a price list for a specific market. The list prices were then applied by the other competitors and served as the basis for negotiations with the customers. Price increases would take the form of setting new prices or new discounts. The discounts were based on the type of customer, its actual or potential volume of purchases as well as its strategic position.

(161) IMI submits that the meetings concerned:

– Price increases or decreases: the agreement concerned the general level of the increase or decrease in a particular territory within the EEA, the size of the increase or decrease, price structure and occasionally maximum discounting levels. The different types of fittings were subject to different price increases. Discussions also sought to reduce the differentials in price between European countries. In this respect, Frabo reports that the price increases were based on the increased costs of raw materials or on other additional increased costs. These kinds of agreements tended to be reached at higher level cartel meetings which usually dealt with more than one country.

– New price structure: the focus here was on setting a new pricing structure and the creation of revised price lists. Its introduction and the number of relevant territories in which it would be introduced was a decision agreed at higher level meetings, whereas the detailed discussion tended to take place at implementation or other meetings.

– Announcement dates and leadership: setting new prices took place in a staggered way. The participants would announce first, the new prices, second, the date that the prices would become effective and third, the last date by which all customers should be subject to the new prices. Arrangements concerned the company which would lead the announcement and the companies which would follow that lead on a territorial basis. These arrangements were the subject of either high-level meetings or meetings discussing certain territories.

– Non-price activities: according to IMI, credit terms and discounts to customers who paid more quickly were limited in time and geographical scope.

– Customer categories and pricing differentials: the largest and most loyal customers would pay the lowest prices. To achieve that aim, customers in each territory were identified and placed in a category. According to IMI, this arrangement did not cover all the countries concerned and did not last throughout the entire period of the cartel.

– Customer allocation by supplier: in this connection cartel members avoided taking historic customers from a competitor.

– Market information: sharing market information and details of increases or decreases in volume and prices achieved in the cartel.

– Discussions on cross supply: there were some initial (but without any final outcome) discussions on supplying only the items in which each manufacturer was the most efficient so as to enable each member to offer the full range of fittings.

– Complaints: these related to loss of customers by other cartel members as well as coordination against low pricing non-cartel manufacturers or distributors.

– Collusive tendering: competitors cooperated in response to invitations to tender. Cooperation took two forms: first, collusive tendering for individual merchants and individual buying groups and, second, collusive tendering as

part of merchant categorisation. Concerning the first form, it involved agreeing "multis" and agreeing which competitors would compete for tenders. According to IMI, price increases were equally applied to tenders. Concerning the second form, high-level meetings would focus on tenders for categories of merchants. As regards implementation, the categorisation exercise was applied for Germany. In Germany, in the late 1990s, there was a decline in market volumes. This led to increased tendering by wholesalers and less control by the competitor manufacturers. In those circumstances, competitors attempted to categorise customers and set price benchmarks, using merchant categorisation.

(162) Frabo for its part confirms a number of the above mentioned practices which consisted in: fixing prices and arranging common price increases in various European countries; fixing market quotas for each competitor on a country basis; setting up a system of customer allocation; and exchanging price and volume information between competitors.

4.1.6. Cartel territories

(163) As already indicated by IMI (see recital (132)), the focus of the cartel within the EEA was Germany, France, the United Kingdom, Spain, Portugal, Italy, Belgium, the Netherlands, the Nordic countries, Greece and Austria.

4.1.6.1. Germany

(164) IMI submits that meetings in Germany as part of the pan-European cartel were first organised around 1987/1988, with more specific discussions from around 1988/1989 when Bänninger started participating in the arrangements. Participants in the meetings included Delta Bänninger/IBP, Viegener, IMI RYW, Hermann Schmidt, Comap and Sanha Kaimer. Topics of discussion were: adjustment of prices either by changing the discount factor ("multi") by a set percentage or by issuing a restructured price list; means of slowing the decline of prices by setting floors in price; agreeing the differentials between the suppliers for maximum discount rates; discussions on allocation of customers, in particular large ones. According to Delta, prices of copper fittings in Germany provided an important benchmark for continental European prices in general.

(165) Delta ***[deleted]*** recalls attending two or three meetings in Germany, involving both EFMA and non-EFMA members. The purpose of this attendance was to determine what was being agreed at the national level regarding prices and in particular to learn more about Viegener's intentions regarding pricing. Viegener was a powerful player in the German market but, since it was not part of Super-EFMA, IBP was less aware of Viegener's intentions. According to Delta, ***[deleted]*** Delta would also have attended meetings in Germany regarding price coordination.

(166) The German market was also the centre of collusion regarding tendering. The discounts ("the multis") that would form the basis of the competitors' tenders were subject to considerable bilateral discussion (including Viegener and Sanha Kaimer).

(167) As explained above in recital (161), Germany was also initially the centre of a customer categorization exercise.

4.1.6.2. United Kingdom

(168) According to IMI, pricing for the United Kingdom was the subject of discussion at pan-European cartel meetings, but also (and more typically) at meetings in the United Kingdom. Meetings were sometimes arranged by product type such as compression or solder ring fittings. Participants were Delta/IBP, IMI YF, Pegler and Flowflex. Comap was also a participant in these meetings, although to a lesser degree until its purchase of Rabco in 1995. Meetings and contacts were initiated by Delta/IBP, IMI YF and, from the mid 1990s, Comap. Subjects of discussion at the UK national meetings were similar to those discussed at the meetings in Germany[16]. The location of the meetings varied. The high-level meetings concentrated on customer categorisation concerning the United Kingdom.

4.1.6.3. France

(169) Cartel meetings in France usually concentrated on setting prices. According to Delta, in France there was good price discipline, as the three leading players on the French market, Comap, Delta/IBP and IMI were also the most important Super-EFMA players. One of the three, Delta/IBP, Comap and IMI RO/YF would develop the revised price list tailored to French data. The sizes of fittings (14 and 16mm diameter fittings) in the French market were unusual in other countries. Once there was an agreement on pricing, an implementation table would also be agreed and the announcement of the new price list would usually be led by Comap as the market leader. Up to the late 1990s prices in France were up to 40 % higher as compared with the rest of continental Europe. In addition to pricing, subjects of the meetings were general market conditions, complaints that a customer had been taken from a supplier or requests for the return of a customer and sometimes the setting of minimum prices by customer category and customer allocation. Cartel meetings were typically held twice a year. During the 1990s, meetings in France were usually held in Paris.

4.1.6.4. Spain/Portugal

(170) Meetings for Spain would occur once per year with the restructuring of price lists which was taking place in conjunction with that for other territories. The participants in Spain were Comap (Sudo), Frabo, Delta/IBP (Atcosa), Sanha Kaimer, **[*deleted*] (**Mueller), Viegener (Viega) and IMI WSL (Woeste SL). According to IMI, the market leader in Spain was Delta/IBP. As to pricing, Spain followed closely the German price list while differentiating on the discount factors. Customer categorisation also took place in Spain.

(171) As regards Portugal, IMI indicates that prices tended to follow the Spanish prices because demand was relatively small and did not warrant separate local meetings.

4.1.6.5. Italy

(172) IMI states that the main suppliers were Comap, Delta/IBP, IMI CT, Frabo, Sanha Kaimer and **[*deleted*] (**Mueller). As regards products, demand was concentrated on

[16] Coordination of price rises, price differentials between different types and different suppliers' bands, customer allocation, alignment of the UK and continental pricing structures and implementation of agreements reached.

brass compression fittings. Discussions concerned prices and the timing of the announcement of price changes. Implementation meetings were scheduled 2 or 3 times per year. In Delta/IBP's view, the Italian market was less structured in terms of price coordination, although price fixing was taking place. Attending companies were Delta/IBP, Comap, IMI CT, Sanha Kaimer in the later years and from around 1999, Frabo. Meetings were focused on the introduction of new price lists and were followed up by a meeting to check implementation. IMI explains that price rises were led by Delta/IBP or Comap. Other topics of the meetings were general discount levels by customer, allocation of the largest customers, complaints about taking customers from competitors and requests not to pursue a customer.

4.1.6.6. Belgium/the Netherlands

(173) IMI submits that because of low demand, not much time was devoted to Belgium and the Netherlands. Suppliers in Belgium included Eclipse (IMI) and Kerrells (Sanha Kaimer), Comap and IMI RO (through their distributors), Delta/IBP and as from 1993, **[*deleted*]** Mueller (through their distributor Simvex). By the end of the 1990s, **[*Mueller*]**, through its distributor Simvex, became a market leader. Prices followed the German level with a structure tailored to certain sizes linked to France. Price lists were developed at high-level cartel meetings. Eclipse would usually be the leader in the price increases. This occurred when Eclipse was active in Belgium and later on through its distributor. Formal meetings to discuss only Belgium were held occasionally.

(174) As for the Netherlands, the main players were Delta/IBP, IMI RYW, Viegener and Sanha Kaimer/Kerrells. Pricing was set at pan-European level or followed that of Germany. The development and announcement of price lists was dealt with among the pan-European cartel members without a meeting. Pricing was normally led by Delta/IBP or sometimes by IMI RYW.

4.1.6.7. Nordic Countries

(175) IMI states that the setting of prices for the Nordic countries took place at pan-European cartel meetings. These meetings were followed by further discussions between Delta/IBP, Comap and IMI/YF on the development of price lists and the arrangement of announcements. For end feed fittings, the suppliers were IMI/YF, Comap, Sanha Kaimer (in the late 1990s) and Delta/IBP with the largest share. Compression fittings were supplied out of the United Kingdom. For compression fittings, the main participants in meetings were Delta/IBP, Pegler, IMI/YF and from the mid-1990s Comap.

4.1.6.8. Greece

(176) According to IMI, the Greek fittings market was dominated by Delta/IBP's distributor, Tzanos and from 2000 on by IMI/YF. Comap was also a player. Discussions on Greece took place at pan-European cartel meetings where prices were agreed. Delta/IBP through Tzanos would normally lead the increase.

4.1.6.9. Austria

(177) According to IMI, similarly as in other countries with low demand, Austria was discussed at pan-European level and in particular at high-level meetings. Prices tended to follow German prices. The price change leader was Delta/IBP via their distributor Mullersdorf.

4.2. **Chronology of contacts**

[Recitals (178) – (528) are deleted, including any cross references to these recitals and relevant footnotes].

5. ARTICLE 81 OF THE TREATY AND ARTICLE 53 OF THE EEA AGREEMENT

5.1. Relationship between the EC Treaty and the EEA Agreement

(529) The arrangements set out above applied to the EEA insofar as they concerned the EU Member States and Norway. The arrangements in question extended to Austria, Sweden and Finland prior to their accession to the European Union on 1 January 1995.

(530) The EEA Agreement, which contains provisions on competition analogous to those contained in the EC Treaty, came into force on 1 January 1994. For the period prior to that date during which the cartel operated, the only provision applicable to this procedure is Article 81 of the EC Treaty.

(531) Insofar as the arrangements affected competition on the common market and trade between EU Member States, Article 81 of the EC Treaty is applicable. The operation of the cartel in EFTA States that are part of the EEA (Norway) and its effect upon trade between the Community and Contracting Parties to the EEA or between Contracting Parties to the EEA fall under Article 53 of the EEA Agreement.

5.2. Jurisdiction

(532) On the basis of Article 56 of the EEA Agreement, the Commission is, in this case, the competent authority to apply both Article 81 of the Treaty and Article 53 of the EEA Agreement, since the cartel had an appreciable effect on trade between Member States and on competition within the Community.

5.3. Application of Article 81 of the Treaty and Article 53 of the EEA Agreement

5.3.1. Article 81(1) of the Treaty and Article 53(1) of the EEA Agreement

(533) Article 81(1) of the Treaty prohibits as incompatible with the common market all agreements between undertakings, decisions by associations of undertakings or concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the common market, and in particular those which directly or indirectly fix purchase or selling prices or any other trading conditions, limit or control production and markets, or share markets or sources of supply.

(534) Article 53(1) of the EEA Agreement (which is modelled on Article 81(1) of the Treaty) contains a similar prohibition. However, the reference in Article 81(1) of the Treaty to "trade between Member States" is replaced in the former provision by a reference to "trade between contracting Parties" and the reference to competition "within the common market" is replaced by a reference to competition "within the territory covered by the…[EEA] agreement".

5.3.2. The nature of the infringement

5.3.2.1. Principles concerning agreements and concerted practices

(535) Article 81 of the Treaty and Article 53 of the EEA Agreement prohibit *agreements* between undertakings, decisions by associations of undertakings and *concerted practices*, provided that the conditions of application of these provisions are met.[17]

(536) An *agreement* for the purposes of Article 81(1) of the Treaty can be said to exist when the parties adhere to a common plan, which limits or is likely to limit their individual commercial conduct by determining the lines of their respective action or abstention from action in the market[18]. It does not have to be made in writing; no formalities are necessary, and no contractual sanctions or enforcement measures are required. The agreement may be express or implicit in the behaviour of the parties, since a line of conduct may be evidence of an agreement. Furthermore, it is not necessary, in order for there to be an infringement of Article 81 of the Treaty, for the participants to have agreed in advance upon a comprehensive common plan. The concept of *agreement* in Article 81(1) of the Treaty would apply to the inchoate understandings and partial and conditional agreements in the bargaining process which lead up to the definitive agreement.

(537) If, for instance, an undertaking is present at meetings in which the parties agree on certain behaviour on the market, it may be held liable for an infringement even where its own conduct on the market does not comply with the conduct agreed[19]. It is, indeed, settled case law that "*the fact that an undertaking does not abide by the outcome of meetings which have a manifestly anti-competitive purpose is not such as to relieve it of full responsibility for the fact that it participated in the cartel, if it has not publicly distanced itself from what was agreed in the meetings*"[20]. Such distancing should take the form of an announcement by the company, for instance, that it would take no further part in the meetings (and therefore did not wish to be invited to them).

(538) An *agreement* for the purposes of Article 81(1) of the Treaty does not require the same certainty as would be necessary for the enforcement of a commercial contract in civil law. Moreover, in the case of a complex cartel of long duration, the term "agreement" can properly be applied not only to any overall plan or to the terms expressly agreed upon but also to the implementation of what has been agreed on the basis of the same mechanisms and in pursuance of the same common purpose, as well as the measures designed to facilitate the implementation of price initiatives[21]. As the Court of Justice,

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17 The case law of the Court of Justice and the Court of First Instance of the European Communities in relation to the interpretation of Article 81 of the Treaty applies equally to Article 53 of the EEA Agreement. See Article 6 of the EEA Agreement and Article 3(2) of the EEA Surveillance and Court Agreement. Reference will therefore be mostly made to Article 81 in the following, it being understood that the same considerations apply to Article 53 of the EEA Agreement.

18 The case law of the Court of Justice and the Court of First Instance in relation to the interpretation of Article 81 of the Treaty applies equally to Article 53 of the EEA Agreement. See Article 6 of the EEA Agreement, Article 3(2) of the EEA Surveillance and Court Agreement, as well as the judgment of the EFTA Court of 16 December 1994 in Case E-1/94, recitals 32-35.

19 Case T-334/94 *Sarrió* v *Commission* [1998] ECR II-1439, paragraph 118.

20 Ibidem. See, inter alia, also Case T-141/89 *Tréfileurope Sales v Commission* [1995] ECR II-791, paragraph 85; Case T-7/89 *Hercules Chemicals* v *Commission* [1991] ECR II-1711, paragraph 232; and Joined Cases T-25/95, T-26/95, T-30/95 to T-32/95, T-34/95 to T-39/95, T-46/95, T-48/95, T-50/95 to T-65/95, T-68/95 to T-71/95, T-87/95, T-103/95 and T-104/95 *Cimenteries CBR SA and others v Commission* [2000] ECR II-491, paragraph 1389.

21 See also the judgment of the Court of First Instance in Case T-7/89 *Hercules v Commission* [1991] ECR II-1711, at paragraph 256.

upholding the judgement of the Court of First Instance, has pointed out in Case C-49/92P *Commission v Anic Partecipazioni SpA*[22], it follows from the express terms of Article 81(1) of the Treaty that agreement may consist not only in an isolated act but also in a series of acts or continuous conduct.

(539) Although Article 81(1) of the Treaty and Article 53 of the EEA Agreement draw a distinction between the concepts of *agreements between undertakings* and *concerted practices*, the objective is to bring within the prohibition of that article a form of co-ordination between undertakings by which, without having reached the stage where an agreement properly so-called has been concluded, they knowingly substitute practical co-operation between them for the risks of competition[23].

(540) The criteria of co-ordination and co-operation laid down by the case law of the Court, far from requiring the elaboration of an actual plan, must be understood in the light of the concept inherent in the provisions of the Treaty relating to competition, according to which each economic operator must determine independently the commercial policy which he intends to adopt in the common market. Although that requirement of independence does not deprive undertakings of the right to adapt themselves intelligently to the existing or anticipated conduct of their competitors, it strictly precludes any direct or indirect contact between such operators the object or effect of which is either to influence the conduct on the market of an actual or potential competitor or to disclose to such a competitor the course of conduct which they themselves have decided to adopt or contemplate adopting on the market[24].

(541) Thus, conduct may fall under Article 81(1) of the Treaty as a *concerted practice* even where the parties have not explicitly subscribed to a common plan defining their action in the market but knowingly adopt or adhere to collusive devices which facilitate the co-ordination of their commercial behaviour[25]. Furthermore, the process of negotiation and preparation culminating effectively in the adoption of an overall plan to regulate the market may well also (depending on the circumstances) be correctly characterised as a concerted practice.

(542) Although in terms of Article 81(1) of the Treaty the concept of a concerted practice requires not only concerting but also conduct on the market resulting from the concerting and having a causal connection with it, it may be presumed, subject to proof to the contrary, that undertakings which were taking part in such a concerting whilst remaining active in the market will take account of the information exchanged with competitors in determining their own conduct on the market. This is all the more true where the concerting occurs on a regular basis and over a long period. Such a concerted practice is caught by Article 81(1) of the Treaty even in the absence of anti-competitive effects on the market[26].

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22 See [1999] ECR I - 4125, at paragraph 81.

23 Case 48/69 *Imperial Chemical Industries v Commission* [1972] ECR 619, at paragraph 64.

24 Joined Cases 40-48/73, *Suiker Unie and others v Commission* [1975] ECR 1663.

25 See also judgment of the Court of First Instance in Case T 7/89 *Hercules v Commission* [1991] II ECR 1711, at paragraph 242.

26 See also the judgment of the Court of Justice in Case C-199/92 *P Hüls v Commission* [1999] ECR I-4287, at paragraphs 158-166.

(543) Moreover, it is established case law that the exchange of information between undertakings, in pursuance of a cartel falling under Article 81 of the Treaty, concerning their respective deliveries constitutes a concerted practice pursuant to Article 81 (1) of the Treaty if the exchange is intended to facilitate constant monitoring of current deliveries in order to ensure that the cartel is sufficiently effective[27].

(544) However, it has to be pointed out that the Commission, in the case of a *complex infringement* of long duration, is not obliged to characterise the contested behaviour exclusively as one or another of these forms of illegal behaviour. The concepts of these two forms of illegal conduct are fluid and may overlap. Indeed, it may not even be possible realistically to make any such distinction, as an infringement may present simultaneously the characteristics of each form of prohibited conduct, while, considered in isolation, some of its manifestations could accurately be described as one rather than the other. It would, however, be artificial analytically to sub-divide what is clearly a continuing common enterprise having one and the same overall objective into several discrete forms of infringement. A cartel may therefore be an agreement and a concerted practice at the same time. Article 81 of the Treaty lays down no specific category for a complex infringement of the present type[28].

(545) In its PVC II judgement[29], the Court of First Instance stated that *"[i]n the context of a complex infringement which involves many producers seeking over a number of years to regulate the market between them, the Commission cannot be expected to classify the infringement precisely, for each undertaking and for any given moment, as in any event both those forms of infringement are covered by Article [81] of the Treaty"*.

5.3.2.2. *Agreements and concerted practices in this case*

(546) The facts described in Part 4 demonstrate that the undertakings: IMI Group, Aalberts Group, Delta Group, Advanced Fluid Connections (Oystertec), Tomkins Group (Pegler), Flowflex, Legris Group (Comap), Mueller, Viega, Frabo and Sanha Kaimer

were involved in anti-competitive activities as follows:

– agreed upon price increases and/or percentage price increases and/or price structures and/or coordinated prices ***[deleted]***;

– agreed upon the method and the dates of the price increases by market leaders in the different European territories ***[deleted];***

– agreed upon discounts, rebates and other commercial terms ***[deleted]***;

– agreed upon customer categorisation and pricing differentials ***[deleted];***

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[27] See, to that effect, the judgments of the Court of First Instance in Case T-147/89,, *Société Métallurgique de Normandie v Commission; Case T-148/89 Trefilunion v Commission;* and Case T-151/89 *Société des treillis de panneaux soudés v Commission,* at paragraph 72.

[28] Judgment of the Court of First Instance in Case T-7/89 *Hercules v Commission*, [1991] ECR II-1711, at paragraph 264.

[29] Judgment of the Court of First Instance of 20 April 1999, Joined Cases T-305/94 *Limburgse Vinyl Maatschappij N.V. and others v Commission* (PVC II) ECR [1999] II-00931, at paragraph 696.

– allocated customers by supplier and stabilized their market shares ***[deleted];***

– agreed upon collusive tendering ***[deleted];***

– ensured implementation of the price agreements/co-ordination by a monitoring system consisting of staggered announcement dates and a market leader arrangement for various European territories as explained above in this recital ***[deleted];***

– exchanged confidential information on commercial strategies, sales volumes, prices, prices achieved in the cartel ***[deleted];***

(547) A number of undertakings do not contest their involvement in an infringement of Article 81 for their respective periods. However, with regard to Comap, although it accepts its involvement between 8 December 1997 and the Commission's inspections (22 and 23 March 2001), it contests its participation from 31 January 1991 to 8 December 1997. For this latter period, Comap claims lack of sufficient evidence on the alleged anticompetitive activities. In a similar vein, Advanced Fluid Connections contests the legal characterisation of its involvement as agreement and/or concerted practice in violation of Article 81. Aalberts points out that its behaviour cannot be considered to be an agreement or concerted practice as no sensitive information was exchanged. Sanha contests the entire period of its participation in the alleged anti-competitive activities. It contends that, first, its behaviour was autonomous and cannot be considered to constitute a concerted practice or an agreement; second, its competitors never managed in convincing Sanha to participate into an agreement; and third, the Commission did not establish any causal link between Sanha's market behaviour and any concerted practice.

(548) With regard to the standard of proof in general, the Commission points out that, since the prohibition of cartels and the penalties which offenders may incur are well known, it is normal for cartel behaviour 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. Even if the Commission discovers evidence explicitly showing unlawful contact between traders, it will normally be only fragmentary and sparse, so that it is often necessary to reconstitute certain details by deduction. 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[30].

(549) Indeed, in practice, the Commission is often obliged to prove the existence of an infringement under conditions which are hardly conducive to that task, when several years may have elapsed since the time of the events constituting the infringement[31].

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30 See the analysis of the Court of Justice in the "*Cement*" case: 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*, judgment of 7 January 2004, paragraphs 55-57.

31 As recognized by the Court of First Instance in Joined Cases T-67/00, T-68/00, T-71/00 and T-78/00 JFE Engineering Corp., formerly NKK Corp. (T-67/00), Nippon Steel Corp. (T-68/00), JFE Steel Corp. (T-71/00) and Sumitomo Metal Industries Ltd (T-78/00) v Commission, [2004] ECR II-2501,, paragraph 203.

Whilst sufficiently precise and consistent evidence must be produced to support the firm conviction that the alleged infringement took place, 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. Rather, it is sufficient if the body of evidence relied on by the institution, viewed as a whole, meets that requirement[32].

(550) Hence, even if Comap contests certain events covering the above mentioned period and even if it provides alternative interpretations to certain pieces of evidence, it has not succeeded in weakening the Commission's position, based on all the evidence and indicia taken together, that Comap was also involved in agreements and/or concerted practices with its competitors from 31 January 1991 to 8 December 1997.

(551) Comap's assertions are in contradiction first, with the concurring statements of Mueller, IMI and Delta who have, incriminating themselves, admitted the history of collusion in the fittings industry and the collusion which also involved Comap from 31 January 1991. More specifically, both IMI **[*deleted*]** and Delta/IBP **[*deleted*]** recall Comap's participation **[*deleted*]** in the anti-competitive arrangements around 1989 ***[deleted]***. Moreover, Delta/IBP explains that the reason for Comap's involvement in the cartel was its size and presence in France which made it an essential member of the pan-European arrangements **[*deleted*]**. The Commission file also contains evidence in the form of handwritten minutes of meetings, agendas and internal reports indicating Comap's participation in the arrangements running from 31 January 1991 until 8 December 1997 **[*deleted*]**. With regard to the date of 31 January 1991, IMI **[*deleted*]** states that the first "Super-EFMA" meeting between Comap, Delta/IBP and IMI YF took place on 31 January 1991 in Zürich. According to **[*deleted*]** (IMI), during this meeting, prices between competitors in Europe were agreed upon. This meeting is confirmed by **[*deleted*]** who submitted in his travel expenses from 31 January 1991 to 1 February 1991 that he attended the *"Super-EFMA"* meeting **[*deleted*]**. In addition, there is evidence in the Commission file suggesting Comap's participation even earlier than 31 January 1991. This evidence is in the form of handwritten documents drafted at the time the event was taking place showing Comap's participation in the infringement as early as 16 April 1990 **[*deleted*]**.

(552) With regard to the arguments of Advanced Fluid Connections and Aalberts as to the legal characterisation of the involvement and the non-sensitive nature of the information exchanged, it should be noted that the factual elements of the illicit arrangements, such as exchanges of confidential information on the future implementation of price rises, on sales volumes, margins, production costs, material costs that culminated in an agreement to increase prices as well as in the effective implementation of the agreed price rises, do not leave any doubt as to the existence of an agreement and/or concerted practices in violation of Article 81. These elements concern, in particular, the meetings and contacts between IBP (part of Advanced Fluid Connections), Comap, Raccord Orléanais **[*deleted*]** and Frabo in 2003 and 2004 in the context of the FNAS Logistics Committee **[*deleted*]**. These meetings are evidenced by written minutes signed by the participant companies. The last contact (a telephone conference) and the price increase discussed are evidenced by the minutes submitted

[32] Joined Cases C-238/99 P, C-244/99 P, C-245/99 P, C-247/99 P, C250/99 P to C-252/99 P and C-254/99 P Limburgse Vinyl Maatschaapij and Others v Commission [2002] ECR I-8375, paragraphs 513 to 523; see also Joined Cases T-67/00, T-68/00, T-71/00 and T-78/00, JFE et al, , paragraphs 179 and 180.

by both Frabo and Advanced Fluid Connections itself **[*deleted*]**. Apart from the agreement on the price increase and its implementation, the exchanges of information on sales volumes and, the disclosure of commercial strategies between the competitors allowed the producers in question to take account of this information when determining their own behaviour on the market. The same applies to the future implementation of price rises by certain participants, which enabled the parties to influence their competitors' conduct and to adjust their own behaviour according to their competitors' strategies. These conversations between the competing manufacturers improved predictability and reduced uncertainty as to the competitors' conduct on the market.

(553) Apart from the arrangements in the framework of FNAS, Frabo submits a series of handwritten documents drafted at the time the event was taking place showing contacts and arrangements on price increases and their implementation in a number of Member States **[*deleted*]**. These contacts cover the period between June 2003 and April 2004 and they took place between ***[clarification: a subsidiary of Aalberts]***, Comap and Frabo. These discussions undoubtedly indicate the illegal character of the agreements and/or concerted practices.

(554) With regard to the increase connected to FNAS, Aalberts provides a different interpretation of whether an agreement was reached in the context of the FNAS Logistics Committee arguing that the meetings did not concern anti-competitive issues. In that regard, the minutes of the above mentioned meetings leave little doubt as to the anti-competitive nature of the discussions. In addition, Comap admits that during the discussions of 20 January 2004, one of the series of the above meetings, its representative made certain statements that were *"an unfortunate slippage of language"* **[*deleted*]**. It is, however, well-established case-law that, where participation in an anti-competitive meeting has been established, as in this case, it is for the undertaking in question to put forward evidence to establish that its participation in that meeting was without any anti-competitive intention by demonstrating that it had indicated to its competitors that it was participating in the meeting in a spirit that was different from theirs[33]. In this case, ***[clarification: a subsidiary of Aalberts]*** and Comap attended a series of manifestly anticompetitive meetings from June 2003 to February 2004 in which discussions focused on anti-competitive matters (see recital (552)) but have not, however, adduced any evidence that at the time of the meetings they publicly distanced themselves from the arrangements concerned. Rather, the subsequent events and ***[clarification: a subsidiary of Aalberts]*** and Comap's own behaviour clearly confirm the Commission's conviction that they did not distance themselves but rather adhered to the arrangements and implemented them all the more. Indeed, as indicated by Advanced Fluid Connections, after April 2004, the month agreed for the price increase, on 1 September 2004, after having it announced on 4 June 2004, Presrac/Raccord Orléanais of Aalberts implemented a 5.5% price increase and on 1 April and 1 July 2004, Comap introduced new prices **[*deleted*]**.

(555) As to Sanha's arguments (see recital (547)), they should also be assessed in light of recitals (548) and (549) above. These arguments contradict the evidence in the

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[33] See the Cement cases, cited above, paragraph 81. See also Case C-199/92 P *Hüls* v *Commission* [1999] ECR I-4287, paragraph 155, and Case C-49/92 P, Commission v Anic [1999] ECR I-4125, paragraph 96).

Commission's possession, and in particular, Sanha's own statements to its competitors prior to the Statement of Objections. It is worth repeating Frabo's minutes of a meeting in October 2000 **[*deleted*]** conveying the following on Sanha Kaimer: *"[Discussion] of prices. IBP started to attack SK for its actions in Germany which had an erosive effect for IBP's volumes. SK [Sanha Kaimer] answered that it is tired of speaking about these agreements since 10 years now and realising that they are not applied on the market.…[Frabo] underlined that also in Italy […..] SK does not behave appropriately [When confronted] SK reacted and replied as usual showing surprised and astonished and stating 'I was not informed but I will nevertheless put things in order"* [34]. Moreover, Sanha's assertions are in contradiction with the statements of IMI, Delta, Frabo and Mueller who have, incriminating themselves, admitted the history of collusion in the fittings industry and the collusion which also involved Sanha on a number of occasions **[*deleted*]**. As to the leniency applications, Sanha points out that Mueller did not mention Sanha's participation in the anti-competitive activities. According to Sanha, as Mueller was the first leniency applicant, its statements bear more weight than those of the other leniency applicants. In this regard, the Commission has evidence, to which Sanha had access, showing that Mueller did in fact have contacts with Sanha in and around 1997. Further, the infringement by Mueller must be distinguished from that by the other cartel members in that Mueller was a fringe player and engaged mainly in bilateral contacts. As a fringe player and limited participant, Mueller would not necessarily have had information regarding all other participants including Sanha and all arrangements over time. Nor can its statements invalidate the Commission's evidence against Sanha and free it from its responsibilities. Indeed and in addition to the leniency statements of IMI, Delta and Frabo, as indicated just above, the Commission possesses evidence demonstrating Sanha's participation in the anti-competitive arrangements. This evidence stems from the Commission's inspections and consists of documents drafted at the time the various contacts between competitors were taking place (that is, documents drafted *in tempore non suspectu*). Furthermore, during the oral hearing of 26-27 January 2006, an IMI employee confirmed his earlier statements on Sanha's participation in the anti-competitive activities. Sanha's involvement in the cartel events is therefore consistent with the overall scheme of the cartel organised through the various bilateral and multilateral contacts. Hence, even if Sanha contests its overall participation in the arrangements, it has not succeeded in weakening the Commission's position, based on all the evidence and indicia taken together, that Sanha was also involved in the agreements and/or concerted practices.

5.3.2.3. Principles concerning single, complex and continuous infringements

(556) A complex cartel may properly be viewed as a *single continuous infringement* for the time frame in which it existed. The agreement may well be varied from time to time, or its mechanisms adapted or strengthened to take account of new developments. The validity of this assessment is not affected by the possibility that one or more elements of a series of actions or of a continuous course of conduct could individually and in themselves constitute a violation of Article 81 of the Treaty. In fact, the Court of Justice stated[35] that the agreements and concerted practices referred to in Article 81(1)

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[34] This is a translation from the original language of the statement, Italian.

[35] Case C-49/92, P *Commission v Anic Partecipazioni* [1999] ECR I-4125, paragraphs 78-81, 83-85 and 203.

of the Treaty necessarily result from collaboration by several undertakings, who are all co-perpetrators of the infringement but whose participation can take different forms according, in particular, to the characteristics of the market concerned and the position of each undertaking on that market, the aims pursued and the means of implementation chosen or envisaged. It follows that infringements of that article may result not only from an isolated act but also from a series of acts or from continuous conduct.

(557) Although a cartel is a joint enterprise, each participant in the agreement may play its own particular role. One or more may exercise a dominant role as ringleader(s). Internal conflicts and rivalries or cheating may occur, but will not, however, prevent the arrangement from constituting an agreement/concerted practice for the purposes of Article 81(1) of the Treaty where there is a single common and continuing objective.

(558) The mere fact that each participant in a cartel may play the role which is appropriate to its own specific circumstances does not exclude its responsibility for the infringement as a whole, including acts committed by other participants but which share the same unlawful purpose and the same anti-competitive effect. An undertaking which takes part in the common unlawful enterprise by actions which contribute to the realisation of the shared objective is equally responsible, for the whole period of its adherence to the common scheme, for the acts of the other participants pursuant to the same infringement. This is certainly the case where it is established that the undertaking in question was aware of the unlawful behaviour of the other participants or could have reasonably foreseen or been aware of it and was prepared to take the risk[36]. In this regard, the Courts have consistently stated that "*an undertaking may be held responsible for an overall cartel even though it is shown that it participated directly only in one or some of the constituent elements of that cartel, if it is shown that it knew, or must have known, that the collusion in which it participated was part of an overall plan and that the overall plan included all the constituent elements of the cartel*"[37].

5.3.2.4. Single, complex and continuous infringement in this case

- Period between 1988 and 2001

(559) As mentioned above in recital (134), the Commission has indications that there was collusive behaviour prior to December 1988. However, as will be explained below (see recital (700)), the Commission takes as a starting date for these arrangements December 1988. This behaviour expanded at pan-European level around January 1991 (the first organised pan-European meeting concerning discussions on prices of pan-European scale) and continued uninterrupted until the end of the infringement with more participants. Although it is possible to argue that anti-competitive contacts at European level began at an earlier date **[*deleted*]**, there can be no doubt that by 31 January 1991, pan-European anti-competitive arrangements were in place and known

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36 Case C-49/92 P *Commission v Anic Partecipazioni* [1999] ECR I-4135, at paragraphs 78-81, 83-85 and 203.

37 Cases T-295/94, T-304/94, T-310/94, T-311/94, T-334/94, T-348/94 *Buchmann v Commission, Europa Carton v Commission, Gruber + Weber v Commission, Kartonfabriek de Eendracht v Commission, Sarrió v Commission* and *Enso Española v Commission,* at paragraphs 121, 76, 140, 237, 169 and 223, respectively. See also Case T-9/99, *HFB Holding and Isoplus Fernwärmetechnik v Commission,* paragraph 231.

to competitors. From January 1991 (and until April 2004), anti-competitive behaviour at national level, including that concerning the United Kingdom, formed part and took place in relation to the pan-European level **[*deleted*]**. This is so, as decisions taken at pan-European level were implemented at national level, issues concerning the national markets were influencing and were taken into account in decisions at pan-European level, the players were aware of this scheme and interaction between the national and pan-European level became so intertwined that the two levels cannot be distinguished **[*deleted*]**. In the light of the above, the Commission considers that the anti-competitive behaviour at pan-European level is the natural continuation of the UK manufacturers' anti-competitive behaviour from December 1988 onwards and regards the behaviour from December 1988 until the end as one, single and continuous infringement.

(560) The Commission bases its reasoning on the following considerations:

– the type of the infringement, the lines of action, the organisation and the coordination at the UK national level amongst the UK fittings manufacturers are similar to those relating to the infringement at pan-European level. The participants did not have to set up new forms of coordination, a new scheme or organisation but rather continued, albeit in more extended form, those established at UK level (see recitals (134)-(140)). Overall, the participants restricted their individual commercial conduct in order to pursue a single identical anti-competitive economic aim, namely the distortion of normal competitive conditions for fittings;

– the extension in geographic scope and in the number of participants is mainly due to the UK manufacturers' expansion to Europe. This expansion was triggered by the industry's consolidation in the late 1980s, and the resulting relationship building in the industry as well as the growing number of pan-European wholesalers **[*deleted*],** three reasons which naturally broadened the scope of the arrangements and led to the UK manufacturers' participation in the anti-competitive practices at pan-European level;

– the UK arrangements served as the basis to continue the agreements reached at pan-European level regarding price increases, rebates and allocation of customers. In fact, the arrangements at UK level had to be adapted and strengthened to take account of the above mentioned new developments;

– as regards participation in the arrangements, the UK fittings manufacturers continued to participate in the pan-European scheme albeit with more competitors as well as in the national arrangements which form part of the pan-European scheme **[*deleted*]**;

– on several occasions, the UK arrangements were part of the coordination at pan-European level and followed the pan-European and other national arrangements **[*deleted*]**;

– two of the UK leading manufacturers were also the leading companies at European level, namely, Delta and IMI;

– continuity in the infringement is indicated by the fact that certain representatives of the Delta group and IMI who participated in the meetings at the UK level were

also aware of the later pan-European arrangements and had participated in the meetings at pan-European level; and *vice versa*, representatives from Comap, a leading European company, who participated in the pan-European arrangements, were aware of, and participated in, arrangements at UK national level **[*deleted*]**;

– the rationale for collusion on prices in the United Kingdom were the strong position held by the large wholesalers, the fluctuations in the price of copper with the ensuing strong inflation and the need for stable market conditions, factors which were similarly applicable in Europe (see recital (132)). In particular, one important factor for price coordination was the growing number of pan-European wholesalers and their tendency to computerise their purchasing systems at pan-European level, an action which facilitated comparison of manufacturers' prices across the board **[*deleted*]**;

– the single pricing structure and the resulting transparency in the net prices in continental Europe facilitated expansion at European level;

– the above mentioned factors of consolidation, simplicity and transparency of the arrangements at pan-European level became the catalyst and created the appropriate environment for adapting and strengthening the behaviour at pan-European level;

– the pan-European arrangements were a more effective way of resisting pressure from the wholesalers and their expansion into the Community. The participants controlled the entire pan-European market.

(561) The Commission therefore views the measures agreed and taken at pan-European level as one coherent set of measures which continue the behaviour that started in the United Kingdom.

(562) In its reply to the Statement of Objections, although Flowflex accepts its involvement for certain periods (mainly in 1997, 1998 **[*deleted*]**), it contests the continuity of its participation from 1989 until 1996. It claims that there is no evidence to suggest its uninterrupted participation for that period which is time-barred.

(563) Flowflex's assertions are not supported by the facts of the case, as described in Part 4. The Commission possesses evidence demonstrating Flowflex's uninterrupted participation in the anti-competitive arrangements for the contested period. This evidence stems from the Commission's inspections and consists of documents drafted at the time the various contacts between competitors were taking place **[*deleted*]**. These documents refer to Flowflex in relation to specific prices and rebates as well as to past and future price increases which leave little doubt as to its involvement. In addition, Flowflex's claims are contradicted by the concurring statements of IMI and Delta who have, incriminating themselves, admitted the history of collusion in the fittings industry and the collusion which also involved Flowflex from the beginning (that is, from 1985) and for the purposes of this Decision from at least from December 1988 **[*deleted*]**. This behaviour was undoubtedly aimed at restricting competition and raising the prices of fittings on the market over the competitive levels.

- Period between 2001 and 2004

Continuity of the infringement after the inspections

(564) The Commission considers that this single and complex infringement continued after the Commission inspections on 22-23 March 2001 and 24-25 April 2001, as far as Comap, IBP/Oystertec (Advanced Fluid Connections) and Frabo are concerned, until April 2004 and to a lesser extent as far as Delta is concerned. With regard to ***[clarification: a subsidiary of Aalberts]***, it participated in the infringement after the inspections between 25 June 2003 and 1 April 2004.

(565) The Commission has to establish continuity by producing sufficiently precise and coherent proof that the alleged infringement was continuous. For this standard of proof to be met, the Commission can deduct from fragmentary evidence. As already indicated above, *"[i]n 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"*[38]. Also for the proof of continuity, different pieces of evidence are to be interpreted in their overall context. As will be further demonstrated, the overall scheme of controlling and restricting competition in the fittings market and, in particular, the will to do so, persisted. This scheme is confirmed by a number of leniency applicants.

(566) The following evidence and considerations support the Commission's findings that the anti-competitive arrangements continued after the inspections in March 2001 until April 2004.

– In its leniency application in July 2004, Frabo submits evidence in the form of written minutes taken in the framework of the FNAS Logistics Committee. The minutes cover a telephone conference dated 16 February 2004 and concern an agreement to increase prices. The participant companies were Frabo, IBP, Raccord Orléanais, Comap **[*deleted*]**.

– In its leniency application, Frabo submits that the contacts (bilateral and multilateral) between competitors continued throughout the whole period after the inspections (March 2001) and until April 2004 **[*deleted*]**. Frabo's corporate statements are supported by a number of documents such as notes drafted at the time of the event, agendas, telephone lists, etc. specifically mentioning instances of price increases and other related commercial issues. Frabo's information as to the various contacts and arrangements is detailed in that it covers names, dates and specific data giving distinguishing features to the instances of communication between competitors.

– In its leniency application of May 2005, Advanced Fluid Connections confirms Frabo's submission regarding FNAS and adds evidence on a number of other FNAS meetings in the form of written minutes. The minutes cover the period between June 2003 and April 2004 and concern an agreement to increase prices, discussions on profit margins, price issues, commercial strategies,

[38] Joined Cases C-204/00 P, C-205/00 P, C-211/00 P, C-213/00 P, C-217/00 P and C-219/04 P, Aalborg Portland A/S et al. v Commission, (ECR 2004 Page I-00123, paragraph 56 and 57)); see also Case T-368/00 *General Motors Nederland BV and Opel Nederland BV v Commission*, [2003] ECR II-04491, paragraph 88.

material costs and other related items. The minutes are signed by all the representatives of the participant companies and for the telephone conference of 16 February 2004, the minutes mention the names of all the participants (Frabo, IBP, Raccord Orléanais, Comap) **[*deleted*]**.

– Advanced Fluid Connections reports that the agreed price increase mentioned above was implemented by two of the participant companies (Raccord Orléanais ***[deleted]*** and Comap; **[*deleted*]**). This implementation is contested neither by Comap nor by Aalberts.

– In its leniency application, Advanced Fluid Connections submits that on 12-16 March 2002 a meeting took place in a trade fair (SHK exhibition) in Essen between IBP GmbH **[*deleted*]**, Woeste **[*deleted*]** and Comap **[*deleted*]**). Advanced Fluid Connections corrected the date in that the meeting did not in fact take place on 12-16 March 2002 but on 18 March 2004. According to Advanced Fluid Connections, the participants had discussions on IBP GmbH's future price increases **[*deleted*]**. Woeste ***[deleted]*** and Comap do not deny that **[*deleted*]** (Woeste ***[deleted]***) and **[*deleted*]** (Comap) met **[*deleted*]**.

– Also, as regards the Essen meeting, Advanced Fluid Connections **[*deleted*]** explains that **[*deleted*]**,"*he told them that we planned to increase prices at the month end.[…] By then, I believe 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"*.

– The Commission notes that IBP's future price increase at the end of March 2004 was not a matter of public record and the rumours circulating in the market certainly cannot amount to a matter of public record. As acknowledged by **[*deleted*]**, **[*deleted*]** (Woeste ***[deleted]***) and **[*deleted*]** (Comap) would not have been able to confirm the rumours by asking customers since IBP's official price-increase letter was not issued until 30 March 2004.

– On this basis, the Commission considers that the information **[*deleted*]** communicated **[*deleted*]** that IBP planned to increase prices at the month end removed any element of uncertainty as to whether or not a price increase was going to be introduced and as to its timing.

– Taking into account the above mentioned consideration as well as the past history of the cartel arrangements (introduction of a price increase each time by a leader company in the various Member States), the only plausible explanation of the Essen meeting is that the anti-competitive contacts resumed after the inspections with the same pattern as before.

– None of the participant undertakings contests that the above mentioned documented contacts took place. None of the participant undertakings provides any credible explanation of these contacts and arrangements.

– Instead, as will be seen below (see recitals (569) et seq.), in contesting the continuity of the infringement after the inspections, Oystertec, Aalberts and Comap challenge the evidentiary value of Frabo's submissions and accompanying documentation stating that Frabo's submissions are not sufficient to prove the infringement and that the contacts were justified by legitimate commercial (cross-supply) relations between the undertakings.

– In order to cast doubt on Frabo's submissions, **[*deleted*]** Advanced Fluid Connections has submitted a written statement saying that contrary to **[*deleted*]** (Frabo) statements, as of April 2001 and for the period 2001-2005, he never had any direct contact with **[*deleted*]**apart from at trade exhibitions.

– However and contrary to **[*deleted*]**statement, Frabo provides several telephone bills of an Italian telephone operator showing numerous calls between **[*deleted*]**and **[*deleted*]**which lasted several hours in total (see also recitals (786)-(790)).

– Frabo also submits commercial documentation showing that the supply relations it had with Advanced Fluid Connections ceased in September 2002 and no such relations continued after that date. Therefore, the contacts that Frabo had with Advanced Fluid Connections after September 2002 cannot be on account of a commercial relationship (see recital (575)).

– A number of undertakings contest the illegality of the meetings in the framework of FNAS. They submit that their contacts must be seen in the context of the Logistic Committee and concerned the issue of packaging.

– However, the Commission fails to see the legitimacy of the discussions between competitors, based on the following:

  – During the meeting of 20 January 2004 in the context of FNAS, **[*deleted*]** Comap stated that *"…while his company does not put in doubt the commitments undertaken in the previous meetings, the effective implementation of the agreement made during the last meeting would require a surcharge of 13% instead of 10% which was initially foreseen"* **[*deleted*]** (agreement to introduce a price surcharge);

  – During the meeting of 15 October 2003 in the context of FNAS, **[*deleted*]** (IBP) states that *"At IBP, category A comprises 11 products representing 50% of volume sales […] it is in this category the margins are lowest"* **[*deleted*]** (commercially sensitive information that is not a matter of public record (category A) and should not be exchanged with competitors);

  – During the meeting of 20 January 2004 in the context of FNAS, **[*deleted*]** Comap states that *"[T]he manufacturers inform their clients of the eventuality of a 6% increase [.]This increase in costs of materials should occur throughout the entire range. The unit price of the new packaging will therefore be 5.3% or 5.4% higher"* **[*deleted*]** (This percentage is based on collusion between competitors. In normal market conditions,

each competitor should be able to determine the unit price of his products in an autonomous and independent way);

– During the same meeting as above, **[*deleted*]** Comap states that *"the manufacturers would check with their clients at Interclima, to sound out the market concerning the possibility of a price increase, if necessary, staggered over time. Feedback to members of the working party would be by way of a conference call on 16 February 2004 at 15:00"* **[*deleted*]** (Agreement on testing the market's reaction on a future price increase);

– During the meeting of 25 June 2003 in the context of FNAS **[*deleted*]** is reported stating that *"the objective should at least be to achieve price stability"* and **[*deleted*]**further says that the manufacturers *"must be reassured about price levels"* **[*deleted*]** (self-explanatory statement on keeping price stability among the fittings manufacturers);

– As will be seen below (see recitals (570),(577),(583)), on several occasions, the same employees participated in the infringement before and after the inspections.

– While contesting the continuity of the infringement before and after the inspections, none of the participant undertakings offers any explanation as to why they changed their behaviour and allegedly resumedtheir contacts. This should also be seen in light of the previous consideration that on several occasions, it was the same employees who participated in the infringement before and after the inspections.

– In its leniency application, Delta **[*deleted*]** also describes how, during the last EFMA meeting of 20 April 2001 (just after the inspections) there were certain unsolicited comments about prices outside the EFMA conference room (but not IMI) and also in the EFMA conference room which the Secretariat was forced to stop **[*deleted*]**.

– There is also documentary evidence in the Commission file showing that, on 26 January 2001, during a meeting that took place in Paris between **[*deleted*]** (IMI), **[*deleted*]** (Delta/IBP) and **[*deleted*]** (Comap), it was mentioned that the collusive meetings between the competitors would continue despite the fact that Delta's fittings business would be sold.

– With regard to this last event of 26 January 2001, Delta explains that this statement cannot refer to Oystertec (the company that acquired Delta's fittings business in 2001) but at most to Nibco (another company which at the time was in negotiations to acquire Delta's fittings business). As a result, that statement cannot be taken into account since it was finally Oystertec that acquired Delta's fittings business.

– The Commission considers that the statement during the meeting of 26 January 2001, as well as the meeting of 20 April 2001 in the framework of EFMA give a strong indication of the spirit and the overall context within which competitors were operating and engaging in illegal contacts throughout the entire cartel period. These instances also demonstrate the will of the participant

companies to control and restrict competition in the fittings market in the future **[*deleted*]**. It is in this context and irrespective of Delta's fittings business acquirer, that the behaviour of the companies involved should be assessed. Indeed, the evidence shows that the companies involved and their successors and some of the persons involved in the meeting of 26 January 2001 did indeed continue the illegal contacts with competitors after the inspections **[*deleted*]**.

(567) In the light of such a long-lasting scheme and the corresponding will to infringe competition law, it is not sufficient to assume that participants interrupted their infringement if their cooperation simply became less visible or their contacts less numerous over a certain period. It is only normal in a cartel of long duration that ups and downs follow each other and that quiet periods or periods of less intensity can hardly be avoided. If quiet periods occur, this may be the result of a natural change in the market brought about by the Commission inspections, not of a real desire to return to conditions of free competition. Here, the fact that that was the case is unequivocally shown by the *previous* and *subsequent* repeated common efforts of the producers to raise prices on the market. To terminate its participation, a party has to publicly distance itself from the cartel's activities and, at the same time, to entirely withdraw from cooperation with respect to all of its competitors. The participants in a cartel have certainly not withdrawn from the infringement if they continue to meet and discuss price increases, market strategies, prices, sales volumes, margins, production costs, material costs etc. **[*deleted*].**

(568) On this basis and as will be elaborated below in more detail, the Commission finds that Oystertec, Comap and Frabo and to a limited extent Delta did not terminate the infringement immediately after the inspections but rather continued it after the inspections. As far as ***[clarification: a subsidiary of Aalberts]*** is concerned, it participated in the infringement from June 2003 onwards, after it had acquired IMI's fittings business. The Commission considers that the behaviour of these companies shows a blatant disregard of the competition rules. When the Commission conducts an inspection in a cartel case, it officially alerts the undertakings concerned that competition rules may have been infringed. In the overwhelming majority of cases, experience has shown that the inspections spur the undertakings to immediately put an end to the infringement, providing thereby immediate relief, while awaiting the Commission's decision in the case. Therefore, for the period after the inspections, undertakings should immediately stop clearly infringing behaviour. In this case, certain undertakings were involved in the anti-competitive practices both before and after the inspections. Those undertakings were aware of the Commission's inspections. Nonetheless, they disregarded the inspections and certain of them continued with the anti-competitive practices for as much as 3 years after the inspections, until April 2004.

(569) In its reply to the Statement of Objections, Aalberts argues that none of its subsidiaries was involved in a single, complex and continuous infringement that lasted until April 2004. It also claims that for the period after August 2002, most contacts with the other fittings producing companies such as Frabo and Comap can be explained as the competitors were customers of its subsidiaries engaging in legitimate supplying relations.

(570) As far as ***[clarification: a subsidiary of Aalberts]*** is concerned, it should be made clear that its participation in the infringement after the inspections lasted from 25 June

2003 until 1 April 2004. The Commission possesses evidence showing first, that IMI, Aalberts' predecessor company, terminated its involvement immediately after the inspections and second, that ***[clarification: a subsidiary of Aalberts]*** started systematically its involvement in June 2003 in the framework of the FNAS meetings **[*deleted*]**.

(571) With regard to the period between June 2003 and April 2004, Aalberts' argument that ***[clarification: a subsidiary of Aalberts]*** participated in legitimate supply relations, is not supported by the facts of the case. There is evidence in the Commission file showing that **[*deleted*]** participated in anti-competitive arrangements after the inspections **[*deleted*]**. This is in connection with anti-competitive arrangements within and outside the FNAS framework. As to the arrangements unconnected to FNAS, Frabo submits a series of documents showing contacts and discussions with ***[clarification: a subsidiary of Aalberts]*** on price increases and their implementation in a number of Member States. As to arrangements related to FNAS, the above mentioned evidence on price increases, production costs, etc. **[*deleted*]** does not appear related to the allegedly legitimate supply relations between competitors. FNAS meetings minutes leave little doubt as to the anti-competitive nature of the contacts. ***[Clarification: a subsidiary of Aalberts]*** not only participated in the meetings and agreed on the various arrangements but also implemented the price increase agreed for April 2004 **[*deleted*]**. Further, Advanced Fluid Connections provided information that on 18 March 2004, IBP GmbH **[*deleted*]**, Woeste **[*deleted*]** and Comap **[*deleted*]** met and had discussions on price increases at an exhibition in Essen[39] **[*deleted*]**.

(572) As mentioned above with regard to the Essen meeting **[*deleted*]**, Advanced Fluid Connections revised its statement in that the meeting occurred in March 2004 and not in March 2002. During the oral hearing, the Commission informed all the parties of Advanced Fluid Connections' revised statement. With the authorisation of the Hearing Officer and after the Commission received the non-confidential version of the statement, it circulated it to the parties concerned. Subsequently, Aalberts reacted to this with a submission dated 8 February 2006 accompanied with the statements of **[*deleted*]**. Consequently, the Commission considers that the parties concerned had been given full access to this information and furthermore, they, and Aalberts in particular, had used the opportunity to comment on this issue. In any event and based

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39 In his statement with regard to this event, **[*deleted*]** says that he had "*short discussions with* **[*deleted*]** *Woeste/Simplex and separately with* **[*deleted*]** *Comap*". According to **[*deleted*]**, during the Essen conference all three persons asked him "*what IBP Germany was planning to do about prices and* **[*deleted*]** *told them that we planned to increase prices at the month end*" because of an increase in raw material costs. To this, Aalberts contends that during this contact, there was no exchange of commercially sensitive information. In this respect, the Commission considers that the announcement of a future price increase to competitors constitutes a contact with clear anti-competitive object. As explained above, exchanges of information on future price increases between competitors allows the producers to take this information into account when determining their own behaviour on the market and enables the parties to influence their competitors' conduct and to adjust their own behaviour according to their competitors' strategies. Aalberts also puts forward the statements of **[*deleted*]** (Woeste**[*deleted*]**) according to which they deny that they asked **[*deleted*]** (IBP) about an intended price increase and that in any case Simplex was already aware of a price increase (to be) announced by IBP Deutschland on the basis of market intelligence. The Commission notes that neither **[*deleted*]** (Woeste **[*deleted*]**) denies having met **[*deleted*]** (IBP) at the fair in Essen on 18 March 2004 and neither of them denies having received the information that at the end of the month of March, IBP GmbH would increase its prices.

on evidence other than this meeting, the Commission established ***[clarification: a subsidiary of Aalberts]*** participation in the anti-competitive activities for the period between June 2003 and April 2004.

(573) Moreover, Aalberts was fully aware of the Commission inspections as well as of IMI's leniency application in September 2003[40]. This is the case, since the acquisition of IMI's fittings business by Aalberts took place in August 2002 and in its leniency application, IMI clarified that following its fittings business sale to Aalberts, IMI would retain the responsibility for, and conduct of, the Commission investigation into fittings. In addition, a number of press releases, financial and trade press reports by the Commission and other individual corporate press releases were issued concerning the Commission's inspections and investigation[41]. Considering that Aalberts had been involved in the fittings sector for many years **[*deleted*]**, these press releases and reports put the company on notice regarding the Commission inspections.

(574) Advanced Fluid Connections argues that the Commission failed to establish the existence of a single, complex and continuous infringement after the inspections. It alleges that the FNAS meetings were not comparable to the French Super-EFMA meetings but related only to the French market and that they were a one-off event unrelated to any infringing behaviour and to the events prior to IBP's acquisition by Oystertec (now Advanced Fluid Connections). Advanced Fluid Connections also contends that after the inspections, the contacts with the competitors, and more precisely with Frabo, were legitimate as they concerned cross-supply arrangements. Further, the company also claims that on 20 December 2001, it adopted a comprehensive compliance programme. This programme was followed by compliance training on 8 January 2002 and various other actions (such as a log of competitor contacts). According to Advanced Fluid Connections, this compliance action interrupted the chain of continuity of the anti-competitive contacts that occurred prior to the acquisition of Delta's fittings business.

(575) The Commission identified a number of illegal competitor contacts between Oystertec (Advanced Fluid Connections) and certain of its competitors, namely ***[clarification: a***

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40 IMI's leniency application admitted IMI's fittings business participation in the cartel before the inspections.

41 See: Dow Jones International News, 23 March 2001: *EU carries out spot inspections of copper tube market*; Reuters News, 26 March 2001: *EC visits IMI in copper tube cartel enquiry*; European Report, 28 March 2001: *Commission anti-trust officials raid offices of five copper tube manufacturers*; Metal Bulletin, 29 March 2001: *EU investigators raid Cu tube companies*; Oster Dow Jones Select, 14 May 2003: *DJ. EU/Outokumpu/GIM-3-No estimates of fines*; Dow Jones International News, 14 May 2003: *EU probes Outokumpu, GIM for copper pipe price-fixing*; Birmingham Post, 3 September 2003: *IMI faces price-fixing claim*; Metal Bulletin, 4 September 2003: *Non-ferrous-Outokumpu, IMI receive details on Cu tube probe*; Birmingham Post, 8 September 2003: *City view – notoriety from copper cartel can't be too reassuring*; Reuters News, 12 December 2003: *EU copper tube cartel fines in pipeline*; Nordic Business Report, 15 December 2003: *EU Commission to fine copper tube makers*; Evening Mail, 19 December 2003: *IMI set for fine over fix claims*; Dow Jones International News; 3 September 2004: *EU Commission to fine Outokumpu for cartel practice*; Dow Jones International News; 3 September 2004: *EU fines Cos EUR 222,3 M for fixing plumbing tube prices*; Waymaker, 3 September 2004: *EU Commission fines former Boliden company for participation in copper tube cartel*; Metals Weel, 6 September 2004: *EC fines seven companies in copper plumbing tubes cartel*; Construction News, 9 September 2004: *IMI fined 30,5 m GBP over price-rigging*; AFX International Focus, 27 September 2005: *EU to open formal proceedings against some European pipe fittings producers.*

subsidiary of Aalberts], Comap and Frabo after the inspections following its acquisition of Delta's fittings business. First, there is evidence showing Oystertec's involvement in the FNAS arrangements between June 2003 and April 2004. This evidence is submitted by Advanced Fluid Connections itself **[*deleted*]**. Second, Advanced Fluid Connections itself provided information that on 18 March 2004, IBP GmbH/Oystertec **[*deleted*]**,Woeste **[*deleted*]** and Comap **[*deleted*]** met and had discussions on price increases during an exhibition in Essen **[*deleted*]**, before the sale of its fittings business to Oystertec. Oystertec's involvement in the illegal arrangements after the inspections not only related to the FNAS meetings but also to contacts with Frabo, Aalberts and Comap **[*deleted*]**. There is also evidence showing that **[*deleted*]** were first employees at Delta and thereafter at Oystertec and certain of them participated in anti-competitive arrangements before and after the inspections until Delta sold its fittings business to Oystertec and thereafter **[*deleted*]**. As regards the argument that the FNAS meetings related only to the French market, there is evidence from the minutes showing that these meetings did not refer only to France but also to Spain, Italy, the United Kingdom, Germany and the European market in general which means that they had pan-European cover. Moreover, the FNAS meetings took place among companies with pan-European presence.

(576) In addition, Frabo reports a number of contacts and arrangements with IBP **[*deleted*]**. According to Frabo, its contacts with IBP took place between 2001 and April 2004 **[*deleted*]**. In respect of Advanced Fluid Connections' argument on the legitimate supply contacts that took place with Frabo, Frabo submits evidence showing that the supply relations it had with Advanced Fluid Connections ceased in September 2002 and no such relations continued after that date. Furthermore, Frabo submits clear evidence of contacts with anti-competitive focus with Oystertec **[*deleted*]**. Moreover, in contesting Frabo's information on the contacts it had with IBP, Advanced Fluid Connections provides the statement of **[*deleted*]** stating that during the period 2001-2005, he did not have telephone contacts with **[*deleted*]**. In its reply to the Statement of Objections, Frabo provided several telephone bills showing that between 10 April 2002 and 17 July 2003, **[*deleted*]** contacted **[*deleted*]** via mobile phone at least 28 times. Given the overall information, documentary evidence and the level of detail provided by Frabo so far as well as the documents provided concerning the above two instances of contacts, which counteract Advanced Fluid Connections arguments, the Commission considers that the information submitted by Frabo is reliable as regards Frabo's illegitimate contacts with IBP/Oystertec.

(577) As to Advanced Fluid Connections' point concerning the compliance programme, it did not interrupt the chain of continuity of the anti-competitive contacts. Advanced Fluid Connections' compliance programme and subsequent training started on 20 December 2001. The Commission observes that most of the same individuals that participated in the anti-competitive contacts before and after the inspections (and before and after the introduction of the programme) **[*deleted*]** signed the above mentioned compliance programme. This does not show that the continuity was interrupted. Furthermore, the Commission fails to understand the value of this programme considering that it took 4 years for the undertaking to identify the anti-competitive contacts described in its leniency application submitted in May 2005. In addition, the Commission has serious doubts as to the value of the programme given that even contacts with competitors during which indisputably sensitive issues were discussed are not mentioned in the log of competitor contacts which Oystertec had

introduced when they ought to have been included therein. More specifically, the contacts at the Essen trade fair meeting on 18 March 2004 where prices were discussed are not mentioned in the log of competitor contacts which **[*deleted*]** introduced and implemented in the framework of Oystertec's competition compliance programme whereas there is clear evidence that these contacts indeed took place **[*deleted*]**. In its reply to the Statement of Objections, Advanced Fluid Connections explained that **[*deleted*]** *"did not inform* **[*deleted*]** *of these conversations but probably [he] should have"*.

(578) The Commission also established Delta's, Oystertec's predecessor company, involvement in the anti-competitive arrangements before the inspections and, as will be seen in recital (580), its involvement before its fittings business sale to Oystertec. Oystertec was fully aware of both the Commission inspections and Delta's leniency application[42] in March 2004, since Oystertec's acquisition of Delta's fittings business took place in November 2001 and Oystertec's representatives were aware of the procedure regarding Delta's leniency application and related correspondence with the Commission.

(579) The fact that the above arrangements continued after the inspections at a bilateral and multilateral level, between the same companies and in some instances between the same individuals, with the same anti-competitive object (price increases, market strategies, prices, sales volumes, margins, production costs, material costs), the same type of information exchange and coordination as well as the implementation of an agreed price increase shows the continuity of the infringement. Even if *arguendo* no agreements in the formal sense were reached and/or implemented during the period from March 2001 until June 2003 (a FNAS meeting), this does not mean that the infringement concerning the fittings had been terminated with regard to all its elements. Furthermore and most importantly, Oystertec did not submit any proof showing that it did not participate in the illegal cartel arrangements after the inspections. On the contrary, the evidence submitted by Oystertec itself as part of its leniency application and the additional evidence in the possession of the Commission shows, beyond question, the level of its participation. Consequently, as far as Advanced Fluid Connections is concerned, there was no discontinuation of the infringement after the inspections and until April 2004.

(580) Delta claims that it terminated its involvement immediately after the inspections on 22-23 March 2001. Delta's claims are not supported by the facts of the case. The Commission possesses evidence showing that there are at least two instances of Delta continuing its illegal arrangements **[*deleted*]**. The first relates to an e-mail **[*deleted*]** on 23 April 2001 revealing anti-competitive arrangements. In this regard, Delta argues that this was an e-mail sent to **[*deleted*]** who was Delta's sales manager for Eastern Europe and that this incident concerns the Czech market which at the time was not part of the Community. This argument cannot be accepted as the e-mail does not indicate that it concerned specifically the Czech or the Eastern European market. The fact that the e-mail was addressed to **[*deleted*]** does not mean that its subject matter was restricted to these markets. On the contrary, this e-mail refers to a number of pan-European competitors and their price policies as well as to agreements reached with

[42] Oystertec's representatives were also present at a meeting between Delta and the Commission for a Delta's leniency submission.

regard to prices without specifying that the subject of the agreements was limited only to these markets. In addition and after the Commission requested Delta to comment on this e-mail, Delta itself acknowledged that *"Following the Commission's dawn raids, IBP verbally instructed managers throughout Europe to desist from discussing price fixing. No meetings were organised by IBP on a central basis to discuss price fixing after April 2001[…]It may well be, however, that certain regions were slow to implement IBP's instructions"* **[*deleted*]**. The second instance relates to another e-mail dated 18 April 2001 sent from **[*deleted*]** to **[*deleted*]** concerning the Spanish market and demonstrating illegal arrangements. In this connection, it should be noted that Delta was aware of the Commission's inspections of 22-23 March 2001. This is shown by an e-mail dated 5 April 2001 sent by **[*deleted*]** confirming the Commission's inspections and mentioning the procedures to follow in the case of the Commission's investigators approaching the company's personnel.

(581) The Commission also possesses evidence showing that **[*deleted*]** were first employees at Delta and thereafter at Oystertec and certain of them participated in anti-competitive arrangements before and after the inspections up to the time when Delta sold its fittings business to Oystertec and thereafter **[*deleted*]**. Delta did not submit any evidence showing its withdrawal from all the elements of the cartel after the inspections and, in particular, with regard to these individuals. On the contrary, the above mentioned facts show Delta's participation in the infringement until the sale of the company's fittings business to Oystertec in November 2001.

(582) Comap claims that Frabo's allegations on the continuation of the illegal arrangements between 2001 and 2004 are not proven. It explains that during that period competitors engaged only in legitimate cross-supply business relationships. It also submits that there is no connection between the EFMA meetings and the meetings that might have occurred later. According to Comap, the two arrangements are not homogeneous or continuous (there was a break of at least 3 years) and do not have the same geographic scope.

(583) The Commission has identified a number of illegal competitor contacts between Comap and certain of its competitors, namely ***[clarification: a subsidiary of Aalberts]***, Oystertec and Frabo, after the inspections (see recital (566) on an overall basis). First, within the FNAS framework, the written minutes of the contacts show Comap's participation **[*deleted*]** in the arrangements from June 2003 to April 2004 **[*deleted*]**. These minutes reveal the illegal nature of the arrangements. In this connection, Comap not only participated in the meetings and agreed on the various arrangements and on the proposed price increase but also implemented this increase **[*deleted*]**. Second, there is evidence in the Commission file showing contacts with anti-competitive focus notably, but not only with Frabo **[*deleted*]**. In this regard, Frabo submits information and documentary evidence based on notes and agendas drafted at the time the event was taking place showing that **[*deleted*]** Comap's employees, participated in the infringements prior to and after the inspections **[*deleted*].** The documents submitted by Frabo show contacts and discussions with Comap on price increases and their implementation in a number of Member States. Timewise, these contacts (not including the FNAS arrangements) concern the period between 2001 and April 2004 and in particular, June and July 2003 and February 2004. Third, Advanced Fluid Connections provided information that on 18 March 2004, IBP GmbH **[*deleted*]**, Woeste **[*deleted*]** and Comap **[*deleted*]** met and had discussions on price increases at an exhibition in Essen **[*deleted*]**. There is no indication that these contacts were related

to the alleged cross-supply relations between the competitors. On the contrary, the evidence shows that illegal contacts and agreements took place.

(584) As to the point concerning the geographic scope of the FNAS meetings, the minutes provide evidence showing that these meetings did not refer only to France but also to Spain, Italy, the United Kingdom, Germany and the European market in general which means that they had pan-European cover. Moreover, the FNAS meetings took place between companies with pan-European presence. This shows similarity with the geographic scope of the infringement as it had been developed prior to the inspections. As to the absence of a connection between the EFMA meetings and the meetings after the inspections, the Commission file demonstrates that during this whole period contacts took place between the same companies and in some instances between the same individuals and with the same anti-competitive object, type of information exchange and coordination as well as the same common continuous objective of distorting prices and restricting competition in the fittings sector. These elements show the continuity of the infringement and that the will to regulate the fittings market never ceased to exist.

(585) Comap was fully aware of the Commission inspections. A number of press releases, financial and trade press reports by the Commission and other individual corporate press releases were issued concerning the Commission's inspections and investigation. Considering that Comap had been involved in the fittings sector for many years, these press releases and reports put the company on notice regarding the Commission inspections.

(586) As indicated above (see recitals (565), (567)), if there is evidence of participation in the cartel before and after the alleged period of discontinuation and there is no proof of such discontinuation or withdrawal from all the elements of the cartel, the cartel cannot be considered terminated. In this case, based on Comap's reply to the Statement of Objections and to a number of leniency applications (IMI, Delta, Mueller and Frabo), Comap participated in the infringement prior to the inspections. Based on the evidence referred to above, Comap also participated in the infringement after the Commission's inspections for as much as 3 years after them. Further, even if *arguendo* no agreements in the formal sense were reached and/or implemented during the period from March 2001 until June 2003 (a FNAS meeting), this does not mean that the infringement concerning the fittings had been terminated with regard to all its elements.

(587) Comap did not submit any evidence showing its withdrawal from all the elements of the cartel after the inspections and, in particular with regard to the above mentioned individuals. In this regard, Comap argues that it publicly distanced itself with a letter dated 16 March 2004 that Comap **[*deleted*]** sent to **[*deleted*]** the President of FNAS explaining that Comap forbids its representatives to have the kind of discussions taking place in the framework of FNAS with its competitors on price setting and sales policy **[*deleted*]**. It must be noted that this letter was not communicated by Comap, itself, to all its competitors and with regard to all the elements of the infringement[43]

[43] This letter did not refer specifically to all the arrangements decided during the FNAS meetings or to the implementation of the agreed price increase on 16 February 2004. This letter did not specify any of the

before the time the arrangements took place, but much later. In addition, the Commission does not consider that this letter constitutes a public distancing as **[*deleted*]** does not make any admission as to the illegal nature of the discussions among competitors.

(588) Thus, as regards Oystertec, Comap and Frabo and to a lesser extent Delta, there was no discontinuation of the infringement after the inspections. As to Aalberts, ***[clarification: a subsidiary of Aalberts]*** participated in the infringement for the period between June 2003 and April 2004. None of the above participants has produced any evidence proving that it formally ended its involvement in the cartel or publicly demonstrated its turning away from the arrangements and its willingness to terminate the infringement with regard to all of its elements while at the same time refusing to engage in any future cartel activities.

(589) This cartel was of a long duration and had a broad geographic coverage. It had sophisticated implementation mechanisms. Taking these elements into account in addition to the number of leniency applications and the amount of evidence gathered, the Commission considers that any event leading to an official termination of the infringement on the part of one of the undertakings, would have been clearly identified and recalled by the participant companies. In this case, none of the participants has produced any evidence showing their withdrawal from the arrangements.

(590) In light of the evidence put forward, the Commission concludes that the period after the inspections until April 2004 can be viewed as a continuation of the infringement. The period after the inspection until June 2003 can be considered as a period of decreased intensity because of the Commission's inspections, with limited contacts[44], rather than the termination of one infringement and starting of another. Taken as a whole, the activities of the cartel between March 2001 and April 2004 formed part of an overall scheme which laid down the lines of the participants' action in the market and restricted their individual commercial conduct with the aim of continuously pursuing an identical anti-competitive object and a single economic purpose, namely to distort the normal movement of prices in the EEA in the market for fittings. The Commission therefore considers that it would be artificial to split up such continuous conduct, characterised by a single purpose, by treating it as consisting of several separate infringements, when what was involved was in reality a single infringement which manifested itself in a series of anti-competitive activities throughout the period of operation of the cartel[45].

(591) For all of these reasons, the above mentioned arrangements are properly to be considered as one single, complex and continuous infringement.

Conclusion

(592) ***[Clarification: a subsidiary of Aalberts]***, Comap, Delta Group, Flowflex, Frabo, IMI Group, Mueller, Oystertec, Pegler, Sanha Kaimer and Viegener at various points in time participated in a single, complex and continuous infringement. On an overall

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contacts that took place between the Commission inspections, on 22-23 March 2001 and the FNAS arrangements.

44 As it is submitted by Frabo.

45 Case T-13/89 *Imperial Chemical Industries v Commission* [1992] ECR II-1021, paragraphs *259-260.*

basis, this infringement lasted from 31 December 1988 until 1 April 2004. IMI, Delta, Pegler and Flowflex were directly participating in the arrangements at first on the UK market, whereas all the above competitors directly participated in the wider European arrangements including the national markets described under heading 4.1.6. The Super-EFMA as well as other related competitor arrangements are considered to be part of one single, complex and continuous arrangement, because all competitors were aware of it and the decisions taken therein took into account national practices and were implemented at national levels **[*deleted*]**. Thus, these arrangements were part of a wider plan, i.e. to prevent competition on copper fittings across Europe. As already indicated, the Super-EFMA arrangements were one of the various anti-competitive arrangements which were occurring in bilateral or multilateral forms.

(593) Furthermore, even though it is not necessary to show that the participants had agreed in advance upon a comprehensive common plan, the description of the overall scheme under heading 4.1 demonstrates that participants agreed upon such a plan in their meetings and through other contacts which were organised numerous times per year. Price cooperation as well as market sharing through customer allocation throughout the Community together with a monitoring system to ensure compliance with the common rules were all parts of this overall plan. The common aim of this plan was to control the European market for copper fittings. Indeed, this was explicitly expressed on several occasions **[*deleted*]**.

(594) The term "agreement" applies not only to the overall plan, but also to the implementation of what had been agreed in pursuance of the same common purpose of controlling the market. Some of the actions taken to implement this overall plan were the announcement dates of price increases and/or new prices in a staggered way and arrangements referred to the company which would “lead” the announcement and the companies which would follow that lead on a territorial basis **[*deleted*]**. Moreover, the parties exchanged information on customers which enabled them to review the implementation of the price targets, customer allocation and categorisation **[*deleted*]**.

(595) Some factual elements of the illicit arrangement could also aptly be characterised as a concerted practice. While an agreement clearly existed behind the action taken to ensure implementation through the announcement dates and market leader arrangements as well as the exchange of confidential information, **[*deleted*]** the operation of this arrangement through the exchange of customer information, price information and multis i.e. concerning price rises or new price structures and the applicable discount schemes, between the undertakings could also be regarded as adherence to a concerted practice in order to facilitate the coordination of the parties’ commercial behaviour. Through this, the producers in question were able to monitor the applicable prices in order to ensure adequate effectiveness of the agreement as well as joint control of the market. Given this system of information exchange and coordination, the Commission must conclude that the parties did not operate on the market independently, since they were in possession of information regarding their competitors’ business behaviour.

(596) In view of their identical purpose, the various agreements and concerted practices formed part of a scheme of price fixing throughout the entire cartel period and of monitoring compliance in the competitor meetings as well as through telephone

contacts and exchanges of faxes and electronic data[46]. This scheme was part of a series of efforts made by the undertakings in question, in pursuit of a single economic aim, namely to prevent competition and, as a consequence, the normal movement of prices on the market. It would thus be artificial to split up such continuous conduct, characterised by a single purpose. The fact is that the participants took part - over a period approximately ranging from 9 months to 14 years - in an integrated scheme constituting a single infringement, which manifested itself in both unlawful agreements and unlawful concerted practices[47].

(597) On the basis of the above considerations, the Commission considers that the complex conduct engaged in by ***[clarification: a subsidiary of Aalberts]***, Comap, Delta Group, Flowflex, Frabo, IMI Group, Mueller, Oystertec, Pegler, Sanha Kaimer and Viegener in this case presents all the characteristics of an agreement and/or a concerted practice within the meaning of Article 81 of the Treaty.

Continuity of the infringement overall

(598) The Commission considers that there was a continuous infringement as follows:

- Comap/Legris from January 1991 until April 2004 **[*deleted*]**,
- Delta Group from December 1988 until November 2001 **[*deleted*],**
- Oystertec from November 2001 until April 2004 **[*deleted*]**,
- IMI Group from December 1988 until March 2001 **[*deleted*]**,
- ***[clarification: a subsidiary of Aalberts]*** from June 2003 until April 2004 **[*deleted*]**,
- Pegler/Tomkins from December 1988 until March 2001 **[*deleted*]**,
- Flowflex from December 1988 until March 2001 **[*deleted*]**,
- Mueller from December 1991 until December 2000 **[*deleted*]**,
- Viegener from December 1991 until March 2001 **[*deleted*]**,
- Frabo from July 1996 until April 2004 **[*deleted*]**,
- Sanha Kaimer from July 1996 until March 2001 **[*deleted*]**

(599) This is supported by the fact that (i) the parties continued the same type of information exchange, price coordination and organisation of contacts; (ii) the object of the infringement remained the same (price coordination, price-fixing, other pricing arrangements such as discounts and rebates, customer allocation); and (iii) contacts, information exchange and coordination between the competitors continued without any interruption. Contacts regarding the UK market started in December 1988 and

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46 E.g. excel tables.

47 *Imperial Chemical Industries, cit.*, paragraphs *259-260.*

expanded to the pan-European level around January 1991 ((559) and surrounding dates, **[*deleted*]** and continued from then until April 2004. In addition, contacts regarding the other European national markets took place between April 1990 and April 2004 (as the first and last known dates) as part of and in connection with the pan-European contacts. All of the above contacts, however, took the same form and followed the same scheme and related organisation which had been developed since December 1988. Evidence presented above also has shown that a number of undertakings continued to have contacts after the Commission inspections, and certain of them for as much as 3 years thereafter.

(600) The Commission also considers that there is a clear continuity of method (arrangements in connection with trade associations (EFMA, BPFMA, FNAS), top, Super-EFMA, high-level and operational meetings, multilateral as well as bilateral meetings, closer coordination between the leading manufacturers and their successors (IMI/Aalberts, Delta/Oystertec, Comap)) and practice (successful enforcement of price increases **[*deleted*]**) of the cartel scheme which started in the United Kingdom as from December 1988, and continued and expanded at European level and in other national markets until April 2004. Evidence shows that participants did not have to set up a new scheme or a new form of coordination. The main characteristics of their cooperation were collusion on pricing, market sharing through allocation of customers and exchange of commercial information (see recitals (546), (559)).

(601) Furthermore, it is established that from December 1988 until the end of the infringement, the leading fittings manufacturers, Delta, IMI and Pegler (the latter from December 1988 until 1991 when the pan-European arrangements started) and Comap (from January 1991 with the pan-European arrangements being in place), had a steady, continuous and more active coordination and participation in the arrangements throughout the entire period as compared to other participants (see recitals (132), (134) et seq., (155)). The same occurred in respect of the period after the inspections where the leading manufacturers and the successor companies, Oystertec (Delta), Aalberts (IMI) and Comap, manifested the same active coordination and participation in the arrangements.

(602) Consequently, the Commission views the conduct in question as a single continuous and complex infringement of Article 81 of the EC Treaty in which each participant must bear its responsibility for the duration of its adherence to the common scheme. The infringement can thus be taken as a whole to constitute a prohibited "agreement" in the sense of Article 81(1) of the EC Treaty. In any event, even if *arguendo* the concept of "agreement" does not apply for certain periods or instances of the infringement, the conduct in question still falls under the prohibition of Article 81 as a concerted practice (see recital (595)).

5.3.2.5. Principles concerning associations of undertakings

(603) Article 81(1) of the Treaty also prohibits as incompatible with the common market behaviour by associations of undertakings which has as its object or effect the prevention, restriction or distortion of competition within the common market. In order to be able to apply sanctions to an association and its members for their involvement in the same infringement the Commission must demonstrate that the

conduct of the association is separate from the conduct of its members[48]. It is not necessary that associations of undertakings engage in commercial or manufacturing activity for Article 81 of the Treaty to apply to them. The Court stated: '*it is not necessary for trade associations to have a commercial or economic activity of their own for* [Art. 81 (1)] *of the Treaty to be applicable to them* […] [Art. 81 (1)] *of the Treaty applies to associations in so far as their activities or those of the undertakings belonging to them are calculated to produce the results which it aims to suppress. To place any other interpretation on* [Art. 81 (1)] *of the Treaty would be to remove its substance* […] *The Court points out in that regard that the wording of Article 85(1)* [Art. 81 (1)] *of the Treaty does not exclude agreements between associations of undertakings and undertakings from the scope of the prohibitions which it lays down. In order to find that an association and its members have participated in one and the same infringement the Commission must establish conduct on the part of the association which is separate from that of its members*'[49].

5.3.2.6. Associations of undertakings in this case

(604) With regard to FNAS, the Commission has evidence that implicates FNAS indirectly in the agreement reached on 16 February 2004 to increase prices. This agreement was reached in the framework of FNAS[50] **[*deleted*]**. According to the minutes of the telephone conference on this date, the conclusion of the meeting was that *"a 5% increase in suppliers' prices could be put into practice quite soon (April), as soon as FNAS had undertaken to justify this with its members"*. This conclusion does not leave any doubt as to the illegal nature of this agreement.

(605) FNAS, therefore, was implicated in this agreement in that it was supposed to facilitate its implementation[51]. As explained above (603), the Treaty is equally applicable to associations of undertakings in so far as their activities are calculated to produce the results which it aims to suppress. By facilitating the implementation of the above mentioned price increase, FNAS could have acted against the Treaty in pursuing an anti-competitive arrangement.

(606) However, while there is evidence showing that the manufacturers reached an agreement which, according to Advanced Fluid Connections, they implemented, there is no evidence indicating that FNAS actively accepted the task entrusted to it by the manufacturers or facilitated the implementation of the agreement.

(607) Consequently, the Commission considers that FNAS was not part of the above mentioned agreement or any other anti-competitive arrangements and it does not intend to address this Decision to it.

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48 Joined Cases T-25/95, T-26/95, T-30/95 to T-32/95, T-34/95 to T-39/95, T-46/95, T-48/95, T-50/95 to T-65/95, T-68/95 to T-71/95, T-87/95, T-103/95 and T-104/95, *Cimenteries CBR SA and others v Commission* [2000] ECR II-491, paragraph 1325, hereinafter "the Cement case".

49 See Cement case.

50 FNAS drafted the minutes of all meetings that started in 2003 and signed by all the participants including those of this telephone conference.

51 It was understood that FNAS would justify the agreement to the wholesalers. Based on the previous meeting of 20 January 2004, by the time FNAS engaged in this justification, the manufacturers would already have checked with their customers at Interclika (a conference), to sound out the market concerning the possibility of a price increase, staggered over time if necessary .

5.3.3. Restriction of competition

5.3.3.1. Object

(608) Article 81(1) of the Treaty and Article 53 (1) of the EEA Agreement expressly include as restrictive of competition agreements and concerted practices which[52]:

(a) directly or indirectly fix selling prices or any other trading conditions;

(b) limit or control production, markets or technical development;

(c) share markets or sources of supply.

(609) These are the essential characteristics of the horizontal arrangements under consideration in this case. Market sharing occurred through allocation of customers and through the agreements as to which undertaking would introduce the price increase, mainly the market leaders, for different European territories **[*deleted*]**.

(610) Specifically, the fixing of a price, even one which merely constitutes a target, affects competition because it enables all the participants in a cartel to predict with a reasonable degree of certainty what the pricing policy pursued by their competitors will be[53]. More generally, such cartels involve direct interference with the essential parameters of competition on the market in question[54]. By expressing a common intention to apply a given price level for their products, the producers concerned cease to determine independently their policy in the market and thus undermine the concept inherent in the provisions of the Treaty relating to competition[55].

(611) The characteristics of the horizontal arrangements under consideration in this case essentially constitute price fixing, of which agreeing upon percentage price increases is a typical example. Agreeing upon a rebate structure (multi) and/or price lines, initiating price rises by a certain competitor every time (mostly the market leader), **[*deleted*]** as well as exchanging information on other commercial terms are examples of the fixing of sales prices and other trading conditions. By planning common action on price initiatives with price increases, the undertakings aimed at eliminating the risks involved in any unilateral attempt to increase prices, notably the risk of losing market share. Prices being the main instrument of competition, the various collusive arrangements and mechanisms adopted by the producers were all ultimately aimed at inflating prices for their benefit and above the level which would be determined by conditions of free competition.

(612) Price fixing and market sharing by their very nature restrict competition within the meaning of both Article 81 of the Treaty and Article 53 of the EEA Agreement.

(613) The anti-competitive object of the parties is also shown by the fact that they took explicit action to conceal their meetings and to avoid detection of their anti-

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52 The list is not exhaustive.

53 Case 8/72 *Vereeniging van Cementhandelaren* v *Commission* [1972] ECR 977, paragraph 21.

54 Case T-141/94 *Thyssen Stahl* v *Commission* [1999] ECR II-347, paragraph 675.

55 Case T-311/94 *BPB de Eendracht* v *Commission* [1998] ECR II-1129, paragraph 192.

competitive agreements and documents. To this effect, they often used[56] the "code-name" "Super-EFMA" for arranging certain of the high-level meetings (see recital (132)) they communicated orally and tried to avoid using written communications in order not to leave a paper trail (see recitals (153), (155)). When they communicated in writing, certain documents were expressly marked "Confidential" or instructed the addressee to destroy the document or not to take any record of it which further indicate the illegal purpose of the contact and the intention to conceal it **[*deleted*]**.

(614) Regarding the anti-competitive object of the exchanges of confidential information and the other contacts with an anticompetitive purpose, the arrangements have to be seen in their context and in the light of all the circumstances. These contacts served to attain the single objective of restricting price competition and further enabled the undertakings to adapt their pricing strategy to the information received from competitors. It is apparent that the purpose of the parties was to ensure the stability of the prices and the market allocation.

(615) Hence, the complex of agreements and/or concerted practices, as described in Part 4, had as its object the restriction of competition within the meaning of Article 81 of the Treaty and Article 53 of the EEA Agreement.

5.3.3.2. Effect

(616) It is settled case-law that for the purpose of application of Article 81(1) of the Treaty and Article 53(1) of the EEA Agreement there is no need to take into account the actual effects of an agreement when it has as its object the prevention, restriction or distortion of competition within the common market. Consequently, it is not necessary to show actual anti-competitive effects where the anti-competitive object of the conduct in question is proven.[57]

(617) It follows that, in this case, violation of Article 81 of the Treaty and Article 53 of the EEA Agreement occurred even when certain price increases agreed upon between the competitors did not prove successful or were not even implemented.

(618) Furthermore, even if the parties perceived the final outcome of some of the price increases as a failure, this does not necessarily imply that they produced no effect on the market. It is quite normal that a leader of a price increase loses some market share, which is a risk that the undertaking in question voluntarily assumes in collusive situations like those in question in these proceedings. In this case, by taking turns, the undertakings involved in leading the price increases in the various EEA territories could level out some of these risks and losses. Moreover, a partially implemented or short-term price increase also affects prices and harms consumers, even when such effect is felt for a shorter period of time than planned and desired by the participants. Although the precise price increase targets were not always entirely achieved, they still had some effect on the way in which the cartel members approached negotiations with customers and thus at least some effect on prices achieved.

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[56] It should be emphasised that the "Super-EFMA" meetings were not the only meetings between competitors.

[57] See, for example, Case T-62/98 *Volkswagen AG* v *Commission* [2000] ECR II-2707, paragraph 178 and case-law cited therein.

(619) The following elements show that most of the collusive price increases which are the subject of this Decision were effectively implemented and had anti-competitive effects on the market:

– The implementation of the cartel decisions was ensured usually through implementation meetings attended by the more technical personnel, such as sales directors or managers at European and/or national level (recitals (147)-(153)), or through Super-EFMA or other *ad hoc* meetings focusing *inter alia* on compliance with previously agreed actions, through the announcement of dates of price increases by market leaders and the regular exchange of confidential information (see, among others, recital (161)). It may be assumed that the competitors in question took into account the information that was exchanged in determining their own conduct on the market (recital (542)).

– In addition, implementation of the price increases occurred by a monitoring system consisting of staggered announcement dates and a market leader arrangement for various European territories **[*deleted*]**.

– The implementation of the cartel decisions was also ensured by frequent contacts between competitors. The fact that they met regularly over a period ranging approximately, for certain participants, between 9 months and, up to 14 years for certain other participants – more than a hundred and sixty bilateral or multilateral meetings are established - to discuss prices, volumes, tenders, customers or other commercial terms is an indication that their arrangement must have been successful. Certain instances of deviation from the agreed principles **[*deleted*]** may be considered normal in the life cycle of a long-lasting cartel.

– There is also evidence of internal instructions to implement a price increase agreed upon at a meeting with competitors and of notes reporting the success or failure in some instances of the price cooperation as well as the application of price increases **[*deleted*]**. With regard to customer allocation, the decisions of the cartel members in this regard were implemented by avoiding taking historic customers from competitors as this was against the spirit of the cartel (recital (161), **[*deleted*]**), by ensuring that the aggrieved party would be compensated for "loss of customer" **[*deleted*]** as well as by sharing customers or making those not respecting the allocation to correct their action **[*deleted*]**.

– As to the stabilisation of market shares, the regular review of the market development at meetings allowed possible deviations to be monitored, in particular concerning customers, in order to re-establish the positions.

– There is also evidence that the parties exchanged information on customers which enabled them to review the implementation of the price targets, customer allocation and categorisation **[*deleted*]**.

(620) Hence, in this case, the Commission considers that, on the basis of the elements which are put forward in Part 4, it has also proved that the cartel arrangements were implemented over a number of years.

5.3.4. Article 81(3)

(621) The provisions of Article 81(1) of the Treaty may be declared inapplicable under Article 81(3) in the case of an agreement or concerted practice which contributes to improving the production or distribution of goods or to promoting technical or economic progress, provided that it allows consumers a fair share of the resulting benefit, does not impose restrictions that are not indispensable to the attainment of those objectives and does not afford the undertakings concerned the possibility of eliminating competition in respect of a substantial part of the products in question.

(622) Restriction of competition being the sole object of the clear price-fixing arrangements which are the subject of this Decision, there is no indication that the agreements and concerted practices between the fittings producers entailed any efficiency benefits or otherwise promoted technical or economic progress. In any event, none of the parties has claimed that the conditions of Article 81(3) of the Treaty were met. "Hardcore" cartels, like the one which is the subject of this Decision, are indeed, by definition, the most detrimental restrictions of competition, which benefit only the participating producers, not consumers.

(623) Accordingly, the conditions for exemption provided for in Article 81(3) of the Treaty are not met in this case and the prohibition imposed by Article 81(1) remains fully applicable.

5.3.5. Effect upon trade between Member States and between EEA Contracting Parties

(624) According to the case-law of the Court of Justice *"in order that an agreement between undertakings may affect trade between Member States, it must be possible to foresee with a sufficient degree of probability on the basis of a set of objective factors of law or fact that it may have an influence, direct or indirect, actual or potential, on the pattern of trade between Member States"*. In any event, whilst Article 81(1) of the Treaty *"does not require that provisions have actually affected trade between Member States, it does require that it be established that the agreements are capable of having that effect"*[58].

(625) Furthermore, the application of Article 81 of the Treaty and Article 53 of the EEA Agreement to a cartel is not restricted to the part of sales by participants in the cartel which actually involve a physical transfer of goods from one Member State or EEA Contracting Party to another, nor is it necessary to demonstrate that the individual participation of each of the cartel members, as opposed to the cartel as a whole, affected trade between Member States or EEA Contracting Parties[59].

(626) As explained in recital (113), it is a feature of the fittings market that there is a substantial volume of trade between Member States and between EEA Contracting Parties. Hence, the complex of agreements and concerted practices between the cartel members had an appreciable effect on this trade.

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[58] See Case 56/65 *Société Technique Minière* [1966] ECR 282, paragraph 7; Case 42/84 *Remia* and Others [1985] ECR 2545, paragraph 22, and the Cement case. See also Case C-306/96 *Javico* [1998] ECR I-1983, paragraphs 16 and 17; and Case T-374/94 *European Night Services* [1998] ECR II-3141, paragraph 136.

[59] See *Imperial Chemical Industries, cit.* , paragraph 304.

(627) In this case, the cartel arrangements covered virtually all trade throughout the Community and EEA. The existence of a price-fixing mechanism must have resulted, or was likely to result, in the automatic diversion of trade patterns from the course they would otherwise have followed[60].

5.3.6. Additional considerations

5.3.6.1. The types of fittings concerned

(628) In their reply to the Statement of Objections, several undertakings argue that the investigation and Decision in this case should not include certain special types of fittings.

(629) According to Aalberts the relevant product market should be limited to standard sized copper end feed fittings, without taking into consideration exotic sized fittings. Aalberts argument for this distinction is that it is not possible to switch between the production of standard and exotic sized fittings. Aalberts claims that there are significant differences between the types of fittings, such as end feed (high volume, commodity product) and press fittings (specialty product) as well as between copper and brass fittings, as they have different applications.

(630) Viegener argues that press fittings and winding fittings were never the object of any unlawful agreements.

(631) Flowflex claims that the different fitting types are not substitutable and therefore are not part of the infringement. According to Flowflex, there is no single European fittings market and the companies concerned do not all compete on the same markets. Fittings categories vary depending on the size, the type, the use and the demand in the different Member States.

(632) According to IMI, the Commission should take into account in its assessment the fact that press fittings became part of the infringement only in 1999/2000. IMI specifies that until 1999/2000 only Viegener was involved in the production of press fittings and enjoyed a virtual monopoly on this type of fittings throughout the main period of the cartel activities.

(633) The Commission cannot accept the arguments submitted by the parties concerning the relevant product market. As a general rule and in line with the *Tokai* judgment of the Court of First Instance, the market covered by a Commission decision is defined by the cartel arrangements and activities[61].

(634) The investigation has shown that during the lifetime of the cartel in this case and at various points in time, all kinds and sizes of fittings, including end-feed, solder ring, compression, press and push-fit fittings were part of the anticompetitive discussions **[*deleted*].** The arrangements covered copper fittings as well as copper alloy fittings made of gunmetal, brass, and other copper based alloys. Representatives of producers

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60 See Joined Cases 209/78 to 215/78 and 218/78 *Van Landewyck and others v Commission* [1980] ECR 3125, at paragraph 170.

61 See 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 yet published at paragraph 90.

which were involved in the production of exotic sized fittings, such as ***[clarification: a subsidiary of Aalberts]***, were equally participating in the unlawful contacts between competitors **[*deleted*]**. As mentioned above (see recital (542)), it may be presumed, subject to proof to the contrary, that undertakings which were taking part in such contacts covering all types of fittings whilst remaining active in the market take account of the information exchanged with competitors in determining their own conduct on the market in relation to all fitting types.

(635) Furthermore, during the Oral Hearing, Viega, the most important European producer of press fittings explained that press fittings and other types of fittings such as end feed, solder ring and compression are entirely substitutable. During the Oral Hearing, Viega's statement was confirmed by Sanha Kaimer. The most significant difference between the different fitting types is how they are connected to the tube. Common fittings have to be soldered to the tube, which can be more time intensive, while press fittings can be connected to the tube via a special clamp mechanism.

(636) As a result, all these types of fittings must be considered to have been part of the cartel arrangements and are therefore covered by this Decision.

5.3.6.2. The alleged coercion of Frabo

(637) In its leniency submission Frabo states that IMI and IBP put pressure on it to participate in the arrangements and more particularly, in a "non-aggression pact" concerning prices and quota. Frabo explains further that its competitors threatened to reduce prices drastically in the markets where Frabo had a strong market share. Frabo refused to coordinate prices with the competitors. As a result, in March 1999, IMI and Delta/IBP lowered their prices in the German market, one of Frabo's most important markets, by approximately 25 %. According to Frabo, this price reduction was the decisive point for it to start cooperating with the competitors.

(638) In its reply to the Statement of Objections, Frabo revised essential elements of its earlier statement. It submitted that although there was some evidence to suggest that IMI and Delta had exerted pressure on it, it was not entirely sure that this was indeed the case. Frabo explained that at the time when IMI's and Delta's price reductions took place in Germany (beginning of 1999), new management was appointed at Frabo which perceived the price reductions as retaliatory measures against Frabo's non-participation in the cartel. Also, Frabo's management thought that to join the cartel arrangements was the only way for the company to survive and, as a result, it started cooperating with the competitors.

(639) In this respect, IMI submits that Frabo could not possibly have been coerced to start participating in the cartel as, based on the Commission's file, Frabo was involved in the anti-competitive arrangements years before the time of the alleged coercion (as early as 3 March 1992). In addition, IMI explains that the 25% reduction in prices in Germany in March 1999 was the result of a price war between IMI and Delta. Delta's explanation for the 25% price reduction in Germany was a customer driven promotional offer to Schmidt, a distributor, and thus unrelated to any pressure on Frabo to join the cartel.

(640) On this basis, the Commission considers that it has not been established that IMI and Delta exerted pressure on Frabo to join the cartel arrangements or that the 25% reduction in prices was a retaliatory measure directed against Frabo.

5.3.6.3. Considerations on certain evidence

(641) A number of documents and tables found at the premises of one of the participants might not have been the subject of an exchange with other parties **[*deleted*]**. The most striking example is a series of spreadsheets containing data on volume and market shares for the years 2000-2003 with regard to several products in the fittings sector, the great majority of the European countries and for all the competitors. The tables were created in 1999 and modified in 2000. Delta claims that these tables contain data derived from the records of DEHL and its subsidiaries, that they represent the annual budgeting exercise prepared to estimate total market size, DEHL's share of the market and sales, and that they are internal documents for internal consumption only.

(642) With respect to these tables, given the extreme level of detail in relation to volume, share, specific product, competitor and the completeness of the information for the countries, together with the fact that as it has been admitted, information has been exchanged regularly among the parties not only at high but also at technical level, the Commission concludes that the compilation of information in the tables, to a significant extent, is the result of the illicit information exchange of sensitive business information amongst the participants in the infringement.

5.4. Addressees

5.4.1. General Principles

(643) Measures enforcing the Community and EEA competition rules should be addressed to a legal entity. Despite the fact that Article 81 of the Treaty and Article 53 of the EEA Agreement are applicable to undertakings, and the concept of undertaking has an economic scope, only entities with legal personality can be liable for their infringement[62]. It is accordingly necessary to define each undertaking that is to be held accountable for the infringement of Article 81 by identifying one or more legal persons that represent the undertaking. According to the case-law, "*Community competition law recognises that different companies belonging to the same group form an economic unit and therefore an undertaking within the meaning of Articles 81 EC and 82 EC if the companies concerned do not determine independently their own conduct on the market*"[63]. If a subsidiary does not determine its own conduct on the market independently, its parent forms a single economic entity with the subsidiary, and may be held liable for an infringement on the ground that it forms part of the same undertaking.

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62 Although an 'undertaking' within the meaning of Article 81(1) is not necessarily the same as a company having legal personality, it is necessary for the purposes of applying and enforcing decisions to identify an entity possessing legal or natural personality to be the addressee of the measure. See *PVC II* case, *cit*., paragraph 978.

63 Case 170/83 *Hydrotherm* [1984] ECR 2999, paragraph 11, and Case T-102/92 *Viho* v *Commission* [1995] ECR II-17, paragraph 50.

(644) Parent companies can be considered liable for the infringements of Article 81 committed by their subsidiaries, when the latter are not able to autonomously determine their behaviour on the market[64]. According to established case-law, when a parent company owns the totality (or almost the totality) of the shares of a subsidiary, at the time the latter commits an infringement of Article 81, it can be presumed that the subsidiary follows the policy laid down by the parent company and thus does not enjoy such an autonomous position[65].

(645) Any presumption of decisive influence in cases of wholly-owned subsidiaries remains rebuttable. However, it is up to the party wishing to rebut the presumption to produce sufficient evidence to support such a rebuttal. General assertions unsupported by convincing evidence are not sufficient in this regard. To rebut the presumption it must be shown either that the parent company was not in a position to exert a decisive influence on its subsidiary's commercial policy, or that the subsidiary was autonomous (i.e., that the parent company, although being in a position to exert decisive influence, did not actually exert it as regards the basic orientations of the subsidiary's commercial strategy and operations on the market).

(646) A presumption cannot be rebutted by alleging that the parent company did not encourage, did not impose or did not give instructions to its subsidiaries to participate in the illegal behaviour or by simply stating that the parent company itself was not directly involved in or was not even aware of the cartel. Also, a presumption cannot be rebutted by simply stating that the parent company did not interfere with the daily management of the subsidiary or that it had only an administrative and financial role. In fact, a parent company can be held liable for the conduct of its subsidiaries, if it exercised, or is presumed to have exercised (and the presumption is not reversed), decisive influence over the general commercial policy of the latter (i.e. if the parent company determines, or is presumed to have determined, the basic orientation of the commercial strategy and operations of the subsidiary), regardless of whether such influence consisted specifically in the kinds of behaviour mentioned above in this recital.

5.4.2. Liability in this case

(647) It has been established in Part 4 that during the periods identified in recital (734), the following undertakings were directly involved in the infringement:

- Delta Engineering Holdings Limited, Druryway Samba Limited (formerly known as Conex Sanbra Limited (**[*deleted*]**), Aldway Nine Limited (formerly known as IBP Limited (28)), Supergrif SL (successor of Accessorios de Tuberia de Cobre SA

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64 Case 48/69 *Imperial Chemical Industries v Commission*, [1972] ECR 619, paragraphs 132-133; Case 170/83 *Hydrotherm* [1984] ECR 2999, at paragraph 11; Case T-102/92, *Viho v Commission* [1995] ECR II-17, at paragraph 50.

65 Case 107/82 *AEG v Commission* [1983] ECR 3151, at paragraph 50; Case C-310/93P, *BPB Industries & British Gypsum v Commission* [1995] ECR I-865, at paragraph 11; Case T-354/94 *Stora Kopparbergs Bergslags AB v Commission* [1998] ECR II-2111, at paragraph 80; Joined Cases T-305/94, T-306/94, 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 LVM and others v Commission* (*PVC II*) [1999] ECR II-931, at paragraphs 961 and 984; Case T-203/01 *Michelin v Commission* [2003] ECR II-4371, at paragraph 290; Joined cases T-71/03, 74/03, 87/03 and 91/03 *Tokai Carbon Co. Ltd and others v Commission*, judgment of 15 June 2005 (not yet published) at paragraphs 59-60).

(**[*deleted*]**), International Buildings Products GmbH, International Buildings Products France SA, IMI plc, Yorkshire Fittings Limited (formerly known as IMI Yorkshire Fittings Limited (12)), Aquatis France SAS (formerly known as Raccord Orléanais SA and thereafter as Raccord Orléanais SAS (12)), Simplex Armaturen + Fittings GmbH & Co. KG (formerly known as R Woeste & Co Yorkshire GmbH (12)), VSH Italia Srl (formerly known as IMI Componenti Termoidrosanitari Srl (12) and Woeste 'Yorkshire' Componenti S.r.l (12)), Comap SA, Pegler Limited, Mueller Industries Inc, Mueller Europe Ltd, Flowflex Components Limited, Flowflex Holdings Limited, FRA.BO SpA, Sanha Kaimer GmbH & Co KG, Kaimer GmbH & Co Holdings KG, Sanha Italia Srl, Viega GmbH & Co. KG.

(648) In order to identify the appropriate addressees of this Decision and to establish the liability for the infringement within each undertaking, the following specifications must be made in respect of the undertakings that follow.

5.4.2.1. Aalberts NV

(649) On 30 August 2002, all IMI's undertakings involved in the production of fittings were sold to Aalberts Industries NV. All these undertakings have since then been wholly-owned subsidiaries of Aalberts Industries. The management of each subsidiary is responsible for all operational activities within the respective subsidiary and reports directly or indirectly to the board of management of Aalberts Industries. Each management team consists of at least a managing director, a sales manager, a production manager and a financial controller. The respective managing director **[*deleted*]**, which manages the subsidiaries' operational units. The Aalberts's supervisory and management board are appointed by the General Assembly of Shareholders.

(650) In its reply to the Statement of Objections, Aalberts denies liability and claims that it was never directly involved and was not aware of the alleged infringement. Aalberts' operational organisation is highly decentralised. **[*deleted*]**. Aalberts did not exercise decisive influence and the business was run "at arm's length". Aalberts is merely a very small holding company employing only 12 people, it therefore cannot exercise control over 80 operating companies. Further, Aalberts has no commercial activity and does not produce or distribute any products.

(651) In the light of recitals (644)-(646) and on the basis of the considerations laid down in recital (649), the Commission finds that Aalberts had the ability to exercise full effective control and decisive influence over its subsidiaries' commercial policy and that it can be presumed to have indeed exercised such control and influence. The contention that each subsidiary's management can bind the subsidiary and that the **[*deleted*]** is not sufficient to reverse the presumption of its decisive influence over its subsidiaries.

(652) In addition, there are elements which in fact support the finding that Aalberts' subsidiaries are not autonomous. As indicated above, the management of each subsidiary reports to Aalberts' management board or to the group of managing directors, which manages the subsidiaries' operational units. This indicates that Aalberts' management was in a position to gain knowledge of what was happening within its subsidiaries and could be assumed to do so, based on the 100% ownership and overall responsibility relating thereto. As regards the argument that Aalberts is just

a holding company with no commercial activity, the Commission notes that the company's stated business activities are industrial services and flow control[66] (see recital (10)). This business operates within the same overall business environment as its subsidiaries. Aalberts therefore does not have a different business scope from that of its subsidiaries. Aalberts claims that until August 2002 when it acquired IMI's fittings business, no subsidiary in its group, except Presrac (now part of Aquatis), produced copper fittings. However, the Commission understands that in 1991, Aalberts acquired VSH a Dutch manufacturer of compression fittings. Aalberts' statement therefore is not correct and the argument implying that Aalberts was not a fittings player or that it had a very limited involvement in the fittings market cannot be accepted.

(653) Finally, Aalberts' financial results are consolidated with those of its subsidiaries, meaning that their profits and losses are part of the profit and loss of the whole group. Aalberts is an international industrial group listed on the Euronext Securities Market in Amsterdam since 1987. The Commission considers that as part of the corporate governance obligations of a publicly listed company, Aalberts, the parent company, should be active in controlling its subsidiaries with regard to possible breaches of antitrust rules and in such cases, in instructing them to stop such behaviour in the future. As mentioned above (see recital (573)), Aalberts was fully aware of the Commission inspections.

(654) The Commission considers that Aalberts has not rebutted the presumption of liability for the behaviour of its subsidiaries. Therefore and in addition to the considerations above (see recitals (649), (652)), the Commission presumes[67] full effective control and decisive influence of Aalberts over its subsidiaries' commercial policy.

(655) Consequently, the Commission considers the following companies directly liable for their illicit activities: Simplex Armaturen + Fittings GmbH & Co KG (formerly known as R Woeste & Co Yorkshire GmbH and Woeste Yorkshire (12)); Aquatis France SAS (formerly known as Raccord Orléanais SA and thereafter as Raccord Orléanais SAS (12)).

(656) In addition, the Commission considers Aalberts Industries NV, in its capacity as parent company, jointly and severally liable for the illicit activities of the companies mentioned in (655) for the period after its acquisition of those companies.

5.4.2.2. Delta

(657) Delta Engineering Holdings Limited ("DEHL"), formerly known as Delta Fluid Controls Limited (25)) was a wholly owned subsidiary of Delta plc throughout the duration of the infringement. Delta plc controlled the appointment of all DEHL's directors (recitals (22) - (29)). DEHL fully owned a number of subsidiaries involved in the infringement and appointed their boards of directors. All DEHL's subsidiaries are managed by DEHL's board. Also, Delta plc fully owned and controlled a number of subsidiaries other than DEHL's subsidiaries involved in fittings. All the companies within the plumbing and fittings divisions were at all times wholly-owned subsidiaries

66 Aalberts' subsidiaries involved in the fittings business are grouped under the business area of Flow Control.

67 Based on the principles set out in recitals (643)-(646) above.

of Delta plc until 23 November 2001, when all of Delta's fittings business was sold to Oystertec plc. The reporting structure within the Delta Group as well as the appointment and relationship between the directors of the various companies within the group as explained below in recital (659) are also to be taken into account.

(658) Delta plc submits that the Delta Group had no involvement in, or knowledge of, the cartel activity engaged in by the fittings division. This was so as the Delta group operated a highly decentralised decision-making structure throughout its various divisions and sub-divisions with the fittings sub-division autonomously managing its day-to-day operations. In its reply to the Statement of Objections, Delta argued that, while it had the ability to exercise decisive influence over its subsidiaries, it did not actually exercise this influence in such a way as to become aware of the infringement.

(659) As mentioned above in recital (646), the relevant question as regards the attribution of liability is not whether the parent company was aware of the infringement. Rather, what must be demonstrated to rebut the presumption is that the subsidiaries were acting autonomously. There are a number of factual elements in the file indicating that this is not the case as regards the subsidiaries within the Delta Group. First, as of 1988, the managing directors of the UK fittings subsidiaries reported to the Divisional Managing Director of Delta Fluid Controls Ltd. The Divisional Managing Director of Delta Fluid Controls Ltd was in turn responsible to and reported to the CEO of Delta plc. At this time, the UK fittings business was managed by Delta plc as an integrated business (see recital (23)). Second, the same reporting structure was followed when Delta Fluid Controls Ltd changed its name to DEHL in 1988. The managing directors of DEHL's fittings subsidiaries reported to the Divisional Managing Director of DEHL, who in turn was responsible to and reported to the CEO of Delta plc. Third, as explained above (657) from 1988 and until 2001, DEHL was a wholly-owned subsidiary of Delta plc, which controlled the appointment of DEHL's directors (25). Fourth, below the Delta plc Board, there was a Delta Group Management Board and beneath this, various divisional boards including the DEHL Divisional Board. Two of DEHL's divisional managing directors **[*deleted*]** had seats on the Delta Group Management Board. Certain Chief Executives of Delta plc **[*deleted*]** as well as the Delta Group Finance Director would generally attend meetings of the DEHL Divisional Board (**[*deleted*]**). As a result, the management of all these companies was thus interconnected through various interlocking relationships. Fifth, there is evidence in the Commission file showing Delta management's (Delta's CEO, **[*deleted*]**) close supervision over the subsidiaries' commercial policies. Sixth, the above mentioned reporting structures should be seen in relation to the fact that from 1994, the companies within the plumbing and fittings divisions were responsible to and reported to DEHL's Divisional Board. As mentioned above (657), DEHL controlled the appointment of the board for all its subsidiaries in the fittings division. In practical terms, it also controlled the appointment of directors to the overseas companies in the fittings division. Seventh, Delta plc is also engaged in the same business sector as DEHL and their subsidiaries (see recital (22)). Eighth, Delta plc fully owned and controlled a number of fittings companies outside the DEHL group but it appears from the corporate structure that all fittings companies formed and were managed throughout the period of the infringement as a single economic unit ((28),(29)). Ninth, it should be mentioned that it was Delta plc that submitted a leniency application to the Commission.

(660) The Commission considers that Delta plc has not rebutted the presumption of liability of Delta plc and DEHL for the behaviour of their subsidiaries. Therefore and in addition to the considerations developed above (see recitals (657), (659)), the Commission presumes[68] the full effective control and decisive influence of Delta plc and DEHL over their respective subsidiaries' commercial policy until 23 November 2001.

(661) Consequently, the Commission considers the following companies directly liable for their illicit activities: Delta Engineering Holdings Limited (formerly being Delta Fluid Controls Limited (25)); Druryway Samba Limited (formerly known as Conex Sanbra Limited (**[*deleted*]**); Aldway Nine Limited (formerly known as IBP Limited (28)); Supergrif SL (successor of Accessorios de Tuberia de Cobre S.A. (**[*deleted*]**); International Building Products GmbH for its own activities and for those of Bänninger GmbH with which it merged (**[*deleted*]**); International Building Products France.

(662) In addition, the Commission considers Delta Engineering Holdings Limited (formerly known as Delta Fluid Controls Limited (25)), in its capacity as parent and managing company, jointly and severally liable for the illicit activities of: Druryway Samba Limited (formerly known as Conex Sanbra Limited (**[*deleted*]**); and Aldway Nine Limited (the successor of IBP Limited (28)). The Commission also considers Delta Engineering Holdings Limited (formerly known as Delta Fluid Controls Limited) liable for the illicit activities of Triflow Limited[69]. The Commission considers DEHL, in its capacity as managing company, jointly and severally liable for the illicit activities of: Supergrif SL (successor of Accessorios de Tuberia de Cobre S.A. (**[*deleted*]**) for the activities of Accessorios de Tuberia de Cobre S.A. and for its own activities (see recital (29) and **[*deleted*]**); International Building Products GmbH for its own activities and for the activities of Bänninger GmbH (which merged with International Building Products GmbH (**[*deleted*]**); and International Building Products France SA.

(663) The Commission notes that Delta plc owned fully Bänninger GmbH, Supergrif SL, Accessorios de Tuberia de Cobre S.A., International Building Products GmbH and International Building Products France SA through a number of wholly-owned subsidiaries (namely, Delta Group Overseas Limited, Delta Group International Holdings Limited, Delta Group Overseas B.V., Delta Electrical and Engineering Holdings BV, Delta Group Overseas Holding GmbH and Delta France SA). In this instance and in the light of the above (recitals (657) to (659)), the presumption of effective control and decisive influence applies.

(664) Finally, the Commission considers Delta plc (formerly known as Delta Group plc (**[*deleted*]**), in its capacity as parent company, jointly and severally liable with DEHL (formerly known as Delta Fluid Controls Limited, recital (25)).

5.4.2.3. Oystertec / Advanced Fluid Connections

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[68] Based on the principles set out in recitals (643)-(646) above.

[69] Triflow ceased to exist on 21 October 2003.

(665) As already mentioned, on 23 November 2001, Delta's fittings division was acquired by Oystertec plc (now Advanced Fluid Connections plc). It should be noted that the infringements described above that took place after 23 November 2001 fall under the responsibility of Oystertec and not of Delta plc. From 23 November 2001, IBP's plumbing division headed by IBP Ltd[70] was wholly owned by Oystertec plc. Oystertec's fittings business was wholly owned by IBP Ltd. International Building Products France SA was IBP's Ltd subsidiary (see recital (33)). Following its acquisition, IBP's business remained focused on the manufacture and supply of plumbing fittings (copper, copper alloy, brass and bronze). At least two members of IBP Ltd's plumbing division Management Board were at the same time directors of Oystertec plc. Until 31 January 2003, **[*deleted*]** were directors of Oystertec plc and at the same time on IBP's plumbing division Management Board. From 1 February 2003, **[*deleted*]** was CEO of IBP Ltd at the same time that he was a director of Oystertec plc, while **[*deleted*]** was a director of IBP Ltd and a director of Oystertec plc. As a result, various interlocking relationships exist between the management of Oystertec plc and IBP Ltd. Finally, it was Oystertec that submitted to the Commission a leniency application for the companies of the group, including IBP Limited and its French subsidiary, International Building Products France SA. The Commission considers that Oystertec plc has not rebutted the presumption of liability of Oystertec plc for the behaviour of its subsidiaries. Therefore, the Commission presumes[71] the full effective control and decisive influence of Oystertec plc over its subsidiaries' commercial policy.

(666) As a result, the Commission considers International Building Products France SA directly liable for the infringement from 23 November 2001 until 1 April 2004. In addition, the Commission considers Advanced Fluid Connections plc (formerly known as Oystertec plc) and IBP Ltd, in their capacity as parent companies, jointly and severally liable for the illicit activities of International Building Products France SA for the respective period.

5.4.2.4. Legris

(667) Comap SA was virtually wholly owned (99.99 %) by Legris Industries SA throughout the duration of the infringement. In addition, Legris Industries nominated the executives of Comap SA, especially Comap SA's board of directors (recitals (55), (57)). Furthermore the Commission observes that **[*deleted*]** was a member of the "Conseil d'Administration" (Board of Directors) of Comap SA. In Comap SA's board of directors, Legris Industries was represented through an administrator. In addition, certain of the activities of Legris Industries were closely related to those of Comap SA (industrial and domestic fluids).

(668) Legris contests the attribution of liability submitting that it was not directly involved in the infringement and did not exercise any control as it did not intervene in Comap's commercial strategy. Also, Legris did not give Comap any instructions to participate in the infringement. Comap's commercial policy was determined autonomously by

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70 It should be clarified that since 23 November 2001, IBP Limited has been owned and formed part of Oystertec plc and not of the Delta group. International Building Products France SA was a wholly-owned subsidiary of IBP Limited.

71 Based on the principles set out in recitals (643)-(646) above.

Comap's management. Legris argues that it had only an administrative and financial role while commercial and industrial questions were within Comap's realm of responsibility. To that effect, Legris submitted all Board and Surveillance Council minutes from 1991 to 2003 alleging that they did not concern Comap's commercial policy.

(669) Based on recital (646) above, the Commission finds that Legris' above mentioned contentions (668) are not sufficient to reverse the presumption of Legris' decisive influence over Comap.

(670) In any case, there are a number of elements in the file showing Legris' involvement and connection to Comap's management and affairs: first, Legris nominated Comap's executives, especially Comap's board of directors; second and as indicated above **[*deleted*]** was a member of Comap's "Conseil d'Administration"; third, Legris was represented in Comap's board of directors through an administrator; fourth, **[*deleted*]** was also a member of Legris' development committee, a fact that shows that there were interlocking relationships in the management of both companies; fifth, **[*deleted*]** was also a member of Legris' "Directoire" (Board of Directors) for a number of years including also years during which he was **[*deleted*]**, a fact that also shows the existence of interlocking relationships between the parent company and the subsidiary; sixth, the majority of the minutes of Legris' Board and Surveillance Council shows references to Comap's and other subsidiaries' activities.

(671) Those elements do not show Comap's autonomy but, on the contrary, indicate that Legris' management was in a position to gain knowledge of Comap's state of affairs and could be assumed to do so, based on the near 100% ownership and overall responsibility relating thereto. In respect of the argument that Legris is only an administrative and financial entity, the Commission notes that the company's stated business activities are industrial, domestic fluids and logistics. This business operates within the same overall business environment as Comap. Legris thus does not have a different business scope than that of Comap. Legris also states that Comap's turnover accounted for **[*deleted*]** of Legris' total turnover showing that the fittings business is not central to Legris. The significance of the percentage of a subsidiary's turnover in the parent's overall turnover does not mean that the parent company has no interest in exercising decisive influence over its subsidiary to ensure the strength and value of the subsidiary and thereby of the whole group.

(672) Finally, Legris' financial results are consolidated with those of Comap, meaning that their profit and loss are part of the profit and loss of the whole group. In this regard, Legris argues that French law requires that in its case, Legris' financial results be consolidated with those of Comap. The Commission observes that Legris is an industrial group listed on the French Stock Exchange and that the requirement for the consolidated accounts is applicable to publicly listed companies. On this account, the Commission considers that as part of the corporate governance obligations of a publicly listed company, Legris, the parent company, should be active in controlling its subsidiaries for possible breaches of antitrust rules and in such cases, in instructing them to stop such behaviour in the future. As mentioned above (see recital (585)), Comap was aware of the Commission inspections and Legris, as Comap's parent company, was equally aware.

(673) For the above reasons, the Commission considers that Legris did not rebut the presumption of its liability for the behaviour of Comap. Therefore and in addition to the considerations above (see in particular recitals (667) and (670)), the Commission presumes[72] the full effective control and decisive influence of Legris Industries over its subsidiary's commercial policy.

(674) Consequently, the Commission considers Comap SA directly liable for its illicit activities. In addition, the Commission considers Legris Industries SA, in its capacity as parent company, to be jointly and severally liable for the illicit activities of Comap SA for the duration of the infringement.

5.4.2.5. Tomkins and Pegler

(675) From June 1986 and until 31 January 2004, Pegler Limited was a wholly-owned subsidiary company of Tomkins plc[73]. Tomkins plc had the power to appoint the directors of Pegler Limited.

(676) In its reply to the Statement of Objections, Pegler submitted that the appropriate addressee of the Decision should be only its parent company, Tomkins, which until 1 February 2004 exercised close control over the Pegler business. Pegler further explains that joint and several liability would not be appropriate in the present case, since it was the legal person managing Pegler's business at the time of the infringement and the beneficiary of the infringement that should be held responsible.

(677) To this effect, in its reply to the Statement of Objections and during the hearing, Pegler put forward factual elements confirming, in its view, the fact that Tomkins exercised effective control over it. On this basis, Pegler explained that: --Tomkins appointed and/or approved all Pegler's directors; --two of Tomkins board directors were also directors of Pegler while two of these directors served as Pegler's chairman; --in Pegler's employment contracts, there was a provision that Tomkins could require Pegler's directors to serve as Pegler's associated companies directors. For instance, from September 2002 until January 2004, **[*deleted*]**, Pegler's managing director, was also appointed as Managing Director of Hattersley Newman Hender Ltd., another subsidiary of Tomkins; --every month Tomkins required Pegler to submit a report covering not only financial matters but also detailed information on sales and marketing, engineering, business development and key projects; --there were two types of board meetings held by Pegler: a) local Board meetings related to operational matters which were attended by the local directors of Pegler and various Tomkins Divisional Controllers and/or Financial Controllers; b) other Board meetings related to constitutional and strategic matters, the signature of accounts and company returns, appointment and resignations of directors, approval of dividends and distribution to Tomkins that were only attended by those directors of Pegler who were also Directors of Tomkins. From 1995 these matters were authorised by one Tomkins director and one other director of Pegler. In addition, Pegler argues that there are a number of additional elements proving that Tomkins continued to exercise decisive influence over Pegler's policy during the period of the infringement.

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72 Based on the principles set out in recitals (643)-(646) above.

73 On 1st February 2004, Pegler was sold by Tomkins plc to its management team and thereafter, on 26 August 2005 to Aalberts plc.

(678) By contrast, Tomkins argues that Pegler should be the only undertaking to be held liable and pay any fine since Tomkins, the parent company, was not involved in the infringement, it was not aware of it, and, in any case, did not otherwise support it.

(679) In addition, Tomkins denies liability and claims that its overall strategy was to be a purely financial investor that could create more shareholder value by applying tested financial controls to Tomkins' holdings while making additional strategic acquisitions that would significantly increase and diversify Tomkins' investment portfolio of businesses. In line with this approach, Tomkins delegated operational responsibility to the management at the local business unit level, its subsidiaries had full autonomy to develop and implement the commercial strategies of their businesses in whichever way they considered would meet the agreed financial objectives. To support its assertions, Tomkins provides a description of the financial guides for the subsidiaries[74].

(680) Tomkins' argument that it was purely a financial investor delegating operational responsibility to the subsidiaries' management at the local business unit level and ensuring that its subsidiaries met the agreed financial objectives does not correspond with the company's stated scope of business in the construction sector which falls within the same overall business scope as that of Pegler.

(681) As regards Tomkins and based on recital (646) above, the Commission finds that Tomkins' contentions (see recitals (678), (679)) are not sufficient to reverse the presumption of Tomkins' effective control and decisive influence over Pegler's commercial policy. On the contrary, Pegler's submissions and other considerations developed in recitals (675) and (677) support the presumption[75].

(682) With regard to Pegler, the Commission has established that it directly participated in the infringement. The fact that Tomkins, its parent company during the infringement, may also be held jointly and severally liable for the behaviour of Pegler does not discharge Pegler from its liability. It is the direct involvement of Pegler's personnel in the infringement that constitutes the basis for Pegler's liability and further, for both legal entities' joint and several liability.

(683) Consequently, the Commission considers Pegler Ltd (formerly known as Peglers Limited (71) directly liable for its illicit activities. In addition, the Commission considers Tomkins plc, in its capacity as parent company, to be jointly and severally liable for the illicit activities of Pegler Ltd.

5.4.2.6. IMI

(684) As explained above in part 4 of the present Decision, IMI plc and IMI Yorkshire Fittings Limited (YF) participated directly in the cartel meetings. As a result of this participation, they are directly liable for their illicit activities. IMI plc controlled –

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74 These guides included : annual strategic plans submitted by the subsidiaries; monthly digest reports of the subsidiaries in meeting their financial targets; annual instructions from Tomkins to subsidiaries on how to complete budgetary and other financial reports; internal control statements of the subsidiaries; capital sanction requests for any capital expenditure over a certain prescribed amount; directors' remuneration and loans statements/information sheets.

75 Based on the principles set out in recitals (643)-(646) above.

through its wholly-owned subsidiary IMI Kynoch Ltd[76] - IMI Yorkshire Fittings Limited (YF) throughout the duration of the infringement. Also, IMI plc wholly owned either directly and indirectly the subsidiary companies mentioned in recitals (686) and (688).

(685) IMI's statement that it has always acted on **[*deleted*]**, cannot be considered sufficient to rebut the presumption of effective control and decisive influence. This is so, *inter alia*, in view of the fact that **[*deleted*]** and both levels were directly involved in the illegitimate contacts. **[*deleted*]** In addition, IMI plc has the power to manage and represent the whole group. Under IMI's Articles of Association, IMI plc's shareholders have the power to appoint or remove any or all of the company's directors by ordinary resolution and IMI plc's board of directors has the power to appoint additional directors. Finally, it was IMI plc that submitted a leniency application to the Commission for the whole group.

(686) For the above reasons, the Commission presumes[77] full effective control and decisive influence of IMI over its subsidiaries' commercial policy.

(687) Consequently, the Commission considers the following companies directly liable for their illicit activities: IMI plc; Yorkshire Fittings Limited (formerly known as IMI Yorkshire Fittings Limited (12)); Aquatis France SAS (formerly known as Raccord Orléanais SA and thereafter as Raccord Orléanais SAS (12)); Simplex Armaturen + Fittings GmbH & Co KG (formerly known as R Woeste & Co Yorkshire GmbH and Woeste Yorkshire (12)); and VSH Italia Srl (formerly known as IMI Componenti Termoidrosanitari Srl (12) and Woeste 'Yorkshire' Componenti S.r.l (12)).

(688) In addition, the Commission considers IMI plc and IMI Kynoch Limited (a fully owned subsidiary of IMI) , to the extent of their capacity as parent companies, jointly and severally liable for the illicit activities of the companies mentioned in recital (687)[78]. The Commission also considers IMI plc liable for the illicit activities of Eclipse NV and for the illicit activities of Woeste SL[79].

5.4.2.7. Mueller

(689) From February 1997 until December 2000, Mueller Industries Inc. (through its wholly owned company WTC Holding Company, Inc.) owned wholly **[*deleted*]** Mueller Europe Ltd (formerly known as Macrobreak Ltd, Wednesbury Tube Company Ltd and Wednesbury Tube & Fittings Company Ltd). **[*deleted*]**

(690) Mueller has confirmed its control over Mueller Europe Ltd. **[*deleted*]**

(691) Consequently, the Commission considers the following companies directly liable for their illicit activities: Mueller Industries[80] Inc; Mueller Europe Limited.

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76 IMI Yorkshire Fittings Limited is a wholly-owned subsidiary of IMI Kynoch Ltd.

77 Based on the principles set out in recitals (643)-(646) above.

78 Out of the companies mentioned in recital (687), IMI Kynoch Limited was the parent company of Yorkshire Fittings Limited.

79 These two companies have ceased to exist.

80 On the basis of the participation in the infringement of its representatives in Europe.

(692) In addition, the Commission considers Mueller Industries Inc and WTC Holding Company Inc (a wholly owned subsidiary of Mueller) , in their capacity as parent companies, jointly and severally liable for the illicit activities of Mueller Europe Limited.

5.4.2.8. Sanha Kaimer

(693) The Commission notes that Sanha Kaimer GmbH & Co. KG was wholly owned by Kaimer GmbH & Co Holdings KG throughout the duration of the infringement. In addition, since 1998, **[*deleted*]** has been SANHA Kaimer GmbH & Co. KG's and Kaimer GmbH & Co. Holding KG's CEO and sole representative of Sanha Italia srl. Therefore, the Commission presumes[81] full effective control and decisive influence of Kaimer GmbH & Co Holdings KG over Sanha Kaimer GmbH & Co. KG's commercial policy.

(694) Consequently, the Commission considers the following companies directly liable for their illicit activities: SANHA Kaimer GmbH & Co. KG; Kaimer GmbH & Co. Holdings KG and Sanha Italia srl. In addition, the Commission considers Kaimer GmbH & Co. Holding KG, in its capacity as parent company, to be jointly and severally liable for the illicit activities of SANHA Kaimer GmbH & Co. KG.

5.5. Duration

5.5.1. Application of limitation periods

(695) Pursuant to Article 25(1)(b) of Regulation (EC) No 1/2003, the power of the Commission to impose fines or penalties for infringements of the substantive rules relating to competition is subject to a limitation period of five years. For continuing infringements, the limitation period only begins to run on the day the infringement ceases[82]. Any action taken by the Commission for the purpose of the preliminary investigation or proceedings in respect of an infringement interrupts the limitation period and each interruption starts time running afresh[83].

(696) In this case, the Commission investigation started with the unannounced inspections pursuant to Article 14(3) of Regulation No 17 on 22 March 2001. Hence, for illegal conduct which ceased prior to 22 March 1996 no fines may be imposed.

(697) Comap claims that during the period from 10 September 1992 to 13 December 1994, the Commission did not prove Comap's anti-competitive conduct. On the contrary, the Statement of Objections shows that Comap acted as an independent company. On this basis there is a period of interruption of 27 months and thus, all events before this period are prescribed.

(698) The facts do not support Comap's assertions. The Commission has evidence showing that Comap continued its anti-competitive behaviour uninterrupted during the relevant period. This evidence demonstrates Comap's participation for the period before, after and during the period in question **[*deleted*]**. In addition, Comap's claim is in

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81 Based on the principles set out in recitals (643)-(646) above.

82 Article 25(2) of Regulation No 1/2003.

83 Article 25(3) to (5) of Regulation No 1/2003.

contradiction with the concurring statements of Mueller, IMI, Delta and Frabo who have, incriminating themselves, admitted the history of collusion in the fittings industry and the collusion which also involved Comap from 31 January 1991 (recitals (142), (141)) including the period in question. The Commission notes that these competitors did not submit, or otherwise inform it, that during the relevant period and/or any time before or after, Comap did not participate or that it publicly announced to them its withdrawal from all the elements of the cartel. As a result, Comap's claims of discontinuation and prescription cannot be accepted.

(699) Flowflex also claims that the Commission did not prove its continuous participation in the infringement between 1989 and 1996. As a result, all events prior to that period are prescribed. The Commission points out that the above mentioned considerations developed with regard to Comap (see recital (698) also apply to Flowflex. In addition, the Commission possesses evidence showing Flowflex's participation **[*deleted*]**. This is supported by the concurring statements of Delta and IMI on Flowflex's participation (see recitals (135), (145)). These competitors did not submit, or otherwise inform the Commission, that during the relevant period and/or any time before or after, Flowflex did not participate or that it publicly announced to them its withdrawal from all the elements of the cartel. In view of the above evidence, Flowflex's unsubstantiated denial is not sufficient to justify its discontinuation claim. In addition, the Commission observes that while Flowflex does not deny its participation in the infringement from 1997 to August 1998, it did not produce any objective element justifying its alleged change of behaviour to participate in the infringement and explaining the differentiation between the periods of participation and non-participation. As a result, Flowflex's claims of discontinuation and prescription cannot be accepted.

5.5.2. Duration of the infringement in this case

(700) With regard to the starting dates, concerning the behaviour of fittings manufacturers on the UK market, the Commission will make its assessment from December 1988. The Commission possesses evidence indicating that some anti-competitive contacts took place prior to 1988[84] (see recital (134)). However, other evidence in the Commission's possession demonstrates on a solid and lasting basis that 1988 is the starting date of the infringement **[*deleted*]**. On this basis, the Commission considers that the collusive arrangements started in the United Kingdom in 1988. That being said, as the Commission's evidence does not specify the exact date or month, the Commission deems it appropriate to consider 31 December, the last day of the last month of the year 1988, as the starting date.

(701) As to the behaviour of fittings manufacturers at pan-European level, due to the loose form and exploratory nature of contacts before January 1991, the exact date on which the collusion between Delta, IMI and Comap started cannot be established with absolute certainty **[*deleted*]**. Thus, in this case and with regard to the pan-European aspect of the cartel, the Commission will limit its assessment under competition rules and the application of any fines to the period from 31 January 1991, date of the first meeting when the competitors agreed on prices and when the pan-European arrangements were evidenced as an organised and structured scheme **[*deleted*]**.

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[84] According to Delta, 1985 is the year during which the anti-competitive behaviour started in the United Kingdom.

(702) Concerning the end dates, the relevant date for determining the duration of an infringement does not depend on the date of the last contact between the competitors (meeting, call, fax, etc.). In this case, agreements were concluded for a certain period and were usually discussed at a later date or at the following meeting. The Commission also has evidence that certain instances of anti-competitive arrangements took place around the time of the inspections **[*deleted*]**. Under normal circumstances, the anti-competitive contacts can be deemed to have been terminated by the Commission inspections which, in this case, took place on 22 March 2001 and on 24 April 2001 pursuant to Article 14(3) of Regulation No 17. As will be described below, this holds true for some undertakings such as IMI, Pegler and Flowflex (see recitals (710), (716) and (723)) for which the Commission considers that the end date is the date of the Commission inspections. However, for some other undertakings, the Commission possesses evidence showing that they in fact continued their collusive practices for as much as 3 years after the inspections **[*deleted*]**. Indeed, some of the parties themselves acknowledge that they cannot exclude the possibility that some employees pursued anti-competitive arrangements even after the Commission's inspections **[*deleted*]**.

(703) Further concerning the end dates, Frabo asserts that contacts between competitors continued until April 2004. According to Frabo, for the end date of April 2004, the competitors were Comap, Oystertec/IBP and Frabo. In addition, evidence in the file shows that April 2004 is the end date as the suggested date of implementation of a price increase **[*deleted*]**. On this basis, the Commission considers that the end date of 1 April 2004 applies to Comap, Oystertec/IBP, Frabo and ***[clarification: a subsidiary of Aalberts]***[85].

5.5.2.1. Delta

(704) On the basis of the above considerations, the Delta Group participated in the infringement from 31 December 1988 to 23 November 2001. As demonstrated in recitals (580) and (581), the Commission possesses evidence that Delta continued having anti-competitive contacts even after the Commission's inspections. In these circumstances, the Commission considers that Delta's participation in the infringement lasted until 23 November 2001, the date on which Delta plc sold its fittings business to Oystertec plc **[*deleted*]**.

(705) Specifically with regard to the various companies of the Delta Group, they participated in the infringement as follows: DEHL (formerly known as Delta Fluid Controls Limited (25)) from July 1991 until November 2001; Druryway Samba Limited (formerly known as Conex Sanbra Limited (**[*deleted*]**) from December 1988 until November 2001; Aldway Nine Limited (formerly IBP Limited (28)) from July 1999 until November 2001; Supergrif SL (the successor of Accessorios de Tuberia de Cobre S.A. (**[*deleted*]**) from July 1991 until November 2001; International Building Products GmbH (for the activities of Bänninger GmbH with which it merged, from January

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85 The Commission has material showing that Presrac/Raccord Orléanais ***[clarification: a subsidiary of Aalberts]*** and Comap introduced new prices in implementation of an agreed price increase after April 2004, i.e. in September 2004 and July 2004 respectively. However, it cannot establish with certainty that these were the final dates as to the implementation since it cannot exclude the possibility that implementation occurred at an even later date. Thus, for all these undertakings, April 2004 will be considered the end date of their participation.

1991 until November 2001 (**[*deleted*]**) and for its own activities, from July 1991 until November 2001; International Building Products France SA from April 1998 until November 2001.

5.5.2.2. Oystertec

(706) With regard to Oystertec (now Advanced Fluid Connections plc), its subsidiary International Building Products France SA participated in the infringement from 23 November 2001 (see (32), (704)) until 1 April 2004. The Commission possesses evidence showing that even after Oystertec's acquisition of Delta's fittings business, anti-competitive contacts continued to take place and lasted until April 2004 **[*deleted*]**. In its leniency application, Oystertec submitted evidence showing its participation in anti-competitive contacts until 1 April 2004 **[*deleted*]**. It is worth repeating that during a meeting on 16 January 2001 between Delta, IMI and Comap, competitors expressly agreed that the collusive meetings would continue despite the fact that Delta's fittings business would be sold (see recital (566)). This statement evidences the spirit and the overall context within which competitors were operating and engaging in illegal contacts throughout the entire cartel period. On this basis, Oystertec participated in the arrangements well after the Commission's inspections, until April 2004 (see recitals (575)-(579)).

(707) Advanced Fluid Connections contests the duration of its participation in the cartel activities in that it only participated in the FNAS meetings infringement which lasted for 2 years and 5 months, assuming that the evidence submitted by Frabo is considered sufficient to establish its participation for this period. However, according to Advanced Fluid Connections, Frabo's leniency application is unsubstantiated and on this basis, its participation in the cartel lasted only one month **[*deleted*]**.

(708) With regard to the continuity and participation of Oystertec in the infringement, the Commission's considerations developed in recitals (564) - (568) and (575)-(579) above apply also here.

(709) Specifically with regard to the various companies of Advanced Fluid Connections, they participated in the infringement as follows: Advanced Fluid Connections (formerly known as Oystertec plc) participated in the infringement from 23 November 2001 until 1 April 2004 **[*deleted*]**. Both its subsidiaries, IBP Limited and International Building Products France SA, participated in the infringement from 23 November 2001 until 1 April 2004.

5.5.2.3. IMI

(710) With regard to IMI Group, it participated in the infringement from 31 December 1988 (see recital (559)) to 22 March 2001. The Commission possesses evidence showing that IMI continued participating in the arrangements until the Commission inspections **[*deleted*]**. In these circumstances, the Commission considers that IMI's participation in the infringement lasted until 22 March 2001.

(711) More particularly with regard to the various companies of the IMI Group, they participated in the infringement as follows: IMI plc from October 1996 to March 2001; Yorkshire Fittings Limited (formerly known as IMI Yorkshire Fittings Limited (12)) from December 1988 to March 2001; Aquatis France SAS (formerly known as

Raccord Orléanais SA and thereafter as Raccord Orléanais SAS (12)) from January 1991 to March 2001; Simplex Armaturen + Fittings GmbH & Co. KG (formerly known as R Woeste & Co Yorkshire GmbH and following its acquisition by Aalberts known as Woeste Yorkshire (12)) from January 1991 until March 2001; VSH Italia Srl (formerly known as IMI Componenti Termoidrosanitari Srl (12) and Woeste 'Yorkshire' Componenti S.r.l (12)) from March 1994 until March 2001; Eclipse NV from March 1993 until June 1998, the date that it ceased to exist.

5.5.2.4. Aalberts

(712) With regard to ***[clarification: a subsidiary of Aalberts]***, it participated in the infringement from 25 June 2003 until 1 April 2004 (see recital (570), footnote 85). Both its subsidiaries, Simplex Armaturen + Fittings GmbH & Co. KG (formerly known as R Woeste & Co Yorkshire GmbH and following its acquisition by Aalberts known as Woeste Yorkshire (12)) and Aquatis France SAS (formerly known as Raccord Orléanais SA and thereafter as Raccord Orléanais SAS (12)), participated in the infringement from 25 June 2003 until 1 April 2004, well after the Commission's inspections.

5.5.2.5. Comap

(713) With regard to Comap, although the Commission possesses evidence pointing to an earlier date of its participation **[*deleted*]**, considering the role, importance and involvement of Comap in the pan-European arrangements, it would base its assessment on the period starting on 31 January 1991, date of the first known "Super-EFMA" meeting **[*deleted*]**. Comap's participation ended on 1 April 2004 (see footnote 85). The Commission considers that Comap as a leading participant in the pan-European arrangements, actively participated and implemented arrangements at this level. The Commission possesses evidence showing that Comap continued participating in the arrangements well after the Commission's inspections **[*deleted*]**.

(714) As already set forth, Comap claims that for the period between 31 January 1991 and 8 December 1997 it did not engage in any anti-competitive behaviour and there is no proof that it continued after the inspections.

(715) With regard to Comap's participation in the infringement and its continuity, the Commission's considerations developed in recitals (547)-(551), (565)-(568) and (582)-(587), (697)-(698) above also apply here.

5.5.2.6. Pegler

(716) With regard to Pegler, it participated in the infringement from 31 December 1988 until 22 March 2001 **[*deleted*]**. Based on Delta's and IMI's submissions, Pegler is identified as one of the principal UK manufacturers that initiated discussions about price changes with the other two leading manufacturers, IMI and Delta. IMI also confirms Pegler's participation in the anti-competitive infringements. Pegler's starting date is based on a report found at Delta during the inspections which indicates that Pegler participated in anti-competitive arrangements in and around the latter part of 1988. However, as the report does not specify the exact date or month, the Commission deems it appropriate to consider 31 December, the last day of the last month of the year 1988, as the starting date. As to the end date, the Commission has evidence that the last anti-

competitive arrangement by Pegler took place on 14 August 2000 **[*deleted*]**. However, given that Pegler was initially one of the leading companies in the infringements concerning the behaviour in the United Kingdom, that it was one of the companies that regularly took part in the arrangements and their implementation, that it did not openly distance itself from the arrangements during the period between the arrangement of 14 August 2000 and the Commission's inspections and given the absence of any evidence to the contrary, the Commission is of the view that it was its inspections which put an end to Pegler's infringement. Accordingly, the infringement's end date for Pegler should be 22 March 2001 (recital (702)).

(717) As regards its starting date, Pegler argues that any infringement on its part can start only as of 29 October 1993. In its reply to the Statement of Objections and during the hearing, Pegler explained that until 20 January 1989, Pegler was not involved in fittings but another company with the same name was involved. Further, from 20 January 1989 until 29 October 1993, Pegler asserts that it acted as an agent for FHT Holdings Ltd., a Tomkins subsidiary, the latter being involved in fittings. After 29 October 1993, Pegler was involved in the fittings business on its own and not as an agent. Further, Tomkins contends that the Commission has failed to discharge its burden of proof in respect of Pegler's starting date in December 1988. According to Tomkins, the earliest possible date of Pegler's participation was late 1989.

(718) The Commission possesses evidence showing Pegler's participation as of 31 December 1988 **[*deleted*]**. The Commission observes that already as from that period, the anti-competitive contacts occurred between Pegler (and not another company) and its competitors. There is no indication that Pegler would have acted on behalf of any other company in these contacts. Rather, the evidence shows that **[*deleted*]**, Pegler's director as from 15 June 1980[86], presented himself to the competitors as Pegler's representative **[*deleted*].** The Commission also requested Pegler to submit any documentation showing Pegler's agency agreement with FHT Holdings Ltd. Pegler, however, was not able to produce any document as to this agreement for the relevant period.

(719) In addition, Tomkins' contentions on Pegler's starting date are in contradiction with the statements of IMI and Delta who have, incriminating themselves, admitted the history of collusion in the fittings industry and the collusion which also involved Pegler in connection with a number of occasions and as a leading participant in the UK arrangements **[*deleted*]**. Moreover, as already explained above, the Commission possesses evidence demonstrating Pegler's participation in the anti-competitive arrangements. This evidence stems from the Commission's inspections and consists of documents drafted and communicated at the time the various contacts between competitors took place (that is, documents drafted *in tempore non suspectu*) **[*deleted*]**.

(720) As regards the end date, Tomkins claims that Pegler's last date of involvement in the anti-competitive arrangements was on 14 August 2000 and not on 22 March 2001, when the Commission inspections took place. Tomkins argues that it is incumbent on the Commission to adduce reliable evidence showing the date of the last manifestation of the undertaking's involvement. Further, Tomkins states that in its statement

[86] This information is given by Pegler itself following the Commission's questions during the hearing.

[*deleted*] Delta acknowledged Pegler's diminished involvement in the anti-competitive discussions once **[*deleted*]** was appointed as Pegler's Managing Director.

(721) Tomkins's arguments are not supported by the facts of the case. As explained above in recital (702), the relevant date for determining the duration of an infringement does not depend on the date of the last contact between the competitors (meeting, call, fax, etc.). In this case, agreements were concluded for a certain period in the future and were usually discussed at a later date or at the following meeting. In this case, the Commission possesses evidence showing that Pegler participated before and after August 2000 **[*deleted*].** As to the period after August 2000, in his statement, **[*deleted*]** states that after 1998, the role of Pegler diminished in the UK price coordination process. According to **[*deleted*]**, *"The reason for this was essentially that Pegler had appointed a new managing director* **[*deleted*]**, *who refused to participate in the pricing discussions. Pegler nevertheless did not immediately stop participating in the meetings with IMI and IBP, although their role became gradually less"*. The Commission observes that: first, **[*deleted*]** does not state that Pegler's role stopped entirely and immediately after **[*deleted*]** became managing director and with regard to all anti-competitive arrangements. On the contrary, **[*deleted*]** expressly states that Pegler did not immediately stop; second, this alleged diminished role concerned only the UK and not the pan-European arrangements; third, on the basis of Pegler's reply to the Commission's Article 11 request for information, **[*deleted*]** was Pegler's managing director from June 2000 onwards and not from 1998. Based on this consideration and given the overall involvement of Pegler's participation in the cartel, it can be concluded that Pegler continued its participation until the Commission inspections in March 2001. Tomkins did not adduce any evidence demonstrating that Pegler publicly distanced itself from the cartel's activities and, at the same time, withdrew from cooperation with respect to all of its competitors.

5.5.2.7. Mueller

(722) With regard to Mueller Industries Inc, it participated in the infringement from 12 December 1991 **[*deleted*]** until January 1997 whilst its subsidiary Mueller Europe Limited participated in the infringement from February 1997 until 12 December 2000 **[*deleted*]**. As to the end date, the Commission notes that 12 December 2000 was Mueller's last involvement in the cartel, when it participated in a bilateral meeting with a competitor, before approaching the Commission and submitting its leniency application.

5.5.2.8. Flowflex

(723) With regard to Flowflex, it participated in the infringement from 31 December 1988 **[*deleted*]** until 22 March 2001. More particularly, Flowflex Components Limited participated in the infringement from December 1988 until March 2001 whereas Flowflex Holdings Limited participated in the infringement from April 1989 until March 2001 (see recital (41)). The starting date is based a report found at Delta during the inspections which indicates that Flowflex participated in anti-competitive arrangements in and around the latter part of 1988. However, as the report does not specify the exact date or month, the Commission deems it appropriate to consider 31 December, the last day of the last month of the year 1988, as the starting date. Concerning the end date, according to a report found at IMI concerning the second quarter of 2000, there was an understanding between IMI, IBP, Comap and Flowflex

for a price increase in respect of which Flowflex did not take any action, although it was expected amongst the competitors to introduce this increase **[*deleted*]**. The report does not mention the expected date for Flowflex's increase. As, however, the report concerns the second quarter of 2000, the last possible date for the implementation of the agreement was 30 June 2000. On this basis, the Commission's evidence points to 30 June 2000 as the last date of Flowflex's involvement. Nonetheless, given the considerations developed in recital (702), that Flowflex regularly took part in the initial arrangements in the United Kingdom which continued at pan-European level, that it continued taking part and implementing the pan-European and national arrangements, that on several occasions itself admitted its participation in the cartel arrangements **[*deleted*]**, that it did not openly distance itself from the arrangements during the period between the meeting of 30 June 2000 and the Commission's inspections and given the absence of any other evidence to the contrary, the Commission is of the view that its inspections put an end to Flowflex's infringement. Accordingly, the infringement's end date for Flowflex should be 22 March 2001 (recital (702)).

(724) Flowflex contests the duration of its involvement in the infringement. As already indicated in recital (562), Flowflex argues that the Commission did not prove its continuous participation between December 1988 and March 2001. As to the starting date, it claims that there is no evidence between 1989 and 1995 and that, for the period before, the Commission is time-barred. Concerning the end date, it denies that any involvement extended until March 2001, the last possible anti-competitive arrangement being in August 1998. In this connection, Flowflex explains that it did not attend any meetings from August 1998 onwards and did not implement any price increases from at least the fourth quarter of 1999.

(725) As regards the starting date, the Commission considerations in recital (699) also apply here. As regards the end date, the considerations in recital (723) also apply here. In this case, the Commission has evidence showing Flowflex's participation before[87] and after August 1998 **[*deleted*]**. This is supported by the concurring statements of Delta and IMI admitting the history of collusion in the fittings industry and the collusion which also involved Flowflex including the period in question. The Commission notes that these competitors did not submit, or otherwise inform it that during the relevant period and/or any time before or after, Flowflex did not participate or that it publicly announced to them its withdrawal from all the elements of the cartel. On the contrary, they provided evidence additional to their statements showing its participation (see for instance **[*deleted*]**). Based on the above evidence and considering Flowflex's overall involvement in the cartel, it can be concluded that Flowflex continued its participation until the Commission inspections in March 2001. Flowflex did not adduce any evidence demonstrating that it publicly distanced itself from the cartel's activities or that, at the same time withdrew from cooperation with respect to all of its competitors.

5.5.2.9. Frabo

(726) With regard to Frabo, it participated in the infringement from 30 July 1996 **[*deleted*]** until 1 April 2004 (recital (703)). The Commission has evidence showing Frabo's participation in the infringement at least from 30 July 1996 **[*deleted*]**. Evidence of

87 Flowflex does not deny its participation for the period before August 1998.

other contacts where Frabo is involved appears also in 1996 **[*deleted*]**. Frabo's participation may also be inferred from other instances occurring on 16-17 February 1996, that is, before 30 July 1996 **[*deleted*]**. However, this evidence does not establish with certainty Frabo's involvement as from these earlier dates. Consequently, Frabo's starting date is 30 July 1996. As to the end date, in its leniency application Frabo states that it ceased contacts with the competitors in April 2004. As a result, Frabo continued participating in the arrangements well after the Commission's inspections **[*deleted*]**. Consequently and as Frabo does not indicate the precise end date, the Commission considers that it participated in the infringement until 1 April 2004.

(727) Frabo contests its starting date submitting that its involvement started on 28 June 1999. According to Frabo, it was during that meeting that it agreed to cooperate with its competitors. In its reply to the Statement of Objections and in order to rebut the Commission's starting date (30 July 1996), Frabo submitted a restaurant bill showing that on 30 July 1996, **[*deleted*]** was at a restaurant in Bordolano, Italy. However, the Commission observes the following: first, the restaurant's receipt is dated 30 July 1996 at 00:31 hours. This only means that **[*deleted*]** was at that restaurant during the very late hours of 29 July and early hours of 30 July 1996 as opposed to the entire day and night of 30 July 1996; and second, this bill mentions only **[*deleted*]** name and it does not make any reference to **[*deleted*]** presence at that restaurant. On this basis, the Commission concludes that the evidence put forward by Frabo to rebut 30 July 1996 as its starting date is not sufficient. In addition, as shown above (726), the Commission possesses evidence showing Frabo's participation not only from 30 July 1996 **[*deleted*]** but also indicating contacts prior to that date **[*deleted*]**.

5.5.2.10.Sanha Kaimer

(728) With regard to Sanha Kaimer, the evidence points to its involvement at least from 30 July 1996 **[*deleted*]** until 22 March 2001. Additional evidence shows that during a meeting with competitors in October 2000, Sanha Kaimer itself indicated its participation in the anti-competitive arrangements from the beginning of the 1990s **[*deleted*]**. Regarding Sanha Kaimer's end date, the Commission considers that the last date of its involvement is 22 March 2001. The Commission notes that even though the last known involvement of Sanha Kaimer was scheduled to take place around March 2001 **[*deleted*]**, as confirmed by the parties, based on the same evidence **[*deleted*]**, it was not excluded that implementation would have occurred later. This evidence supports therefore the conclusion that the cartel agreements continued at least until 22 March 2001, when the Commission carried out its inspections.

(729) More particularly, Sanha Kaimer GmbH & Co KG participated in the infringement from July 1996 until March 2001 whereas Kaimer GmbH & Co Holdings KG and Sanha Italia srl participated in the infringement from January 1998 until March 2001 respectively **[*deleted*]**.

(730) As already described above, Sanha Kaimer contests the entire duration of its involvement. Based on the considerations and evidence **[*deleted*]**, Sanha Kaimer's arguments cannot be accepted.

5.5.2.11.Viegener

(731) With regard to Viegener, its participation started on 12 December 1991 **[*deleted*]** and ended on 22 March 2001 **[*deleted*]**.

(732) Viegener claims that its participation did not last for the entire period between December 1991 and March 2001 but was significantly shorter. In its reply to the Statement of Objections Viegener explicitly admits its involvement only after November 2000.

(733) In this case, the Commission has evidence showing Viegener's participation as early as December 1991 **[*deleted*]** and some evidence even indicates participation from July 1991 **[*deleted*]** and continuously throughout the lifetime of the cartel until March 2001 **[*deleted*]**. This is supported by the concurring statements of Delta, IMI and Mueller admitting the history of collusion in the fittings industry and the collusion which also involved Viegener. The Commission notes that these competitors did not submit or otherwise inform it that during the relevant period and/or any time before or after, Viegener did not participate or that it publicly announced to them its withdrawal from all the elements of the cartel. On the contrary, they provided evidence additional to their statements showing its participation. Based on the evidence available and considering Viegener's overall involvement in the cartel, it can be deduced that Viegener continued its participation until the Commission inspections in March 2001. Viegener did not adduce any evidence demonstrating that it publicly distanced itself from the cartel's activities and at the same time withdrew from cooperation with respect to all of its competitors. On the contrary, the Commission notes that Viegener itself does not deny its participation for a certain period. In this connection, Viegener did not produce any objective element justifying a change of behaviour showing that it participated for a shorter period and explaining the differentiation between the periods of participation and non-participation. In view of all of the above, Viegener's claim cannot be accepted.

5.5.3. Conclusions on the addressees and the duration in this case

(734) Based on the foregoing, it has been established that the following companies have infringed Article 81 of the Treaty and Article 53 of the EEA Agreement as follows:

i) ***[clarification: a subsidiary of Aalberts]***, from 25 June 2003 until 1 April 2004 (9 months)

ii) Aquatis France SAS, from 31 January 1991 to 22 March 2001 (IMI) (10 years and 1 month) and 25 June 2003 until 1 April 2004 (Aalberts) (9 months)

iii) Simplex Armaturen + Fittings GmbH & Co. KG, from 31 January 1991 until 22 March 2001 (IMI) (10 years and 1 month) and 25 June 2003 until 1 April 2004 (Aalberts) (9 months)

iv) VSH Italia S.r.l, from 15 March 1994 until 22 March 2001 (IMI) (7 years)

v) Yorkshire Fittings Limited, from 31 December 1988 to 22 March 2001 (IMI) (12 years and 2 months)

vi) Advanced Fluid Connections plc, from 23 November 2001 until 1 April 2004 (2 years, 4 months)

vii) IBP Limited, from 23 November 2001 until 1 April 2004 (2 years, 4 months)

viii) International Building Products France SA, from 4 April 1998 until 23 November 2001 (Delta) (3 years, 7 months) and from 23 November 2001 until 1 April 2004 (Advanced Fluid Connections) (2 years, 4 months)

ix) International Building Products GmbH, (for the activities of Bänninger GmbH with which it merged, from 31 January 1991 until 23 November 2001) and for its own activities, from 22 July 1991 until 23 November 2001 (10 years, 9 months)

x) Delta plc, from 31 December 1988 until 23 November 2001 (12 years, 10 months)

xi) Aldway Nine Limited, from 28 July 1999 until 23 November 2001 (Delta) (2 years, 3 months)

xii) Delta Engineering Holdings Limited, from 31 December 1988 until 23 November 2001 (12 years, 10 months) (participating directly from 22 July 1991 until 23 November 2001 (10 years, 4 months))

xiii) Druryway Samba Limited, from 31 December 1988 until 23 November 2001 (Delta) (12 years, 10 months)

xiv) Flowflex Holdings Ltd, from 1 April 1989 until 22 March 2001 (11 years, 11 months)

xv) Flowflex Components Ltd, from 31 December 1988 until 22 March 2001 (12 years, 2 months)

xvi) FRA.BO S.p.A, from 30 July 1996 until 1 April 2004 (7 years, 8 months)

xvii) IMI plc, from 31 December 1988 to 22 March 2001 (12 years, 2 months) (participating directly from 1 October 1996 to 22 March 2001) (4 years, 5 months)

xviii) IMI Kynoch Ltd, from 31 December 1988 to 22 March 2001 (12 years, 2 months)

xix) Legris Industries SA, from 31 January 1991 to 1 April 2004 (13 years, 2 months)

xx) Comap SA, from 31 January 1991 to 1 April 2004 (13 years, 2 months)

xxi) Mueller Industries Inc., from 12 December 1991 until 12 December 2000 (9 years)

xxii) Mueller Europe Ltd., from 28 February 1997 until 12 December 2000 (3 years, 9 months)

xxiii) WTC Holding Company, Inc, from 28 February 1997 until 12 December 2000 (3 years, 9 months)

xxiv) Pegler Ltd, from 31 December 1988 until 22 March 2001(12 years, 2 months)

xxv) SANHA Kaimer GmbH & Co. KG, from 30 July 1996 until 22 March 2001 (4 years, 7 months)

xxvi) Kaimer GmbH & Co. Holdings KG, from 30 July 1996 until 22 March 2001 (4 years, 7 months) (participating directly from 1 January 1998 until 22 March 2001) (3 years, 2 months)

xxvii) Sanha Italia srl, from 1 January 1998 until 22 March 2001 (3 years, 2 months)

xxviii) Supergrif SL, under Delta's ownership, from 22 July 1991 until 23 November 2001 (10 years, 4 months)

xxix) Tomkins plc, from 31 December 1988 until 22 March 2001 (12 years, 2 months)

xxx) Viega GmbH & Co. KG, from 12 December 1991 until 22 March 2001 (9 years, 3 months).

5.6. Remedies

5.6.1. Article 7 of Regulation (EC) No 1/2003

(735) Where the Commission finds that there is an infringement of Article 81 of the Treaty and Article 53 of the EEA Agreement it may require the undertakings concerned to bring such infringement to an end in accordance with Article 7 of Regulation (EC) No 1/2003.

(736) While it appears from the facts that in all likelihood the infringement effectively ended by April 2004, it is necessary to ensure with absolute certainty that the infringement has ceased.

(737) It is therefore necessary for the Commission to require the undertakings to which this Decision is addressed to bring the infringement to an end (if they have not already done so) and henceforth to refrain from any agreement, concerted practice or decision of an association which might have the same or a similar object or effect.

(738) The prohibition applies to all secret meetings and multilateral or bilateral contacts between competitors aimed at restricting competition between them or enabling them to concert their market behaviour.

5.6.2. Article 15(2) of Regulation No 17 and Article 23(2) of Regulation (EC) No 1/2003

(739) Under Article 15(2) of Regulation No 17 and Article 23(2)(a) of Regulation No 1/2003[88], the Commission may by decision impose fines on undertakings and associations of undertakings where, either intentionally or negligently they infringe Article 81 of the Treaty and/or Article 53(1) of the EEA Agreement. For each

[88] Under Article 5 of Council Regulation (EC) No 2894/94 of 28 November 1994 concerning arrangements for implementing the Agreement on the European Economic Area *"the Community rules giving effect to the principles set out in Articles 85 and 86 [now Articles 81 and 82] of the EC Treaty […] shall apply mutatis mutandis"*. (OJ L 305, 30.11.1994, p.6).

undertaking and association of undertakings participating in the infringement, the fine must not exceed 10% of its total turnover in the preceding business year.

(740) In fixing the amount of any fine the Commission must have regard to all relevant circumstances and particularly the gravity and duration of the infringement.

(741) In relation to each undertaking, the fine imposed for each infringement should reflect any aggravating or attenuating circumstances.

(742) The Commission proposes to set fines at a level sufficient to ensure deterrence.

5.7. The basic amount of the fines

(743) The basic amount of the fine is determined according to the gravity and duration of the infringement.

5.7.1. Gravity

(744) In assessing the gravity of the infringement, the Commission takes account of its nature, its actual impact on the market, where this can be measured, and the size of the relevant geographic market.

5.7.1.1. Nature of the infringement

(745) The infringement in this case consisted primarily of secret collusion between cartel members to fix prices in the EEA, supported by the exchange of confidential information. These kinds of horizontal restrictions are, by their very nature, among the most serious violations of Article 81 of the Treaty and Article 53 of the EEA Agreement.

5.7.1.2. The actual impact of the infringement

(746) In its reply to the Statement of Objections, Comap argued that its prices over the years were the result of the evolution of the price of copper and not of the anti-competitive arrangements.

(747) At the outset, it should be mentioned that the impact of the infringement is assessed only if it is measurable[89]. Increases in raw material costs and other factors may cause industry-wide increases in prices, but it has been undoubtedly established by the facts in this case that the price increases were preceded by contacts between the producers who agreed on simultaneous or sequential price increases. Whilst it is not possible to measure precisely to what extent prices would have changed in the absence of collusion, what can be said, however, is that with regard to the EEA, the cartel arrangements were implemented **[*deleted*].** There are several examples in the file mentioning the success and the effective implementation of a price increase **[*deleted*].** The Commission also considers that the impact of a cartel is not limited to prices, especially where the object of the anti-competitive behaviour also concerns customer allocation and thus stabilisation of market shares. The evidence available and the

[89] Joined Cases T-236/01, T-239/01, T-244/01 to T-246/01, T-251/01 and T-252/01 *Tokai a.o. v Commission* [2004] ECR II-1181, paragraph 207.

leniency applications testify to this customer allocation throughout the period of the infringement **[*deleted*].**

(748) Further, while Mueller, IMI, Delta and Frabo admit the existence of the anti-competitive agreements and practices described in recital (619), IMI, Delta and Frabo have advanced defensive arguments pertaining to the impact on the market. These arguments relate to: participation in the agreement in order not to lose customers **[*deleted*]**, non-implementation of price increases by Frabo by not applying them or by granting extra discounts in order to apply the old prices **[*deleted*]**, limited implementation as regards certain practices (recital (161)), deviation from agreements (recital (153)), aiming to collect as much information as possible without coordination **[*deleted*]** or just exchanging information without coordination on prices **[*deleted*]**, the wholesalers' purchasing power and strong inflation or fluctuations in the price of copper. Viega also argues that, as far as it is concerned, it was not involved in the hard core of the cartel, the infringement was, at the most, serious and did not have an impact on the market.

(749) As to the impact of the infringement, the Commission considers that on the basis of the elements set forth above, it has proven that the anti-competitive arrangements were implemented (see also recital (747)). This conclusion is not weakened by the fact that on some occasions certain parties did not follow the intended trend.

(750) Furthermore, it must be emphasised that irrespective of the Commission's finding that the infringement had a restrictive effect, the fact that it had a restrictive object which was intrinsically very serious must, in any event, be a more significant factor in the Commission's categorisation of the infringement as very serious than factors relating to its effects. The effect which an agreement or concerted practice may have had on normal competition is not a conclusive criterion in assessing the proper amount of the fine. As confirmed by case law, the nature of the infringement, where it has a clear anti-competitive object, may be more significant than those relating to its effects, "*particularly where they relate to infringements which are intrinsically serious, such as price-fixing and market-sharing*"[90].

(751) Based on the foregoing, the Commission's conclusion is that the arrangements, in so far as they pertained to the EEA market, were implemented and did have an impact on the market even where this impact was weaker or lasted for less time than was intended by some of the participants. Consequently, the gravity of the infringement cannot be assessed at a lesser level than very serious in this regard.

5.7.1.3. The size of the relevant geographic market

(752) The Commission takes into account the territory affected by the cartel, that is to say the geographic extent of the copper fittings business.

(753) On an overall basis, the main part of the fittings cartel was a European cartel. The infringement covered virtually the whole of the common market and, following its creation, the EEA territory. However, as explained in recital (559), the Commission

90 Cases T-241/01 *SAS v Commission*, 18 July 2005, in particular paragraphs 84 and 85; T-49/02 to T-51/02, *Brasserie nationale and Others.. v Commission*, 27 July 2005, paragraphs 178 and 179; T-38/02, *Groupe Danone v Commission*, 25 October 2005, in particular paragraphs 147, 148 and 152.

considers that the anti-competitive behaviour at pan-European level is the natural continuation of the UK manufacturers' anti-competitive behaviour from December 1988 until January 1991. For that period, geographically the cartel covered the UK market and it had a more limited geographic coverage. As indicated below (see recital (775)), the Commission takes that into account in calculating the starting amount of the fine.

(754) Consequently, as regards Delta, IMI, Pegler and Flowflex, as to the period starting on 31 December 1988, the Commission bases its assessment on the fact that the cartel covered the UK market and, as to the period starting on 31 January 1991, date of the first known "Super-EFMA" meeting **[*deleted*]**, on the fact that these undertakings expanded, participated and implemented arrangements at pan-European level (see recitals (559), (560)).

5.7.1.4. Conclusion on the gravity of the infringement

(755) Taking into account the nature of the infringement committed and the fact that it covered the whole of the common market and, following its creation, most of the EEA, the Commission considers that the addressees have committed a very serious infringement of Article 81 of the Treaty and Article 53 of the EEA Agreement. In the Commission's view, these factors are such that the infringement must be regarded as very serious, even if the actual impact of the infringement cannot be measured.

5.7.2. Differential treatment

(756) Within the category of very serious infringements, the scale of likely fines makes it possible to apply differential treatment to undertakings in order to take account of the effective economic capacity of the offenders to cause significant damage to competition, as well as to set the fine at a level which ensures that it has sufficient deterrent effect. The Commission notes that this exercise seems particularly necessary where there is considerable disparity in the size of the undertakings participating in the infringement. For this purpose, the undertakings concerned can be divided into different categories according to their relative importance in the market concerned, subject to adjustment where appropriate to take account of other factors and especially the need to ensure effective deterrence.

(757) In the circumstances of this case, which involves several undertakings, it will be necessary, in setting the basic amount of the fines, to take account of the specific weight and, therefore, the real impact of the offending conduct of each undertaking on competition. In this context, the specific weight is distinguishable from the importance of the undertaking in question in terms of its size or economic power. The proportion of turnover derived from the goods in respect of which the infringement was committed is likely to give a fair indication of the scale of the infringement on the relevant market[91]. Whilst an undertaking's market shares (based on turnover or sales volume) cannot be a decisive factor in concluding that an undertaking belongs to a powerful economic entity, they are nevertheless relevant in determining the influence which it may exert on the market affected by the infringement[92]. Moreover, the market

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91 Case T-220/00 *Cheil Jedang Corp. v Commission* [2003] ECR II-2473, paragraph 91.

92 Case C-185/95 P *Baustahlgewebe* v *Commission* [1998] ECR I-8417, paragraph 139.

share of any given party to the cartel also gives an indication of its contribution to the effectiveness of the cartel as a whole or, conversely, of the instability which would have affected the cartel had it not participated.

(758) As the basis for determining the relative importance of the undertakings in this infringement, the Commission considers it appropriate to take into account the respective turnover of each undertaking with the product concerned. The individual weight of the participants in the infringement will be compared on the basis of their product market shares in the EEA for all the undertakings, in the year 2000 except for Aalberts and Advanced Fluid Connections, for which the year 2003 will be used. The Commission chose 2000 because it is the most recent year of the infringement in which most undertakings to which this decision is addressed were active in the cartel except the two undertakings mentioned.

(759) In setting the starting amounts, the Commission also takes into account the significance of the fittings sector in the EEA. The estimated value of the relevant fittings sales in the EEA in 2000 and 2003, the last full years of the infringement, were approximately EUR 536 million and EUR 526 million respectively.

(760) Flowflex submits that in terms of size as compared to the other competitors, it is the smallest undertaking. Although it accepts the qualification of the infringement as very serious, it argues that the fine should be applied in a flexible, proportionate and non-discriminatory manner for an SME (small and medium-sized enterprise) such as Flowflex.

(761) In furtherance of this argument, Frabo believes that, unlike other neighbouring sectors such as copper tubes, the fittings industry is characterised by a large number of SMEs, which is a fact that the Commission should take into account in determining the starting amount. Like Flowflex, Frabo argues that compared to all other participant companies, it is the smallest in size and unlike other competitors, it is a family-owned company only active in fittings. On this basis, the differential between the starting amount for the first group and Frabo should be larger than a simple correlation between what their respective market shares might suggest. The same type of argument is also put forward by Tomkins on behalf of Pegler. Finally, according to Frabo, in determining the groupings, the Commission should take into account the different types of fittings in which each company is involved.

(762) Pegler contends that any fine must be strictly limited to Pegler's worldwide turnover and not to Tomkins, its parent company during the infringement. In addition, Tomkins argues for Pegler that the Commission should take into account Pegler's market share (well below 1%) and the fact that it had sales only in two EEA countries (the United Kingdom and Portugal).

(763) With regard to the argument concerning small and medium undertakings, the Commission considers that in accordance with the considerations set out in recitals (756) (757), the size of each undertaking and thus its qualification an SME is taken into account when the starting amount is calculated. As to the differential between the groupings in particular on account of the various types of fittings involved, as explained above (see recitals (633), (634)), the market covered by a Commission decision is defined by the cartel arrangements and activities. The investigation showed that during the lifetime of the cartel in this case all kinds and sizes of copper and

copper alloy fittings were part of the anticompetitive discussions. As to the various types of fittings in which each undertaking is involved, these are reflected in each undertaking's turnover of the product concerned and, as such they are taken into account.

(764) With regard to the issue of territorial scope, it is important to note that the cartel covered the whole of the Community and, following its creation, the EEA. From 1988, the cartel focused on the UK market and from 1991 on pan-European scale covering virtually the whole of the EEA market. The competitors' market shares in terms of volume and value covered approximately 95% of the market. In this context, the Commission takes into account the territory affected by the cartel, that is to say the geographic extent of the fittings business as a whole and not the territorial scope of the activity of each individual undertaking. Apart from these considerations and in respect of Pegler's argument on its limited market share and presence in the market (the United Kingdom, Portugal), it is important to note that the Commission does indeed take into account these points. As the starting amount of the fine is based on the undertakings' EEA turnover, Pegler's limited geographic presence is already reflected in this lower EEA-wide turnover/market share.

(765) On this basis, the Commission considers that the appropriate starting amounts for the following undertakings are respectively as follows:

- Aalberts Industries NV: EUR 60 million
- Advanced Fluid Connections plc: EUR 36 million
- Delta plc: EUR 46 million
- Flowflex Holdings Ltd: EUR 5.5 million
- FRA.BO S.p.A: EUR 5.5 million
- IMI plc: EUR 46 million
- Legris Industries SA: EUR 14.25 million
- Mueller Industries Inc.: EUR 5.5 million
- Kaimer GmbH & Co. Holdings KG: EUR 5.5 million
- Tomkins plc: EUR 2 million
- Viega GmbH & Co. KG: EUR 60 million

5.7.3. Sufficient deterrence

(766) Within the category of very serious infringements, and in order to ensure that the fines imposed have a sufficient deterrent effect and take into consideration the fact that large undertakings have a legal and economic knowledge and infrastructures which enable them more easily to recognise the illegal nature of their conduct, the Commission may adjust the starting amount of the fine. For this purpose, total turnover is the figure that gives an indication of the size of the undertaking and of its economic power, which

must be known in order to assess whether a fine will deter it[93]. As a result, in this case, the Commission intends to take into account the size and the overall resources of each undertaking.

(767) The Court of First Instance has approved the Commission's approach of applying a multiplying factor. In a recent judgement, it stated that insofar as the amount of fine "*was further multiplied by 2.5 in order to take into account the applicant's position as a European group, that weighting was not applied on the basis of the applicant's total turnover*" and that "*the multiplier of 2.5 has no proportional link with the difference between the applicant's and the other undertakings' total turnover*"[94].

(768) Delta claims that when the Commission contemplates applying a multiplier for deterrence purposes, merely a sentence in the Statement of Objections does not respect the rights of defence and the Commission must rather identify the specific reasons for the application of such multiplier. Further, Delta submits that no multiplier for deterrence should be applied in its case since, as the parent company i) it was not involved in the infringement; ii) it did not exercise decisive influence over the undertakings involved; iii) it is not a big multinational company; iv) other undertakings are several times larger; v) it divested the fittings business and is not involved any longer and vi) there is no possibility that it will be a repeated offender (recidivism).

(769) Tomkins argues that there is no justification for the Commission imposing any deterrence uplift on Tomkins in respect of Pegler's alleged infringement, because: first, Tomkins turnover for the year 2005 was only GBP 3 182.4 million (EUR 4 635 million),[95] which is below the threshold applied by the Commission in its recent decisions concerning the uplifts for deterrence; and, second, there is not considerable disparity in the size of the undertakings involved in the infringement.

(770) As regards the rights of defence argument, the Court of First Instance held that in determining the amount of the increase in the fine due to the application of a certain multiplier "*the essential procedural requirement to state reasons is satisfied where the Commission sets out in its decision the factors which enabled it to measure the gravity and duration of the infringement and it is not required to set out a more detailed account or the figures relating to the method of calculating the fine*"[96]. In respect of Delta's arguments of no involvement in the infringement and no exercise of decisive influence on its subsidiaries, the considerations developed in recital (659) also apply here. As to the point that other undertakings are larger, for the purpose of deterrence, the size of each undertaking is taken into account when the multiplier is established. In that regard, it should be kept in mind and as the Court of First Instance held "*the multiplier of […] has no proportional link with the difference between the applicant's and the other undertakings' total turnover*"[97] (see also recital (767)). As to the points on divestiture and repeated infringement, the Commission rejects Delta's claims. An undertaking's divestiture of a given business does not absolve the undertaking of its

93 *Cheil Jedang Corp. v Commission*, paragraphs 83 and 96.
94 Case T-31/99 *ABB Asea Brown Boveri Ltd. v Commission* [2002] ECR II-1881, paragraph 155.
95 Exchange rate 2005: 0,6865 GPB = 1 Euro, (OJ C 1, 4.1.2006, p.2).
96 Case T-15/02 *BASF v Commission* [2006], not yet published, paragraph 213.
97 Case T-31/99 *ABB Asea Brown Boveri Ltd. v Commission* [2002] ECR II-1881, paragraph 155.

liability for past infringements and certainly does not prevent it from committing cartel infringements in the future in the same or a different business area.

(771) As to Tomkins' claims, the Commission notes that its turnover of 4 635 million Euros justifies an increase for deterrence. In respect to the argument of absence of disparity in the size of the undertakings involved, it does not hold true since Tomkins, being the largest undertaking, is of significantly greater size than the others. Accordingly, the Commission considers it appropriate to multiply the fine for Tomkins by 1.25.

(772) As for the other undertakings, in view of their total turnover in 2000 and 2003, the Commission considers that it is not appropriate to multiply the fine.

(773) As a result, the starting amount of the fine to be imposed on Tomkins plc is EUR 2.5 million.

5.7.4. Increase for duration

(774) As discussed in recitals (700)-(733), the infringement involved the following companies, Aalberts Industries NV, Advanced Fluid Connections plc, Delta plc, Flowflex Holdings Ltd, FRA.BO S.p.A, IMI plc, Legris Industries SA, Mueller Industries Inc., Kaimer GmbH & Co. Holdings KG, Tomkins plc, Viega GmbH & Co. KG, with different companies involved for different periods, and started at the latest on 31 December 1988 and continued at least until April 2004.

(775) The great majority of these undertakings committed an infringement of long duration. The current policy of the Commission for cartel cases is to increase the fines by 10% per year for an infringement of long duration. These cases are further increased by 5% for any remaining period of 6 months or more but less than a year. As already indicated above (see recital (753)), in calculating the starting amount of the fine, the Commission takes into account that as from December 1988 and until January 1991, the cartel covered the UK market and it had a more limited geographic coverage. To that end, for the period between 31 December 1988 and 31 January 1991, the Commission considers that the fine is to be increased by 5% per year (instead of 10%). The undertakings to which this reduction applies are: Yorkshire Fittings Limited, Delta plc, Druryway Samba Limited, Flowflex Holdings Ltd, Flowflex Components Ltd, IMI plc, IMI Kynoch Ltd, Pegler Ltd, Tomkins plc.

(776) The addressee companies committed a continuous infringement for the respective duration as indicated in recital (734).

5.7.5. Conclusion on the basic amounts

(777) The basic amounts of the fines to be imposed on each undertaking are therefore as follows:

- Aalberts Industries NV: EUR 63 million
- Advanced Fluid Connections plc: EUR 43.2 million
- Delta plc: EUR 98.9 million
- Flowflex Holdings Ltd: EUR 11.5 million

– FRA.BO S.p.A: EUR 9.6 million

– IMI plc: EUR 96.6 million

– Legris Industries SA: EUR 32.7 million

– Mueller Industries Inc.: EUR 10.4 million

– Kaimer GmbH & Co. Holdings KG: EUR 7.9 million

– Tomkins plc: EUR 5.2 million

– Viega GmbH & Co. KG: EUR 114 million

5.8. Aggravating and attenuating circumstances

5.8.1. Aggravating circumstances

(778) The Commission has found aggravating factors in this case.

5.8.1.1. Participation in the infringement after the inspections

(779) In recitals (564)-(590) above, it was established that Oystertec (now Advanced Fluid Connections), Comap, Frabo and to a lesser extent Delta did not terminate the infringement immediately after the inspections. These undertakings participated in the infringement after them. As far as Aalberts is concerned, it is established that ***[clarification: a subsidiary of Aalberts]*** participated in the infringement after the inspections between June 2003 and April 2004 (see in particular recital (570)). As far as cartel cases are concerned, the Commission considers this behaviour a serious disregard of the competition rules. When the Commission conducts an inspection in a cartel case, it officially alerts the undertakings concerned that competition rules may have been infringed. In the overwhelming majority of cartel cases, experience has shown that the inspections spur the undertakings to immediately put an end to the infringement while awaiting the Commission's decision in the case. Therefore, for the period after the inspections, undertakings should normally stop any infringing behaviour. In this case, there is abundant evidence that the above mentioned undertakings were aware of the Commission's inspections. Nonetheless, these undertakings disregarded the inspections and certain of them continued the infringement for as much as three years thereafter, until April 2004.

(780) The fact that these undertakings participated in the infringement even though they were informed that the Commission had launched an investigation targeted at that very infringement must lead to an increase of the fine, representing a sanction for the additional unlawful energy which it expended in continuing the infringement.

(781) In recitals (564)-(590), the Commission put forward evidence and considerations which establish that all the companies mentioned in recital (779) participated in the infringement after the inspections through their employees and none of the companies publicly distanced themselves or withdrew from all elements of the cartel. In these circumstances, the Commission considers that the requirement to publicly distance oneself from all elements of the cartel becomes even more pronounced after the inspections. As a result, where an undertaking is aware of the Commission's

inspections, it has an active responsibility to examine the activities of its employees for possible breaches of antitrust rules and in such cases, to instruct them to desist immediately from participating in the cartel and all its elements as well as to stop such behaviour in the future. In this case, the Commission fails to see the alleged effectiveness of the compliance programmes vis-à-vis the undertakings' employees who, despite the inspections and the compliance programmes, continued committing the infringement after them. Silent denunciation or the mere introduction of compliance programmes is not sufficient means to stop the anti-competitive behaviour.

(782) As regards Aalberts, it is explained that ***[clarification: a subsidiary of Aalberts]*** participated in the infringement after the inspections during the period between June 2003 and April 2004 (see recital (570)). Despite the fact that ***[clarification: a subsidiary of Aalberts]*** participated as from June 2003, the Commission considers that this aggravating circumstance should equally apply to Aalberts. The Commission bases its reasoning on the following considerations: first, as explained above, Aalberts was fully aware of the inspections (see recital (570)), since the acquisition of IMI's fittings business by Aalberts took place in August 2002 which was after the inspections. In addition, a number of press releases, financial and trade press reports concerning the inspections and investigation were issued which, considering Aalberts's involvement in the fittings sector, put the company on notice; second, as already elaborated (see recital (570)), there is evidence that **[*deleted*]** participated in anti-competitive arrangements before and after the inspections **[*deleted*]**. **[*deleted*]** were fully aware of the inspections and their consequences in terms of competition rules. These individuals witnessed IMI's introduction of an alleged "state of the art" compliance programme which was continued by ***[clarification: a subsidiary of Aalberts]*** and were allegedly instructed by both companies to follow this programme. Nevertheless, as evidenced above and despite the compliance programme, they participated in the infringement after the inspections. Aalberts is and should be responsible for them since it is individuals who participate in the various anti-competitive arrangements and commit the infringement of competition rules and not the undertakings themselves; and third, as elaborated in recital (781), considering that Aalberts was aware of IMI's leniency application (see recital (570)), it was on notice about the infringement. It had, thus, an active responsibility to examine the activities of **[*deleted*]** employees for possible breaches of antitrust rules and in such cases, to instruct them to stop such behaviour in the future and/or possibly to apply disciplinary measures.

(783) For these reasons, this aggravating circumstance also applies to Aalberts.

(784) As far as Frabo is concerned, the Commission recognises that its contribution in this regard was particularly decisive. Frabo was the first company to disclose the anti-competitive behaviour after the inspections and provided the link for the years before and after the inspections. Thus, the Commission was able to establish continuity between the two periods, which could not have been proven without Frabo's contribution. Having regard to this circumstance and in keeping with the principle of fairness, Frabo should not be penalised for disclosing this post-inspection arrangement. Thus, Frabo should be exempted from this aggravating factor.

(785) Against this background and taking into account the particular context of this case, this aggravating circumstance justifies an increase of 60 % in the basic amount of the fine to be imposed on Aalberts, Oystertec, Comap and Delta.

5.8.1.2. Misleading information

(786) In its reply to the Statement of Objections, Advanced Fluid Connections provided the Commission with misleading information. More specifically, in its reply to the Statement of Objections, Advanced Fluid Connections annexed a statement signed by **[*deleted*]** on 29 November 2005. In this statement **[*deleted*]** reacts, amongst others, to Frabo's leniency application where it provided information about telephone contacts between **[*deleted*]**. These contacts covered the period between 2001 and 2005. **[*deleted*]** states that he understands *"that* **[*deleted*]** *claims that she has had telephone contact with me in the period 2001-2005. This is incorrect. I am confident that the only contact I have had with her since about April 2001, when Frabo stopped attending the copper campaign meetings, has been at trade exhibitions. Even then, the only specific instance I can recall is at the Mostra Convegno exhibition in about March 2004. During 2004, IBP Italy supplied some fittings to Frabo, but this was done, I believe, on normal trading terms and I do not recall having any direct communication with Frabo regarding that."* In its reply to the Statement of Objections, Frabo provided several telephone bills showing the mobile-telephone calls placed by **[*deleted*]** during the period 2002-2004. Frabo also provided **[*deleted*]** business card with his mobile phone number handwritten. The telephone bills indicate that between 10 April 2002 and 17 July 2003, **[*deleted*]** contacted **[*deleted*]** via mobile phone at least 28 times (This does not include calls which **[*deleted*]** might have placed via fixed line to **[*deleted*]** and the calls which **[*deleted*]** might have placed to **[*deleted*]**).

(787) The Commission submitted these telephone bills to Advanced Fluid Connections for comments. Advanced Fluid Connections explained the following: *"[Advanced Fluid Connections' legal representative] has asked* **[*deleted*]** *of IBP Banninger Italia srl about his recollection of these telephone calls. He is unable to confirm the content of them but believes they were innocent and sets out legitimate reasons why the calls could have taken place."* Then, in a modified version of his first statement **[*deleted*]** explains that he understands *"that* **[*deleted*]** *claims that she has had telephone contact with me in the periods 2001 to April 2004. However, the telephone records which she has supplied to the Commission only cover the period 10 April 2002 – 17 July 2003. […] I do not recall these calls. I receive many calls each day and these represent only a small fraction of them. I believe the reason I cannot recall them, assuming the records are accurate, is because they were innocent and of no particular consequence. […]".*

(788) As to **[*deleted*]** point that *"during 2004, IBP Italy supplied some fittings to Frabo, but this was done, I believe, on normal trading terms and I do not recall having any direct communication with Frabo regarding that"*, Frabo submitted evidence showing that it purchased from IBP only between July 2001 and September 2002 and that no further orders were placed by Frabo after September 2002. As to Frabo's supplies to IBP, Frabo found the record of only one order placed by IBP during the period 2001-2004 in July 2002. As regards IBP Italy's supplies to Frabo, **[*deleted*]** again amends his statement stating that *"in 2003, I decided to stop supplying Frabo with product. This was because by supplying them with these products Frabo had a complete product*

range. […] During 2001-2002 (not 2004 as I originally thought), IBP Italy supplied some fittings to Frabo, but this was done, I believe, on normal commercial terms." In the light of the above, it is shown that **[*deleted*]** amended and further amended his initial statement ending up by admitting that he did indeed have the contacts that he so confidently denied at first having with **[*deleted*]**.

(789) On this basis, the Commission considers that Advanced Fluid Connections misled the Commission, where, taken together, there is a consistent body of indicia and evidence showing Oystertec's involvement in the infringement after the inspections and until April 2004.

(790) On the foregoing, the individual responsibility of Advanced Fluid Connections is aggravated by its above mentioned behaviour. This aggravating circumstance justifies an increase of 50 % in the basic amount of the fine to be imposed on Advanced Fluid Connections.

5.8.2. Attenuating circumstances

5.8.2.1. Passive and/or minor role

(791) The great majority of the undertakings invoked attenuating circumstances for their minor and/or passive role in the cartel.

(792) In general, the Commission admits that an exclusively passive or "follow-my-leader" role played by an undertaking in the infringement may, if established, constitute an attenuating circumstance. A passive role implies that the undertaking will adopt a 'low profile', that is to say not actively participate in the creation of any anti-competitive agreements[98]. The factors capable of revealing such a role within a cartel include the significantly more sporadic nature of the undertaking's participation in the meetings by comparison with the ordinary members of the cartel,[99] and also the existence of express declarations to that effect made by representatives of other undertakings which participated in the infringement[100]. In any event, it is necessary to take account of all the relevant circumstances in each particular case.

(793) Aalberts submits that as far as it is concerned, given the very short duration and the limited scope (FNAS) of its infringement, its role compared to the overall infringement is minor. In the view of Advanced Fluid Connections, Oystertec was a minor peripheral player which was only involved in exchanging information at FNAS meetings where the customers were present. As a result, according to Advanced Fluid Connections, this shows an isolated unintentional and negligent participation. As regards Comap, it argues that it was not a leader or an important player. According to Comap, fittings represent a small percentage **[*deleted*]** of Comap's activities and its sales do not cover Denmark, Norway and Holland. Frabo explains that it played a minor role while refusing to join the cartel for more than a decade. Mueller also invokes the fact that it was a peripheral player and often the target of the competitors'

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98 Case T-220/00 *Cheil Jedang* v *Commission* [2003], ECR II-2473, paragraph 167; also Joined Cases T-236/01, T-239/01, T-244/01 to T-246/01, T-251/01 and T-252/01 *Tokai Carbon v Commission of the European Communities*[2004], ECR II-1181, paragraph 331.

99 Case T-311/94 *BPB de Eendracht* v *Commission* [1998] ECR II-1129, paragraph 343.

100 Case T-317/94 *Weig* v *Commission* [1998] ECR II-1235, paragraph 264.

coordinated action. Flowflex submits that its role was passive and as the smallest undertaking named in the Statement of Objections, its participation had a limited impact on the market. In a similar vein, Pegler argues that it was not a ring leader and, as recognised by Delta and IMI and evidenced by its market share, its role was minor and decreased during the period of the infringement to a 'follow my leader' role. As to Viega, it was a follower and a peripheral player and sometimes even a maverick putting pressure on the competitors.

(794) ***[clarification: a subsidiary of Aalberts]***' and Advanced Fluid Connections' attempts to portray themselves as participants in a one-off event in the FNAS framework are not convincing. Rather, the evidence in the Commission's file points to them having been fully aware of the Commission's inspections and having continued IMI's and Delta's leading roles as their respective successors (see recitals (564)-(590)). As regards Comap, the evidence in the file does not leave any doubt as to its leadership and active role in the cartel (see recitals (551),(582)-(587)). The frequency of Comap's contacts with the other producers throughout the entire period of the infringement including after the inspections, as described in recitals **[*deleted*]** is incompatible with any notion of a passive player. As to the small percentage of the fittings business in Comap's activities, this is irrelevant to the question of whether or not an undertaking played an important or a minor role in the infringement. The role of each undertaking in the infringement is based on its actions and not the percentage that the product concerned represents in the undertaking's overall activities. In respect of Frabo's argument that it refused to join the cartel for a decade, the Commission cannot but refer to the evidence laid down above (see recitals (726) and (727)) pointing to the duration of Frabo's participation. If Frabo's participation did not last as long as that of other competitors that is reflected in the increase for duration of the starting amount and certainly does not imply Frabo's minor or passive role. In any case, the duration of an undertaking's participation and its minor or passive role are two distinct elements that must be assessed separately. It is also undisputed that Frabo was a full member of the cartel for the period of its participation **[*deleted*]** and that its involvement does not have particular distinguishing features in this respect. Concerning Pegler, the evidence in the file points to consistent, regular and active participation in the infringement **[*deleted*]**. The evidence in the file also shows that with regard to the UK arrangements, Pegler played a leading role. Pegler did not put forward any evidence justifying a change from a leading player to a minor one. Although the evidence shows that Pegler did not play a leading role in the pan-European arrangements, this fact does not justify a passive or minor role in the infringement overall.

(795) As to the claims raised by Mueller, Flowflex and Viega, absence of leadership cannot be equated to a passive or minor role in the infringement. Although proof of a leadership role may in certain circumstances give rise to an increase of the fine for an aggravating factor, the absence of such a factor does not constitute an attenuating circumstance. Finally, it should be pointed out that during the lifetime of the cartel, all the above mentioned undertakings without exception participated in one way or another in agreeing price increases and implementing them. Consequently, there are no distinguishing features for any of these undertakings justifying a minor or passive role.

(796) The Commission, therefore, cannot accept any of the above mentioned claims that these undertakings' passive and/or minor roles constitute a mitigating factor.

(797) However, as regards Flowflex, evidence in the file shows that its involvement was not comparable to that of the active members such as IMI and Delta. There is no evidence that it actively participated in the creation of any anti-competitive agreements. Rather, the evidence shows that its involvement was limited to accepting and implementing the agreements reached by the others. As a small player, Flowflex did not take an up front role in the agreements and/or concerted practices. Flowflex followed a passive, "follow-my-leader" role vis-à-vis other leading undertakings such as IMI, Delta and Pegler (see recital (135)).

(798) Therefore, in the case of Flowflex, because of its passive and minor role, the amount of the fine that would have otherwise been imposed should be reduced by 10 %.

5.8.2.2. Participation in few elements of the infringement

(799) Almost all undertakings claim that the fact that they did not participate in all the elements of the agreement constitutes a mitigating factor.

(800) To that effect, Aalberts argues that ***[clarification: a subsidiary of Aalberts]*** was not active in all the types of fittings. Advanced Fluid Connections points to its very short period of participation. Comap argues that its participation cannot be qualified as regular and that it did not cover all the national markets. Flowflex submits that it only attended compression meetings covering only the UK, Scandinavian, Belgian, Dutch and Portuguese markets. Similarly, Pegler explains that its involvement concerned only 5 types of fittings and the UK and Portuguese markets. Tomkins submits for Pegler that according to **[*deleted*]** (Delta/IBP) statement, Pegler implemented the price increases sporadically and as result of an increase in raw material costs. Mueller points out that it did not attend Super-EFMA meetings and its contacts concerned only end-feed fittings. Sanha denies any participation. Finally, Viega states that its participation was limited to the German market, it did not join many 'German meetings' and it only had three contacts of an anti-competitive nature.

(801) As a general rule, there is no reason to apply a reduction in the fine for not having participated in all the years of the infringement, since this will be taken into account in relation to the shorter duration of the infringement. In addition, there is no reason to apply a reduction for not having participated in all the elements of the agreement. As already indicated above, the Courts have consistently stated that "*an undertaking may be held responsible for an overall cartel even though it is shown that it participated directly only in one or some of the constituent elements of that cartel, if it is shown that it knew, or must have known, that the collusion in which it participated was part of an overall plan and that the overall plan included all the constituent elements of the cartel*"[101].

(802) Apart from and in addition to the above mentioned considerations (recital (801)), the investigation showed that during the lifetime of the cartel in this case all kinds and sizes of fittings were part of the anti-competitive discussions. As to the various types

[101] Cases T-295/94, T-304/94, T-310/94, T-311/94, T-334/94, T-348/94 *Buchmann v Commission, Europa Carton v Commission, Gruber + Weber v Commission, Kartonfabriek de Eendracht v Commission, Sarrió v Commission* and *Enso Española v Commission*, at paragraphs 121, 76, 140, 237, 169 and 223, respectively. See also Case T-9/99 *HFB Holding and Isoplus Fernwärmetechnik v Commission*, paragraph 231.

in which each undertaking is involved, these are reflected in each undertaking's turnover of the product concerned and, as such they are taken into account. With regard to the issue of territorial scope, the evidence shows that for most of its duration, the cartel covered the whole of the Community and, following its creation, the EEA. The competitors' market shares in terms of volume and value covered approximately 95% of the market. In this context, the Commission takes into account the territory affected by the cartel, that is to say the geographic extent of the fittings business, as a whole and not the territorial scope of the activity and participation of each individual undertaking. As to Pegler's argument of sporadic price increases which were the result of increases in the costs of raw material, Pegler's price increases and multitude of other contacts cannot be considered more sporadic compared with those of the other ordinary members of the cartel **[*deleted*]**. As to the raw material increases, the considerations set out in recital (747) apply equally here. As regards Sanha's denial of any participation in the infringement, the Commission cannot but refer to the evidence described above and in particular, **[*deleted*]** pointing to Sanha's own admission in 2000 that it participated in all the agreements for a decade.

(803) Therefore, the Commission cannot accept any of these claims regarding participation in few elements of the infringement.

5.8.2.3. Economic difficulties in the fittings sector

(804) Comap submits that the reasons for joining the cartel were that the fittings business was less remunerative than its other activities and it needed to make important investments.

(805) Comap's argument cannot be accepted. In recent case law, the Court of First Instance has confirmed that the Commission is not required to regard as an attenuating circumstance the poor financial state of the sector. The fact that the fittings business is economically less healthy than other business does not justify an undertaking's joining the cartel. The Court of First Instance held that as a general rule, cartels come into being when a sector encounters problems. If the parties' reasoning were to be followed, the fine would have to be reduced as a matter of course in virtually all cases[102].

5.8.2.4. Termination of the infringement

(806) Comap, Delta, Flowflex, Tomkins for Pegler and Viega claim that the fact that the infringement was terminated immediately following the Commission's inspections should qualify as an attenuating circumstance.

(807) With regard to Comap and Delta, as already laid down, the Commission possesses evidence showing continuation of their participation after the inspections (see recitals (565)-(591) as well as recitals (779)-(784) on participation after the inspections as an aggravating circumstance).

(808) With regard to Flowflex, Pegler and Viega, it should be noted that the reduction of the fine on the grounds of mitigating factors for immediate termination of the

[102] Joined Cases T-236/01, T-239/01, T-244/01 to T-246/01, T-251/01 and T-252/01 *Tokai Carbon and Others v Commission of the European Communities*, [2004] ECR II-1181, paragraph 345.

infringement upon the Commission's intervention is particularly appropriate where the conduct in question is not manifestly anti-competitive. Conversely, its application will be less appropriate, as a general rule, where the conduct is clearly anti-competitive[103]. Price fixing and market allocation being by their very nature hard-core antitrust violations, there can be no doubt in this case that the arrangements which are the subject of this Decision were anti-competitive. Flowflex, Pegler and Viega knew very well or could not have been unaware that they engaged in illegal activities. The Commission considers therefore that their immediate cessation of the illegal behaviour upon the Commission's intervention cannot be regarded as an attenuating circumstance in this manifest and deliberate infringement of Article 81 of the Treaty.

(809) Mueller submits that it ended its participation prior to its cooperation with the Commission in January 2001. In the case of Mueller, the termination of its involvement in the illegal activity no later than the time at which it disclosed the cartel is a requisite for total immunity from fines (Section B, point (c) of the 1996 Leniency Notice). In any event, Mueller's early termination is taken into account in the part concerning the duration.

5.8.2.5. Non-implementation

(810) Comap, Delta, Flowflex and Frabo claim that the amount of their fines should be reduced because they either did not or did not fully implement the anti-competitive agreements. Comap explains that it only exchanged information concerning France and Spain and acted independently. Delta submits that on numerous occasions it did not implement the agreements through discounts, rebates, disregarding customer allocation. The arguments of Flowflex and Frabo are similar.

(811) As already pointed out, if, for instance, an undertaking is present at meetings in which the parties agree on certain behaviour on the market, it may be held liable for an infringement even where its own conduct on the market is not in conformity with the conduct agreed[104]. It is, indeed, well-settled case law that *"the fact that an undertaking does not abide by the outcome of meetings which have a manifestly anti-competitive purpose is not such as to relieve it of full responsibility for the fact that it participated in the cartel, if it has not publicly distanced itself from what was agreed in the meetings*"[105]. Such distancing should take the form of an announcement by the company, for instance, that it would take no further part in the meetings (and therefore did not wish to be invited to them).

(812) Moreover, the Commission is not required to recognise non-implementation of a cartel as an attenuating circumstance unless the undertaking relying on that circumstance is able to show that it clearly and substantially opposed the implementation of the cartel, to the point of disrupting the very functioning of it, and that it did not give the appearance of adhering to the agreement and thereby incite other undertakings to implement the cartel in question. The fact that an undertaking did not behave on the market in the manner agreed with its competitors is not necessarily a matter which

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103 Case T-44/2000 *Mannesmannröhren-Werke AG v Commission*, [2004] ECR II-2223, paragraph 281.

104 Case T-334/94 *Sarrió* v *Commission* [1998] ECR II-01439, paragraph 118.

105 Ibidem. See, inter alia, also Case T-141/89 *Tréfileurope Sales v Commission* [1995] ECR II-791, paragraph 85; Case T-7/89 *Hercules Chemicals* v *Commission* [1991] ECR II-1711, paragraph 232; andthe Cement case, paragraph 1389.

must be taken into account as an attenuating circumstance when determining the amount of the fine to be imposed[106]. Indeed, the fact that a cartel agreement is not honoured does not mean that it does not exist[107]. In this case, the infringement committed is not therefore cancelled out merely because a participant may have succeeded in deceiving the other members of the cartel and in using the cartel to its own advantage by not complying in full with the prices fixed[108].

(813) The Commission's undisputed conclusion on this point is set out in recitals (619)-(620), where it is stated that the arrangements were implemented. This conclusion is not altered by the fact that the implementation may have been less than fully successful in achieving the intended impact on the market because of buyer resistance and/or remaining competition. None of the above mentioned companies provided any indication that they demonstrated any desire, or undertook any action, to deliberately abstain from implementing the agreements they concluded in respect of the EEA during the period in which they adhered to them[109]. A difference in the degree to which they implemented the agreements cannot be regarded as a real failure to implement them[110].

(814) It follows that Comap, Delta, Flowflex and Frabo have failed to show that non-implementation of the price agreements in practice constitutes a mitigating factor.

5.8.2.6. Absence of recidivism

(815) Flowflex pointed out that it has never adhered before to an anti-competitive agreement or participated in other parallel infringements, such as copper tubes. Viega states that no recidivism applies to it. Both undertakings submit that this should be taken into account as a mitigating factor.

(816) The Commission does not consider that, in general, the lack of antecedents in the violation of competition rules constitutes an attenuating circumstance to be taken into account for the fixing of the fine. On the contrary, repeated infringements are explicitly listed as an aggravating circumstance. The absence of an aggravating circumstance does not amount to an attenuating circumstance. Flowflex's and Viega's claims are therefore rejected.

5.8.2.7. Disciplinary measures and compliance programme

(817) A number of undertakings argue that they should receive a reduction for having applied antitrust compliance programmes. IMI states that it introduced immediately after the inspections (1 May 2001 and subsequent dates) a state of the art and strict compliance programme which, in the case of employee non-implementation, would be followed by disciplinary action. It also mentions that the meeting of 20 April 2001 where it did not participate in the discussions and the unsolicited comments about

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106 Case T-44/2000, *Mannesmannröhren-Werke AG v Commission* [2004] ECR II-2223, paragraph 277; Case T-327/94 *SCA Holding v Commission* [1998] ECR II-1373, paragraph 142.

107 Case T-141/94 *Thyssen Stahl* v *Commission* [1999] ECR II-347, paragraphs 233, 255, 256 and 341.

108 Case T-308/94 *Cascades* v *Commission* [1998] ECR II-925, paragraph 9, concerning the assessment of attenuating circumstances.

109 The Cement case, paragraphs 4872 to 4874.

110 Case T-220/00 *Cheil Jedang* v *Commission* [2003]ECR II-02473, paragraphs 194-199.

prices in the EFMA conference room **[*deleted*]** is an example of the effectiveness of its compliance programme. **[*deleted*]** Aalberts submits that ***[clarification: a subsidiary of Aalberts]*** continued the state of the art compliance programme that IMI adopted. Advanced Fluid Connections explains that after the inspections it introduced a comprehensive compliance programme as well as compliance training and other related action. Pegler and Viega also state that they introduced compliance programmes and other actions after the Commission's intervention.

(818) While the Commission welcomes measures taken by undertakings to avoid cartel infringements in the future, such measures cannot change the reality of the infringement and the need to sanction it in this Decision[111]. The mere fact that in certain of its previous decisions, which all predate the adoption of the 1998 Guidelines on the method of setting fines imposed pursuant to Article 15 (2) of Regulation No 17 and Article 65 (5) of the ECSC Treaty[112], the Commission took such measures into consideration as attenuating circumstances does not mean that it is obliged to act in the same manner in every case[113]. That is *a fortiori* so where, as here, the infringement constitutes a manifest breach of Article 81(1)(a) of the Treaty.

(819) Further, the Commission notes that IMI's compliance program started on 1 May 2001. Consequently and contrary to IMI's contentions on the effectiveness of its compliance record, the programme itself could not have had any impact on the company's behaviour on 20 April 2001 when the meeting in the EFMA conference room took place. The Commission also notes that IMI and Advanced Fluid Connections' compliance action started on 1 May 2001 and 20 December 2001 respectively. IMI and Advanced Fluid Connections (Oystertec) submitted leniency applications in September 2003 and in May 2005 respectively. The Commission fails to see the alleged effectiveness of these programmes considering that it took 2 and 4 years respectively for the undertakings to discover the anti-competitive contacts described in their leniency application. The Commission also fails to understand the effectiveness of Advanced Fluid Connections' compliance programme vis-à-vis its employees who, despite the inspections, continued committing the infringement after them.

(820) Under these circumstances, the Commission does not accept any claim that adoption of compliance action should be taken into account as an attenuating factor.

5.8.2.8. Alleged coercion of Frabo by Delta and IMI

(821) As already set out above in recitals (637)-(640), Frabo alleged that IMI and IBP put pressure on it to participate in the arrangements. However, in its reply to the Statement of Objections, it revised its statement and explained that for a number of reasons, this perception may not have been correct. Frabo nevertheless requests the Commission to consider as an attenuating circumstance Frabo's initial perception of the competitive actions as retaliatory measures and objective loss of some 20% in its total worldwide turnover for 1999 compared to 1998 sales.

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111 See Joined Cases T-236/01, T-239/01, T-244/01 to T-246/01, T-251/01 and T-252/01, *Tokai Carbon Co. Ltd and Others v Commission*, at paragraph 343.

112 OJ C 9, 14.1.1998, p. 3.

113 Case T-7/89 *Hercules Chemicals* v *Commission* [1991] ECR II-1711, paragraph 357, and Case T-352/94 *Mo och Domsjö* v *Commission* [1998] ECR II-1989, paragraphs 417 and 419.

(822) As already concluded (see recital (640)), there is no evidence that either IMI or Delta exerted pressure on Frabo to join the cartel arrangements, nor that their action was a retaliatory measure against Frabo. The Commission considers that Frabo's position is not affected by this. In any event, no attenuating circumstance would have applied to Frabo, had coercion been proven. A company that is coerced by other participants to participate in a competition law infringement should inform public authorities. In the light of such an option, which respects the law, a participation in illegal cartel activities cannot be justified.

5.8.2.9. Cooperation outside the scope of the 1996 Leniency Notice

(823) Advanced Fluid Connections and IMI claim that their cooperation during the course of the investigation in this case goes beyond the level of cooperation that is required to benefit from a maximum reduction in fines under the 1996 Leniency Notice and urge the Commission to consider this further cooperation as an additional mitigating factor. More specifically, Advanced Fluid Connections explains that as the first to provide evidence for the period after the inspections, it should receive immunity. IMI submits that it should receive immunity because it was the first undertaking to provide decisive evidence. IMI explains that but for its cooperation, the Commission would not have had enough evidence to prove the infringement. In addition, IMI claims that it provided the link between the UK and pan-European arrangements. Further, IMI was the first company to provide evidence of anti-competitive behaviour for all types of fittings including press fittings. As a result, IMI should not be penalised for its cooperation on all types of fittings and the Commission should not include press fittings in IMI's turnover in determining IMI's gravity and starting amount of the fine.

(824) Unlike point 23 of the 2002 Commission notice on immunity from fines and reduction of fines in cartel cases[114], the 1996 Leniency Notice does not provide for any specific reward to a leniency applicant that discloses facts previously unknown to the Commission and affecting the gravity or duration of the cartel. It is therefore appropriate to consider any such cooperation under the attenuating factors. However, it is important to mention that the reduction of the fine for cooperation outside the Leniency Notice in secret cartel cases could only be of an exceptional nature[115].

(825) The Commission considers that Frabo's cooperation qualifies for an attenuating factor in this regard. Frabo was the first to disclose the duration of the cartel after the inspections, and, in particular, it was the first to provide evidence and explanations to prove continuity of the infringement after them and until April 2004. Prior to Frabo's leniency application, the Commission could not have established the duration and continuity of the infringement from March 2001 until April 2004.

(826) The Commission considers that Frabo should not be penalised for its cooperation by imposing on it a higher fine than the one that it would have had to pay without its cooperation. Therefore the basic amount of Frabo's fine should be reduced by the hypothetical amount of the fine that would have been imposed on Frabo for a three year infringement. In the light of the above, the basic amount of the fine to be imposed

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114 OJ C 45, 19.2.2002, p. 3.

115 See Commission Decision of 20.10.2005, Case COMP/38.281 *Italian Raw Tobacco*, not yet published, paragraphs 385 et seq.

on Frabo should be reduced by the lump sum of EUR 1.6 million for effective cooperation outside the scope of the 1996 Leniency Notice.

(827) As to IMI's argument on the link between the UK and pan-European arrangements, the Commission considers that IMI did not provide this link in its statements and did not differentiate between the UK and the pan-European arrangements (see recital (132)). Under these circumstances and as far as IMI is concerned, its cooperation will be assessed within the context of the 1996 Leniency Notice.

(828) With regard to IMI's argument that it was the first to disclose evidence of anti-competitive behaviour for press fittings, the investigation showed that during the lifetime of the cartel in this case and at various points in time, all kinds and sizes of fittings, including press fittings were part of the anticompetitive discussions. As explained in recital (633), in line with the *Tokai* judgment of the Court of First Instance, the market covered by a Commission decision is defined by the cartel arrangements and activities. As a result, IMI's claim cannot be accepted.

(829) Finally, the Commission cannot accept Advanced Fluid Connections' claim in this regard. Advanced Fluid Connections was not the first undertaking to adduce evidence for the period after the inspections; Frabo was. In addition, the Commission observes that Advanced Fluid Connections did not come forward to the Commission with a leniency application until more than 3 years after it acquired Delta's fittings business and was informed of the inspections and after the Commission sent an Article 18 request for information. In addition, as already explained in recital (118), Advanced Fluid Connections specified that, although it is possible, it makes no admission that IBPF participated in a concerted practice between competitors in a suspected infringement of Article 81 of the Treaty or that the facts and matters presented in its leniency application constitute an infringement of Article 81 on its part. On this basis, there is no reason justifying a reduction in Advanced Fluid Connections' fine as an attenuating circumstance for cooperation outside the scope of the 1996 Leniency Notice.

5.9. Application of the 10% turnover limit

(830) The amount of the fine calculated by taking account of any attenuating or aggravating circumstances may not exceed 10% of the worldwide turnover of the undertaking concerned.

(831) In this case, the basic amount of the fine to be imposed on Viegener, Delta, Advanced Fluid Connections, Legris, Flowflex and Frabo prior to the application of the Leniency Notice exceeds the 10% limit of their total turnover. The basic amount of the fine to be imposed on these undertakings should therefore be reduced as follows:

- Advanced Fluid Connections plc: EUR 18.09 million
- Delta plc: EUR 35.39 million
- Flowflex Holdings Ltd: EUR 1.34 million
- Frabo S.p.A.: EUR 1.97 million
- Legris Industries SA: EUR 46.8 million

– Viega GmbH & Co. KG: EUR 54.29 million

5.10. Application of the 1996 Leniency Notice

(832) Mueller, IMI, Delta, Frabo and Advanced Fluid Connections co-operated with the Commission at different stages of the investigation with a view to receiving the favourable treatment set out in the 1996 Leniency Notice, applicable to this case. The Commission therefore examines in recitals (833)-(870), in chronological order, whether the parties concerned satisfied the conditions set out in the notice.

5.10.1. Mueller

(833) Mueller, the current parent company of WTC Holding Company, Inc. and Mueller Europe Ltd., was the first undertaking to inform the Commission about the existence of a cartel in the fittings sector affecting the EEA market in the 1990s. The **[*deleted*]** evidence **[*deleted*]** which Mueller provided on 9 January 2001, prior to the Commission's investigation, enabled the Commission to establish the existence, content and the participants of a number of cartel meetings and other contacts held in particular between 1991 and 2000 as well as to undertake inspections on 22 March 2001 and thereafter.

(834) Mueller immediately put an end to its involvement in the infringement before starting its cooperation with the Commission (see recital (722)). It continuously provided the Commission with all relevant information, documents and evidence available, and maintained full cooperation throughout the investigation **[*deleted*]**. Mueller neither compelled other participants nor did it act as an instigator nor did it play a determining role.

(835) Mueller therefore benefits from total exemption from any fine.

5.10.2. IMI

(836) IMI claims that its cooperation qualifies for a 50% reduction under Section D of the 1996 Leniency Notice.

(837) On 18 September 2003, following a request for information under Article 11 of Regulation No 17, IMI approached the Commission with a view to submitting a leniency application (see recital (115)). On 19 September 2003, it sent a brief description of cartel activities and a list of meetings. On 30 September 2003, in the framework of a meeting with the Commission, it submitted a leniency application and expressed its willingness to cooperate with the Commission under the terms of the Leniency Notice. IMI's application was followed by a number of written submissions and meetings as well as interviews with its representatives.

(838) The documentary evidence, corporate statements and witness interviews provided by IMI cover a period extending from late 1980s to 2001. In its submissions, IMI provided a description of the cartel including a non-exhaustive list of the multilateral meetings and other contacts of fittings producers (with indication of the dates, locations and participants), as well as a number of additional internal documents drafted at the time the various anti-competitive activities were taking place. This is very important considering that a number of these documents and events dated from a

number of years ago, a fact that makes their recollection particularly difficult. It also described the context and provided narratives explaining a number of handwritten notes and other documents found during the inspections at its employees' offices. These narratives made it possible to connect these documents to specific cartel events. This submission was completed by oral explanations given by IMI's employees at interviews conducted at the Commission's premises in Brussels on a number of occasions. Further, although IMI approached the Commission more than 2 years after the inspections and after the Commission sent an Article 11 request for information, its cooperation began nearly seven months before that of the other participants. On an overall basis, the Commission notes that IMI assisted the Commission in many respects and its cooperation was active and complete.

(839) The Commission therefore accepts that the quantity, quality and value as well as the timing of the information submitted by IMI allowed the Commission to better understand the infringement and interpret the documents obtained in the inspections. The information submitted in the form of important documentary evidence, corporate statements and executive interviews was detailed and therefore extensively used by the Commission in the pursuance of its investigation.

(840) IMI does not qualify for a non-imposition of a fine or a very substantial reduction of at least 75% in its amount under Section B of the 1996 Leniency Notice. More specifically, it does not meet the condition set forth in point (a) of Section B, since it did not inform the Commission about the cartel before the Commission undertook an investigation, ordered by Decision, in this case.

(841) Furthermore, IMI does not qualify for a substantial reduction from 50% to 75% under point (b) of Section C of the 1996 Leniency Notice, since it was not the first undertaking to adduce decisive evidence on the cartel's existence – Mueller was (see recitals (833) et seq.). In addition, the Commission investigations ordered by decision provided sufficient grounds for initiating the procedure leading to the Decision in this case. The inspections produced direct evidence on the existence of the cartel in the period starting in 1988 and ending in 2001.

(842) IMI claims for a reduction under Section D of the 1996 Leniency Notice. Under this Section, an undertaking which does not comply with all the conditions set out in Sections B or C of that Notice can still benefit from a significant reduction of 10% to 50% of the fine that would otherwise have been imposed. The Commission notes that before the Statement of Objections was sent, IMI materially contributed to establishing the existence of the infringement, and after having received the Statement of Objections, it informed the Commission that it confirmed the facts presented in its leniency submissions and did not substantially contest the facts on which the Commission based its findings. The Commission also observes that IMI provided evidence earlier than the other leniency applicants and cooperated more actively. IMI is therefore entitled to a reduction of the fine (10% to 50%) under Section D (2), first and second indent of the 1996 Leniency Notice.

(843) In view of the above and in accordance with Section D of the 1996 Leniency Notice, IMI is, accordingly, granted a 50 % reduction of the fine that would otherwise have been imposed if it had not co-operated with the Commission.

(844) The total fine imposed on IMI should therefore be EUR 48.3 million.

5.10.3. Delta

(845) Delta claims that its cooperation qualifies for a 50% reduction under Section D of the 1996 Leniency Notice. On 10 March 2004, Delta submitted a leniency application. Delta's application was followed by other written submissions, a meeting and the presentation of oral statements (see recital (116)).

(846) To a great extent, Delta corroborates the facts presented by IMI in its leniency submissions. The corporate statements and witness interviews provided by Delta cover the period of the UK arrangements and continued during the period of the pan-European arrangements until March 2001. In its corporate statements and witness testimonies, Delta provided a description of the cartel, making the distinction between the UK arrangements that started in the late 1980's and the later pan-European arrangements. Although Delta did not provide information establishing continuity between these two arrangements, it nevertheless clarified and confirmed evidence in the possession of the Commission regarding the infringement in late 1988. It thus allowed the Commission to solidify its evidence proving continuity between these two periods.

(847) Delta submits that it provided information revealing that the origin of the cartel dated in 1985. The Commission cannot accept this claim. There is explicit reference in the file showing that Delta modified its initial statement that the cartel arrangements started in 1985 with a subsequent statement that the starting date of the main collusive practices was in 1988 (see recital (134), **[*deleted*]**). In doing so, Delta gave information that only corroborated the Commission's findings for 1988. Thus, Delta cannot benefit from a statement that it itself later modified. Nevertheless, this change of statements does not alter the Commission's conclusion that on an overall basis, Delta cooperated with the Commission and did not substantially contest the facts on which the Commission based its findings.

(848) Delta did not start cooperating with the Commission until well after the inspections and some 8 months after the Commission sent a request for information under Article 11 of Regulation No 17. The on-site inspections ordered by a Commission Decision were carried out as early as March 2001. Although aware of the Commission's investigation for 3 years, Delta did not offer to cooperate until it had been approached by the Commission on several occasions with requests for information starting in December 2001[116]. Delta maintains that the lapse of time between the inspections and its leniency application is not indicative of non-cooperation. Delta explains that because of the sale of its fittings business, it encountered difficulties in gathering the information needed for its application. The Commission appreciates Delta's difficulties. However, the fact remains that Delta approached the Commission after Mueller and IMI submitted their leniency applications[117].

(849) After having received the Statement of Objections, Delta informed the Commission that it did not substantially contest the facts on which the Commission has based its findings.

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116 The Commission started its correspondance with Delta after the inspections as early as December 2001 with a request for information under Article 11 of Regulation No 17.

117 The Commission notes that IMI also sold its fittings business to Aalberts.

(850) Delta was not the first undertaking to provide the Commission with decisive evidence on the fittings cartel, as required under point (b) of Section B of the 1996 Leniency Notice, and therefore it does not qualify under Section C which refers to the conditions set out in Section B, points (b) to (e). Nevertheless, under Section D of the said Notice, an undertaking which does not comply with all the conditions set out in Sections B or C can still benefit from a significant reduction of 10% to 50% of the fine that would otherwise have been imposed.

(851) After due consideration of all these circumstances, the Commission considers that Delta is entitled to a reduction of the fine (10% to 50%) under Section D (2), first and second indent of the 1996 Leniency Notice. Delta is accordingly granted a 20% reduction of the fine that would have been imposed if it had not cooperated with the Commission.

(852) The total fine imposed on Delta should therefore be EUR 28.31 million.

5.10.4. Frabo

(853) On 19 July 2004, Frabo submitted a leniency application (see recital (117)).

(854) To a great extent, Frabo corroborates the facts presented by IMI and Delta in their leniency submissions. The documentary evidence and corporate statements provided by Frabo cover mainly the period between 1998 and 2004 **[*deleted*]**. The evidence provided by Frabo clarified and confirmed evidence in the possession of the Commission regarding the infringement after 1998. It thus allowed the Commission to solidify its evidence for the period ending with the inspections in March 2001.

(855) Frabo did not start cooperating with the Commission until well after the inspections and about one year after the Commission sent a request for information under Article 11 of Regulation No 17. The on-site inspections ordered by a Commission Decision were carried out as early as March 2001. Being aware of the Commission's investigation for more than 3 years, Frabo did not offer its cooperation before it had been approached by the Commission requesting information[118]. Frabo argues that the Commission should take into account the company's efforts to cooperate, despite the reasonable fears of retaliatory measures it had from IMI and Delta. Frabo's claim cannot be accepted. As already concluded (see recitals (640) and (822)), there is no evidence that either IMI or Delta exerted pressure on it to join the cartel arrangements or that their action was a retaliatory measure against Frabo. On this basis, Frabo's perception and fears of retaliatory measures cannot justify its late decision to start cooperating with the Commission in the framework of the Leniency Notice. A company whose perception is that it is coerced by other participants to participate in a competition law infringement should inform the public authorities. In the light of such an option, which respects the law, participation in illegal cartel activities cannot be justified. In this context, the fact remains that Frabo approached the Commission after Mueller, IMI and Delta submitted their leniency applications.

(856) Nevertheless, Frabo was the first to disclose that the infringement continued for the period after the inspections and until April 2004 (see recitals (825)-(826)). In addition,

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[118] The Commission started its correspondance with Frabo after the inspections as early as July 2003 with a request for information under Article 11 of Regulation No 17.

Frabo's information was also used to draft requests for information that contributed to triggering Advanced Fluid Connections' leniency submission, in which it provided evidence on participation in the infringement after the inspection. Frabo thus assisted the Commission significantly in establishing the facts and in solidifying the evidence for the period after the inspections on which this Decision is based. For this cooperation, the Commission granted Frabo an attenuating factor outside the scope of the 1996 Leniency Notice.

(857) Frabo was not the first undertaking to provide the Commission with decisive evidence on the fittings cartel, as required under point (b) of Section B of the 1996 Leniency Notice and therefore it does not qualify under Section C which refers to the conditions set out in Section B, points (b) to (e). Nevertheless, under Section D of the said Notice, an undertaking which does not comply with all the conditions set out in Sections B or C can still benefit from a significant reduction of 10% to 50% of the fine that would otherwise have been imposed.

(858) After having received the Statement of Objections, although Frabo does not substantially contest the facts on which the Commission has based its allegations as from 1999 as far as it is concerned, it argued that its starting date was on 28 June 1999 and not in July 1996 as established by the Commission. (In this connection, see recitals (726),(727)).

(859) After due consideration of all these circumstances, the Commission considers that Frabo is entitled to a reduction of the fine (10% to 50%) under Section D (2), first and second indent of the 1996 Leniency Notice. Frabo is accordingly granted a 20 % reduction of the fine that would have been imposed if it had not cooperated with the Commission.

(860) The total fine imposed on Frabo should therefore be EUR 1.58 million.

5.10.5. Advanced Fluid Connections

(861) On 24 May 2005, Advanced Fluid Connections (Oystertec) submitted a leniency application (see recital (118)). Advanced Fluid Connections' application was followed by the submission and presentation of written statements.

(862) Advanced Fluid Connections did not start cooperating with the Commission until well after its acquisition of Delta's fittings business and at a very advanced stage of the procedure when the Commission inquired about the language of correspondence with the company, including that for a possible Statement of Objections. Being aware of the Commission's investigation for more than 3 and a half years, Advanced Fluid Connections did not offer its cooperation before it had been approached by the Commission requesting information[119].

(863) To a certain extent, Advanced Fluid Connections corroborates the facts presented by Frabo in its leniency submission with regard to the participation in the infringement surrounding the FNAS events in 2003 and 2004. The documentary evidence and corporate statements provided by Advanced Fluid Connections cover the years 2003

[119] The Commission had correspondance with Advanced Fluid Connections in January 2005 with a request for information under Article 18 of Regulation No 1/2003.

and 2004. The evidence provided by Advanced Fluid Connections assisted the Commission to solidify its evidence for the period from June 2003 until April 2004.

(864) Advanced Fluid Connections argues that it added considerable value to the investigation by being the first applicant to fully disclose the relevant facts and circumstances for the period after the inspections. Also, after having received the Statement of Objections, Advanced Fluid Connections submitted that it did not substantially contest the facts on which the Commission bases its findings. The Commission rejects Advanced Fluid Connections' claim. For the period after the inspections, Advanced Fluid Connections approached the Commission after Frabo submitted its leniency application which provided direct evidence of the infringement for that period. In its reply to the Statement of Objections, Advanced Fluid Connections only admits a limited number of facts as to the period after the inspections while contesting the validity of others. Finally, as indicated in recitals (786)-(789), Advanced Fluid Connections misled the Commission.

(865) Therefore, after due consideration of all these circumstances, the Commission sees no reason for Advanced Fluid Connections to be granted a reduction of the fine and considers that Advanced Fluid Connections is not entitled to any reduction under Section D(2) first and second indent of the 1996 Leniency Notice.

5.10.6. Comap

(866) In its reply to the Statement of Objections, Comap argues that unlike other companies, Comap was not inspected and was not contacted by the Commission[120]. According to Comap, this disadvantaged it vis-à-vis the other companies which had the opportunity to submit a leniency application.

(867) As regards the first point, it should be noted that it is in the discretion of the Commission to decide at which undertaking inspections should be carried out. This, however, does not mean that a company which is not inspected is allowed to continue the anti-competitive arrangements. As to the second point, for certain companies which have a number of subsidiaries in other countries than the country of the parent company, the Commission sends a letter asking for a language waiver so as to establish a single language for all communications with that company. As already stated above (see recital (862)), in this letter, the Commission inquires about the language of correspondence, including that for a possible Statement of Objections, if the Commission were to decide to issue a Statement of Objections in the case. The Commission considers that the submission of a leniency application is a corporate decision following which a company decides autonomously to come forward to the Commission and divulge facts relating to its participation in anti-competitive activities. This application is irrelevant to the language waiver letters sent by the Commission. In addition, Comap was aware of the Commission's investigation regarding a possible infringement of Article 81 of the Treaty on cartel practices. Such possible infringement is mentioned in the letters sent by the Commission requesting information. The Commission sent such letters to Comap at an early stage of the

[120] Here, Comap refers to the Commission's contact with Advanced Fluid Connections when the former sent a letter to the latter inquiring about the language of correspondence with the company, including that for a possible Statement of Objections. This issue has also been mentioned by other companies such as Aalberts and Pegler.

procedure after the inspections. Comap therefore was aware of the on-going procedure and had every opportunity to submit a leniency application if it had decided to do so. In this connection, the Commission observes that Comap submitted a leniency application on the basis of non-contestation of facts. This leniency application was part of Comap's reply to the Statement of Objections in December 2005, which is four and a half years after the Commission's inspections and two and a half years after the Commission contacted Comap requesting information under Article 11 of Regulation No 17[121].

(868) This leniency application was based on the non-contestation of facts for the period between 8 December 1997 and March 2001.

(869) The Commission notes that Comap's non-contestation of facts is limited only to three out of thirteen and a half years of the infringement. In these circumstances, the Commission considers that Comap is not entitled to any reduction of the fine under in Section D (2) second indent of the 1996 Leniency Notice.

5.10.7. Conclusion on the application of the 1996 Leniency Notice

(870) In conclusion, with regard to the nature of their cooperation and in the light of the conditions as set out in the 1996 Leniency Notice, Mueller, IMI, Delta, Frabo, Advanced Fluid Connections and Comap should be granted the following reductions of their respective fines:

–	Mueller	immunity from fines;
–	IMI	a reduction of 50 %;
–	Delta	a reduction of 20 %;
–	Frabo	a reduction of 20 %;
–	Advanced Fluid Connections	no reduction;
–	Comap	no reduction.

5.11. Ability to pay

(871) In its reply to the Statement of Objections, Flowflex asks the Commission to take into consideration its potential inability to pay a fine. **[*deleted*]**.

(872) In its reply to the Statement of Objections, Frabo asks the Commission to take into consideration its potential inability to pay a high fine. Frabo explains that it is in a difficult financial situation and that its high debts would not enable it to have the necessary support of the banks to pay a high fine.

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[121] The Commission started its correspondance with Comap in July 2003 with a request for information under Article 11 of Regulation No 17.

(873) With regard to Delta, although it did not explicitly mention that it might be unable to pay a fine, in its reply and during the Oral Hearing, Delta refers to its high obligations stemming from its pension plan liabilities.

(874) In view of these arguments, the Commission asked the above mentioned companies for detailed information on their financial situation in order to be able to take account of their real ability to pay in accordance with point 5(b) of the Guidelines on the method of setting fines.

(875) After examination of the information presented, the Commission concludes that the companies concerned are not confronted by financial difficulties making them unable to pay the fine in a specific social context[122].

(876) The Commission accordingly takes the view that the arguments relating to Flowflex's, Frabo's and Delta's ability to pay should be dismissed.

5.12. The amounts of the fines imposed in this proceeding

(877) The fines to be imposed pursuant to Article 15(2) of Regulation No 17 and Article 23(2) of Regulation (EC) No 1/2003 should therefore be as follows:

– Aalberts Industries NV: EUR 100.80 million
of which jointly and severally with:
(i) Aquatis France SAS: EUR 55.15 million; and
(ii) Simplex Armaturen +
Fittings GmbH & Co. KG: EUR 55.15 million

– 1. IMI plc jointly and severally with IMI Kynoch Ltd: EUR 48.30 million
of which jointly and severally with:
(i) Yorkshire Fittings Limited: EUR 9.64 million; and
(ii) VSH Italia S.r.l: EUR 0.42 million; and
(iii) Aquatis France SAS: EUR 48.30 million; and
(iv) Simplex Armaturen +
Fittings GmbH & Co. KG: EUR 48.30 million
2. Aquatis France SAS and Simplex Armaturen +
Fittings GmbH & Co. KG are jointly and severally
liable for the additional amount of: EUR 2.04 million

– Advanced Fluid Connections plc: EUR 18.08 million
of which jointly and severally with:
(i) IBP Limited: EUR 11.26 million; and
(ii) International Building Products
France SA: EUR 5.63 million

– Delta plc jointly and severally with
Delta Engineering Holdings Limited: EUR 28.31 million
of which jointly and severally with:
(i) Druryway Samba Limited: EUR 28.31 million; and

[122] See Joined Cases T-236/01, T-239/01, T-244/01 to T-246/01, T-251/01 and T-252/01 *Tokai Carbon v Commission* [2004] ECR II-1181, paragraph 371.

(ii) International Building Products GmbH: EUR 2.81 million; and
(iii) International Building Products France SA: EUR 5.63 million; and
(iv) Aldway Nine Limited: EUR 28.31 million; and
(v) Supergrif SL: EUR 0.59 million

– Flowflex Holdings Ltd jointly and severally with Flowflex Components Ltd: EUR 1.34 million

– FRA.BO S.p.A : EUR 1.58 million

– Legris Industries SA: EUR 46.80 million
of which jointly and severally with Comap SA: EUR 18.56 million

– Tomkins plc jointly and severally with Pegler Ltd: EUR 5.25 million

– Kaimer GmbH & Co. Holdings KG: EUR 7.97 million
of which jointly and severally with:
(i) SANHA Kaimer GmbH & Co. KG: EUR 7.97 million; and
(ii) Sanha Italia srl: EUR 7.15 million

– Viega GmbH & Co. KG: EUR 54.29 million

HAS ADOPTED THIS DECISION:

Article 1

The following undertakings have participated, for the periods indicated, in a single, complex and continuous infringement of Article 81 of the Treaty and, from 1 January 1994, of Article 53 of the EEA Agreement by entering into a complex of agreements and concerted practices in the market for copper and copper alloy fittings, consisting 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:

– Aalberts Industries NV, from 25 June 2003 until 1 April 2004

– Aquatis France SAS, from 31 January 1991 until 22 March 2001 (IMI) and from 25 June 2003 until 1 April 2004 (Aalberts)

– Simplex Armaturen + Fittings GmbH & Co. KG, from 31 January 1991 until 22 March 2001 (IMI) and from 25 June 2003 until 1 April 2004 (Aalberts)

– VSH Italia S.r.l, from 15 March 1994 until 22 March 2001

– Yorkshire Fittings Limited, from 31 December 1988 until 22 March 2001

– Advanced Fluid Connections plc, from 23 November 2001 until 1 April 2004

– IBP Limited, from 23 November 2001 until 1 April 2004

– International Building Products France SA, from 4 April 1998 until 23 November 2001 (Delta) and from 23 November 2001 until 1 April 2004 (Advanced Fluid Connections)

– International Building Products GmbH, from 31 January 1991 until 23 November 2001

– Delta plc, from 31 December 1988 until 23 November 2001

– Aldway Nine Limited, from 28 July 1999 until 23 November 2001

– Delta Engineering Holdings Limited, from 31 December 1988 until 23 November 2001

– Druryway Samba Limited, from 31 December 1988 until 23 November 2001

– Flowflex Holdings Ltd, from 1 April 1989 until 22 March 2001

– Flowflex Components Ltd, from 31 December 1988 until 22 March 2001

– FRA.BO S.p.A, from 30 July 1996 until 1 April 2004

– IMI plc, from 31 December 1988 until 22 March 2001

– IMI Kynoch Ltd, from 31 December 1988 until 22 March 2001

– Legris Industries SA, from 31 January 1991 until 1 April 2004

– Comap SA, from 31 January 1991 until 1 April 2004

– Mueller Industries Inc., from 12 December 1991 until 12 December 2000

– Mueller Europe Ltd., from 28 February 1997 until 12 December 2000

– WTC Holding Company, Inc., from 28 February 1997 until 12 December 2000

– Pegler Ltd, from 31 December 1988 until 22 March 2001

– SANHA Kaimer GmbH & Co. KG, from 30 July 1996 until 22 March 2001

– Kaimer GmbH & Co. Holdings KG, from 30 July 1996 until 22 March 2001

– Sanha Italia srl, from 1 January 1998 until 22 March 2001

– Supergrif SL, from 22 July 1991 until 23 November 2001

– Tomkins plc, from 31 December 1988 until 22 March 2001

– Viega GmbH & Co. KG, from 12 December 1991 until 22 March 2001.

Article 2

For the infringement referred to in Article 1, the following fines are imposed:

a) Aalberts Industries NV: EUR 100.80 million
of which jointly and severally with:
(i) Aquatis France SAS: EUR 55.15 million; and
(ii) Simplex Armaturen +
Fittings GmbH & Co. KG: EUR 55.15 million

b) 1. IMI plc jointly and severally with IMI Kynoch Ltd: EUR 48.30 million
of which jointly and severally with:
(i) Yorkshire Fittings Limited: EUR 9.64 million; and
(ii) VSH Italia S.r.l: EUR 0.42 million; and
(iii) Aquatis France SAS: EUR 48.30 million; and
(iv) Simplex Armaturen +
Fittings GmbH & Co. KG: EUR 48.30 million
2. Aquatis France SAS and Simplex Armaturen +
Fittings GmbH & Co. KG are jointly and severally
liable for the additional amount of: EUR 2.04 million

c) Advanced Fluid Connections plc: EUR 18.08 million
of which jointly and severally with:
(i) IBP Limited: EUR 11.26 million; and

(ii) International Building Products France SA: EUR 5.63 million

d) Delta plc jointly and severally with Delta Engineering Holdings Limited: EUR 28.31 million
of which jointly and severally with:
(i) Druryway Samba Limited: EUR 28.31 million; and
(ii) International Building Products GmbH: EUR 2.81 million; and
(iii) International Building Products France SA: EUR 5.63 million; and
(iv) Aldway Nine Limited: EUR 28.31 million; and
(v) Supergrif SL: EUR 0.59 million

e) Flowflex Holdings Ltd
jointly and severally with Flowflex Components Ltd: EUR 1.34 million

f) FRA.BO S.p.A : EUR 1.58 million

g) Legris Industries SA: EUR 46.80 million
of which jointly and severally with Comap SA: EUR 18.56 million

h) Tomkins plc
jointly and severally with Pegler Ltd: EUR 5.25 million

i) Kaimer GmbH & Co. Holdings KG: EUR 7.97 million
of which jointly and severally with
(i) SANHA Kaimer GmbH & Co. KG: EUR 7.97 million; and
(ii) Sanha Italia srl: EUR 7.15 million

j) Viega GmbH & Co. KG: EUR 54.29 million

The fines shall be paid in **Euros**, within three months of the date of notification of this Decision, into bank account **No 642-0029000-95** of the European Commission with **Banco Bilbao Vizcaya Argentaria S.A.**, Avenue des Arts 43, B - 1040 Brussels **(SWIFT-Code: BBVABEBB – IBAN: BE76 6420 0290 0095).** After the expiry of that period, interest shall automatically be payable at the interest rate applied by the European Central Bank to its main refinancing operations on the first day of the month in which this Decision is adopted, plus 3.5 percentage points, namely 6.5 %.

Article 3

The undertakings listed in Article 1 shall immediately bring to an end the infringement referred to in that Article in so far as they have not already done so.

They shall refrain from repeating any act or conduct described in Article 1, and from any act or conduct having the same or similar object or effect.

Article 4

This Decision is addressed to

- Aalberts Industries NV, Sandenburgerlaan 4, 3947 CS Langbroek, Netherlands
- Aquatis France SAS, Z.I. des Forges - B.P.6, 1 rue Jacques Dufrasne, 45380 La Chapelle Saint-Mesmin, France
- Simplex Armaturen + Fittings GmbH & Co. KG, Isnyer Str. 28, 88260 Argenbühl, Germany
- VSH Italia S.r.l., Via E. Mattei 15-17, 22070 Bregnano, Italy
- Yorkshire Fittings Limited, Haigh Park Road, Stourton, LS10 1 RT Leeds, United Kingdom
- Advanced Fluid Connections plc, c/o KPMG LLP, The Embankment, Neville Street, Leeds, LS1 4DW, United Kingdom
- IBP Limited, Whitehall Road, Tipton, West Midlands, DY4 7JU, United Kingdom
- International Building Products France SA, 13 Rue Jean Pierre Timbaud, 78500 Sartrouville, France
- International Building Products GmbH, Erdkauter Weg 17, 35394 Giessen, Germany
- Delta plc, 2nd Floor, Bridewell Gate, 9 Bridewell Place, EC4V 6AW London, United Kingdom
- Aldway Nine Limited, Chiltern House, 24-30 King Street, Watford, Hertfordshire WD18 0BP; United Kingdom
- Delta Engineering Holdings Limited, 2nd Floor, Bridewell Gate, 9 Bridewell Place, EC4V 6AW London, United Kingdom
- Druryway Samba Limited, Chiltern House, 24-30 King Street, Watford, Hertfordshire WD18 0BP, United Kingdom
- Flowflex Holdings Ltd, Samuel Blaser Works, Tongue Lane Industrial Estate, Buxton, Derbyshire SK17 7LR, United Kingdom
- Flowflex Components Ltd, Samuel Blaser Works, Tongue Lane Industrial Estate, Buxton, Derbyshire SK17 7LR, United Kingdom
- FRA.BO S.p.A, Via Circonvallazione 7, 26020 Bordolano (Cremona), Italy
- IMI plc, Lakeside, Solihull Parkway, Birmingham Business Park, Birmingham B37 7XZ, United Kingdom

– IMI Kynoch Ltd, Solihull Parkway, Birmingham Business Park, Birmingham B37 7XZ, United Kingdom

– Legris Industries SA, 74 Rue de Paris, 35000 Rennes, France

– Comap SA, 16 Avenue Paul Santy, B.P. 8211, 69355 Lyon Cedex 08, France

– Mueller Industries Inc., 8285 Tournament Drive, Memphis, Tennessee 38125, USA

– Mueller Europe Ltd., Oxford Street, Bilston, West Midlands WV14 DS, United Kingdom

– WTC Holding Company, Inc., c/o The Corporation Company, 30600 Telegraph Road, Bingham Farms, Michigan 48025, USA

– Pegler Ltd, St. Catherine's Avenue, Doncaster, South Yorkshire DN4 8DF, United Kingdom

– SANHA Kaimer GmbH & Co. KG, Im Teelbruch 80, 45219 Essen, Germany

– Kaimer GmbH & Co. Holdings KG, Im Teelbruch 80, 45219 Essen, Germany

– Sanha Italia srl, c/o SANHA Kaimer GmbH & Co. KG, Im Teelbruch 80, 45219 Essen, Germany

– Supergrif SL, Calle Ramon de Trinxeria 1, Pol. Ind. el Plá, 08980 Sant Feliu de Llobregat (Barcelona), Spain

– Tomkins plc, East Putney House, 84 Upper Richmond Road, London SW15 2ST, United Kingdom

– Viega GmbH & Co. KG, Ennester Weg 9, 57439 Attendorn, Germany

This Decision shall be enforceable pursuant to Article 256 of the Treaty and Article 110 of the EEA Agreement.

Done at Brussels, 20.09.2006

For the Commission
Neelie KROES
Member of the Commission

ANNEX

Size and relative importance in fittings in 2000 and 2003 (non-confidential version)

Undertaking	EEA turnover (2000) (Value/EUR million)	Market shares (2000) (Value in %)	EEA turnover (2003) (Value/EUR million)	Market shares (2003) (Value in %)
Delta Group	100 - 150	20 – 30 %	---	---
Advanced Fluid Connections	---	---	50 - 100	10 – 20 %
IMI Group	100 - 150	20 – 30 %	---	---
Aalberts Group	0 - 50	0 – 10 %	100 - 150	20 – 30 %
Comap	0 - 50	0 – 10 %	0 - 50	0 – 10 %
Legris	---	---	---	---
Frabo	0 - 50	0 – 10 %	0 - 50	0 – 10 %
Mueller	0 - 50	0 – 10 %	0 - 50	0 – 10 %
Pegler	0 - 50	0 – 10 %	0 - 50	0 – 10 %
Tomkins Group	---	---	---	---
Flowflex	0 - 50	0 – 10 %	0 - 50	0 – 10 %
Sanha Kaimer	0 - 50	0 – 10 %	0 - 50	0 – 10 %
Viegener	150 - 200	20 – 30 %	150 - 200	30 – 40 %
Aggregated Share	510.876		501.673	
Others	26.89	5.00	26.4	5.00
Total	537.77	100.00	528.07	100.00