COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels,

COMMISSION DECISION

of 28.1.2009

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

Case COMP/39406 - Marine Hoses

(ONLY THE GERMAN AND ENGLISH TEXTS ARE AUTHENTIC)

(Text with EEA relevance)

to be notified to:

Bridgestone Corporation and Bridgestone Industrial Limited

The Yokohama Rubber Company Limited

Dunlop Oil & Marine Limited, ContiTech AG, and Continental AG

Trelleborg Industrie SAS and Trelleborg AB

Parker ITR Srl and Parker Hannifin Corporation

Manuli Rubber Industries SpA

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COMMISSION DECISION

of

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

Case COMP/39406 – Marine Hoses

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 and Article 23(2) thereof,

Having regard to the Commission decision of 28 April 2008 to initiate proceedings in this case,

Having given the undertakings concerned the opportunity to make known their views on the objections raised by the Commission pursuant to Article 27(1) of Regulation (EC) 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,

Having regard to the final report of the Hearing Officer in this case,[3]

Whereas:

1. INTRODUCTION

1.1. Addressees

1. This Decision is addressed to the following companies:

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1 OJ L 1, 4.1.2003, p. 1.
2 OJ L 123, 27.4.2004, p. 18.
3 To be published in the Official Journal.

- Bridgestone Corporation;
- Bridgestone Industrial Limited;
- The Yokohama Rubber Company Limited;
- Dunlop Oil & Marine Limited;
- ContiTech AG;
- Continental AG;
- Trelleborg Industrie SAS;
- Trelleborg AB;
- Parker ITR Srl;
- Parker Hannifin Corporation; and
- Manuli Rubber Industries SpA.

1.2. Summary of the infringement

2. This Decision relates to a single and continuous infringement of Article 81 of the Treaty and Article 53 of the Agreement on the European Economic Area (hereinafter the "**EEA Agreement**").

3. The infringement, which covered the entire EEA, consisted of (i) allocating tenders, (ii) fixing prices, (iii) fixing quotas, (iv) fixing sales conditions, (v) geographic market sharing, and (vi) the exchange of sensitive information on prices, sales volumes and procurement tenders.

2. THE INDUSTRY SUBJECT TO THE PROCEEDINGS

2.1. The product

4. The product to which the infringement relates is marine hoses. Marine hoses are used to load sweet or processed crude oil and other petroleum products from offshore facilities (for example buoys,[4] floating production storage and offloading systems[5]) onto vessels and to offload them back to offshore or onshore facilities (for example buoys or jetties). Hence, marine hoses are used mainly in the context of oil transportation from remote places of exploitation not linked to major oil consuming countries by pipelines. Marine hoses are used offshore, that is near or in the water, while onshore or industrial hoses are used on land.

5. Marine hoses are usually composed of an inner elastomere layer (lining), a steel helix and textile or wire layers to reinforce the hose, an outer cover composed of elastomere, and an end fitting allowing connection to another hose. Marine hoses can be composed of one or two carcasses (single or double carcass hoses). Marine hoses usually have an internal diameter of 4 to 24 inch and a length of up to 40 feet. Marine hoses include floating hoses, which rest on the surface of the

[4] Buoys are normally anchored offshore and serve as a mooring point for tankers to load and offload oil, gas or fluid products. Such buoys are also referred to as Single Point Mooring systems ('SPM') or Single Buoy Moorings ('SBM').

[5] Floating Production, Storage and Offloading systems ('FPSO') are floating tank systems used to take all of the oil or gas produced from a nearby platform, process it, and store it until the oil or gas can be offloaded onto waiting tankers, or sent through a pipeline.

water, and submarine hoses, which provide a connection between seabed pipelines and floating facilities. Marine hoses almost invariably comply with the 1991 industry standard 'OCIMF' (Oil Companies International Marine Hoses Forum).[6]

6. Each marine hoses installation is composed according to the clients' specific needs of a number of standard hoses, specific hoses at the connections at both ends, and ancillary equipment (for example, valves, end gear, floating equipment). For the purposes of this Decision, the term 'marine hoses' will be deemed to include such ancillary equipment.

2.2. The undertakings subject to the proceedings

2.2.1. Bridgestone

7. Bridgestone Corporation is a company heading a group active in the manufacture and sale of tyres and other rubber products made up of a varied range of industrial and consumer products, together with bicycles and other sporting goods worldwide. Until 1984, Bridgestone was called Bridgestone Tire Co., Ltd.[7] It is headquartered in Tokyo, Japan. As part of its Industrial Products business, it manufactures and markets marine hoses, initially in Japan and since 1972 worldwide.[8]

8. Bridgestone's worldwide marine hoses business is run by Bridgestone Corporation (**'BSJ'**) and several wholly owned subsidiaries.[9] The subsidiaries involved in Bridgestone's marine hoses sales are Bridgestone Industrial Limited (**'BSIL'**, incorporated on 19 December 1989 and headquartered in London, United Kingdom), Bridgestone Industrial Products America, Inc. (**'BSA'**, a Delaware company headquartered in Nashville, Tennessee, USA), Bridgestone Engineered Products of Asia Holdings, SDN, BHD (**'BSEA'**, headquartered in Kuala Lumpur, Malaysia) and six Japanese subsidiaries.[10] Marine hoses sales outside Japan are carried out by one of the subsidiaries covering the relevant regions of the world.[11]

9. Bridgestone Corporation's worldwide consolidated turnover for all products in calendar year 2006 was EUR 20 484 million.

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6 For a copy of the OCIMF standard see [...]

7 [...]

8 [...]

9 Within Bridgestone Corporation, the International Industrial/Engineered Products Department (previously International Industrial Rubber Products Sales Department and Industrial Rubber Products Sales Department) is responsible for the international marine hoses business, and the Civil Engineering/Marine Products Sales Department (previously Industrial Rubber Products Sales Department No. 2, Marine Products Sales Department, Marine and Civil Construction Products Sales Department) is responsible for the Japanese marine hoses business, see Bridgestone's Reply to Request for Information of 20 July 2007, Commission file p. 1214/7-9.

10 [...]

11 [...]

10. Bridgestone Corporation and BSIL will hereinafter be jointly referred to as '**Bridgestone**'.

11. The Bridgestone representatives relevant for the purpose of this Decision are:[12]

Table 1: Bridgestone representatives

Name	Period of Employment	Position

2.2.2. Yokohama

12. The Yokohama Rubber Company Limited is a company heading a group active in the manufacture and sale of tyres and other rubber products like hoses, sealants and adhesives, aircraft products, and golf products worldwide. It is headquartered in Tokyo, Japan. It manufactures and markets marine hoses throughout the world.

13. Yokohama's worldwide marine hoses business is organised as part of its Industrial Products Division at Yokohama's offices in Japan. Sales outside Japan are managed from the Industrial Products Overseas Sales Department.[13] None of Yokohama's subsidiaries in the EEA, which focus on the sale of tyres, is involved in the marine hoses business.

14. The Yokohama Rubber Company Limited will hereinafter be referred to as '**Yokohama**'.

15. Yokohama's worldwide consolidated turnover for all products during the business year ending 31 March 2007 was around EUR 3 200 million.[14]

16. The Yokohama representatives relevant for the purpose of this Decision are: [15]

Table 2: Yokohama representatives

Name	Period of Employment	Position

12 [...]
13 […]
14 […]
15 […]

2.2.3. DOM

17. Dunlop Oil & Marine Limited is a limited liability company. It is active in the design, manufacture and supply of hoses for the oil, gas, petrochemical and dredging industries, for both offshore and onshore based operations. It belongs to the Continental Group that is active in among others automotive systems, tyres and other rubber products.

18. In 2006 Dunlop Oil & Marine Limited's global annual sales were EUR [...].

19. Dunlop Oil & Marine Limited was incorporated by Unipoly Limited in England and Wales on 26 November 1997. On 12 December 1997, Dunlop Oil & Marine Limited acquired the marine hoses business assets of […]. […] had been active in the marine hoses business as from the starting date of the conduct to which this Decision relates.

20. On [date], all shares of Dunlop Oil & Marine Limited were sold by Unipoly Limited to […], which was, in turn, 100% owned by […].[16] On 1 January 2001, […] transferred its shares in Dunlop Oil & Marine Limited to […]. […] was wholly owned by Phoenix AG.

21. On 2 November 2004 Continental AG acquired approximately 75,6% of the share capital in Phoenix AG, following a merger approval given by the European Commission in a Decision of 26 October 2004 (Case M.3436).[17] On 7 November 2004, these shares were transferred to ContiTech AG, a wholly owned subsidiary of Continental AG. On 16 November 2004, the executive boards of ContiTech AG and Phoenix AG concluded a […] and a merger agreement, both approved by the shareholders' meetings of ContiTech AG and Phoenix AG.[18] According to the Continental AG Annual Report 2004, "*the effective date of the merger is 1 January 2005*".[19] The management and profit and loss pooling agreement was entered in the commercial register on 9 March 2005,[20] while the entry into force of the merger agreement was delayed by Phoenix AG minority shareholders' court actions and only occurred on 16 January 2007. As of 31 December 2004, ContiTech-Universe Verwaltungs-GmbH owned […], which in turn owned […]% of […].

16 […]
17 […]
18 […]
19 Annual Report 2004, p. 70.
20 Annual Report 2006, p. 111-112.

22. On 16 January 2007, Phoenix AG was merged into ContiTech AG and ceased to exist as a legal entity. Since 16 January 2007 the situation has been as follows: […] owns 100% of […]. […] owns 100% of […]. […] owns 96.75/96.6% of […] (the remaining shares are held by […] minority shareholders). […] owns 100% of […] (as of 10 December 2008 indirectly via […][21]). […] owns 100% of […]. […] owns 100% of […].[22]

23. The entities referred to in recitals 20-22 above under the control of Continental AG and its predecessors will hereinafter be jointly referred to as '**DOM**'. The entities which ran the marine hoses business transferred to DOM on 12 December 1997 before that date will hereinafter be referred to as '[…]'.

24. The Continental Group's global annual sales were EUR 14 887 million in 2006.[23]

25. The […] and DOM representatives relevant for the purpose of this Decision are:[24]

Table 3: […] and DOM representatives

Name	Period of Employment	Position

2.2.4. Trelleborg

26. Trelleborg AB is a Swedish undertaking that exists since 1905. Its global turnover was approximately SEK 27 000 million (around EUR 2 900 million) in 2006. The Trelleborg Group comprises four business areas: Trelleborg Engineered Systems (which includes marine hoses), Trelleborg Automotive, Trelleborg Sealing Solutions and Trelleborg Wheel Systems.

27. Trelleborg AB is involved in the production and commercialisation of marine hoses through its subsidiary Trelleborg Industrie SAS ('TISAS'). On 28 March 1996, Trelleborg AB bought the marine hoses business previously owned by the

21 […]
22 […]
23 […]
24 […]

Michelin Group by the acquisition of 100% of the shares of Trelleborg Industrie SAS (then named Caoutchouc Manufacturé et Plastiques de Palport SA, also known as CMP Kléber) from the Michelin Group.[25]

28. The legal entity currently named Trelleborg Industrie SAS has manufactured and marketed marine hoses at least since the 1980s. Since 1993, it has borne the following names:

(a) 1993 Société Industrielle de Raccords Automobiles SA (founded on 28 July 1993);
(b) 1995 Caoutchouc Manufacturé et Plastiques de Palport SA (name adopted on 26 April 1995);
(c) 1997 Trelleborg Industrie SA (name adopted on 28 August 1997); TISAS absorbed a sister company named Trelleborg SA;
(d) 1998 Trelleborg Industrie and/or Bergougnan SA (name adopted on 25 November 1998);
(e) 2004 Trelleborg Industrie and/or Bergougnan SAS; and
(f) 2005 Trelleborg Industrie SAS (name adopted on 13 May 2005).

29. The entities mentioned in recitals 26-28 above will be referred to hereafter as '**Trelleborg**'.

30. The Trelleborg representatives relevant for the purpose of this Decision are:[26]

Table 4: Trelleborg representatives

Name	Period of Employment	Position

2.2.5. Parker ITR

31. Parker ITR Srl is a company active in the manufacturing and commercialisation of industrial and hydraulic hoses, marine oil and gas hoses, and technical compounds. Parker ITR Srl's turnover was [...] in 2006. Parker ITR Srl is a legal entity headquartered in Veniano, Italy.

32. In 1966 Pirelli Treg SpA, part of the Pirelli group, established a marine oil and gas hose business. Subsequently, Pirelli Treg SpA merged with Itala, another entity in the Pirelli group becoming ITR SpA. In 1993 ITR SpA was purchased by Saiag SpA through its controlled entity Finag SA (of Luxembourg). After it had started negotiations with Parker Hannifin about a possible sale of *inter alia* its marine hoses business, Saiag SpA created a new legal entity named ITR Rubber Srl on 27 June 2001, whose business was described as the production and

[25] Actually in the period until 27 December 2004, Trelleborg Industrie SAS management held minute fractions of the shares of Trelleborg Industrie SAS, while Trelleborg Holding France SAS held the remainder; this entity is 100% owned by Trelleborg AB […]

[26] […]

sale of various rubber products, including hoses.[27] On 19 December 2001, all assets of ITR SpA related to the manufacturing and marketing of a series of products including marine hoses were transferred to ITR Rubber Srl. The transfer took effect on 1 January 2002. Parker Hannifin purchased ITR Rubber Srl on 31 January 2002 further to an agreement of 5 December 2001 (and renamed it Parker ITR Srl). At first Parker Hannifin Holding Srl and later Parker Italy Holding Srl held 100% of the shares of Parker ITR Srl. ITR SpA and Saiag SpA continue to exist and carry out business activity.

33. Parker Hannifin Corporation is based in Cleveland, Ohio, United States of America. Parker Hannifin is a diversified manufacturer of motion and control technologies and systems, providing precision engineered solution for a wide variety of commercial, mobile, industrial and aerospace markets.

34. Parker Hannifin Corporation is divided into eight groups: Aerospace, Hydraulics, Filtrations, Climate & Industrial Control, Fluid Connectors, Seal, Instrumentation and Automation/Pneumatics. The Fluid Connectors group is divided into four geographic regions (North America, South America, EU and Asia). One of the geographic regions is Europe. Within Europe the Fluid Connector Group has four divisions and one Business Unit. The products of the Business Unit are sold on the global marine oil and gas market.

35. At present, Parker Hannifin Corporation is the parent company of Parker Hannifin International Corporation which is in turn the parent company of Parker Italy Holding LLC. Furthermore, Parker Italy Holding LLC owns Parker Italy Holding Srl which is the parent company of Parker ITR Srl.

36. Parker Hannifin Corporation's worldwide consolidated turnover for all products during the business year 2006 ending on 30 June was EUR 7 410 million.[28]

37. The entities mentioned in recitals 31 and 33-36 above will be referred to hereinafter as '**Parker ITR**'.

38. The Parker ITR representatives relevant for the purpose of this Decision are:[29]

Table 5: Parker ITR representatives

Name	**Period of Employment**	**Position**

[27] [...]
[28] [...]
[29] [...]

2.2.6. Manuli

39. Manuli is an undertaking active in the design, manufacture and distribution of machines and fluid conveying rubber/metal components and systems for high pressure hydraulics and oil and marine applications worldwide. The ultimate parent company heading the undertaking, Manuli Rubber Industries SpA (**'MRI'**), is a publicly listed company headquartered in Milan, Italy. It manufactures marine hoses and markets them throughout the world.

40. Manuli entered the oil and marine business in 1973, when it was trading as Uniroyal – Manuli SpA, a joint venture owned 50 % by Uniroyal, and 50 % by Dardanio Manuli SpA and three individuals of the Manuli family.[30] In May 1986, Dardanio Manuli SpA purchased Uniroyal's stake in the company and the company's name was changed into Uniroyal – Manuli Rubber SpA.[31] Subsequently, the name of Uniroyal – Manuli Rubber SpA was changed on three occasions: (i) to Uniroyal – Manuli Rubber Srl in November 1988, (ii) to Manuli Rubber Industries Srl in November 1990, and (iii) to Manuli Rubber Industries SpA in January 1997. After an Initial Public Offering in July 1997, the shares were traded on the stock exchange until 2003, when members of the Manuli family repurchased all shares and the company was de-listed.

41. Manuli's worldwide marine hoses marketing and sales activities were initially conducted by MRI. On 2 December 1984 Manuli established Uniroyal Manuli (USA) Inc. (**'MOM'**), a Delaware corporation wholly owned by MRI.[32] The company's name was changed to Uniroyal Manuli Rubber (USA) Inc. in 1986, to Manuli Rubber Industries (USA) Inc. in 1990 and then to Manuli Oil & Marine (USA) Inc. in 1997. The company was liquidated on 31 December 2006. MOM's board of directors was appointed by MRI.[33] After the creation of MOM, Manuli's entire worldwide marine hoses marketing and sales were run by MOM. MOM's daily conduct of business, orders, pricing, quotations and tender activities were handled by […].[34] [35] [36]

42. MRI started to get involved in the operational part of marine hoses marketing and sales again, when on […].[37]

43. MRI and MOM will be referred to hereinafter as '**Manuli**'.

44. Manuli's worldwide consolidated turnover for all products during the calendar year 2006 was EUR […] million and for calendar year 2007 EUR […] million.[38]

45. The Manuli representatives relevant for the purpose of this Decision are:[39]

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30 […]
31 […]
32 […]
33 […]
34 […]
35 […]
36 […]
37 […]
38 […]

Table 6: Manuli representatives

Name	Period of Employment	Position

2.2.7. Other market players

46. In the early period of the period under investigation, two further marine hoses producers existed. […] was taken over by […] in the mid-1980s. [...] exited the marine hoses business in 1995.

47. As of the 1990s, Brazilian companies Flexomarine SA (until 2006/2007 called Pagé) and Goodyear Produtos de Borracha Ltda. started to manufacture and market marine hoses. According to the parties, while these undertakings have a substantial market share in Brazil, until very recently they did not market marine hoses in the international market.

48. In 2006/2007, […] started to manufacture and market marine hoses mainly in Italy on a small scale.

49. [Cartel coordinator's company] is a company incorporated […] United Kingdom. It does not manufacture or market marine hoses. It provides consultancy services relating to the market supply and demand and pricing structure for offshore hoses and ancillary equipment to marine hose manufacturers. Mr. [cartel coordinator], a former […] employee, is the company's majority shareholder and sole director.[40]

50. Previously Mr. [cartel coordinator] carried out his consulting business through a company named [Cartel coordinator's company] incorporated on […].

51. Both companies will hereafter be referred to as [Cartel coordinator's company].

52. Mr. [cartel coordinator] also provided consultancy services through a United Kingdom company named […] and through the Italian company […].[41]

39 […]
40 […]
41 […]

2.3. Description of the business

2.3.1. The demand

53. Marine hoses are purchased for use by petroleum companies, buoy manufacturers, port terminals, oil industry and governments, either for new projects or for replacement purposes.

54. With regard to new project business (also referred to as original equipment, OE), oil terminals or other end users usually engage an engineering company (also referred to as original equipment manufacturer, OEM) as a contractor to construct or install new oil distribution facilities like SBMs or FPSOs.[42] The OEM purchases an entire marine hoses installation for such a project from a marine hoses producer.

55. Once such marine hoses are installed, the individual marine hose parts need to be replaced in a cycle of between […]. Purchases of marine hoses for replacement purposes (also referred to as spare business) are often carried out directly by end users. In some cases, end users outsource and centralise their marine hoses purchases to subsidiaries or external companies. Replacement sales account for a greater proportion of the worldwide marine hoses market than sales of new products.[43]

56. The demand for marine hoses largely depends on the development of the oil sector, in particular oil exploitation in areas remote from the place of consumption. Demand for marine hoses has expanded over time. It is cyclical and to some extent linked to the development of the oil prices. Demand started to become significant in the late 1960s and rose in the early 1970s, in particular from oil producing regions in the Persian Gulf, the North Sea and North Africa. The 1980s saw an increase in demand from South America's developing national oil companies. In the late 1990s, demand moved towards West Africa.

2.3.2. The supply

57. Marine hoses are manufactured by undertakings best known as tyre and rubber manufacturers or their spin-offs. They are produced on demand according to the specific needs of customers. As demand for marine hoses is geographically widely dispersed, most marine hoses producers engage a significant number of agents which, for specific markets, provide general marketing services and offer their products in the course of purchase tenders published in these areas.

2.3.3. The geographic scope of the marine hoses business

58. Marine hoses are traded worldwide and the main producers are active at a worldwide level. Regulatory requirements for marine hoses are not fundamentally different from one country to another.[44] Technical requirements

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42 Single Buoy Moorings or Floating Production, Storage and Offloading systems, see recital 4 above.

43 […]

44 […]

differ according to the specific environment and the conditions of use, but this is not seen as an obstacle to selling marine hoses throughout the world.

2.4. Inter-state trade

59. During the relevant period, the participants sold marine hoses produced in Japan, the United Kingdom, Italy, and France to end users and/or original equipment manufacturers established in different Member States and Contracting Parties to the EEA Agreement and exported marine hoses to other Member States and Contracting Parties to the EEA Agreement.[45] While the end use location of most marine hoses systems is outside Europe, some of the main worldwide original equipment manufacturers are based in different Member States and Contracting Parties to the EEA Agreement.

3. PROCEDURE

3.1. The Commission's investigation

60. Yokohama applied for immunity under the Commission's Notice on Immunity from fines and reduction of fines in cartel cases (the 'Leniency Notice')[46] on 20 December 2006. Yokohama was granted conditional immunity on 26 April 2007.

61. On 2 May 2007, the Commission launched surprise inspections at the premises of DOM, Trelleborg, Parker ITR, Manuli and [cartel coordinator's company] and at the private home of Mr. [cartel coordinator]. In the following months a series of requests for information under Article 18 of Regulation (EC) No 1/2003[47] were sent to the parties involved and other undertakings that could provide information.

62. On [date] Manuli made an application for leniency under the Leniency Notice.[48] On [date] Parker ITR made an application under the Leniency Notice which it subsequently completed.[49] Finally, on 7 December 2007, Bridgestone made an application under the Leniency Notice.[50] On [date], Manuli was informed that its application met the criteria to qualify for a reduction of fines. On 29 April 2008, Parker ITR and Bridgestone were informed that their applications did not meet the criteria to qualify for a reduction of fines.

63. On 28 April 2008, the Commission adopted a Statement of Objections in this case which was notified to the parties between 29 April and 1 May 2008. All parties were sent a DVD with the accessible parts of the file and with the exception of ContiTech AG and Continental AG these parties subsequently visited the Commission in order to consult the parts of the file 'accessible at

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45 The fact that some marine hoses manufacturers based in the EU/EEA exported marine hoses to other EU/EEA countries is also confirmed, for example, by the following replies: […]

46 OJ C 298, 8.12.2006, p. 17.

47 Previously Article 3 of Regulation No 17.

48 [...]

49 [...]

50 [...]

Commission premises'. All parties replied to the Statement of Objections before the deadline. All parties with the exception of DOM, ContiTech AG, and Continental AG asked to be heard at an Oral Hearing which was subsequently held on 23 July 2008.

3.2. Investigations and proceedings in other jurisdictions

64. Following an application for leniency filed by Yokohama, the US Department of Justice and the Japanese Fair Trade Commission also investigated the cartel.

65. […]

66. […]

67. On […] and 2 December 2008, […] and DOM […] and USD 4 000 000 respectively. On 15 November 2007 two Trelleborg employees pleaded guilty to charges related to anticompetitive practices in the marine hoses market. On 11 December 2008, a Bridgestone employee entered a similar guilty plea. On 11 November 2008, […]. A criminal indictment against one Parker ITR employee allegedly involved in the cartel was filed on 28 July 2008. On 12 December 2007, […] and […] of DOM and Mr. [cartel coordinator] of [cartel coordinator's company] pleaded guilty to similar charges before a US court. Subsequently, they were transferred to the United Kingdom, where, on 11 June 2008, they were sentenced by a UK Court for a cartel offence under the UK Enterprise Act. The judgment was upheld by the Court of Appeals on 14 November 2008 albeit with a reduced sentence.

68. In its reply to the Statement of Objections, ContiTech AG argued that […] By adopting this course of action, the Commission went beyond its powers as an independent ´guardian of the Treaty´. Any continuation of the Commission proceedings would therefore infringe the addressees' right to a fair trial based on Article 6(1) of the European Convention on Human Rights and Article 47(1) of the Charter of Fundamental Rights.

69. According to point 12 (b) of the Leniency Notice, an undertaking may be granted immunity from fines even if it is involved in the cartel following its application for immunity, if that is, in the Commission's view, reasonably necessary to preserve the integrity of the inspections. […] It is not uncommon that a certain amount of time lapses between an application for immunity and an inspection, especially if the inspection requires coordination with other jurisdictions. In such a case the mere fact that the Commission knows about an infringement but has not yet carried out an inspection certainly does not affect the rights of defence of the participants of a cartel. Nor are these rights affected if the Commission knows about an infringement but has not yet carried out an inspection, […]. In accordance with the case law, the end date of an infringement can be that of the date of the inspections even if comes some time after the last proven cartel

contact.[51] The Commission also holds the view that international cooperation with other competition authorities, which is of major importance for the detection and investigation of international cartels,[52] requires that obligations of immunity applicants under different jurisdictions have to be coordinated. […] It is finally important to note that the conduct referred to by ContiTech AG did not have any implications on the proceedings in this case, as it did not trigger the investigation, nor does the Commission rely on any evidence obtained from that conduct to establish the infringement shown in this Decision. […] Hence, ContiTech AG has not shown that its rights were affected by the Commission's conduct. Furthermore ContiTech AG has not shown how the Commission's conduct could have affected the Commission's role as authority called upon to implement Article 81 of the Treaty.

4. DESCRIPTION OF THE EVENTS

4.1. Basic principles and functioning of the cartel

70. The investigation of the Commission uncovered evidence showing that the addressees of this Decision participated during the relevant period in anticompetitive arrangements which consisted of:

(a) allocating tenders,

(b) fixing prices,

(c) fixing quotas,

(d) fixing sales conditions,

(e) geographic market sharing,

(f) exchanging sensitive information on prices, sales volumes and procurement tenders.

71. Evidence uncovered shows that at least since 1986 members of the marine hose cartel ran a scheme to allocate among themselves the tenders issued by their customers. Under the scheme, a member of the cartel who obtained a customer inquiry would report it to the cartel coordinator, who would in turn allocate the customer to a 'champion', which means the cartel member who was supposed to win the tender. In order to ensure that the tender was allocated to the 'champion' in the tendering procedure, the cartel members adopted a reference price list and agreed on the prices that each of them should quote so that all bids would be above the price quoted by the champion.

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51 Case T-59/99 *Ventouris v Commission* [2003] ECR II-5257, paragraphs 191-193.

52 For example, *Agreement between the Government of the United States and the Commission of the European Communities regarding the application of their competition laws*, OJ of 27.4.1995 pages 47-52 and *Agreement between the European Communities and the Government of the United States of America on the application of positive comity principles in the enforcement of their competition laws*, OJ L 173 of 18.6.1998, p. 28–31.

72. Moreover, evidence shows that the cartel members agreed to several measures to facilitate this process. They agreed to reference prices, quotas and sales conditions as well as a system of penalties to compensate cartel members who lost a tender which the cartel had allocated to them but which was won by other cartel members.

73. In their replies to the Statement of Objections, none of the parties contest the description of the operation of the cartel with the exception of Bridgestone, which denies that there was an element of market sharing in the cartel.[53]

4.2. The cartel arrangement

74. […][54] Subsequently, the Commission found a series of written agreements at the premises of [cartel coordinator's company] that […] and provide additional details.

4.2.1. The 'Memorandum'

75. In a document of 1 April 1986, Bridgestone, Yokohama, […], […],[55] Trelleborg, Parker ITR, and Manuli agreed upon the following:

"*MEMORANDUM OF UNDERSTANDING 1/4/86*

1. *Quotations for new business to be on the basis of:*
   Original Equipment: *Dunlop* […] *list prices dated 1st January, 1986 less 25% less 18%.*
   Replacement Sales: *Dunlop* […] *list prices dated 1st January, 1986 less 25%.*
2. *"Favoured" bidder to bid prices 4% below second lowest bidder. Band of prices between second lowest and highest bidder to be 4%, varied by items, to avoid identical individual prices.*
3. *Target market shares for the period 1/4/86 to 1/4/87 to be as follows:*
   […][56] [57]

76. The Commission considers that as a contemporaneous document this item of evidence has probative value in itself without having to be supported by other means of evidence. The following circumstances show that this document is evidence of a cartel between the parties concerning marine hoses: (i) Mr. [cartel

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53 […]

54 […]

55 […] was in 1986 already part of the same group as […] and its marine hose activities would before long be integrated into […], including its role in the cartel.

56 The Commission considers that D is DOM; B/S is Bridgestone, Y is Yokohama and […] is […] as these are obvious abbreviations; furthermore, ITR was at the time part of Pirelli Treg (hence T/P), Trelleborg was called Kleber or Kleber Industrie Caoutchouc Manufacture Et Plastique (hence K/C), Manuli was called Uniroyal Manuli (hence U/M) and [...].

57 […]

coordinator], in whose house this document was found, was exclusively involved in consultancy activities regarding one product, marine hoses; (ii) the undertakings mentioned were, at the time, all involved in the production and commercialisation of marine hoses while no significant other suppliers of marine hoses existed; and (iii) the document matches […] in two important respects: the year of the cartel arrangement and the individual quotas of the undertakings involved.[58]

77. The Commission concludes that the parties to the Memorandum of Understanding of 1 April 1986 entered into a cartel which included an agreement on how to allocate tenders,[59] an agreement to fix prices,[60] and an agreement on quotas[61]. As outlined below, these agreements became more sophisticated and gradually changed over time.

4.2.2. The allocation of projects

78. Projects were allocated to cartel members on the basis of a number of criteria such as:

"- *Market share situation*
- *Factory loading situation*
- *Customer preference*
- *History of supply*"[62]

79. The cartel member to whom the project was allocated would be called the 'champion'. According to the 'Memorandum of Understanding', the 'champion' would bid at a certain price level while (some of) the other parties would make 'supporting bids' at a higher level to give the customer the impression of genuine competition.[63]

4.2.3. Pricing

80. Members of the cartel agreed on price lists which served as a reference for the prices quoted to customers. The Memorandum of Understanding refers to 1 January 1986 Dunlop […] prices as the common reference (less a certain percentage).[64]

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58 On the market share quotas see section 4.2.4 below.
59 See section 4.2.2 below.
60 See section 4.2.3 below.
61 See section 4.2.4 below.
62 […]
63 […]
64 […]

81. These prices were adapted several times throughout the duration of the cartel.[65] Following the adoption of new OCIMF standards in 1991, the cartel adopted a set of reference prices based upon the new standard.

82. […] a copy of the price list valid from 2001 onwards, which according to it was agreed upon and distributed in a cartel meeting.[66] The Commission has found copies of these price lists with somewhat different headings but with identical prices at DOM, Manuli and Trelleborg, even though some of these tables have 1992 and others 2001 as date.[67] The price lists covered both the marine hoses and ancillary equipment.

83. The evidence in this case includes numerous messages between members of the cartel and between the coordinators and members of the cartel referring to bids at, for example, P/L x […]. The Commission concludes that this means that members are expected to quote prices at […] % of the agreed price list.[68]

84. The members of the cartel were apparently worried about identical bids (which might look suspicious to customers or authorities suspecting price fixing) as they also agreed upon a method for varying bids according to supplier and diameter of the hose.[69]

85. In its reply to the Statement of Objections, Bridgestone claimed that the purpose of the arrangements in the Memorandum of Understanding was not fixing prices in the classic sense as the price list was only a frame of reference that helped bidders steer tenders to the 'agreed champion'.

86. The Commission notes that the cartel price lists constituted a frame of reference for discussions to agree on the specific prices to be quoted with regard to each tender. Various cartel meeting documents show that the cartel price list was used to set a general price level to guide the prices offered by the champion and the other cartel members in the specific tenders.[70] In the framework of discussions on specific tenders, cartel members then agreed both on the 'champion' and on the prices to be offered in that tender.[71] Hence, the price list was used to steer tenders to the 'agreed champion', which effectively fixed the price for that tender. Price fixing by the cartel members was composed of both the agreements on general price level and the specific arrangements on prices to be offered in a particular tender. Moreover, the arrangements can be expected to have an effect on prices since the 'champion' did not have to fear price competition from other cartel members. It is concluded that the evidence on file shows that the cartel arrangements included an element of price fixing.

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65 […]
66 […]
67 […]
68 […]
69 […]
70 […]
71 See, for example, recitals 138, 179 below.

4.2.4. The market share quotas

87. The cartel was based upon market share quotas for the companies involved. The original market share quotas, which were subsequently reviewed, […].[72] The document named 'Memorandum' subsequently found with [cartel coordinator's company] contained the same information.[73]

88. In the following years the market share quotas changed:

Table 7: market share quotas marine hose cartel

PRODUCER	ORIGINAL QUOTAS 1986[74]	QUOTAS IN 1988-1990[75]	QUOTAS AFTER 1990[76]	QUOTAS AFTER 1999/2000[77]
[…]	[percentage]	[percentage]	[percentage]	[percentage]
[…]	[percentage]	[percentage]	[percentage]	[percentage]
[…]	[percentage]	[percentage]	[percentage]	[percentage]
[…]	[percentage]	[percentage]	[percentage]	[percentage]
[…]	[percentage]	[percentage]	[percentage]	[percentage]
[…]	[percentage]	[percentage]	[percentage]	[percentage]
[…]	[percentage]	[percentage]	[percentage]	[percentage]
[…]	[percentage]	[percentage]	[percentage]	[percentage]

89. Sales to home countries/customers (see section 4.2.5 below) were not included in these market share quotas.

4.2.5. Coordination and allocation of tenders (including geographic market sharing)

90. The cartel involved the allocation of tenders in at least two ways. Firstly, it was agreed that certain geographic markets should be considered as home markets.

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72 […]

73 […]

74 […]

75 […]

76 […] Some of these quotas are confirmed in the minutes of the October 1993 meeting where it is said that Yokohama aimed to increase its quotas from 11 to 13.5%, half of Bridgestone's' quota (Inspection findings, Commission file p. 470/118).

77 […]

Moreover, for all tenders not allocated in this manner, allocation would take place through the cartel coordinator(s) who would allocate tenders on the basis of market share situation, factory loading situation, customer preference and history of supply.[78]

91. With regard to the allocation of certain geographic markets, […] about an "*informal quid pro quo*" / "*Gentlemen's Agreement*" under which the Japanese competitors were prevented or discouraged from winning bids in Europe and vice-versa.[79]

92. The minutes of a 1991 meeting include the following conclusion:

> "[Trelleborg] *requested that certain markets or customers should be considered as* [Trelleborg] *home market and removed from the market share allocation table, as is the case already for* [the Japanese undertakings], […], [Parker ITR] *and* [Manuli]".[80]

93. This shows that at least by 1991 Japan (for Bridgestone and Yokohama), the United Kingdom (for […]), and Italy (for Parker ITR and Manuli) were considered as home markets within the cartel.

94. The "*Italian home market*" divided between Manuli and Parker ITR was already referred to in an internal Manuli document of November 1989, which also indirectly mentions the United Kingdom and France as home markets.[81] On 22 February 1995, an external consultant acting for Parker ITR, [...] wrote to [...] a message on estimated sales and market shares quotas: *"ITR $* […] *% (excludes domestic Italian market). ..."*[82]

95. In 1996, Trelleborg sent a fax to DOM asking for a correction of the market share quota calculation. A sale by Trelleborg should not be counted under the Trelleborg quota as "*for a very long time* […] *has been considered as "private market"* [of Trelleborg] *as we do not have any in* […] ".[83] This shows that for several years before […] was treated similarly with regard to Trelleborg.

96. […] [84] [85] [86]

97. Therefore several national markets ([…], the United Kingdom for DOM, and Japan for Bridgestone and Yokohama, Cameroon in the early 1990s for Trelleborg, and Libya since 1999/2000 for DOM) were considered as home markets and allocated directly to members of the cartel and were not accounted for under the market share quotas of the cartel.

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78 See section 4.2.2 above.
79 […]
80 […]
81 […]
82 […]
83 […]
84 […]
85 […]
86 […]

98. With regard to other tenders, from 1986, when one of the members of the cartel became aware of a tender, it would inform its coordinator: Bridgestone for the Japanese members or […] for the European members. The two coordinators would then decide on the basis of the criteria agreed who would be the 'champion' for the tender.

99. Furthermore, at least since December 2001, the cartel had a single external coordinator: [cartel coordinator's company], owned and ran by Mr. [cartel coordinator]. [cartel coordinator's company] coordinated all members' cartel activities. Moreover, in the period 1999-2001, Parker ITR and [cartel coordinator's company] shared coordination of the cartel.[87]

100. Cartel participants communicated with the cartel coordinator on a regular basis by fax and e-mail and sometimes by telephone for each new enquiry. The coordinator provided cartel members with market share reports, market development reports and concrete instructions as regards their bids. In addition, the coordinator selected a 'champion' for each project.[88]

101. Bridgestone claims that the purpose of the conduct was neither to manipulate levels of supply, nor to allocate geographical areas. The documents quoted by the Commission in this regard merely show that cartel tender allocation did not cover tenders issued in Europe and in Japan, as participants recognised that they predominated in their local markets, amongst other things for historical reasons and due to regulatory barriers, and that market share calculation would not take account of sales into countries where a participant dominated sales. Bridgestone denies that it participated in any allocation of the national markets mentioned by the Commission ([…]) and claims that it supplied to both […] and […] and made various attempts to sell in Europe. DOM also argues that there is significant evidence on the file to demonstrate that each of Bridgestone, Yokohama, Trelleborg and Parker ITR had customers and sales in Libya and concludes that Libya was not an exclusive or 'home market' for DOM.

102. With regard to the allocation of home markets, it is true that most of the contemporaneous documents refer to home markets in the context of discussions on market shares, stating that those home markets should not be taken into account for purposes of calculating and reporting on worldwide market shares. These documents show however that the non-inclusion of home markets in market share calculation was an integral part of the agreement on worldwide market share quotas for each cartel member. Home markets were considered as a quid pro quo for other home markets ("[…] *has been considered as "private" market, as we do not have any in* […] ")[89] or in exchange for accepting lower market share quotas.[90] Those documents also show that the agreed worldwide market share quotas would have been different if the respective home markets had been included in the calculation.[91] All this suggests that the acceptance of

87 […]
88 […]
89 […]
90 […]
91 […]

certain '*home markets*' by cartel members was not just an agreement on which tenders would come within the scope of the cartel, but included an at least implicit agreement that the marine hoses business in home markets would be attributed to the domestic producer, i.e. geographic market sharing. If other producers had tried to sell too much into their home markets, then the domestic producer would demand compensation by higher market shares or would request to be allocated other tenders.

103. If as claimed by Bridgestone the agreement of home markets had been simply a definition of the geographic scope of the cartel taking into account existing regulatory, technical, and commercial barriers for such home markets, the definition of home markets would have been a technical discussion rather than a negotiation about market positions. Moreover there would have been no reason to attribute countries such as […] and […] in which no barriers favouring a domestic producer existed. Therefore, such countries continued to be respected as home markets only because there was a geographic market sharing agreement. With regard to customers in other countries where the domestic producer's position was solid for pre-existing reasons, the agreement recognised these in exchange for other home markets or lower market share quotas.

104. The Commission's position is also supported by the clear statement made by Mr. [cartel coordinator] to […] in a document of 2002 that "*the Club has always respected home markets and these have never appeared on the market share reports*".[92] The word "*respected*" demonstrates that the existence of home markets was at least partially a result of the cartel imposing such a rule rather than any insurmountable barrier to entry. The conscious decision of what market should become a home market is also visible from the document quoted in recital 92 above.

105. The fact that none of the major cartel meeting documents explicitly mentions an agreement on home market allocation can be explained by the fact that this was apparently a delicate subject as the exact value of specific home markets in terms of worldwide quota calculation was difficult to assess. In fact in one document of 2002 Mr. [cartel coordinator] reports that "*we did attempt to get everybody to establish the true market size (...) but nobody wanted to divulge their true figures*".[93]

106. There is no evidence that any cartel member sold marine hoses for end use in another cartel member's domestic market. While, as Bridgestone writes, it attempted to bid for tenders in other European countries such as […] and […], that would only be relevant if the Commission had concluded that the whole of Europe was considered as a home market for the European manufacturers, which it does not. Several cartel members indeed delivered hoses for end use in […], being a 'home market' of DOM. Moreover, DOM relies on a document of 2002 in which Mr. [cartel coordinator] writes that cartel members, while accepting the arrangement were "*still carrying out their own routine marketing in* […] ".[94]

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92 […]

93 […]

94 […]

However in the same document he indicates that DOM dominated the […] market and that "*B2 and B3 have only supplied small orders for* […] *and C have not supplied anything*". While this document may indicate that the home market agreement with regard to […] may have been limited to the major tenders it does not put in doubt the fact that such an agreement existed in the first place. In any event, the fact that an agreement is not respected by all parties does not contradict the fact that such an agreement was reached in the first place.

107. On the basis of the […] and the contemporaneous documents quoted above which corroborate those statements, it is concluded that the evidence on file shows that the cartel arrangements included an agreement to allocate certain geographic markets to specific cartel members, notably […],[…], and Italy and, at times, […] and […].

4.2.6. Exchange of sensitive information on prices, sales volumes and on procurement tenders

108. In order to make the cartel function properly,[95] parties informed the cartel coordinator(s) of upcoming tenders (with the exception of home markets). In turn the coordinator(s) regularly sent the members of the cartel lists of allocated tenders with market share information and price lists.[96]

4.2.7. Other arrangements

109. The members of the cartel agreed to several measures harmonising sales conditions such as payment terms, guarantees and the discouragement of global and long-term contracts[97]. They also agreed upon dealing with exchange rates[98], internet bidding[99], and penalties[100].

110. On occasions, the cartel drew up lists of infringements of the cartel rules. One of those lists dated 1 October 1991 and referred to in the minutes of the cartel meeting in October 1991[101] reads:

"Violation (Oct. '90 – Sept. 91)

Job No	*Customer*	*Amount ($K)*	*Champ*	*Violated by*
27	[...]	[...] [Parker ITR, Trelleborg]	*EP , EK*	*ED*"[102] […][103]

95 See also section 4.2.2 above.
96 See below sections 4.3.2.3 and 4.3.4.3.
97 […]
98 […]
99 […]
100 […]
101 […]
102 […]
103 See explanations of the codes in section 4.2.8 below.

etc. (nineteen items in total). A similar document without a date contains a conclusion that "*Y* [Yokohama] *& U* [Manuli] *WERE ONLY GOOD BOYS*".[104]

111. In later periods, cartel members complained bilaterally in their correspondence about violations of agreements.[105] Moreover, the market share situation as a whole was reviewed repeatedly in meetings, and cartel members falling far behind their target market share would be allocated new tenders with preference.[106]

4.2.8. Codes

112. […] provided two sets of code names for the participants in the cartel used in communication among them.[107] The inspection findings show abundant use of both sets of codes. The parties have not contested the Commission's interpretation of the codes.

113. One document found at Manuli explains the codes. The document is a telephone list with handwritten code names […] before the names of certain individuals known as employees of the companies involved in the cartel.[108]

114. Moreover, many documents showing tables with market information found with the companies systematically mention the cartel participants in the alphabetical order of the code names:[109]

Table 8: code names members marine hose cartel

Bridge-stone	**Yoko-hama**	[…]	**DOM**	**Trelle-borg**	**Parker ITR**	**Manuli**
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]

115. In some documents, especially from the 1980s and early 1990s, another set of codes or abbreviations is used: […]. On the basis of their geographical location (J for Japan and E for Europe) and their names of that period, the Commission concludes that these stand for respectively Bridgestone, Yokohama, [...], […], Trelleborg (then: Kleber), ITR (then: Pirelli Treg)), Manuli and […]. Moreover […] and […] were used for Japanese Group (all Japanese members taken together) and European Group (all European members taken together).

104 […]
105 […]
106 […]
107 […]
108 […]
109 […]

4.3. Chronological overview

4.3.1. The beginning of the cartel

116. While there are indications that a cartel in marine hoses existed in the early 1970s, the Commission has neither detailed descriptions nor contemporaneous evidence of cartel activities for the period between May 1980 and April 1986.[110]

117. […] [111] [112] [113] [114]

4.3.2. April 1986 until March 1997

4.3.2.1. Meetings

118. […] Manuli, which was charged in the Statement of Objections with cartel participation in the periods 1 April 1986 to 1 August 1992 and 3 September 1996 to 2 May 2007, concurred with the Commission that it was not part of the cartel between 1 August 1992 and 3 September 1996, and denied its own participation before 1989 and between 3 September 1996 and May 2000.[115]

119. […] Between April 1986 and April 1992, cartel members usually held a general cartel meeting (a 'Club meeting') twice a year[116].

120. On 1 April 1986, cartel members Bridgestone, Yokohama and [...] (later known as the 'Japanese Group') and […],[…] (which was in 1986 already part of the same group as […] and whose marine hose activities, including its role in the cartel, would before long be integrated into […]), Trelleborg, Parker ITR and Manuli (known as the 'European Group') agreed upon a one page *"Memorandum of Understanding"* (see also section 4.2.1 above). This document is later referred to in at least three other cartel documents (mentioning its date).[117] The document identifies the eight parties to the Memorandum.

121. Still in spring 1986, on 8-10 June 1986, a further cartel meeting took place, and the same parties agreed on a more elaborate arrangement.[118] Market shares were changed and the members of the cartel decided to allocate certain geographic markets to specific cartel members as home markets, at this stage notably Japan, the United Kingdom, and Italy (see section 4.2 above). The document agreed

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110 […]
111 […]
112 […]
113 […]
114 […]
115 See recitals 127-128 below.
116 […]
117 […]
118 […]

upon during this meeting also refers to the eight parties mentioned in recital 120 above. With regard to the prices to be quoted, they provide for a "*trial period*" until an envisaged next meeting on 6 October 1986, but as some of the price arrangements cover the period until December 1987,[119] it can be concluded that the arrangements were intended to last at least until that date. […][120]

122. Table 9 summarizes the evidence on file and the Commission's conclusions with regard to all general cartel meetings between April 1986 and October 1995. It follows from the evidence quoted in Table 9 that these meetings were cartel meetings.

Table 9: Club meetings April 1986-1995

Date, place	**Participants**	**Evidence**
1 April 1986	Bridgestone, Yokohama, [...], […], […], ITR, Trelleborg, and Manuli.	[…] [121] […] [122]
Spring 1986 (8-10 June), Oriental Hotel, Bangkok,	At least Bridgestone ([…]), Yokohama ([…]),[…] ([…]), […] ([…] and another person), Parker ITR ([...]), Trelleborg ([…] and another person)	[…] [123] […] [124] […] [125]
6 October 1986, Copenhagen	[…] ([…] and […]) and all other members (Bridgestone, Yokohama, Trelleborg, Parker ITR, Manuli)[126]	[…] [127] […] [128]
Autumn 1986 at Como, Italy	Yokohama ([…]), Bridgestone ([...]), [...] ([…] and another person), […] ([…]and […]), Parker ITR ([…]), Trelleborg ([…] and another person) [129]	[…][130] […] [131]
6-7 April	At least Yokohama ([…]) and	[…] [132]

119 […]
120 […]
121 […]
122 […]
123 […]
124 […]
125 […]
126 […]
127 […]
128 […]
129 […]
130 […]
131 […]

1987, Bangkok	[…] ([…])	[…] [133] [134] […] [135]
28-30 September 1987, Venice	At least Yokohama ([…]) and […] ([…] and […])	[…] [136] [137] […] [138]
29 February - 2 March 1988, Bangkok	At least Yokohama ([…]) and […] ([…] and […])	[…] [139] [140] […] [141]
26-28 September 1988, Geneva	Bridgestone, Yokohama, [...], […] ([…] and […]), Trelleborg ([…])	[…] [142] […] [143] [144] […] [145] […] [146]
13-18 April 1989, Bangkok	At least Yokohama, […] ([…] and […]), and Trelleborg	[…] [147] [148] […] [149] […] [150]
2 April 1990, Hakone, Japan	Bridgestone (chairman), Yokohama, [...], […] ([…] and […]), Parker ITR, and Manuli. (Not Trelleborg)	[…] [151] […] *[152]* […] [153]
1-2 October	Bridgestone, Yokohama, [...], […], Parker ITR, and Manuli	[…] [154] […] [155]

132 […]
133 […]
134 […]
135 […]
136 […]
137 […]
138 […]
139 […]
140 […]
141 […]
142 […]
143 […]
144 […]
145 […]
146 […]
147 […]
148 […]
149 […]
150 […]
151 […]
152 […]
153 […]

1990, Como	(Not Trelleborg)	
18 April 1991, Bangkok	At least Bridgestone ([…]), Yokohama ([…]), […] ([…] and […]), Trelleborg	[…] [156] [157] […] [158] […] [159] […] [160]
4-5 October 1991, Florence	Bridgestone ([…],[…]), Yokohama, […], Trelleborg, Parker ITR and Manuli	[…] [161] […] [162] [163] […] [164] […] [165] […] [166]
1 April 1992, Macau	At least Bridgestone ([…],[…]), Yokohama ([…]), […] ([…] and […]), and Manuli ([…])	[…] [167] [168] […] [169] […] [170] […] [171]
7-13 October 1992, Paris	At least […] ([…],[…]), Yokohama (not Manuli)	[…] [172] [173] […] [174]
Early October 1993, Portugal	Bridgestone, [...], […] ([…]), Trelleborg (not Yokohama, Parker ITR, Manuli)	[…] [175] […] [176]
7-8 April 1994,	Bridgestone ([…]), Yokohama ([…]) , [...], […]	[…] [177] […] [178]

154 […]
155 […] .
156 […]
157 […]
158 […]
159 […]
160 […]
161 […]
162 […]
163 […]
164 […]
165 […]
166 […]
167 […]
168 […]
169 […]
170 […]
171 […]
172 […]
173 […]
174 […]
175 […]
176 […]

Tokyo	([…]), Trelleborg ([…]) and Parker ITR (not Manuli)	[…] [179] […] [180] and […] [181] […] [182] […] [183] […] [184]
12-13 October 1995, Bangkok	Bridgestone, Yokohama, […] ([…]) (not Manuli)	[…] [185] […] [186] […] [187] […] [188]

123. As indicated in Table 9, in the period from June 1986 until the summer of 1992, the cartel continued to meet with its regular members, gradually adjusting its rules as outlined in section 4.2 above.

124. The "*Rules*"- a document incorporating the minutes of the 7 April 1987 meeting - provides for target market shares for all undertakings involved in the cartel at the time to be applied "*for the period 1/4/87 to 1/1/88*".[189] This confirms that during that time period all undertakings continued to be part of the cartel.

125. In 1990, Trelleborg did not attend meetings. However, it assured the other members of the cartel that: "*whilst their corporate policy prohibits them from attending meetings of the Committee, they intend to pursue an 'intelligent' pricing policy via co-operation with other members, as long as this coincides with their target* (…)".[190] In fact, Trelleborg was included in the market statistics and market share allocation during these meetings,[191] and was in possession of comprehensive statistics for that period (see below recital 133). Trelleborg representatives were present again at least in the meeting in Florence on 4-5 October 1991. Clearly, Trelleborg continued to be part of the cartel throughout this period. In its reply to the Statement of Objections, Trelleborg did not specifically contest its participation in the cartel in this period.

177 […]
178 […]
179 […]
180 […]
181 […]
182 […]
183 […]
184 […]
185 […]
186 […]
187 […]
188 […]
189 […]
190 […]
191 […]

126. Furthermore, a number of smaller bilateral and regional meetings took place between 1986 and 1992. […][192]

127. In its reply to the Statement of Objections, Manuli indicated that there is no proof of its membership from as early as 1986. […] is not sufficient to identify the time at which Manuli adhered to the agreement, and the oral evidence contains numerous statements denying Manuli's presence at the first and subsequent meetings. Manuli's participation before 1989 is not referred to in the […] and Parker ITR. The reference to Manuli's market share in the 1986 '*Memorandum of Understanding'* and in some of the meeting minutes could also be a picture of the actual market situation. Specific adjustments to the agreed prices which each producer was supposed to make to the cartel prices in order not to offer identical prices, which can be found in the '*Addendum'* of 10 June 1986 could also have been drawn up on the basis of a hypothetical cartel which would comprise all the operators in the sector. Statistics on the value of orders during the period 1988-1990 contained in the minutes of the two 1990 meetings and in Market Share tables found at Trelleborg may have been exchanged after 1989. In fact, meeting minutes of December 1999 also refer to the market share of the competitor Pagé which at the time was not considered to be a member of the cartel. Finally […].

128. The Commission notes that […]. […] nor Parker ITR deny Manuli's participation or presence at meetings before 1989 but the relevant individuals merely were not able to recall that presence. While that statement cannot be used to prove Manuli's presence, it does not show Manuli's absence: memory may be fading for events as long ago, especially as Manuli was a smaller player on the market at the time. The Commission also recalls that in cases where *documents* show that there was concertation between undertakings regarding their market behaviour, the burden is on the undertakings not merely to submit an alleged alternative explanation for such behaviour but to challenge the existence of the facts established by those documents.[193] It is clear from the contemporaneous document entitled '*Memorandum of Understanding'* quoted in recital 75 above that it was an agreement between parties present or adhering to it. The reference to target market shares cannot simply describe the actual situation but necessarily means an agreement to respect a party's agreed market share in upcoming bids. If Manuli were not party to the agreement no share would have been reserved for it. Moreover, along with Manuli's market share indicated in the cartel minutes, the cartel rules as described in recital 84 above also indicated how Manuli was to modify its bids in order to avoid making bids identical with those of other cartel members. Manuli has not provided any alternative explanation as to why cartel rules would include such a provision if not because Manuli was a member of the cartel at the time; cartel members would not have provided for arrangements to conceal bid rigging with Manuli if they did not expect Manuli to take part in bidding according to the agreed rules. The Manuli […] may indeed indicate a particular situation of Manuli in the cartel, but Manuli did not prove that this particular situation referred to a later date of entry into the cartel. Moreover, these

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192 […]

193 Joined Cases T-305/94 etc. *Limburgse Vinyl Maatschappij and Others* v *Commission (PVC II)* [1999] ECR II-931, paragraph 728, relied upon in joined Cases T-67/00 etc. *JFE Engineering Corp. v Commission*, [2004] ECR II-2501, paragraphs 186 and 187. (emphasis added).

attempted explanations relating to the meaning of […] are irrelevant for the '*Memorandum of Understanding'* of 1 April 1986 as recital 75 shows clearly that Manuli, just like the other participants, was referred to in that document by an abbreviation of its own name "*U/M*". That same abbreviation for Manuli also appears in the document of 7 April 1987 which refers to "*policies agreed*" on that date and previously.[194] The '*Addendum'* of 10 June 1986 and the documents agreed during the cartel meetings in October 1986, April 1987, and September 1988 quoted in recital 122 also refer to the cartel members including Manuli. For these reasons it is concluded that Manuli's participation in the cartel is proven as of 1 April 1986.

4.3.2.2. Manuli ceased participation

129. According to Manuli, it decided to withdraw from the cartel in 1992.[195] While Manuli participated in most cartel-wide meetings until 1 April 1992 (Macau), it did not participate in any of the meetings after August 1992. An internal Manuli letter of 2 October 2000 states that […] (the Commission presumes that this is Manuli's employee […]) represented Manuli in the cartel until 1992 and mentions a subsequent exit of Manuli from the cartel.[196] In addition, a document found at the premises of Mr. [cartel coordinator] entitled '*History of Activities'*, which was apparently drafted in the late 1990s and updated later on, states that in 1992, "*Manuli ceased cooperation*".[197] Further handwritten notes found at the premises of Mr. [cartel coordinator] include the statement: […] *left August 1992"*[198]. There is no evidence on file which would show collusive contacts with Manuli after mid 1992 (for the period after mid 1996 see section 4.3.2.4 below).

130. On the basis of this evidence, it is concluded that Manuli decided to cease its participation in the cartel on 1 August 1992.[199]

4.3.2.3. Communications

131. Exchanges of information on upcoming marine hoses tenders and on the bids placed, as well as on the winners of these tenders were an important part of the cartel.

132. As shown by a document found at the premises of Mr. [cartel coordinator] entitled '*Rules of Technical Committee Marine Hose April 1990'*,[200] by 1990 the cartel had elaborated a regular communication system. Since all rules "*rely for their success on an effective communication system*", members agreed to communicate with regard to "*early registration of new enquiries with all members*", "*clear confirmation of nominated Champion*" and "*price and terms to be bid by each member*", "*updating of market share situation on a monthly basis by circulation of order allocation table"* and *"confirmation of orders received*".

194 […]
195 […]
196 […]
197 […]
198 […]
199 […]
200 […]

133. The first evidence of systematic collection of information on marine hoses tenders dates back to 1987: two tables found at Trelleborg entitled '*MH market share'* list the value of the marine hoses tenders from January 1987 until August 1994 and from October 1990 until September 1994, and indicate the market shares of the cartel members ([…]).[201] Similar tables submitted by Trelleborg listing tenders from March 1989 onwards[202] are further evidence of systematic collection and exchange of information on awarded and outstanding tenders. An internal Manuli document of November 1989 reported about sales statistics kept by the '*Club*' since as early as 1978 which "*allowed a much higher degree of certainty, perhaps as high as 90%*" and reproduced a comprehensive '*Marine Hose Market Share analysis'* for 1986-1990.[203] In fact, the minutes of the April and October 1990 meetings refer to "*the latest market share table*" and to "*the order allocation tables*", thereby suggesting that a practice of drawing up such tables had existed among cartel members before, and indicate that from that moment on Bridgestone would distribute these tables monthly.[204] The minutes also contain "*final statistics*" for 1988/1990 reproducing partially identical numbers to the tables found at Trelleborg.[205] Furthermore, very similar tables covering later periods were a result of an exchange of information among cartel members to organise and supervise tender allocation (see below, recital 222). The tables of 1987-1994 found at Trelleborg quoted in this recital were likewise a product of an exchange of information among cartel members to organise and supervise tender allocation and cartel collaboration.

134. Moreover, several tables entitled '*MH market share'* were found at or submitted by Trelleborg.[206] [...][207] [208] A table dated 24 September 1993 entitled '*MH Market Share'* covering the period from September 1992 until October 1993 with partially identical data was found at Parker ITR.[209]

135. The handwritten notes from the meeting in October 1993 make clear reference to tender allocation involving also […] [Parker ITR]: ("[…] [Trelleborg] *(...) not prepared to see* […] *keep an increased market share*",[210] showing that Parker ITR continued to be part of the cartel during that time, even though it was not represented at the meeting. Trelleborg's notes on the April 1994 meeting show that participants discussed the development of their individual market shares between October 1992 and March 1994,[211] thereby showing that this entire period was covered by cartel arrangements.

136. [...][212]

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137. [...][213]

138. In a written communication found at Trelleborg and sent by […] [Trelleborg] to […] [[…]] on 2 October 1995 Trelleborg asked […] with reference to "*[...] 59233 1/SP32/DM/1*" to "*let us be 'Champion' on that job*".[214] A similar communication from […] [Trelleborg] to […] [[…]] dated 28 November 1995 reads: "[…] [Parker ITR]*: I want to believe that B3 told you, although this does not match very well with their latest action in […]. They however will have the opportunity to demonstrate their goodwill in the very near future. 2. […] is requesting prices for (...). We hope everyone will accept to consider us as champion on that job; please do not quote below LP x 0.8 FOB. I would appreciate to get OK from* […] *and specially from* […] *as soon as possible*".[215]

139. Four samples of communications with other cartel members between May 1995 and March 1996 and between September 1996 and January 1997 saved on floppy disks found at the premises of Mr. [cartel coordinator] show faxes sent from […] to […] and from […] to Trelleborg and concern tender allocation involving Bridgestone, Yokohama, […], Trelleborg, and Parker ITR.[216]

140. […] [217]

4.3.2.4. Coordination with Manuli in 1996/1997

141. Several pieces of evidence show that as of late 1996, Manuli returned to coordinate some marine hoses tenders with cartel members.

142. In a written communication of 3 September 1996, […] [Trelleborg] wrote to […]: "*I think we have a unique chance to re-establish better price level this year; (...) I agree with your suggestion to let* […] *have a substantial part of this tender and I propose the following figures*", followed by a table with price quotations in which […] is indicated as Champion for one of the tender lots.[218] […] [219]

143. […] [220] [221] [222]

144. […] [223] [224]

145. […] [225]

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213 […]
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219 Joined Cases T-67/00 etc. *JFE Engineering Corp. v Commission*, [2004] ECR II-2501, paragraphs 186-187; Joined Cases T-305/94 etc. *Limburgse Vinyl Maatschappij and Others* v *Commission (PVC II)* [1999] ECR II-931, paragraph 728.
220 […]
221 […]
222 […]
223 […]
224 […]

146. […] [226] In support Manuli quotes […][227] as well as several contemporaneous documents of 2000 indicating that Manuli has […] [228] referring to "*the first co-ordinated job with* […]",[229] to […],[230] and to […][231][…][232]

147. It is hence established that, as of 3 September 1996, Manuli coordinated some tenders with other cartel members and benefited from the comprehensive market information exchanged for the purposes of supervising the market allocation arrangements among cartel members.

4.3.3. March 1997 until June 1999

148. In the Statement of Objections, the Commission concluded that the marine hoses cartel began to experience difficulties in early 1997 and by 1998 became less active, but that in spite of certain conflicts and frictions of the existing cartel arrangements cartel members did not stop coordination of tenders in 1997-1999, nor did any of them clearly distance itself and withdraw from the cartel. The Commission had also concluded that as of early 1999, cartel members began to terminate the period of internal struggles and by 11 June 1999 they had re-established the more formal '*Club*' structures which had existed until the early 1990s in order to increase prices.

149. In their replies to the Statement of Objections, several parties (in particular Trelleborg, […], Bridgestone, and Manuli) contested that the documents quoted by the Commission showed a continuation of the cartel between 1997 and mid 1999 and pointed to other parts of those documents as well as to other documents on file which in their view showed that (i) the cartel had been terminated in spring 1997, or (ii) at least that they had not participated in any cartel activities as of that date and a new, different cartel was set up in 1999.

4.3.3.1. Collusion in 1997

150. Evidence on file shows that in 1997 […], Parker ITR, Trelleborg, Manuli, Bridgestone and Yokohama continued contacts and collusion on tenders for marine hoses awarded and delivered until the end of 1997.

151. […][233] [234] [235]

152. […] [236]

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153. […] [237] [238] [239]

154. […][240]

155. […] [241]

156. In its reply to the Statement of Objections, DOM argued that the two documents of […] show that it exited any pre-existing cartel in March 1997. Trelleborg argues that this document does not support the allegation that cooperation continued, given that it reports the exit of […], a price war, a breakdown of the club, an endemic battle between Japanese producers, and […] contempt for […]. The Commission holds the view that these documents bear witness that Mr. [cartel coordinator] had informed other cartel participants that […] would stop participating in the formal club structure which had existed until that time. However, this is not evidence of a complete withdrawal of […] from the cartel. On the contrary, by reporting to other cartel members that […] intended to "*remain profitable on future pricing despite exiting the club*", […] indicated that its pricing in the future would not significantly deviate from previous price levels as coordinated in the cartel. The failure to implement a complete withdrawal from the cartel is also shown by the evidence of further contacts (recital 158 below). […]

157. The '*history of activities'* found at the premises of Mr. [cartel coordinator] reads: "*3/97: Stop all cooperation. 1997: DOM average price level drops from* […]. *Market prices gradually drop to* […] *in open markets.*"[242] With regard to April 1999, it states that DOM announced that "*it would follow market prices upwards*" (but could not lead), and in June 1999 that "*Activities start again in an effort to increase prices".*[243] Similarly, a document of 2002 apparently prepared by Mr. [cartel coordinator] reads "*March 1997 – all official cooperation stopped; June 1999 – activities start again*"[244] In view of the documents quoted in recitals 151 - 156 above and 158-180 below, the Commission concluded in the Statement of Objections that "*stop all cooperation*" refers to DOM, and not to the cartel as a whole. In this connection, the Commission recalls that the documents of […] clearly show that the cooperation continued (see recitals 151 -156). […].

158. […][245]. Indeed a contemporaneous document shows that in September and October 1997, DOM was awarded a substantial part of the Reliance India tender, while Manuli was not awarded any lot of that tender.[246] […] indicates in his report that Trelleborg was "*attacking*" a Manuli account, and referred to this as

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"*this type of double dealing that made me reluctant to listen to Kleber*". At the same time he reports that during talks with […] he reminded him that […] and […] had offered Manuli support. […] felt it necessary to "*provide three separate explanations*" for Trelleborg's attacks on Manuli accounts. […] also reports that […] of Parker ITR reassured Manuli after meeting with Trelleborg that "*the Europeans would not be aggressive*" on Manuli's account. In its reply to the Statement of Objections, DOM argued that the document does not show that the contacts between […] and other competitors actually occurred, as in December 1997 […] reported that no further contacts occurred (see recital 163 below). […].

159. Finally, as of 13 June 1997, Mr. [cartel coordinator], at the time still with […], reported about a meeting with Parker ITR.[247] Mr. [cartel coordinator] did not provide the diaries on which his recollection is based. Parker ITR – unlike DOM – does not contest that meeting. While Mr. [cartel coordinator]'s report gives some indication that […] and Parker ITR were in contact at that time, nothing is known about the content of the meeting.

160. The Commission also notes that no party except DOM claims that it clearly distanced itself from the cartel between 1997 and 1999/2000. DOM reported in its reply to the Statement of Objections that according to […] in or about March 1997 […], the managing director, gave a clear instruction to all senior management including himself and […], that involvement in any cartel must cease. DOM stated that the documents of 14 and 26 June 1997, the "*history of activities*", and an internal Manuli document of 25 June 1999 in which […] reports from a talk with former DOM employee […] that DOM senior management was told by its owner […] "*that no meeting with competitors is possible under the threat of firing*",[248] show that it formally distanced itself from the cartel in March 1997. For the reasons stated in recitals 156-158 above, the Commission considers that the document of 25 June 1999 is inconclusive to show such conduct, as it merely confirms an internal instruction, and a communication of that instruction two years later by a former employee, at a time when […] clearly participated in the cartel. In view of the evidence and the explanations referred to in recitals 151-160 above it is concluded that […] continued to participate in cartel collusion among competitors.

161. It follows from the […] and from the contemporaneous documents laid out in this section that […], Parker ITR, Trelleborg, Manuli, Bridgestone and Yokohama were in direct contacts aimed at coordinating their bidding behaviour for upcoming marine hoses tenders at least until May 1997. […][249] [250] [251] [252]

162. It is concluded that in 1997 DOM, Parker ITR, Trelleborg, Manuli, Bridgestone and Yokohama continued contacts and collusion on tenders for marine hoses awarded and delivered until the end of 1997.

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4.3.3.2. Contemporaneous documents on continued contacts in 1998

163. […] [253] In their replies to the Statement of Objections, Trelleborg and DOM argued that this document is not evidence of cartel conduct, but to the contrary shows that the cartel had ceased. The Commission considers that the document is indeed an indication that the formal '*Club*' structure in place before 1997 was discontinued. However, the document gives an indication that some tender allocation continued among […] and Bridgestone, for which there appeared to be strong evidence as expressed in a contemporaneous note of another cartel participant, Manuli.

164. An internal Manuli fax of 24 March 1998 mentions that a customer […] believes from pricing received in a tender that "*the hose cartel is still very active*".[254] In their replies to the Statement of Objections, DOM and Trelleborg argued that this statement is mere speculation based on hearsay. The Commission concludes that the statement of a customer familiar with the marine hoses market in a contemporaneous document gives a further albeit vague indication that some tender allocation continued.

165. Several tables entitled '*MH Market Share*' and '*MH Enquiry – Under Evaluation'* covering 1997, 1998, and 1999 were found at DOM[255] and at the premises of Mr. [cartel coordinator].[256] These tables have the same format as the tables previously exchanged among cartel members and, as in previous periods, contain comprehensive information about the winners of marine hoses tenders. This level of detail of information in at least some of the tables covering 1998 suggests that they are based at least partially upon exchange of commercially sensitive information among competitors.

166. […][257]

167. […][258] [259] [260]

168. […]

169. In conclusion, the tables are evidence that at least in some instances DOM exchanged information about the award and the value of marine hoses tenders with other competitors (in particular Parker ITR) during 1998.

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4.3.3.3. Contacts to strengthen the cartel as of September 1998

170. Evidence shows that as of September 1998, Bridgestone, Yokohama, DOM, Parker ITR, and to a limited extend Manuli engaged in contacts aimed at improving collusion between marine hoses manufacturers.

171. On 1 September 1998, Bridgestone hired Mr. [cartel coordinator], who had left DOM shortly before, as a consultant. […] [261] [262] The Commission acknowledges that available evidence does not show that in 1998 Bridgestone engaged Mr. [cartel coordinator] to serve as a cartel coordinator for all parties, and moreover there is no indication that Mr. [cartel coordinator] assumed such a role before mid-1999. That does not however rule out that Mr. [cartel coordinator] made certain contacts on behalf of Bridgestone. Such contacts during that time frame would be imputable to Bridgestone.[263]

172. Attempts to strengthen the cartel as of September or October of 1998 are reported by […][264]

173. Similar instances of contact are the subject of three contemporaneous documents.

174. […] [265] [266] [267] [268]

175. […]

176. […]

177. […] [269] [270]

178. Several documents show that by 11 June 1999 cartel members had terminated the period of internal struggles and had re-established the more formal '*Club*' structures which had existed until the early 1990s in order to increase prices.

179. […][271] [272]

180. Moreover, several pieces of evidence show that a meeting between at least […] of Trelleborg, a representative of Yokohama, and Mr. [cartel coordinator] (at the time working as a consultant for Bridgestone) took place on 23 June 1999. […] [273] […] Travel expense records of Trelleborg's […] show consumptions in the

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bar/restaurant of the London Heathrow Sheraton Skyline Hotel on 23 June 1999.[274] A handwritten diary entry for 23 June 1999 found on the premises of Mr. [cartel coordinator] reads: "*London Sheraton Skyline*".[275] The meeting on 23 June 1999 gives a further indication that competitors had collusive contacts in late 1998 / early 1999, as the preparation of such a meeting after a period of mistrust and internal struggles requires considerable preparation and organisation.

181. It is concluded that the faxes of 11 and 21 June and the meeting of 23 June 1999 are clear evidence that cartel participants had overcome difficulties and engaged in fully-fledged price coordination and tender allocation again, as of 11 June 1999 for Parker ITR, Bridgestone and Yokohama, and as of 21 June 1999 also involving DOM and Trelleborg.

4.3.3.4. Further arguments by the parties pointing at an alleged interruption of the cartel arrangements

182. The parties also referred to several contemporaneous documents and argue that this shows that the arrangements broke down entirely.

183. […][276] [277] [278] [279] [280] [281] [282] [283] [284]

184. In its reply to the Statement of Objections, DOM also referred to the trial of three individuals by a UK court on 10 and 11 June 2008, in which according to DOM the UK Office of Fair Trading relied on the uncontested evidence (i) of Mr. [cartel coordinator] that in "*October 2000 there had been discussions going on between the marine hose manufacturing companies and that led to the reformation or reforming of the cartel or club*.", (ii) of […] stating that "*co-operation continued until the late 1990's, when there were problems with the cartel*" and that discussions about the reforming of a cartel commenced some time in 1999, and (iii) of […] stating that he had been told that DOM had left the cartel in 1997 and did not rejoin it until mid 2000. DOM further refers to a videotape of a cartel meeting in Houston on 2 May 2007 played during the UK trial at which Mr. [cartel coordinator] was recorded as saying that cartel activity had ceased between 1997 and 1999/2000. The Commission notes that the criminal trial before the UK court concerned charges brought against several individuals under the UK Enterprise Act, while the proceedings in this case aim to verify whether an infringement of Article 81 of the Treaty by a number of undertakings took place. The present proceedings concerning an infringement of

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Article 81 of the Treaty and any criminal investigation of the UK Office of Fair Trading into a violation of the Enterprise Act are governed by different procedural rules and were therefore conducted separately without any exchanges concerning the substance of the case. The Commission also notes that neither DOM nor [cartel coordinator's company] have provided the Commission with transcripts of the statements given before the UK court. To the extent that they submitted similar information in their replies to the requests for information, it has been taken into account in this Decision. DOM's submissions about the court hearing in its reply to the Statement of Objections are selective hearsay about what has been testified orally before the court, and the Commission is not in a position to verify the veracity of the quotations. Therefore, DOM's submissions about its former employees' testimony do not have any evidential value going beyond a simple contestation by DOM in its reply to the Statement of Objections of the fact that a cartel existed between 1997 and 1999/2000 and that DOM was part of that cartel. To the extent that contemporaneous documents show collusion involving DOM (see recitals 178-180 above), that claim is rejected.

185. In their replies to the Statement of Objections, DOM, […], and Trelleborg also pointed to the following elements to show that the cartel did not continue to operate between May 1997 and June 1999:

- DOM, one of the two group leaders, officially announced its exit from the cartel in March 1997.[285] While some documents on file show that […] of Parker ITR made attempts to take over the role of European group coordinator, evidence does not suggest that he actually took over that role before mid-1999;

- no multilateral cartel meetings involving all or almost all parties took place during that period and unlike for the period before and after, evidence on file does not include correspondence between cartel members concerning tender allocation;

- prices dropped considerably during that period,[286] and certain documents suggest a "*price war*"[287] between competitors.

186. The Commission holds the view that none of these elements proves that a cartel did not exist during the relevant time.[288]

4.3.3.5. Conclusions as regards the period May 1997 to June 1999

187. Overall, evidence shows that in 1997 […], Parker ITR, Trelleborg, Manuli, Bridgestone and Yokohama continued contacts and collusion on tenders for marine hoses awarded and delivered until the end of 1997. In 1998 at least DOM and Parker ITR continued to exchange commercially sensitive information on the

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285 See recitals 154-155 above.

286 See, for example, document quoted at recital 156.

287 See, for example, document quoted at recital 177.

288 Notably, there may be several reasons for the drop in prices. Contemporaneous documents suggest that the drop was due to a drop in oil prices which entailed a decrease of demand […]. In view of these documents, the decrease of prices does not provide any indication as to whether the cartel continued or ceased to exist between 1997 and 1999.

allocation. As of September 1998, Bridgestone, Yokohama, DOM, Parker ITR, and to a limited extent Manuli engaged in contacts aimed at improving collusion between marine hose manufacturers. It should therefore be concluded that the cartel went through a period of limited activity as of 13 May 1997 until 11 June 1999 for Bridgestone, Yokohama, and Parker ITR and until 21 June 1999 for DOM and Trelleborg.

4.3.4. Mid 1999 until mid 2006

4.3.4.1. Meetings

188. In their replies to the Statement of Objections, the parties did not contest the existence of a cartel or their participation therein for the period from June 1999 to May 2007, with the exception of Manuli which contested its own participation for the period before the second half of 2000, and of Parker ITR which contested its participation in 2007 (see in detail recitals 209 and 235).

189. From 1999 onwards, a further series of meetings were organised. It follows from the evidence quoted in Table 10 that these meetings were cartel meetings.

Table 10: Club meetings June 1999-May 2004

Date, place	**Participants**	**Evidence**
23 June 1999	Trelleborg ([…]), Yokohama, […] (at the time consultant for Bridgestone)	[…] [289] […] [290] […] [291]
2 August 1999	Yokohama, DOM, Trelleborg ([…])	[…] [292] […] [293] […] [294] […] [295]
10 December 1999,	Bridgestone ([…]), Yokohama ([…]), DOM,	[…] [297]

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London	Trelleborg, Parker ITR ([…]),[…][296]	[…] [298] […] [299] [300] [301] […] [302]
6 December 2000, London	Bridgestone ([…]), Yokohama ([…]), DOM ([…][303]), Trelleborg ([…][304]), Parker ITR ([…]), Manuli ([…][305] [306]), […]	[…] [307] […] [308] […] [309] […] [310] […] [311] […] [312] […] [313] […] [314] […] [315] […] [316] […] [317] […] [318] […][319]
11-12 June 2001, Miami	Bridgestone ([…]), Yokohama ([…]), DOM ([…] and at least one other person), Trelleborg ([…]), Parker ITR ([…]), Manuli ([…]), and […]	[…] [320] […][321] […] [322] […] [323]

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	In addition, […] of Phoenix and […] of Trelleborg attended only the dinner reception but not the negotiations	[…] [324] […] [325] […] [326] […] [327] […] [328] […] [329]
3-4 July 2002, London	Bridgestone, Yokohama[330], DOM, Trelleborg ([…][331]), Parker ITR ([…][332]), Manuli ([…][333]),[…][334]	[…] [335] […] [336] […] [337] […] [338] […] [339] […] [340] […] [341] […] [342] […] [343]
May 2004, Houston	DOM, Trelleborg, Parker ITR, Manuli, and […][344]	[…] [345] […] [346]

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190. The December 1999 meeting in London […][347] During the meeting,[348] undertakings confirmed that they "*will do everything* [they] *can to continue to cooperate fully as they have always done in the past*" and "*consider this to be the last chance to make the Club work*" (DOM), "*want the Club to work again*" ([…]), that "*the general idea to re-start the Club is necessary*" (Yokohama). As a "*framework for future cooperation*", the cartel would be formed of three groups […] coordinated by […] for Group 1 and […] [Parker ITR] for Group 2. Moreover, "*any member who does violate an instruction will be isolated by the other members*".

191. […][349]

192. […] [350] [351]

193. With regard to the December 2000 meeting, […][352]

194. The payments for the coordination services agreed during this meeting were carried out through consultancy agreements concluded by cartel members with [cartel coordinator's company] from October 2000. […] [353] [354]

195. […] [355] [356] In an exchange of correspondence, Manuli and [cartel coordinator's company] refer to the invoices as "*pro forma invoices*".[357]

196. Moreover, between 1999 and 2002 a number of bilateral meetings took place. A handwritten diary entry for 4 October 1999 found at the premises of Mr. [cartel coordinator] reads: "[…] *meeting with* […]".[358] The Commission concludes that this refers to a meeting between […] of Parker ITR and […] of Yokohama. […]. [Cartel coordinator's company]'s diary entries of Mr. [cartel coordinator] indicate that a meeting between Mr. [cartel coordinator] and Trelleborg took place in London on 22 December 1999.[359] In the period 2000-2002 a series of bilateral meetings took place that supported the multilateral contacts[360].

197. From 2003 onwards, the cartel organisation changed, and instead of general cartel meetings, suppliers met bilaterally with Mr. [cartel coordinator], as various members were reluctant to take part in cartel-wide meetings.

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198. […][361]

199. According to [cartel coordinator's company], Mr. [cartel coordinator] met a representative of Bridgestone in Frankfurt on 2 May 2003.[362]

200. […][363]. [Cartel coordinator's company] confirms that Mr. [cartel coordinator] met a representative of Yokohama in London on 23 July 2003, and also on 10 September 2003.[364] […] [365]

4.3.4.2. Role of Manuli

201. Evidence shows that Manuli continued its presence in the cartel even through the cartel's period of lower intensity. As indicated in recital 152 above, Manuli's statement indicates that between 1997 and 2000 it was in some kind of illicit contacts with other cartel members concerning cooperation on the marine hoses market. Contemporaneous documents also show that Manuli was updated by them about ongoing collusion throughout this period.[366] When other cartel members discussed the establishment of more formal cartel structures as of 1999, […] of Manuli continued to be in contact with them.[367] He met Mr. [cartel coordinator] on 18 May 1999 and 2 September 1999.[368] In an internal Manuli letter of 30 June 1999, […] reports about a phone call from […] of Trelleborg during which he "*agreed with his assessment that the prices need to increased"* and *"told him that an approach must be made to us centred around 12% market share and that I categorically refuse any attempt to establish a European coordinator that would speak for Manuli within this arrangement.* [369] In the December 1999 cartel meeting, Manuli, although absent, was allocated a quota of the marine hoses market (see document quoted in recital 189 above).

202. Moreover, there is clear evidence showing that Manuli again participated in tender allocation at least from 9 May 2000. […][370] In a further internal letter of […] submitted by Manuli, its employee […] reported about the same meeting.[371]

203. A document distributed by Mr. [cartel coordinator] during a cartel meeting in 2002 reads: "[…]".[372]

204. In a fax of 15 May 2000, […] [Parker ITR] reported that it had received a phone call from […] and that […]"*still want to start cooperating again but we will have to accept that this will be a slow process until both sides have got full confidence in each other.* […] *will be selective in which jobs they co-operate to begin with*

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until such time as we have fixed a firm agreement between all parties and they have seen some successful results. In the meantime we shall continue to maintain contact with them in order to build a relationship for the future". […] [373] [374] [375] [376]

205. Furthermore, [cartel coordinator's company]'s diary entries of Mr. [cartel coordinator] and Manuli documents show that a meeting between Mr. [cartel coordinator] and Manuli took place in Milan on 27 September 2000.[377] […] [378] [379]

206. […] [380]

207. Correspondence of 15 November 2000 found at the premises of Mr. [cartel coordinator] and sent to […] from [cartel coordinator] lists the "[…][381] It also refers to attached Market Share Reports prepared within the table "*covering all of the orders known to have been placed so far*", and a "*Summary Report that gives the totals for the orders plus a list of the major outstanding enquiries that are pending*". The Commission concludes that this refers to the Market Share Reports prepared in the cartel and shows that Manuli was included in the flux of information within the cartel at least as of this date.[382]

208. Finally, Manuli submitted several extracts from internal notes concerning its cartel participation and correspondence with other cartel members dating from August to November 2000.[383]

209. In its reply to the Statement of Objections, Manuli claimed that there is nothing to indicate that it joined the cartel before the second half of 2000. It refers to […].[384] […] [385] [386] [387] As indicated in recitals 201-202 above, contemporaneous documents show that Manuli was in some kind of illicit contacts with other cartel members concerning cooperation on the marine hoses market and was updated by them about ongoing collusion between 1997 and 2000, and that Manuli again participated in tender allocation at least from 9 May 2000. The documents referred to by Manuli in its reply to the Statement of Objections, none of which is contemporaneous to the period before 9 May 2000, indeed confirm that Manuli was not part of the formal '*Club*' structure before that date, but do not contradict the finding in recital 201 above that Manuli continued to be in some kind of illicit

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contacts with other cartel members and was updated by them about ongoing collusion.

210. It is concluded that between 1997 and 9 May 2000 Manuli was in some kind of illicit contacts with other cartel members concerning cooperation on the marine hoses market and was updated by them about ongoing collusion. Manuli fully participated in the formal cartel structure again from 9 May 2000.

211. Subsequently, MRI left the cartel by way of a letter sent by […] to Mr. [cartel coordinator] on 12 March 2003 and a meeting between […], […], and Mr. [cartel coordinator] on 25 March 2003 held to clarify MRI's decision.[388]

212. However, MRI's subsidiary MOM continued to participate in the cartel through its employee […].

213. On 1 May 2003, Manuli's subsidiary MOM and [cartel coordinator's company] entered into a consultancy agreement.[389] […].[390]

214. Therefore, while MRI employees stopped being directly involved in the cartel as from 12 March 2003, MOM employees continued to take part in it. When MOM was dissolved on 31 December 2006, some of these employees were transferred to MRI, and continued to be in contact with other cartel members (for such instances see sections 4.3.4.3, 4.3.5 and 4.4 below).

4.3.4.3. Communications

215. Apart from the meetings which became less and less frequent over time, regular exchanges of correspondence (mostly by fax and e-mail) between the parties as of mid-1999 played an increasingly important role in the cartel.

216. […] [391]

217. Throughout 1999 – 2006, information exchanges concerning past sales, often in relation to quotas were frequent and members regularly discussed allocation of individual sales and other issues.

218. […] [392]

219. […] [393]

220. […] [394]

221. […] [395] [396] [397] [398] [399] [400] [401] [402] [403] [404] [405] [406]

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222. […] [407] [408] [409] [410] [411] [412] [413] [414] [415] [416] [417] [418] [419] [420] [421]

223. […] [422] [423] [424] [425] [426] [427] [428]

224. […] [429] [430] [431] [432]

225. […] [433] [434] [435] [436] [437] [438]

226. Evidence on the file shows payments to Mr. [cartel coordinator] by Manuli on 31 March and 19 May 2006,[439] by […] until 10 May 2006,[440] and by Trelleborg until 20 July 2006.[441]

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227. […] [442] [443] [444] In June 2006, Yokohama substantially undercut the cartel prices for a tender issued by Shell Asia. It is concluded that the cartel continued in 2006, with Yokohama leaving it on 1 June 2006.

4.3.5. Mid-2006 until May 2007

228. Several emails of July to December 2006 exchanged between […] and […] of Bridgestone show that Bridgestone continued to actively seek to coordinate bidding behaviour and benefited from coordination in at least one case and that Bridgestone employees continued to consider themselves part of the cartel throughout that period.[445] Further correspondence of September 2006 addressed to […] and market share reports of January and September 2006 addressed to […] and […]" were also found at the premises of Mr. [cartel coordinator].[446]

229. [Cartel coordinator's company] reports about a meeting with Trelleborg, Parker ITR, and DOM in Geneva on around 13 September 2006,[447] and about meetings with Manuli in London on 17 November 2006, and with Trelleborg in France on 20 December 2006. [448]

230. Furthermore, emails with marine hoses market share tables and market reports until the end of April 2007 were found at Parker ITR.[449] In addition, identical tables sent to […] of DOM] on 7 March 2007 were found at Mr. [cartel coordinator]'s premises.[450] Identical tables sent by Mr. [cartel coordinator] were found at Trelleborg,[451] together with emails from […] of Trelleborg to Mr. [cartel coordinator], in which the former informed Mr. [cartel coordinator] about recent orders placed with Trelleborg.[452] In an email of 4 April 2007 found at Mr. [cartel coordinator]'s premises, Mr. [cartel coordinator] asked […] to advise on orders placed with Trelleborg. This advice was followed by another Trelleborg employee.[453] These documents show that [cartel coordinator's company] continued to provide DOM, Parker ITR, and Trelleborg with information about other competitors' bids in the format used by the cartel for many years.

231. […] [454] [455] [456]

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232. […] [457] [458] [459] [460] [461]

233. In an email of 18 April 2007 found at the premises of Mr. [cartel coordinator] , […]complained that his "*biggest problem at this point is confidence in the arrangements*" and claimed that "*given the current system (...) we must have some procedure or ability in place to punish cheaters*", and also stated that "*communication is a problem*" because "*if we (...) cannot communicate with the players when we need to, confidence is lost and prices must drop in an attempt to ensure an award*".[462]

234. In an email of 19 April 2007 found at Trelleborg, Mr. [cartel coordinator] wrote concerning a […] tender that "*if you need any further information relating to the competitors price levels (...) we will do our utmost to obtain these for you*."[463] This email shows that Trelleborg continued to profit from the pricing information gathered by [cartel coordinator's company], which originated at least partly from competitors.

235. In its Reply to the Statement of Objections, Parker ITR claimed that there was no evidence of an infringement since May 2006 when […] had taken over Parker ITR's marine hoses business (May 2006), with the exception of one event in March 2007 described in Parker ITR's application for reduction of fines which was however not reflected in the Statement of Objections.

236. Parker ITR's description of an event in March 2007 in its application for reduction of fines has not been taken into account. However, the documents quoted in recitals 228-234 above and obtained independently from Parker ITR's description show continued involvement of Parker ITR in the cartel. Parker ITR continued to receive the market share reports used by the cartel to prepare and survey tender allocation for many years throughout the last period of the cartel up to the end of April 2007.[464] Moreover, an email of 18 April 2007 to Parker ITR, in which [cartel coordinator's company] informed Parker ITR of the prices quoted by Manuli, Yokohama, Bridgestone, Parker ITR, and Flexomarine and the winners of "*the Sumed Tender*",[465] shows that Parker ITR continued to profit from the pricing information gathered by [cartel coordinator's company]. An email exchange of 24 April 2007 shows that Parker ITR intended to renew the consultancy agreement with [cartel coordinator's company] to obtain such market intelligence for at least one year.[466] In an email of 2 April 2007 [cartel coordinator's company] asked […] of Parker ITR to "*advise the details of any*

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464 See among others recital 230 above.
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orders received during March for inclusion in our report".[467] As a recipient of this kind of emails, Parker ITR must have assumed that Mr. [cartel coordinator] was sending similar requests to other competitors and therefore that the information contained in the reports was collected at least partly from competitors. Emails by Mr. [cartel coordinator] to Bridgestone [...] [468] [469] [470] as well as a cartel meeting between Trelleborg, Parker ITR, DOM and Mr. [cartel coordinator] in late 2006 reported by Mr. [cartel coordinator] [471] show that Parker ITR continued to be in contact and exchanged bidding strategy information with the cartel.[472] In an email of 2 April 2007, [cartel coordinator's company] asked […] of Parker ITR in respect of an upcoming tender (SBM Brazil) [...][473] Although Parker ITR claims that […] did not know what "*P/L*" meant and submitted a bid for this tender on the cost basis developed by Parker ITR,[474] there is no indication that when receiving the email Parker ITR informed the cartel of its non-compliance with the bidding instructions. Taken together, this evidence shows that between mid-2006 and 2 May 2007 Parker ITR continued to be in contact and exchanged bidding strategy information with the cartel, received bidding instructions from the cartel for tenders in which it participated, and also received information about prices and allocation of recent tenders from competitors in the format used by the cartel to prepare and supervise tender allocation for many years.

237. In its submission of 14 September 2007, Parker ITR reports that in December 2006, its employee […] met […] of […], […] of Trelleborg, and Mr. [cartel coordinator] to convey to them the "*soft message*" that Parker ITR would be "*on our own*" [...].[475] Part of this "*soft message*" was to complain about one tender in October/November 2006 which within the cartel would have been allocated to Parker ITR but was actually won by Trelleborg and to indicate to cartel members: "*you owe me down the road*".[476] For these reasons it is concluded that Parker ITR continued to participate in the cartel until its end.

238. It is concluded that Bridgestone, DOM, Trelleborg, Parker ITR, and Manuli continued to engage in contacts coordinated in part by [cartel coordinator's company] including meetings, emails and phone calls, during which they exchanged information about prices and awards of tenders, allocated tenders and agreed on bidding prices until the Commission's surprise inspections on 2 May 2007.

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472 See recital 229 above
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476 For an assessment of these events see recital 273 below.

4.3.6. Coordination of the cartel

239. DOM and Bridgestone are explicitly identified as cartel coordinators in the minutes of at least two cartel meetings in the early 1990s,[477] as well as in other documents ("*D* [[…]] *and B* [Bridgestone] *coordinators*").[478] Bridgestone was the coordinator for the Japanese Group and […] for the European Group.[479] In that capacity, the two companies coordinated and decided on the allocation of tenders to cartel members, and gave cartel members bidding instructions to implement those decisions.[480] Moreover, Bridgestone was responsible for collecting confidential information from cartel members, drawing up tables showing the state of tender allocation and sending them to other cartel members on a monthly basis.[481] During the period from 1986 to 1992, Bridgestone and […] chaired meetings[482] and […] drafted new rules.[483] Any complaints were assessed by Bridgestone, […] and the 'injured party'.[484] […] of […] was the author of the minutes of the October 1991 meeting.[485] In 1991, Bridgestone drafted a list of violations.[486] Moreover, […] agreed to prepare a new price list based on the new OCIMF rules (1991).[487]

240. Furthermore, several documents show that Bridgestone and […] continued to serve as coordinators for the Japanese and European Groups of the cartel until the mid 1990s. For example, on 26 September 1995 Bridgestone took over responsibility for communicating meeting arrangements from Japanese to European cartel members.[488] On 2 October 1995 Trelleborg asked […] to "*let us be 'Champion' on that job*".[489] On 28 February 1996 […] thanked Bridgestone for a market share report which was received to be forwarded to other B Group Members and contained information on tender quotes from B3.[490]

241. Several documents show that from around 1999-2000 until late 2001, Parker ITR served as coordinator of one of the two cartel groups composed of itself and Yokohama, while another group was coordinated by Mr. [cartel coordinator] . Mr. [cartel coordinator] and his undertaking [cartel coordinator's company] took over the coordination of the whole cartel as of that time until the date of the inspections on 2 May 2007. [491] Already in March 1997, […] had offered to become a cartel coordinator to replace […].[492] As of September 1998, […] [493]

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when the cartel was strengthened again in 1999 after the period of limited activity, Parker ITR took the initiative to approach several cartel members and suggest to them to "*try and begin to increase price levels*".[494] From that time until late 2001, Parker ITR was the coordinator of one cartel group, while the other group was coordinated by Mr. [cartel coordinator]. Inquiries from the cartel group were registered with Parker ITR,[495] and numerous documents show that Parker ITR took over the role of coordinating and deciding on the allocation of tenders, as well as giving bidding instructions to all cartel members.[496] Furthermore, evidence shows that at least the meeting in December 1999, the second key meeting after the more formal structure of the cartel was strengthened again, was chaired by Parker ITR.[497]

4.4. Conclusions as regards the period 1986 - 2007

242. Regular cartel activities went on during the period 1 April 1986 – 2 May 2007, with a period of limited activities between 13 May 1997 and 11 June 1999, lasting until 21 June 1999 for […] (i.e. from December 1997 DOM) and Trelleborg and until 9 May 2000 for Manuli. Yokohama participated in the cartel until 1 June 2006. Manuli participated in the cartel from 1 April 1986 until 1 August 1992 and from 3 September 1996 until 2 May 2007.

243. Between 1 April 1986 and 14 March 1997, […] and Bridgestone coordinated the cartel. From 11 June 1999 to 30 September 2001, Parker ITR shared the coordination of the cartel with Mr. [cartel coordinator]. The latter continued the coordination of the cartel until the Commission inspections on 2 May 2007.

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

5.1. Relationship between the Treaty and the EEA Agreement

244. The arrangements described in section 4 above were applied on a world-wide scale. They were therefore liable to affect competition in the whole of the common market and the territory covered by the EEA Agreement.

245. The EEA Agreement, which contains provisions on competition analogous to those of the Treaty, came into force on 1 January 1994. This Decision therefore includes the application as from 1 January 1994 of those rules (primarily Article 53 of the EEA Agreement) to the arrangements to which objection is taken.

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493 […]
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497 See recital 190.

246. Insofar as the arrangements affected competition in the common market and trade between Member States, Article 81 of the Treaty is applicable. Article 53 of the EEA Agreement is applicable insofar as the arrangements affected competition in the territory covered by that Agreement and trade between the Contracting Parties to that Agreement.

5.2. Jurisdiction

247. In this case the Commission is the competent authority to apply both Article 81 of the Treaty and Article 53 of the EEA Agreement on the basis of Article 56 of the EEA Agreement, since the cartel had an appreciable effect on trade between Member States (see Section 5.3.5 below).

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

5.3.1. Article 8(1)1 of the Treaty and Article 53(1) of the EEA Agreement

248. 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.

249. Article 53(1) of the EEA Agreement (which is modelled on Article 81 of the Treaty) contains a similar prohibition. However the reference in Article 81 to trade "*between Member States*" is replaced 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. Agreements and concerted practices

(1) Principles

250. Article 81 of the Treaty and Article 53 of the EEA Agreement prohibit anticompetitive *agreements* between undertakings, *decisions of associations of undertakings* and *concerted practices*.

251. An 'agreement' can be said to exist when the parties adhere to a common plan which limits their individual commercial conduct by determining the lines of their mutual action or abstention from action in the market. It does not have to be made in writing; no formalities are necessary, and no contractual sanctions or enforcement measures are required. The fact of agreement may be express or implicit in the behaviour of the parties. 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 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.

252. In its judgment in the PVC II case[498], the Court of First Instance stated that "*it is well established in the case law that for there to be an agreement within the meaning of Article [81 EC] of the EC Treaty it is sufficient for the undertakings to have expressed their joint intention to behave on the market in a certain way*".[499]

253. Also, it is well established 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*".[500] Such distancing should take the form of an announcement by the company, for instance, that it wants to take no further part in the meetings (and therefore does not wish to be invited to them).

254. Although Article 81 of the Treaty and Article 53 of the EEA Agreement draw a distinction between the concept of ′concerted practices' and ′agreements between undertakings', their object is to prohibit a form of co-ordination between undertakings which, without necessarily having reached the stage where an agreement properly so-called has been concluded, knowingly substitutes practical co-operation between them for the risks of competition.[501]

255. The criteria of co-ordination and co-operation laid down by the case law of the Community courts, 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 whose object or effect is either to influence the conduct on the market of an actual or potential competitor or to disclose to such a

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498 Joined Cases T-305/94 etc. *Limburgse Vinyl Maatschappij N.V. and others v Commission* (PVC II), [1999] ECR II-00931, paragraph 715.

499 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 recitals No 4 and 15 as well as Article 6 of the EEA Agreement, Article 3(2) of the EEA Surveillance and Court Agreement, as well as Case E-1/94 of 16.12.1994, recitals 32-35. References in this text to Article 81 therefore apply also to Article 53.

500 Case T-334/94 *Sarrió v Commission* [1998] ECR II-01439, paragraph 18. See 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 Case T-25/95 *Cimenteries CBR v Commission* [2000] ECR II-491, paragraph 1389.

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

competitor the course of conduct which they themselves have decided to adopt or contemplate adopting on the market.[502]

256. Thus conduct may fall under Article 81 of the Treaty and Article 53 of the EEA Agreement 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.[503]

257. Although in terms of Article 81 of the Treaty the concept of a 'concerted practice' requires not only concertation but also conduct on the market resulting from the concertation and having a causal connection with it, it may be presumed, subject to proof to the contrary, that undertakings taking part in such a concertation and remaining active in the market will take account of the information exchanged with competitors in determining their own conduct on the market, all the more so when the concertation occurs on a regular basis and over a long period. Such a concerted practice is caught by Article 81 of the Treaty even in the absence of anti-competitive effects on the market.[504]

258. Moreover, it is established case law that the exchange, between undertakings, in pursuance of a cartel falling under Article 81 of the Treaty, of information concerning their respective deliveries, which not only covers deliveries already made but is intended to facilitate constant monitoring of current deliveries in order to ensure that the cartel is sufficiently effective, constitutes a concerted practice within the meaning of that article.[505]

259. In the case of a 'complex infringement' of long duration, it is not necessary for the Commission to characterise the conduct as exclusively one or other of these forms of collusion. The concepts of 'agreement' and 'concerted practice' 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 different forms of infringement.

260. In its *PVC II* judgment,[506] 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*

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502 Joined Cases 40-48/73 etc. *Suiker Unie and others v Commission* [1975] ECR 1663, paragraphs 173 and 174.

503 Case T-7/89 *Hercules v Commission* [1991] ECR II-1711, paragraphs 255-261.

504 Case C-199/92 *P Hüls v Commission*, [1999] ECR I-4287, paragraphs 158-167 and Case C-49/92 *P Commission v Anic Partecipazioni*, [1999] ECR I-4125, paragraphs 121-125.

505 Cases T-147/89, T-148/89 and T-151/89 *Société Métallurgique de Normandie v Commission, Trefilunion v Commission* and *Société des treillis et panneaux soudés v Commission,* [1995] ECR II-1057, 1063, and 1191, respectively, paragraph 72.

506 Judgment of the Court of First Instance in joined Cases T-305/94 etc. *Limburgse Vinyl Maatschappij N.V. and others v Commission* (PVC II)*,* [1999] ECR II-00931, paragraph 696.

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 EC Treaty". This approach has been confirmed by the Court of Justice.[507]

261. In the case of a complex infringement of long duration, the term 'agreement' can properly be applied not only to any overall plan or to the terms expressly agreed 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 the Court of Justice, upholding the judgment of the Court of First Instance, has pointed out it follows from the express terms of Article 81 of the Treaty that agreement may consist not only in an isolated act but also in a series of acts or a course of conduct.[508] The Court of Justice has also said that " *different actions form part of an '*overall plan*' because their identical object distorts competition within the common market*"[509] and that the existence of an 'overall plan' (and thus a single infringement) can be established by a finding that the participants to a series of practices and/or agreements collusively aimed at restricting (price) competition between them.[510]

262. According to the case-law, the Commission must show precise and consistent evidence to establish the existence of an infringement of Article 81 of the Treaty. It is however not necessary for every item of evidence produced by the Commission to satisfy those criteria in relation to every aspect of the infringement. Instead, it is sufficient if the body of evidence relied on by the Commission, viewed as a whole, meets that requirement. It is in fact normal that agreements and practices prohibited by Article 81 of the Treaty assume a clandestine character and that associated documentation is fragmentary and sparse. In most cases therefore, 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.[511]

(2) Application in this case

263. The facts described in section 4 of this Decision demonstrate that Bridgestone, Yokohama, DOM, Trelleborg, Parker ITR, and Manuli agreed to allocate tenders,[512] fix prices,[513] quotas,[514] and sales conditions,[515] and to share geographic markets.[516]

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507 For example Case C-49/92P *Commission v Anic Partecipazioni SpA,* [1999] ECR I-4125, paragraphs 132-133.

508 Case C-49/92P *Commission v Anic Partecipazioni SpA,* [1999] ECR I-4125, paragraph 81.

509 Case C-113/04P *Technische Unie v Commission*, [2006] ECR I-8831, paragraph 178. In this judgment, the Court of Justice also pointed out that the different arrangements and practices "pursued the same anti-competitive object, consisting of maintaining prices at a supra-competitive level" (see paragraph 180).

510 Case C-105/04 P *Nederlandse Federatieve Vereniging voor de Groothandel op Elektrotechnisch Gebied v Commission*, [2006] ECR I-08725, paragraphs 162-163.

511 Joined Cases C-204/00 P, C-205/00 P, C-211/00 P, C-217/00 P and C-219/00 P, *Aalborg and others v. Commission*, [2004] ECR I-123, paragraphs 53-57.

512 See sections 4.2.2, 4.2.5 and 4.3 to 4.4 above.

264. Evidence uncovered shows that at least since 1986 members of the marine hose cartel ran a scheme to allocate among themselves the tenders issued by their customers. Under the scheme, a member of the cartel who obtained a customer inquiry would report it to the cartel coordinator, who would in turn allocate the customer to a 'champion', that means the cartel member who was supposed to win the tender. In order to ensure that the tender was allocated to the 'champion' in the tendering procedure, the cartel members agreed on the prices that each of them should quote in a particular tender so that all bids would be above the price quoted by the champion.[517]

265. Moreover, evidence shows that the cartel members agreed to several measures to facilitate this process. They agreed to quotas, reference prices and sales conditions as well as a system of compensation by cartel members for breaking ranks and winning tenders allocated to another member.[518]

266. Those undertakings also agreed to attribute certain national markets inside and outside the EEA ([…]) exclusively to individual marine hoses suppliers.[519]

267. Basic cartel arrangements such as the market quotas to be attributed to each undertaking and the reference price lists were agreed upon mostly during multilateral meetings.[520] The allocation of specific tenders and the arrangement of the specific prices to be quoted by the 'champion' and by the other undertakings for a specific tender occurred in part during multilateral meetings,[521] and regional or bilateral meetings,[522] and in part by way of written communications among cartel members such as mail, fax, and email mostly involving the cartel coordinator(s).[523]

268. The Commission considers that all cartel members continued to show their adherence to the cartel arrangements by participating in one or more of the cartel activities described in section 4 above throughout the period of the infringement, except for the cases specified in recitals 129 (for Manuli) and 227 (for Yokohama). Moreover, while the Commission does not have evidence of multilateral meetings between October 1995 and December 1999, or after May 2004, it considers that cartel members continued to show their adherence to the cartel arrangements by attending bilateral meetings and/or communicating orally or in writing and thereby allocating tenders and/or agreeing on prices to be quoted for certain tenders or in general and/or exchanging information.[524]

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513 See sections 4.2.3 and 4.3 to 4.4 above.
514 See sections 4.2.4 and 4.3 to 4.4 above.
515 See section 4.2.7 and 4.3 to 4.4 above.
516 See sections 4.2.5 and 4.3 to 4.4 above.
517 See sections 4.1, 4.2.2, 4.2.5, and 4.3 to 4.4 above.
518 See sections 4.1, 4.2.3, 4.2.6, 4.2.7, and 4.3 to 4.4 above.
519 See recitals 91 - 96 above, also for the Commission's conclusions concerning the arguments of Bridgestone and DOM in this regard.
520 See, for example, sections 4.2, 4.3.2.1 and 4.3.4.1.
521 […]
522 See in particular recitals 126, 196, 199, 200, 201, 227, 229 above.
523 See in particular sections 4.2.6, 4.3.2.3, 4.3.4.3 above
524 See in particular sections 4.3.2.3, 4.3.4.3, 4.3.5 and recitals 126 and 196 above.

269. The facts described in section 4 of this Decision also demonstrate that Bridgestone, Yokohama, DOM, Trelleborg, Parker ITR and Manuli exchanged sensitive information on prices, sales volumes and procurement tenders to facilitate and/or monitor the implementation of the agreements on tender allocation.[525] Cartel members informed each other about new tenders issued, about the prices they intended to quote for the tenders, and about which orders they received at which prices. Information was exchanged partly during meetings,[526] and at least as of 1995 in the format of tables circulated in writing among cartel members, at certain times each month.[527] Information exchanges provided cartel members with a continuously updated and nearly comprehensive overview of the marine hoses market.

270. The Commission considers that the participating undertakings have taken account of the information exchanged with competitors in determining their own conduct on the market. Information about new tenders was used to prepare discussions on their allocation among cartel members.[528] Information about the value of tenders attributed to each cartel member was used to assess compliance by cartel members with the agreed market shares, and this assessment influenced the allocation of upcoming tenders among cartel members.[529] In any event, the Commission presumes also based on the case law cited in recital 257 above, that the participating undertakings in such concertation have taken account of the information exchanged with competitors in determining their own conduct on the market, all the more so because the concertation occurred on a regular basis over more than twenty years.

271. By engaging in such conduct, the undertakings concerned adhered to a common plan to restrict competition between them by allocating tenders, fixing quotas, prices and sales conditions, sharing geographic markets, and exchanging information, which limited their individual commercial conduct by determining the lines of their mutual action or abstention from action in the market. Moreover, the exchange of information which occurred between cartel members may be characterised as concerted practices that facilitated the coordination of the parties' commercial behaviour. The exchange was intended to facilitate constant monitoring of deliveries in order to ensure that the cartel was sufficiently effective, and reduced or removed the degree of uncertainty as to the operation of the market in question, at times providing the parties with a nearly complete picture of the current and expected sales in the worldwide marine hoses market, with the result that competition between cartel members was restricted.

272. On the basis of the above, the Commission considers that the arrangements between the undertakings involved constitute agreements and/or concerted practices in the sense of Article 81 of the Treaty and Article 53 of the EEA Agreement.

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525 See in particular sections 4.2.6, 4.3.2.3 and 4.3.4.3 above.
526 See, for example, sections 4.3.2.1 and 4.3.4.1 above.
527 See, for example, sections 4.3.2.3 and 4.3.4.3 above.
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273. With regard to DOM's claim that the conduct of […] in March 1997 constituted a public distancing from the cartel and hence a termination of the participation which should also be taken into account for DOM, which purchased the marine hoses business on 12 December 1997,[530] the Commission concludes that even if an internal instruction to leave the cartel was given, none of the documents on the file is evidence that the conduct of the representatives of […] towards other cartel participants amounted to a public distancing from the cartel in the required way. The Commission recalls that according to the case law, a party which tacitly approves of an unlawful initiative, without publicly distancing itself from its content, effectively encourages the continuation of the infringement and compromises its discovery. That complicity constitutes a passive mode of participation in the infringement which is therefore capable of rendering the undertaking liable in the context of a single agreement.[531] If an undertaking wants to terminate its participation in a cartel, that case law requires the undertaking to openly distance itself from the cartel objectives and the methods to be used for implementing those objectives.[532] Assuming the veracity of DOM's submission, the facts reported therein do not show that […] distanced itself from the cartel in the way required by the case law. When Mr. [cartel coordinator] indicated to Manuli that "*Dunlop's MD advised […] to remain profitable on future pricing despite exiting the club – apparently at the insistence of BTR*" he gave Manuli the impression that […] would not considerably deviate from the price levels agreed upon in the cartel before, and informed Manuli about […]'s intentions for its future pricing strategy. Just two months later, in May 1997, […] returned to discuss tender allocation with competitors. For these reasons it is concluded that […] continued to participate in the cartel until its end.

274. With regard to Parker ITR's claim that its conduct as of May 2006 when […] took over its marine hoses business does not constitute continuation of the agreements and/or concerted practices,[533] the evidence shows that between mid-2006 and 2 May 2007 Parker ITR continued to be in contact and exchanged bidding strategy information with the cartel, received bidding instructions from the cartel for tenders in which it participated, and also received information about prices and allocation of recent tenders from competitors in the format used by the cartel to prepare and supervise tender allocation for many years.[534] Moreover, with regard to Parker ITR's reports that its employees conveyed a "*soft message*" to other cartel members that Parker ITR would be "*on our own*",[535] the Commission recalls that according to the case law, a party which tacitly approves of an unlawful initiative, without publicly distancing itself from its content, effectively encourages the continuation of the infringement and compromises its discovery. That complicity constitutes a passive mode of participation in the infringement which is therefore capable of rendering the undertaking liable in the context of a

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530 See recital 153 - 160 above.

531 Joined Cases C-204/00 P, C-205/00 P, C-211/00 P, C-217/00 P and C-219/00 P, *Aalborg and others v. Commission*, [2004] ECR I-123, paragraph 84; Case T-120/04 *Peroxidos Organicos v Commission* [2006] ECR II-4441, paragraph 68.

532 Case T-329/01 *Archer Daniel Midland v Commission* [2006] ECR II-03255.

533 See recital 235 above.

534 See recital 236 ssq above.

535 See recital 237 above.

single agreement.[536] If an undertaking wants to terminate its participation in a cartel, that case law requires the undertaking to openly distance itself from the cartel objectives and the methods to be used for implementing those objectives.[537] Assuming the veracity of Parker ITR's submission, the facts reported therein do not show that Parker ITR distanced itself from the cartel in the way required by the case law. By complaining about other cartel members' non-respect of a tender allocated to Parker ITR and by stating "*you owe me down the road*" it gave them the impression that it expected obedience to the agreements. By continuing to receive emails with bidding instructions and information about prices and allocation of recent tenders from competitors in the format used by the cartel to prepare and supervise tender allocation for many years without in reply requesting the senders to stop such communications, Parker ITR likewise did not give other cartel members the impression that any announcements of termination of Parker ITR's involvement in the cartel would have to be taken seriously. For these reasons it is concluded that Parker ITR continued to participate in the cartel until its end.

5.3.3. Restriction of competition

275. Article 81 of the Treaty and Article 53 of the EEA Agreement expressly include as restrictive of competition agreements and concerted practices which[538]:

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

(b) share markets or sources of supply.

276. These are the essential characteristics of the arrangements under consideration in this case. The cartel has to be considered as a whole and in the light of the overall circumstances, but the principal aspects of the complex of agreements and concerted practices considered in this case which can be characterised as restrictions of competition are:

(a) allocating tenders,

(b) fixing prices,

(c) fixing quotas,

(d) fixing sales conditions,

(e) geographic market sharing,

(f) exchanging sensitive information on prices, sales volumes and procurement tenders.

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536 Joined Cases C-204/00 P, C-205/00 P, C-211/00 P, C-217/00 P and C-219/00 P, *Aalborg and others v. Commission*, [2004] ECR I-123, paragraph 84; Case T-120/04 *Peroxidos Organicos v Commission* [2006] ECR II-4441, paragraph 68.

537 Case T-329/01 *Archer Daniel Midland v Commission* [2006] ECR II-03255.

538 The list is not exhaustive.

277. These agreements and concerted practices had as their object the restriction of competition within the meaning of Article 81 of the Treaty and Article 53 of the EEA Agreement. They are described in detail in the factual part of this Decision (see section 4). By engaging in that conduct, the undertakings aimed at eliminating the risks involved in uncoordinated bidding for marine hoses tenders, notably the risk of not being awarded a tender due to high prices or less attractive sales conditions, as the cartel members were able to predict with a reasonable degree of certainty what the pricing policy pursued by their competitors during the tenders was going to be.[539] 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. The cartel members ceased to determine independently their policy in the market and thus undermined the concept inherent in the provisions of the Treaty relating to competition.[540]

278. It is settled case-law that for the purpose of application of Article 81 of the Treaty and Article 53 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.[541]

279. Even if it is not necessary to show any anti-competitive effects where the anti-competitive object of a conduct is proven, the facts as established in section 4 of this Decision demonstrate the existence of anti-competitive effects of the cartel arrangements as a whole, comprising agreements and concerted practices. It is, in fact, demonstrated in this case, that the undertakings involved, the sales of which covered over 90% of the worldwide and EEA market of marine hoses, allocated tenders, both with respect to specific customers and geographic markets/countries,[542] agreed in general and for specific tenders to increase and/or to maintain prices at a certain level, and actually attempted and at various times succeeded in raising their prices,[543] exchanged commercially sensitive information[544] and closely monitored the implementation of those agreements. Furthermore, on various occasions cartel members stated that the cartel contributed to the attainment of higher prices levels and quantified those impacts of the cartel.[545]

280. According to the case-law, the Commission is not required to show systematically that the agreed prices allowed the cartel participants to obtain higher prices than in the absence of such agreements. It is sufficient that agreed prices serve as the basis for individual negotiations since they limit the clients'

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539 Case 8/72 *Vereeniging van Cementhandelaren* v *Commission* [1972] ECR 977, paragraph 21.
540 Case T-311/94 *BPB de Eendracht* v *Commission* [1998] ECR II-1129, paragraph 192.
541 Case T-62/98 *Volkswagen AG vs Commission* [2000] ECR II-2707, paragraph 178.
542 See section 4.2.5 and recitals 91 - 96 above.
543 See sections 4.2.3 and 4.3 to 4.4 above.
544 See in particular sections 4.2.6, 4.3.2.3 and 4.3.4.3 above.
545 See, for example, recital 192 above.

margin of negotiation.[546] The fact that an agreement having an anti-competitive object is implemented, even if only in part, is sufficient to preclude the possibility that the agreement had no effect on the market.[547] Also, even when the cartel sets only price objectives and not fixed prices, it cannot be inferred from the fact that the undertakings sold below the reference prices that the cartel had no effects.[548]

281. Whilst the competition-restricting object of the arrangements is sufficient to support the conclusion that Article 81 of the Treaty and Article 53 of the EEA Agreement apply, the likelihood of the competition-restricting effects of those arrangements has nonetheless also been established and leads to the same conclusion.

5.3.4. Single and continuous infringement

(1) Principles

282. A complex cartel may properly be viewed as a 'single and continuous infringement' for the time frame in which it existed. The Court of First Instance points out, inter alia, in the Cement cartel case that the concept of 'single agreement' or 'single infringement' presupposes a complex of practices adopted by various parties in pursuit of a single anti-competitive economic aim.[549] 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.

283. 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 a single infringement which manifested itself in a series of anti-competitive activities throughout the period of operation of the cartel.[550] According to the case law, this also applies if an infringement, although single and continuous, was disrupted for a brief period if the cartel was then resumed fully.[551] That serves to reconcile the concept of a single and continuous infringement with the requirements arising from the need for precise determination of the duration of the infringement and, therefore, insofar as the calculation of the amount of the fine depends among other things on that latter criterion, from the principle of proportionality of the fine. Similar consequences apply if there is a period for which there is evidence of sporadic and low intensity contacts (e.g. exchanges of information, attempts to coordinate behaviour or strengthen the cartel) between participants which nonetheless constitute a

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546 Joined Cases T-259 to 264 and 271/02 *Raiffeisen Zentralbank Österreich and others v Commission* [2006] ECR II-05169, paragraphs 285-286.

547 Case T-38/02 *Groupe Danone v Commission* [2005] ECR II-4407, paragraph 148.

548 Case T-64/02 *Heubach v Commission* [2005] ECR II-5137 , paragraph 117.

549 Case T-25/95 *Cimenteries CBR v Commission* [2000] ECR II-491, paragraph 3699.

550 Case T-1/89 *Rhône-Poulenc S.A. v Commission* [1991] ECR II-867, paragraphs 125-126.

551 Case T-279/02 *Degussa v Commission* [2006] ECR II-897, paragraph 178; see also Case T-21/99 *Dansk Rorindustri v Commission* [2002] ECR II-1681, paragraphs 41-56.

sufficient basis to find that the cartel did not stop functioning at any point during this brief period, but at most changed its usual form. Finally, a single infringement may in any event be found and sanctioned if there is a proven break in the participation of one or more undertakings in the cartel which does not allow the conclusion that the cartel continued between two different manifestations of it. Even if the break were to be of a longer duration, but the participant or participants in question resumed the same cartel after the break, then it would still be possible to find that there had been a single infringement and to impose a sanction also as regards the period prior to the break, without any limitation period being applicable, pursuant to Article 25(2) of Regulation (EC) No 1/2003 and Article 1(2) of Council Regulation (EEC) No 2988/74 of 26 November 1974 concerning limitation periods in proceedings and the enforcement of sanctions under the rules of the European Economic Community relating to transport and competition[552] which applied previously and had the same content. The limitation period would start to run on the day on which the last manifestation of such a single and repeated infringement ceased, and in such a case the concept of repeated infringement would be applicable. Since the participants rejoin the same cartel, a single infringement is committed and a single fine applied for the entire duration excluding the period of the break (see also recitals 411-415 below). [553]

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

285. 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 them and was prepared to take the risk.[554]

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552 [1974] OJ L 319, p. 1.

553 At least two Commission Decisions used this notion: Commission Decision 2007/691/EC of 20 September 2006 in Case COMP/F/38.121 – *Fittings*, [2007] OJ L 283, pp. 63 – 68; Commission Decision 83/546/EEC of 17 October 1983 in Case COMP/IV/30.064 - *Cast iron and steel rolls*, [1983] OJ L 317, pp. 1-18, recitals 67-68.

554 Case C-49/92P *Commission v Anic Partecipazioni SpA,* [1999] ECR I-4125, paragraph 83.

286. As the Court of Justice stated in its judgment in case *Commission v. Anic Partecipazioni*,[555] the agreements and concerted practices referred to in Article 81 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, as reiterated by the Court in the Cement cases, that an infringement of Article 81 may result not only from an isolated act but also from a series of acts or from continuous conduct. That interpretation cannot be challenged on the ground that one or several elements of that series of acts or continuous conduct could also constitute in themselves and taken in isolation an infringement of Article 81 of the Treaty. When the different actions form part of an 'overall plan', because their identical object distorts competition within the common market, the Commission is entitled to impute responsibility for those actions on the basis of participation in the infringement considered as a whole.[556]

287. Although Article 81 of the Treaty does not refer explicitly to the concept of single and continuous infringement, it is settled case-law of the Courts 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*".[557]

288. The fact that an undertaking concerned did not participate directly in all the constituent elements of the overall cartel cannot relieve it of responsibility for the infringement of Article 81 of the Treaty. Such a circumstance may nevertheless be taken into account when assessing the seriousness of the infringement which it is found to have committed. Such a conclusion is not at odds with the principle that responsibility for such infringements is personal in nature, nor does it neglect individual analysis of the evidence adduced, in disregard of the applicable rules of evidence, or infringe the rights of defence of the undertakings involved.

(2) Application in this case

289. The evidence referred to in section 4 of this Decision shows that from 1986 the parties to the infringement in this case fixed target market shares for marine hoses sales, allocated among themselves the tenders issued by their customers, allocated several *'home markets'*, exchanged commercially sensitive information and fixed sales conditions. Target market shares were intended to apply for one

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555 Case C-49/92P *Commission v Anic Partecipazioni SpA,* [1999] ECR I-4125, paragraphs 78-81, 83-85 and 2003.

556 Joint Cases C-204/00 etc,, *Aalborg Portland A/S and Others v Commission*, [2004] ECR I-00123, paragraph 258.

557 Cases T-147/89, T-259/94, T-304/94, T-310/94, T-311/94, T-334/94, T-348/94, *Buchmann and others v. Commission*, [1995] ECR II-01057 paragraphs 121, 76, 140, 237, 169, 223, respectively. See also Case T-9/99, *HFB Holding and Isoplus Fernwärmetechnik v. Commission*, [2002] ECR II-01487, paragraph 231. As regards the meaning of an 'overall plan' in that context, see fn. 510.

or more years, and they were regularly revised and adapted at later stages. The allocation of marine hoses tenders occurred regularly when new tenders were published. Discussions on allocation of several tenders were dealt with jointly in the same faxes, emails or meetings. This shows that the conduct described in section 4 of this Decision was an ongoing process and not an isolated or sporadic occurrence. The different elements of the infringement were in pursuit of a single anti-competitive object, which remained the same both before and after the period of limited activity: the increase or stabilisation of the price in the EEA and worldwide for marine hoses by way of fixing prices, quotas and sales conditions, the allocation of tenders, and the exchange of sensitive information on prices, sales volumes and procurement tenders. The Commission therefore qualifies the conduct described in section 4 of this Decision as a complex, single and continuous infringement running from 1 April 1986 to 2 May 2007.

290. In its reply to the Statement of Objections, Trelleborg argued that the Commission has not adduced sufficiently precise and consistent evidence,[558] in particular has not adduced evidence of facts sufficiently proximate in time for it to be reasonable to accept that that infringement continued uninterruptedly and that Trelleborg participated in it between 1997 and 1999.[559] Trelleborg argued that while a short break in official cartel activity of a few months may require relatively little additional evidence of collusive contacts, this would not be the case in a longer period of time as in this case.[560] According to Trelleborg, evidence shows the ending of arrangements in 1997, an unremitting price war over a period of several years and a very substantial and long term fall in prices. Previous Commission practice, as shown by the Decision in the *Industrial and medical gases* case, was not to find a single and continuous infringement in case of such a break.[561]

291. [...] [562]

292. DOM argued that there is clear evidence that the cartel ceased to operate in the period from March 1997 to 1999. In any event, DOM claims that it did not participate in any cartel during that period, as it formally distanced itself from any cartel in March 1997, and there is no evidence of its continued involvement thereafter.

293. The parties also refer to several contemporaneous documents in which cartel members describe the events in the mid-1990s as […] [563] / "*the club gradually*

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558 Referring to the case law in Joint Cases T-67/00, T-68/99, T-71/00 and T-78/00 *JFE Engineering and others v Commission* [2004] ECR II-2501, paragraphs 173-19.

559 Referring to the case law in Joint Cases T-101/05 and T-111/05 *BASF v Commission* judgement of 12 December 2007, not yet reported, paragraph 187.

560 Referring to Commission Decision of 21 October 1998 in Case IV/35.691/E-4 – *Pre-insulated Pipes*, [1999] OJ L24 at p. 1, recital 141.

561 Referring to Commission Decision of 24 July 2002 relating to a proceeding pursuant to Article 81 of the EC Treaty (Case COMP/E-3/36.700 – *Industrial and medical gases* 2003 OJ L 84/1, paragraph 387; for the Commission practice see also Commission Decision 83/546/EEC of 17 October 1983 in Case IV/30.064 – *Cast iron and steel rolls*, OJ L317 at pp. 1-18, paragraph 68.

562 Referring to Case T-36/05 *Coats and others v Commission* judgement of 12 September 2007, not yet reported, paragraphs 69-71.

stopped functioning"[564] / "*arrangements ended*"[565] and argue that this shows that the arrangements broke down entirely (see section 4.3.3.4 above).

294. In the Commission's view, there are some instances of contacts among single cartel members in the period between May 1997 and June 1999 which can be considered as proven, and there are indications of further instances of contacts and collusion (see section 4.3.3 above). Moreover, it would be artificial to limit the duration of an agreement to the date when it was reached, without counting the time of its preparation and foreseen application. However, the body of evidence available is not sufficient to establish fully that the collusive arrangement between competitors continued with the same intensity between 13 May 1997 and 11 June 1999 (between 13 May 1997 and 21 June 1999 for DOM and Trelleborg, between 13 May 1997 and 9 May 2000 for Manuli, see recital 187 above).

295. However, according to the case law quoted in recital 283 above, a single and continuous infringement may well undergo a period of limited activity or even a suspension for a brief period, provided that the cartel was then resumed fully. The Commission holds the view that even in case of such a period of low or limited activity of two years, a single and continuous infringement may be found provided that a full review of the characteristics of the cartel before and after that period shows that the parties resumed substantially the same cartel. The Commission considers that, while the length of the period should be taken into account, it is primarily of relevance whether the cartel had the same object before and after the period, and whether there was a clear continuity of the method and practice followed.[566]

296. In this case, the infringement was the same before 13 May 1997 and after 11 June 1999. It had the same single anti-competitive object, the same geographic scope, essentially the same members, and it followed essentially the same method.

297. The infringement was in pursuit of a single anti-competitive object, which remained the same both before and after the period of limited activity: the increase or stabilisation of the price in the EEA and worldwide for marine hoses by way of fixing prices, quotas and sales conditions, the allocation of tenders, and the exchange of sensitive information on prices, sales volumes and procurement tenders. The object of the cartel in the first half of the 1990s is shown, for example, by the minutes of a 1990 cartel meeting: "*Fundamental Objectives of* [the] *Committee: to maximise prices, to reduce selling expenses, to exchange information on enquiries in an open manner, so that jobs can be allocated fairly, to enjoy the security that when selected as champion, a member can be confident of winning the job*".[567] In the minutes of the cartel meeting in

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566 Case T-21/99 *Dansk Rorindustri v Commission* [2002] ECR II-1681, paragraphs 41-56 and Commission Decision of 21/10/1998 in Case IV/35.691/E-4 – *Pre-Insulated Pipe Cartel*) [1999] OJ L 24, p. 1, recitals 140-142.

567 […]

December 2000, the object of the cartel is described with almost identical words: "*maximise prices and profitability, give security to the nominated Champion, exchange enquiry information in an open manner, ensure that job allocations are fair and adhered to, reduce selling expenses*".[568]

298. The geographical scope of the infringement was worldwide before 1997 and after 1999. Likewise, cartel members respected that certain geographic markets were supplied only by one party before 1997, and they continued to do so after 1999.[569]

299. The existence of a single and continuous infringement is supported by the fact that the cartel followed the same pattern throughout the years, and there was a clear continuity of method before and after the period of limited activity between 1997-1999 and 1997-2000 for Manuli.

300. In particular, before 1997,

- mostly during general meetings (the last general meeting which can be proven by the Commission took place in 1995), cartel members fixed and repeatedly reviewed target market shares to be attributed to each of them;[570]

- during these general meetings, cartel members also agreed and repeatedly reviewed a list of reference prices to be charged for marine hoses parts;[571]

- members had to '*register'* upcoming tenders with a central coordinator ([…] and Bridgestone);[572]

- on the basis of the general arrangements, cartel members, coordinated by […] and Bridgestone, discussed and proposed a '*champion*',[573] and a price level to be quoted by the '*champion*' and the other bidders;[574]

- a penalty/compensation was foreseen in case of *'violations'* in which a selected *'champion'* lost a tender to another cartel member;[575]

- Bridgestone maintained and distributed a monthly market share status report in order to show if members were behind or ahead of their market share.[576]

301. After 1999, the structure consisting of a central coordination and two groups of members was upheld, although the group composition was modified. The role of coordinator was now attributed to Parker ITR for Yokohama, Trelleborg and Parker ITR, and to [cartel coordinator's company] for DOM and Bridgestone.[577]

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568 See recital 193 above.
569 See section 4.2.5 and recitals 91 - 96 above.
570 See sections 4.2.3, 4.2.4, and 4.3.2.1 above.
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The modification of the composition of the groups in 1999 took place because of previous difficulties in the relationship between Bridgestone and Yokohama.[578] These changes affected neither the underlying market sharing arrangements on which the cartel was based nor the main procedure to allocate tenders which essentially remained the same:

- mostly during general meetings, which took place again as of 1999,[579] cartel members fixed and repeatedly reviewed target market shares to be attributed to each of them (although with slight modifications[580] reflecting the disappearance of [...] in 1995 and changes of cartel members' market positions between the mid 1990s and 1990[581]);

- during these general meetings, cartel members also agreed and repeatedly reviewed a list of reference prices to be charged for marine hoses parts;[582]

- cartel members committed to '*registration'* of upcoming tenders to the coordinator;[583]

- a *'champion'* was selected in accordance with a number of criteria and subsequently supported by all other cartel members. [584] Already as of mid-1999, cartel members started to discuss price levels with reference to the 1992 price list again ("[…]"[585]), before a new price list was prepared in 2001;

- the coordinator issued an updated Market Share Report on a monthly basis;[586]

- members agreed on "*penalties*" / "*compensation*" in case of "*violations*".[587]

302. After 1999, cartel members continued to use the same sets of codes to refer to each other and the same format of tables to exchange information about upcoming tenders and their allocation which they had used before.[588] […] [589]

303. The undertakings participating in the arrangements remained the same throughout the whole period of the infringement, with the exception of undertakings which were no longer active on the marine hoses market ([…], [...]), and the departure of Manuli from the cartel in 1992. Individuals participating in the arrangements in the years before 1997 and in 1999 and 2000 also continued to be mostly the same, with at least one individual per undertaking remaining in the arrangements ([…] for Yokohama, […] for Parker ITR, […] for […], […] for Trelleborg, […] for DOM, [...] for Bridgestone, and […], albeit initially for DOM

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588 See sections 4.3.2.3 and 4.3.4.3 above.
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and subsequently for Bridgestone and as an independent coordinator).[590] Through most of the cartel's existence Bridgestone, Yokohama, DOM, Trelleborg, and Parker ITR took part in it, to a large extent through the same individuals ([…] of Trelleborg took part in the second cartel meeting in 1986, the last cartel meeting in 2007 and most of those in between; […] of Yokohama also took part in the second cartel meeting in 1986 and in many more until at least 2001; […] of Manuli took part in meetings from 1992 until 2007 as far as Manuli took part in the cartel; […] of Parker ITR took place in meetings from at least as early as 1997 until 2006). The methods of the cartel stayed the same as well: to increase prices for marine hoses in reference to a common price table against a background of quotas that excluded certain home markets and clients and an intensive exchange of sensitive commercial data. While the cartel went through a period of limited activity, the behaviour of the companies can only be considered a single and continuous infringement.

304. Moreover, cartel members themselves saw the modified arrangements of 1999 as a follow-up to their earlier cartel behaviour. They referred to the cartel as "[…]"[591] or simply the "*Club*"[592] as they had before 1997.[593] In the December 1999 meeting,[594] undertakings confirmed that they "*will do everything* [they], *can to continue to cooperate fully as they have always done in the past*" and "*consider this to be the last chance to make the Club work*" (DOM), "*want the Club to work again*" [...] and that "*the general idea to re-start the Club is necessary*" (Yokohama). Other documents refer to a "[…]",[595] a "*re-start*" of "*the Club*",[596] "[…]",[597] "*re-establish the Club*" after a prior "*break up of the old Club*".[598] With regard to the contemporaneous documents referred to by the parties as showing that the arrangements broke down entirely, the Commission notes that, while there is not sufficient evidence to prove continuing intensive collusion between May 1997 and June 1999, and while that period was characterised by cartel members as a "*price war*" or an "*all-out war*", in which "*the club disbanded*", "*gradually stopped functioning*", and "*almost collapsed",* there is no indication that the diminution of the cartel arrangements during that period occurred out of any desire to return to conditions of free competition.[599] Moreover, it is only normal in a cartel of long duration that ups and downs follow each other and periods of conflict can hardly be avoided, including a return to more competitive prices. A price war is a normal consequence of and punishment for deviation in a cartel and as such is not incompatible with an overall continuous purpose to distort prices and restrict competition.[600] The Commission

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590 See, for example, sections 4.3.2.1 and 4.3.4.1 above.

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599 The only exception to that may be DOM; however DOM cannot be held liable for the conduct of the entity holding its business before late 1997 in any event.

600 For example Commission Decision 2006/902/EC of 21 December 2005 in Case COMP/F/38.443 – *Rubber Chemicals*, OJ L 353 of 13 December 2006, p. 50 - 53, paragraph 212.

also holds the view that even if the documents quoted by the parties suggest that club activities were not pursued with the same intensity for a certain period of time as of 1997 (see also section 4.3.3 above), that does not affect the conclusion that upon the full reactivation of the cartel its members made explicit references to the Club arrangements in place before and followed up on these arrangements by reactivating a cartel that was essentially the same as before.

305. Finally, while the finding of a single and continuous infringement is case-specific, the Commission notes that, contrary to what is suggested by Trelleborg, previous practice has seen findings of single and continuous infringements in cases where that was contested by the parties in view of periods of price wars and alleged terminations of a cartel.[601]

306. It is concluded that the agreements and/or concerted practices between the undertakings involved throughout the whole period constitute a single and continuous infringement of Article 81 of the Treaty and Article 53 of the EEA Agreement.

307. In any event, even if the period of limited anticompetitive activity between 13 May 1997 and 11 June 1999 (between 13 May 1997 and 21 June 1999 for Trelleborg and between 13 May 1997 and 9 May 2000 for Manuli) were considered as an interruption of cartel activity for all the undertakings for a long period, by later rejoining the same cartel, they have committed at least a single and repeated infringement[602] of Article 81 of the Treaty and Article 53 of the EEA Agreement.

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

308. Article 81 of the Treaty is aimed at agreements which might harm the attainment of a single market between the Member States, whether by partitioning national markets or by affecting the structure of competition within the common market. Similarly, Article 53 of the EEA Agreement is directed at agreements that undermine the achievement of a homogeneous European Economic Area.

309. The Community Courts have consistently held that, "*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*".[603] "*Article*

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601 For example, Commission Decision 2006/902/EC of 21 December 2005 in Case COMP/F/38.443 – *Rubber Chemicals*, OJ L 353 of 13 December 2006, p. 50 - 53, paragraphs 205-220.

602 See Article 25(2) of Regulation 1/2003 and Article 1 paragraph (2) of Council Regulation (EEC) No 2988/74 of 26 November 1974 concerning limitation periods in proceedings and the enforcement of sanctions under the rules of the European Economic Community relating to transport and competition, [1974] OJ L 319, p. 1 and recital 283 above.

603 Case 56/65 *Société Technique Minière* [1966] ECR 282, paragraph 7; Case 42/84 *Remia and Others v Commission* [1985] ECR 2545, paragraph 22; Joined Cases T-25/95 etc., *Cimenteries CBR and Others v Commission* [2002] ECR II-491, paragraph 3930.

81 of the EC Treaty does not require that agreements have actually affected trade between Member States, but it does require that it be established that the agreements are capable of having that effect"[604].

310. The arrangements to which this Decision relates had an appreciable effect on trade between Member States and between the Contracting Parties to the EEA Agreement.

311. As demonstrated in section 2.4 above on trade between Member States, the marine hoses product sector is characterised by a substantial volume of trade between Member States and there is also trade between the Community and EFTA countries belonging to the EEA.

312. In this case, the cartel arrangements covered the entire EEA. The existence of arrangements to fix prices and sales conditions in the entire EEA and to allocate tenders in several Member States and contracting parties to the EEA Agreement and to share geographic markets within the EEA must have resulted, or can be expected to result, in the automatic diversion of trade patterns from the course they would otherwise have followed in the EEA.

313. In its reply to the Statement of Objections DOM argued that the Commission has not proven to the requisite standard that the cartel had an influence, direct or indirect, actual or potential, on the pattern of trade between Member States. This is particularly important as the marine hoses cartel has been investigated by a large number of competition authorities worldwide.

314. It is uncontested that, as indicated in recital 59 above, some of the main worldwide marine hoses manufacturers are based in different Member States and that these manufacturers exported marine hoses to other Member States and contracting parties to the EEA Agreement.[605] Evidence on file shows that tenders for marine hoses for end use within the EEA, for which marine hoses manufacturers based in other Member States did or could have submitted bids were subject to tender allocation within the cartel,[606] including tenders in the agreed 'home markets' of marine hoses manufacturers based in other Member States.[607] In view of these facts it is proven to the requisite standard that the infringement to which this Decision relates had an appreciable effect on trade between Member States and between the Contracting Parties to the EEA Agreement.

315. Insofar as the activities of the cartel related to sales in countries that are not Member States or Contracting Parties to the EEA Agreement, they lie outside the scope of this Decision.

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604 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.

605 […]

606 […]

607 See recitals 91 - 96 above.

316. In its reply to the Statement of Objections, DOM argued that any agreements or concerted practices relating to sales of marine hoses for delivery and use outside the EEA do not affect trade between Member States and therefore fall outside the jurisdiction of the Commission.

317. As shown above (see recitals 289-305), the conduct to which this Decision relates was a single and continuous infringement concerning worldwide sales of marine hoses, including sales of marine hoses with a final destination of use within the EEA and marine hoses invoiced to entities based in the EEA. Some of the sales concerned by the infringement fall outside the scope of the Treaty, but this does not affect the Commission's jurisdiction to deal with the infringement as such. As indicated below in recital 423, sales invoiced to entities based in the EEA but delivered for end use outside the EEA must be considered as sales within the EEA, and fall within the scope of the Treaty.

5.4. Non-application of Article 81(3) of the Treaty and Article 53(3) of the EEA Agreement

318. Pursuant to Article 1(2) of Regulation (EC) No 1/2003, an agreement, decision or concerted practice caught by Article 81(1) of the Treaty shall not be prohibited if it satisfies the conditions of Article 81(3) of the Treaty, that is, if it contributes to improving the production or distribution of goods or to promoting technical or economic progress, provided that it allows customers 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. The same applies, *mutatis mutandum*, with respect to Article 53 of the EEA Agreement.

319. Restriction of competition being the object of the arrangements concerning allocation of tenders, geographic market sharing, fixing of quotas, prices and sales conditions, and exchanging of commercially sensitive information which are the subject of this Decision, there is no indication that the agreements and/or concerted practices between the marine hoses suppliers entailed any benefits or otherwise promoted technical or economic progress. Hardcore cartels, like the one to which this Decision relates, are, by definition, the most detrimental restriction of competition, as they benefit only the participating suppliers, not consumers.

320. According to Article 2 of Regulation (EC) No 1/2003 the burden of proving that the conditions of Article 81(3) are met is on the undertakings claiming the benefit of that provision.

321. None of the participants in the infringement in this case have claimed that the conditions of Article 81(3) are met, or provided evidence to that effect. On this basis, the conditions of Article 81(3) of the Treaty and Article 53(3) of the EEA Agreement are not fulfilled in this case.

6. ADDRESSEES OF THIS DECISION

6.1. Principles

322. In order to identify the addressees of this Decision, it is necessary to determine the legal entities to which responsibility for the infringement should be imputed.

323. As a general consideration, the subject of Community competition rules is the 'undertaking', a concept that has an economic scope and that is not identical with the notion of corporate legal personality in national commercial or fiscal law. The 'undertaking' that participated in the infringement is therefore not necessarily the same entity as the precise legal entity within a group of companies whose representatives actually took part in the cartel meetings. The term 'undertaking' is not defined in the Treaty. However, in Shell International Chemical Company v. Commission, the Court of First Instance held that "*in prohibiting undertakings inter alia from entering into agreements or participating in concerted practices which may affect trade between Member States and have as their object or effect the prevention, restriction or distortion of competition within the common market, Article 85(1)* [now Article 81(1)] *of the EEC Treaty is aimed at economic units which consist of a unitary organization of personal, tangible and intangible elements which pursues a specific economic aim on a long-term basis and can contribute to the commission of an infringement of the kind referred to in that provision*".[608]

324. Despite the fact that Article 81 of the Treaty is applicable to undertakings and that the concept of undertaking has always been a functional one, only entities with legal personality can be held liable for infringements. This Decision should therefore be addressed to legal entities.[609] For each undertaking that is to be held accountable for infringing Article 81 of the Treaty in this case it is therefore necessary to identify one or more legal entities which should bear legal liability for the infringement in this case. 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.*"[610] If a subsidiary does not determine its own conduct on the market independently, the company which directed its market strategy forms a single economic entity with that subsidiary

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608 Case T-11/89, [1992] ECR II-757, paragraph 311. See also Case T-352/94 *Mo Och Domsjö AB v Commission,* [1998] ECR II-1989, paragraphs 87-96; Case T-43/02 *Jungbunzlauer v. Commission*, judgment of 27 September 2006, not yet reported, paragraph 125; Case T-314/01 *Avebe v Commission*, [2006] ECR II-03085, paragraph 136; Case T-330/01, *Akzo Nobel v Commission*, [2006] ECR II-03389, paragraph 83.

609 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. Case T-305/94 *Limburgse Vinyl Maatschappij and others v Commission* [1999] ECR II-0931, paragraph 978.

610 Case 48/69 *Imperial Chemical Industries v. Commission,* [1972] ECR 619, paragraphs 132-133; Case 170/83 *Hydrotherm* [1984] ECR 2999, paragraph 11 and Court of First Instance in Case T-102/92 *Viho v Commission* [1995] ECR II-17, paragraph 50, cited in Case T-203/01 *Michelin* v *Commission* [2003] ECR II-4071, paragraph 290.

and may be held liable for an infringement on the ground that it forms part of the same undertaking.

325. According to the settled case-law of the Court of Justice and the Court of First Instance, the Commission can generally assume that a wholly-owned subsidiary essentially follows the instructions given to it by its parent company without needing to check whether the parent company has in fact exercised that power[611]. However, the parent company and/or subsidiary rebut this presumption by producing sufficient evidence that the subsidiary "*decided independently on its own conduct on the market rather than carrying out the instructions given to it by its parent company and such that they fall outside the definition of an 'undertaking.*"[612]

326. It follows that where an infringement of Article 81 of the Treaty is found to have been committed, it is necessary to identify a natural or legal person who was responsible for the operation of the undertaking at the time when the infringement was committed so that it can answer for it.

327. When an undertaking that has committed an infringement of Article 81 of the Treaty subsequently disposes of the assets which contributed to the infringement and withdraws from the market in question, it continues to be answerable for the infringement if it has not ceased to exist.[613] If the undertaking which has acquired the assets carries on the violation of Article 81 of the Treaty, liability for the infringement should be apportioned between the seller and the acquirer of the infringing assets, each undertaking being responsible for the period in which it participated through these assets in the cartel. However, if a liable legal entity, remaining in existence, is transferred to another undertaking the original legal entity remains liable for any infringement committed by it before the transfer.[614] If the legal entity initially answerable for the infringement ceases to exist and loses its legal personality, being purely and simply absorbed by another legal entity, that latter entity must be held answerable for the whole period of the

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611 Case T-369/04 *Schunk v Commission*, judgment of 8 October 2008, not yet published, paragraphs 55-57; Case T-330/01, *Akzo Nobel v Commission*, [2006] ECR II-03389, paragraph 83; Joined Cases T-71/03 etc. *Tokai Carbon* and Others *v Commission*, [2005] ECR II-10, paragraph 60; Case T-354/94 *Stora Kopparbergs Bergslags v Commission,* [1998] ECR II-2111, paragraph 80, upheld by Court of Justice in Case C-286/98P *Stora Kopparbergs Bergslags v Commission,* [2000] ECR I-9925, paragraphs 27-29; Case 107/82 *AEG v Commission,* [1983] ECR 3151, paragraph 50; Case T-85/06 *General Química and others v Commission*, judgment of 18 December 2008, not yet reported, paragraphs 58-62; Case T-69/04 *Schunk v Commission*, judgment of 08 October 2008, not yet reported, paragraphs 56-57.

612 Court of First Instance in Joined Cases T-71/03 etc. *Tokai Carbon* and Others *v Commission*, [2005] ECR II-10, paragraph 61.

613 Case T-6/89 *Enichem Anic v Commission (Polypropylene),* [1991] ECR II-1623; Case C-49/92P *Commission v Anic Partecipazioni,* [1999] ECR I-3125, paragraphs 47-49.

614 Case C-279/98 P *Cascades* v *Commission,* [2000] ECR I-9693, paragraphs 78-79: *"It falls, in principle, to the natural or legal person managing the undertaking in question when the infringement was committed to answer for that infringement, even if, when the Decision finding the infringement was adopted, another person had assumed responsibility for operating the undertaking ... Moreover, those companies were not purely and simply absorbed by the appellant but continued their activities as its subsidiaries. They must, therefore, answer themselves for their unlawful activity prior to their acquisition by the appellant, which cannot be held responsible for it".*

infringement and thus liable for the activity of the entity that was absorbed.[615] The mere disappearance of the legal entity responsible for the operation of the undertaking when the infringement was committed does not allow the latter to evade liability.[616] Liability for a fine may thus pass to a successor where the corporate entity which committed the violation has ceased to exist in law.

328. Different conclusions may, however, be reached when a business is transferred from one legal entity to another, in cases where transferor and transferee are linked by economic links, that is to say, when they belong to the same undertaking. In such cases, liability for past behaviour of the transferor may transfer to the transferee, notwithstanding the fact that the transferor remains in existence.[617]

329. Moreover, according to the case law, the Commission may hold an economic successor who absorbed the main part of another legal entity's economic activity concerned by the infringement liable for that infringement, in particular if the new legal entity was set up specifically to be the economic successor of the infringing entity.[618]

330. According to the case law, the acts of an agent can be imputed to the principal where the companies acted as a single entity in the market.[619] Where an agent works for the benefit of its principal, it may in principle be treated as an auxiliary body forming an integral part of the principal's business who must carry out its principal's instructions and thus, like a commercial employee, forms an economic unit within that undertaking.

331. The same principles hold true, *mutatis mutandis*, for the purposes of the application of Article 53 of the EEA Agreement.

6.2. Application to this case

6.2.1. Bridgestone (Bridgestone Corporation and Bridgestone Industrial Limited)

332. It is established by the facts described in section 4 above that employees of BSJ were involved in the infringement described in this Decision from 1 April 1986 until 2 May 2007, and that employees of BSIL were involved in the infringement described in this Decision from its incorporation on 19 December 1989 until 2 May 2007.

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615 Case C-49/92 *Commission v Anic* [1999] ECR I-4125, paragraph 145.

616 Case T-305/94 *PVC II,* [1999] ECR II-931, paragraph 953.

617 Joined Cases C-204/00 P (and other), *Aalborg Portland A/S a.o. v Commission* [2004] ECR I, 267, paragraphs 354-360, as confirmed in Case T-43/02 *Jungbunzlauer AG v Commission*, quoted above, par. 132-133.

618 For example, Case T-134/94 *NHM Stahlwerke v Commission*, [1997] ECR II-2293, paragraph 42-46.

619 Case T-66/99 *Minoan Lines v Commission*, [2003] ECR II-05515, paragraph 125; See also Joined Cases 40/73 to 48/73, 50/73, 54/73 to 56/73, 111/73, 113/73 and 114/73 *SuikerUnie and Others v Commission* [1975] ECR 1663, paragraph 480.

333. Moreover, BSJ should also be held liable for BSIL's conduct. BSJ wholly owns BSIL. In accordance with the case law cited in section 6.1 above, it is presumed that BSJ exercises decisive influence over BSIL.

334. Moreover, BSIL was fully integrated into the management and reporting structure headed by BSJ senior management.[620] This reinforces the presumption vis-à-vis the ultimate parent company.

335. [...]

336. According to the case law referred to in recital 330 above, the acts of an agent can be imputed to the principal where the companies acted as a single entity in the market[621]. Where an agent works for the benefit of its principal, it may in principle be treated as an auxiliary body forming an integral part of the principal's business, who must carry out its principal's instructions and thus, like a commercial employee, forms an economic unit within that undertaking.

337. The Commission considers that in this case, [...] any conduct of Mr. [cartel coordinator] and his company [cartel coordinator's company] carried out on behalf of Bridgestone between September 1998 and at least mid-1999 is imputable to Bridgestone. The activities at issue consisted in contacts with other marine hoses manufacturers aimed at colluding with regard to marine hoses tenders. According to the agreement with Bridgestone Mr. [cartel coordinator] and his company were not allowed to act on behalf of any competitor in the marine hoses business.[622] [...] Moreover, the documents on the file concerning that period also show that competitors perceived Mr. [cartel coordinator] as acting on behalf of Bridgestone.[623]

338. Therefore, it is concluded that Bridgestone Corporation should be held liable for its conduct between 1 April 1986 and 2 May 2007 and for the conduct of Mr. [cartel coordinator] between 1 September 1998 and 30 June 1999, and that Bridgestone Corporation and Bridgestone Industrial Limited should be held jointly and severally liable for the conduct of Bridgestone Industrial Limited between 19 December 1989 and 2 May 2007.

6.2.2. Yokohama (the Yokohama Rubber Company Limited.)

339. It is established by the facts described in section 4 above that the Yokohama Rubber Company Limited was involved in the infringement described in this Decision from 1 April 1986 until 1 June 2006.

340. Therefore, it is concluded that the Yokohama Rubber Company Limited. should be held liable for the infringement from 1 April 1986 until 1 June 2006.

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621 Case T-66/99 *Minoan Lines v Commission*, [2003] ECR II-05515, paragraph 7; See also Joined Cases 40/73 to 48/73, 50/73, 54/73 to 56/73, 111/73, 113/73 and 114/73 *SuikerUnie and Others v Commission* [1975] ECR 1663, paragraph 480.

622 […]

623 See recitals 165 and 172 above.

6.2.3. DOM (Dunlop Oil & Marine Limited, ContiTech AG and Continental AG)

341. Dunlop Oil & Marine Limited acquired its oil and marine business assets from Dunlop Limited on 12 December 1997.

342. As has been shown in section 4 above, Dunlop Oil & Marine Limited was involved in the infringement described in this Decision from 12 December 1997 until 2 May 2007. Dunlop Oil & Marine Limited should therefore be held liable for the infringement from 12 December 1997 until 2 May 2007.

6.2.3.1. Liability of ContiTech AG

343. The Statement of Objections informed Dunlop Oil & Marine Limited and its parent companies of the Commission's intention to hold ContiTech AG liable for the conduct of Dunlop Oil & Marine Limited from 28 July 2000 until 2 May 2007.

Arguments by Dunlop Oil & Marine Limited, ContiTech AG and Continental AG

344. In their replies to the Statement of Objections, Dunlop Oil & Marine Limited, ContiTech AG and Continental AG argued that :

(a) the Statement of Objections did not indicate a clear date as of which the Commission intended to hold ContiTech AG liable;

(b) Phoenix AG should not be held liable for the conduct of Dunlop Oil & Marine Limited as […] is not a sufficient condition for liability, least of all when the ownership was indirect;

(c) the indicia advanced by the Commission in support of the conclusion that Phoenix AG effectively controlled Dunlop Oil & Marine Limited are inconclusive, while the fact that Dunlop Oil & Marine Limited continued to be a fully functional entity after the takeover by Phoenix AG, […] disprove the economic unity between Dunlop Oil & Marine Limited and Phoenix AG;

(d) ContiTech AG should not be held liable for the conduct of Phoenix AG on the ground that it exercised effective control over it, […] and the other evidence relied on by the Commission to show effective control is inconclusive;

(e) the merger of Phoenix AG into ContiTech AG does not transfer the liability of the former to the latter, as the Commission did not demonstrate economic unity between ContiTech AG and the subsidiary directly involved in the infringement.

Appraisal by the Commission

Statement of Objections

345. According to the case law, the Statement of Objections must be sufficiently clear to enable the parties concerned properly to identify the conduct complained of by the Commission.[624]

346. In the Statement of Objections the Commission established the liability of ContiTech AG due to its role as legal successor of Phoenix AG, for the time period between 28 July 2000 and 2 May 2007 (conclusion at paragraphs 326 and 329, reasoning at paragraphs 327, 328 and 329 of the Statement of Objections). Moreover, for the period between 9 February 2005 and 2 May 2007, the Commission established the liability of ContiTech AG on the additional ground that it exercised decisive influence over Phoenix AG and […] Dunlop Oil & Marine Limited (conclusion at paragraphs 326 and 331 of the Statement of Objections, reasoning at paragraphs 330 and 331). The Statement of Objections clearly stated that the Commission intended to hold ContiTech AG liable from the date on which liability can be established on the basis of the first ground. Nowhere did the Statement of Objections indicate that the Commission intended to limit ContiTech AG's liability to the period starting from 9 February 2005: where that date was mentioned in the context of ContiTech AG's liability, it was specified that this was to indicate that from that date the Commission "also" intended to hold ContiTech AG liable on the additional ground that it exercised decisive influence over Phoenix AG and […] Dunlop Oil & Marine Limited, thereby clarifying that 9 February 2005 is *not* the starting date of ContiTech AG's liability.[625]

347. With regard to the conclusions drawn in the Statement of Objections, it is true that in one summary conclusion in section 6 ("*Addressees of the present proceedings*"), the Statement of Objections mistakenly stated that ContiTech AG is liable as of 2 November 2004 (and not as it should have stated as of 28 July 2000) (paragraph 334). However, the Commission considers that in accordance with the case law quoted in recital 345 above, it is the Statement of Objections read as a whole which must be sufficiently clear to properly identify the alleged conduct. In this regard, it is important to note that both the introduction to the Statement of Objections (paragraph 3) and the final conclusion concerning the "*Duration of the infringement*" at the end of the Statement of Objections (paragraph 358) indicated 28 July 2000 (and not 2 November 2004) as the starting date for ContiTech AG's liability. Moreover, section 6 ("*Addressees of the present proceedings*") gives detailed reasons why ContiTech AG should be held liable as of 28 July 2000, referred to several events that occurred in 2000, 2001, and 2002, and twice indicates 28 July 2000 (and not 2 November 2004) as a starting date (paragraphs 326 and 329). The reasoning of the Statement of Objections indicated that the grounds for holding ContiTech AG liable ([…] by Phoenix AG - ContiTech AG's predecessor – […]), were present as of 28 July 2000. ContiTech AG cannot claim that it was unable to properly identify and defend itself against the conduct complained of by the Commission, given that the Statement of Objections gave detailed reasons for holding ContiTech AG liable as of 28 July 2000, and the Commission's intention to do so is expressed at

624 For example, Case T-15/02 *BASF AG v Commission* [2006] ECR II-497 paragraph 45.
625 See recitals 326, 331.

least four times in the text as a whole. It is concluded that from the perspective of an addressee, the single reference to 2 November 2004 in paragraph 334 of the Statement of Objections was identifiable as a clerical error, and the Statement of Objections read as a whole could only have been understood to allege that ContiTech AG was liable as of 28 July 2000 (and not as of 2 November 2004). This is apparently how ContiTech AG effectively understood the Statement of Objections: its reply contains a detailed examination aimed at rebutting the Commission's reasoning to establish ContiTech AG's liability as of 28 July 2000, and analyses several events between 2000 and 2002 relied on in the Statement of Objections for that purpose. By letter of 12 September 2008 the Commission informed ContiTech AG about the clerical error in the Statement of Objections and gave ContiTech AG the opportunity to comment.

Liability due to position as successor of Phoenix AG

(a) Exercise of decisive influence by Phoenix AG over Dunlop Oil & Marine Limited

348. Between 28 July 2000 and 16 January 2007, […], Phoenix AG owned […] of Dunlop Oil & Marine Limited. It can therefore be presumed that it exercised decisive influence on its subsidiary's conduct. ContiTech AG's interpretation of the relevant precedents[626] suggesting that full control is not sufficient to establish a presumption of exercise of decisive influence cannot be accepted. As explained in recitals (322) – (331), and as recently confirmed by the Community Courts,[627] it is established case law that the Commission can presume that parent companies exercise decisive influence on their wholly owned subsidiary. Where such a presumption applies, […], it is for the parent company to reverse the presumption by adducing evidence demonstrating that its subsidiary decided independently on its conduct on the market. Failure to provide sufficient evidence on the part of the parent company amounts to a confirmation of the presumption and provides a sufficient basis for the imputation of liability.

349. These principles apply in the case of indirect ownership as well, as indirect shareholdings enable the shareholder which holds 100% of the shares indirectly to influence the subsidiary to a similar degree as a shareholder holding 100% directly.[628] The case relied upon by ContiTech AG to demonstrate that the presumption should not apply in the case of an indirectly wholly-owned subsidiary is inconclusive in that regard. According to that case – which concerns public procurement -, the interference of an intermediate company "*may, depending on the circumstances of the case, weaken any control possibly*

626 Referring to Case C-286/98P *Stora Kopparbergs Bergslags v Commission*, [2000] ECR I-9925, paragraph 28 and to Case T-109/02 *Bolloré v Commission* [2008] ECR II-947, paragraph 132.

627 Case T-85/06 General Química and others v Commission, judgment of 18 December 2008, not yet reported, paragraphs 58-62.; Case T-69/04 Schunk v Commission, judgment of 08 October 2008, not yet reported, paragraphs 56-57; Case T-69/04 Schunk v Commission, judgment of 08 October 2008, not yet reported, paragraphs 56-57; Case T-30/05 *Prym Consumer v Commission*, judgment of 12 September 2007, not yet reported, paragraphs 146-148.

628 Case T-330/01, *Akzo Nobel v Commission*, [2006] ECR II-03389, paragraphs 78, 83 to 85; T-203/01 *Michelin* v *Commission* [2003] ECR II-4071, paragraph 290; Case T-9/99 *HFB Fernwärme v Commission*, [2002] ECR II-1487, paragraph 59.

exercised by the contracting authority over a joint stock company merely because it holds shares in that company"[629] That case concerned 99,98% ownership, and the Court relied particularly on the fact that in such a case special protection for minority shareholders would weaken the influence of the indirect owner. Even so, clearly, the Court did not suggest that the subsidiary would enjoy full autonomy from the majority parent. In any event, case law concerning the interpretation of the notion of "*public supply contract*" in a directive concerning public procurement based on the Treaty (in particular Article 95 of the Treaty) cannot be relied on without limitations for purposes of interpretation of the Treaty itself, and in particular Article 81 of the Treaty. In the context of that directive, the exercise of decisive influence over a subsidiary must be proven by a public body in order to be able to rely on an exception to the application of public procurement rules. According to the case law that exception has to be interpreted narrowly.[630] In fact, the case itself shows that the Court does not interpret the notion at issue in exactly the same way as in its case law on parental liability for infringements of Article 81 of the Treaty: in the public procurement case the Court adduced the fact that the public entity owned only 99,98% and not 100% of the shares as an important element speaking against full control, while the case law recognises that for the purposes of establishing parental liability for infringements of Article 81 of the Treaty nearly full ownership is to be treated in a similar manner to full ownership.[631] In the context of this Decision the question is whether indirect full ownership by a private company provides the indirect shareholder with a similar degree of power to exercise decisive influence over the subsidiary as a full or nearly full direct shareholding so that one can reasonably assume that the indirect subsidiary carries out, in all material respects, the instructions given to it by its parent company. The Commission holds the view that this is the case, as the powers and mechanisms of control are identical in the case of direct and indirect full ownership, and there would be no reason to distinguish between the position of a direct and an indirect full shareholder for these purposes.

350. Moreover, the Commission adduced factual elements indicating that Phoenix AG exercised decisive influence over Dunlop Oil & Marine Limited, which is indicative of Phoenix AG's control and reinforces the presumption.

(a) Four out of five non-managing directors of […] appointed since 28 July 2000 were […].[632] ContiTech AG questions whether the notion of non-managing directors corresponds to United Kingdom company law, but in this respect the Commission relies on […]'s reply quoted in […] above, which refers to one […] and other "*directors*". […] correctly points out that the […] non-managing directors were not employed by […] and claims that they […].[633]

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629 Case C-340/04 *Carbotermo SpA and Consorzio Alisei v Comune di Busto Arsizio and AGESP SpA* [2006] ECR I-4137, paragraph 39.

630 Case C-458/03, *Parking Brixen GmbH v Gemeinde Brixen and Stadtwerke Brixen AG* [2005] ECR II-8585, paragraph 63.

631 Cases T-203/01 *Michelin v Commission* 2003 ECR II-4071, paragraph 290 and Case C-248/98 *KNB v Commission* [2000] ECR I-9641, paragraph 72.

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(b) […] [634] [635]

(c) […] [636]

(d) In [...][637] took part in one of the cartel meetings.[638] In their replies to the Statement of Objections, […] claimed that according to the Statement of Objections [...] only participated in a dinner reception on the evening before the cartel meeting. This is indeed suggested by one contemporaneous document although another document shows that [...] had booked accommodation in the Club in Miami, Florida where the cartel meeting took place for the whole duration of the meeting.[639] In any event, the Commission notes that the indication in the documents referred to in footnotes 637 and 638 that [...] would only attend the dinner reception is preceded by "*twelve people will be involved as follows*",[640] and by an indication that [...] wants "*to take this opportunity to meet all members*", although he "*will not participate in any of the meetings*".[641] Correspondence refers to "*the Oil meeting from 10 to 13 June*".[642] All these documents show that, while there was a distinction between the dinner reception aimed more at general discussions and improving the social relations among cartel members, and the specific negotiations, these were two parts of one single meeting with a common anti-competitive purpose. [...]'s participation in one part of the meeting shows that he was aware of the existence of the cartel. Moreover, his presence contributed to the cartel by showing other members that Dunlop Oil & Marine Limited's owners backed Dunlop Oil & Marine Limited's cartel involvement.

(e) […].[643] [644]

(f) Moreover, […]'s rules of procedure applied to Dunlop Oil & Marine (21 July 2003).[645] In their replies to the Statement of Objections ContiTech AG and Continental AG claimed that these […] and that these did not enable the exercise of decisive influence over Dunlop Oil & Marine Limited. The Commission notes that the rules include among other things a detailed […]. This certainly goes beyond general principles of good corporate governance

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638 Trelleborg Reply to Request for information of 29 June 2007, Commission file p. 584/844; see also Inspection findings, Commission file pp. 1222/70-73.

639 Manuli's leniency application of 13 June 2007, Commission file p. 1131/42 and 1131/49; Trelleborg Reply to Request for information of 29 June 2007, Commission file p. 583/7.

640 Manuli's leniency application of 13 June 2007, Commission file p. 1131/42.

641 Manuli's leniency application of 13 June 2007, Commission file p. 1131/49.

642 Manuli's leniency application of 13 June 2007, Commission file p. 1131/36.

643 Inspection findings, Commission file pp. 1222/8 (Document Summary JH7).

644 Case T-112/05, *Akzo Nobel v Commission*, judgment of 12 December 2007, not yet published, paragraph 77.

645 Inspection findings, Commission file pp. 1222/8 (Document Summary JH8).

and was one element to integrate Dunlop Oil & Marine Limited into the general management organisation of the group headed by Phoenix AG.[646]

351. Finally, the presumption of exercise of decisive influence was not rebutted in this case. The fact that Dunlop Oil & Marine Limited had existed long before and was acquired as a fully functional entity in the framework of a strategic purchase aimed at entering a new business is […]. Similarly, the exercise of decisive influence does not require that the subsidiary was integrated into the parent company in the way a company set up by the group itself ("*gewachsene Konzerngesellschaft*") would have been. In that regard, the presumption of exercise of decisive influence has been applied by the Community Courts in the case of the purchase of a subsidiary, with effect from the day of the purchase at issue.[647] As to ContiTech AG's argument that Phoenix AG did not exercise decisive influence over Dunlop Oil & Marine Limited, particularly because of a lack of […], the exercise of decisive influence on the commercial policy of a subsidiary does not require […].

(b) ContiTech AG is successor of Phoenix AG

352. ContiTech AG held 75,6% of shares in Phoenix AG from 7 November 2004 and Phoenix AG was merged into ContiTech AG on 16 January 2007, making ContiTech AG the economic successor of Phoenix AG. In accordance with the case law cited in recital 327 above, if a legal person initially answerable for the infringement ceases to exist and loses its legal personality, being purely and simply absorbed by another legal entity, that latter entity must be held answerable for the whole period of the infringement and thus liable for the activity of the entity that was absorbed.[648] In their replies to the Statement of Objections, ContiTech AG and Continental AG claimed that the case law[649] concerning liability after a merger only concerns the case in which the legal entity directly involved in the infringement disappears, and is not applicable in this case of […]. Beyond the formal position of a parent company the principles of economic continuity require that the liable parent company and the infringing subsidiary effectively formed a single economic entity during the time of the infringement.[650] According to ContiTech AG, it and Dunlop Oil & Marine

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646 While the full rules of procedure are confidential (confidential version at Commission file p. 478/76-79), the Commission considers that ContiTech AG as successor of Phoenix AG has certainly access to that document internally.

647 Case T-354/94 *Stora Kopparbergs Bergslags v Commission,* [1998] ECR II-2111, paragraph 80, upheld by Court of Justice in Case C-286/98P *Stora Kopparbergs Bergslags v Commission,* [2000] ECR I-9925, paragraphs 27-29.

648 Case C-279/98 P *Cascades* v *Commission,* [2000] ECR I-9693, paragraphs 78-79: *"It falls, in principle, to the natural or legal person managing the undertaking in question when the infringement was committed to answer for that infringement, even if, when the Decision finding the infringement was adopted, another person had assumed responsibility for operating the undertaking ... Moreover, those companies were not purely and simply absorbed by the appellant but continued their activities as its subsidiaries. They must, therefore, answer themselves for their unlawful activity prior to their acquisition by the appellant, which cannot be held responsible for it".*

649 Referring to Case C-49/92 P *Anic v Commission* [1999] ECR I-4125, paragraph 145.

650 Referring to Case T-354/94 *Stora Kopparbergs Bergslags v Commission,* [1998] ECR II-2111, upheld by Court of Justice in Case C-286/98P *Stora Kopparbergs Bergslags v Commission,* [2000] ECR I-9925.

Limited never formed such an entity before the merger. In line with its previous practice, [651] the Commission holds the view that the principles explained in recital 327 above should also be applied where a parent company liable for the conduct of its subsidiary was merged into a new entity. The relevant case law indicates that in the case a company assumes all the rights and liabilities of another company, it must be treated as its economic successor,[652] and that "*where between the commission of the infringement and the time when the undertaking in question must answer for it the person responsible for the operation of that undertaking has ceased to exist in law, it is necessary, first, to find the combination of physical and human elements which contributed to the commission of the infringement and then to identify the person who has become responsible for their operation*".[653] The case law does not state that this rule only applies where the direct owner of the assets disappears; on the contrary the person responsible for the operation of the undertaking could as well be a parent company. There is no indication that liability can only be transferred where the new company formed an economic entity with the infringer at the time of the infringement as claimed by ContiTech AG; that was not the case in the *Anic* Case and if it had been there would be no need to discuss a transfer of liability because the new company could be held liable *for the very reason* that it formed an economic entity with the infringer at the time of the infringement.

353. Moreover, ContiTech AG and Continental AG claimed that according to the case law[654] where a company which has infringed competition law is transferred from one company group to another company group, while the infringing company continues to be answerable for a past infringement, that liability is limited to the transferred company and does not extend to other entities in the new company group. The Commission holds the view that there is an important difference between that line of case law and this case: in *Cascades* the company remained in existence and hence continued to be liable for the infringement, while in this case, […] disappeared as a legal entity. The issue decided by the Court was hence that liability of one entity cannot be extended to an *additional* entity in the course of a merger, while in this case, liability of […] ends with its disappearance, and is *replaced* by liability of […]. The mere disappearance of the person responsible for the operation of the undertaking when the infringement was committed does not allow the latter to evade liability.[655] The Commission has also applied these principles where a parent company liable for the conduct of its subsidiary was merged into a new entity.[656] ContiTech AG should therefore be held liable on this ground for the conduct of Dunlop Oil & Marine Limited from 28 July 2000 until 2 May 2007.

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651 Commission Decision of 2 July 2002 in Case C.37519 *Methionine*, OJ L255 of 8 October 2003, p. 1, paragraphs 234-250 at 241-144.

652 Joined Cases 40 to 48, 50, 54 to 56, 111, 113 and 114/73, *Coöperatieve Vereniging "Suiker Unie" UA and others v Commission*, [1975] ECR 1663, paragraph 84.

653 Case T-6/89 *Enichem Anic v Commission* [1991] ECR II-01623, paragraph 123, upheld on appeal, Case C-49/92 P *Anic v Commission* [1999] ECR I-4125, paragraph 48.

654 Referring to Case C-279/98 P *Cascades* v *Commission,* [2000] ECR I-9693, paragraph 77.

655 Case T-305/94 *PVC II,* [1999] ECR II-931, paragraph 953.

656 Commission Decision 2003/674/EC of 2 July 2002 in Case C.37519 *Methionine*, OJ L255 of 8 October 2003, p. 1, paragraphs 234-250 at 241-144.

Liability due to exercise of decisive influence over Dunlop Oil & Marine Limited

354. As explained in recital 21 above, between 2 November 2004 and 16 January 2007, ContiTech AG held 75,6% of the shares of Phoenix AG, which - as shown in recitals 348-351 above - in turn can be presumed to have exercised decisive influence on Dunlop Oil & Marine Limited, and, as of 16 January 2007, […] wholly owned […]. Moreover, there are factual elements indicating that at least as of 9 March 2005, […]which can, in turn, be presumed t[…]:

(a) From [date], the board of […] was composed of two individuals who were simultaneously members of the board of directors of […];[657]

(b) As of [date], a management and profit and […] ("*Beherrschungs- und* […]") between […] and […]signed in […] was in place, which provided […] with a general right to issue instructions to the management of […] and hence indirectly to […];[658]

(c) Simultaneously, […] and […] concluded a […]. The […]'s effect was delayed to early 2007 for the sole reason that it was obstructed by […].[659] As pointed out by ContiTech AG and Continental AG in their replies to the Statement of Objections, the merger agreement only concerned […]. Nevertheless the conclusion of the merger agreement simultaneously with the management and profit and loss pooling contract shows that at least as of 9 March 2005 […] intended to merge the businesses of […] into its own activities. That demonstrates that it did actually make use of the possibility to determine […];

(d) Already in its 2004 Annual Report, issued in March 2005, Continental AG indicated that with regard to the merger of ContiTech and Phoenix AG, it planned to introduce "*a common organization in the Fluid, Air Spring Systems and Conveyor Belt Group business units*"[660]. As pointed out by ContiTech AG and Continental AG in their replies to the Statement of Objections, […]. Nonetheless, the Commission considers that that […] shows that […] did actually make use of the possibility to determine […]'s and hence also […]'s business strategy.

(e) Moreover, the Continental AG 2005 Annual Report reports that the integration of Phoenix AG (which already controlled Dunlop Oil & Marine Limited) into Continental's ContiTech division in 2005 went well and faster than foreseen:

> *"The integration of Phoenix into the ContiTech Division is making good progress and takes place more rapidly than expected. In the past*

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657 Gerhard Lerch (additionally since 30 September 2005 member of the executive board of Continental AG), Heinz-Gerhard Wente, see <http://www.continental.de/generator/www/com/en/continental/portal/themes/continental/facts/exec/intro_vorstand_en.html> 3 March 2008).

658 Beherrschungs- und Gewinnabführungsvertrag zwischen der ContiTech AG (…) und der Phoenix Aktiengesellschaft, Commission file p. 995/6-12, in particular 7.

659 Verschmelzungsvertrag zwischen der Phoenix AG (…) als übertragender Gesellschaft und der ContiTech AG (…) als übernehmender Gesellschaft, Commission file p. 995/12-23; Annual Report 2006, <http://www.conti-online.com> (3 March 2008), p. 111-2.

660 Annual Report 2004, <http://www.conti-online.com> (3 March 2008), p. 40.

months we have worked at all levels on a successful common future. The merger brings us to a higher level of technological competence and a wider presence on the market. Moreover, it has reinforced our activities in Eastern Europe and Asia. The first synergies of the integration that should be completed by the end of 2006 have already been realised in 2005. "[661]

This shows that ContiTech AG engaged in a full integration of Phoenix AG's business operations as of early 2005.

(f) […] [662] [663]

(g) […] [664] [665]

(h) […][666] [667] [668] In their reply to the Statement of Objections ContiTech AG and Continental AG claimed that they cannot verify these facts in their entirety as these documents are partially non-accessible. To the extent that in single instances contacts were made, these were of a superficial nature and did not have a guiding influence and do not show the exercise of decisive influence over Dunlop Oil & Marine Limited. On the contrary such requests would not have been necessary if there had been a hierarchical relationship. The Commission considers that the very existence of such contacts, which is shown by the non-confidential document summaries provided by Dunlop Oil & Marine Limited, is of relevance to show that […].

355. It is therefore concluded that ContiTech AG should be held liable for the conduct of Dunlop Oil & Marine Limited. from 9 March 2005 until 2 May 2007 also on the ground of its exercise of decisive influence on Dunlop Oil & Marine Limited.

6.2.3.2. Liability of Continental AG

356. Continental AG owned 100 % of ContiTech AG until 16 January 2007 and 96,75% after the ContiTech AG / Phoenix AG merger on 16 January 2007.

357. The Statement of Objections informed Dunlop Oil & Marine Limited and its parent companies of the Commission's intention to hold Continental AG liable

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661 Annual Report 2005, <http://www.conti-online.com, p. 4 (3 March 2008). Original: *Die Integration von Phoenix in die Division ContiTech verläuft erfreulich und schneller als geplant. In den vergangenen Monaten haben wir auf allen Ebenen an einer erfolgreichen gemeinsamen Zukunft gearbeitet. Der Zusammenschluss bringt uns eine höhere technologische Kompetenz und eine verbesserte Marktpräsenz. Auch unsere Aktivitäten in Osteuropa und Asien wurden gestärkt. Erste Synergien durch die Integration, die Ende 2006 abgeschlossen sein soll, wurden bereits 2005 realisiert.*

662 Inspection findings, Commission file p. 1222/8 (Document Summary JH6).

663 Case T-112/05, *Akzo Nobel v Commission*, judgment of 12 December 2007, not yet published, paragraph 77.

664 DOM's Reply to Request for Information of 31 May 2007, Commission file p. 1223/26-27; reply to Request for Information of 13 February 2008, Commission file pp. 1158/3-4.

665 Inspection findings, Commission file pp. 1222/86-90, 1222/8 (Document Summary JH26), 1222/91-96, 1222/97-100 (minutes of such meetings in 2006 and 2007); DOM's Reply to Request for Information of 13 February 2008, Commission file pp. 1158/3-4.

666 Inspection findings, Commission file pp. 1222/9 (Document Summary JH32).

667 Inspection findings, Commission file pp. 534/9 (Non-confidential Summary).

668 Inspection findings, Commission file pp. 1222/75-85.

for the conduct of Dunlop Oil & Marine Limited from 9 March 2005 until 2 May 2007.

358. In its reply to the Statement of Objections, Continental AG argued, in addition to the arguments listed in recital 344 above, that there are not sufficient indicia to render Continental AG liable for the period when it did own […] of ContiTech AG.

359. In line with the case law quoted in recitals 324-325, it can be presumed that Continental AG exercised decisive influence on ContiTech AG. As shown in recitals 354-355 above, ContiTech AG in turn exercised decisive influence on Phoenix AG and Phoenix AG's […] subsidiary Dunlop Oil & Marine Limited at least as of 9 March 2005. In its reply to the Statement of Objections, Continental AG argues that it should not be held liable, as ContiTech AG should not be held liable for the conduct of Dunlop Oil & Marine Limited (arguments presented in recital 344 above), and as Continental AG's 100% ownership of ContiTech AG (96,75% after 16 January 2007) is not a sufficient condition for liability. For the reasons laid out in recitals 345-355 above, ContiTech AG should be held liable for the conduct of DOM. Moreover, it was recently confirmed by the Community Courts[669] that the Commission can presume that parent companies exercise decisive influence on their wholly owned subsidiary. Where such a presumption applies, as in this case for Continental AG, it is for the parent company to reverse the presumption by adducing evidence demonstrating that its subsidiary decided independently on its conduct on the market. Continental AG's reply to the Statement of Objections was limited to putting into doubt an additional element for the exercise of decisive influence adduced by the Commission in the Statement of Objections, which is no longer included in this decision. Continental AG has not provided any evidence demonstrating that ContiTech AG decided independently on its conduct on the market. Failure to provide sufficient evidence on the part of the parent company amounts to a confirmation of the presumption and provides a sufficient basis for the imputation of liability.

360. It is therefore concluded that Continental AG should be held liable for the conduct of Dunlop Oil & Marine Limited from 9 March 2005 until 2 May 2007.

6.2.4. Trelleborg (Trelleborg Industrie SAS, Trelleborg AB)

361. As has been shown in section 4 above, TISAS and its legal predecessors were involved in the infringement described in this Decision from 1 April 1986 until 2 May 2007.

362. In its Statement of Objections, the Commission informed Trelleborg of its intention to hold Trelleborg AB liable for the conduct of TISAS as well.

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669 Case T-85/06 *General Química and others v Commission*, judgment of 18 December 2008, not yet reported, paragraphs 58-62.; Case T-69/04 *Schunk v Commission*, judgment of 08 October 2008, not yet reported, paragraphs 56-57; Case T-30/05 *Prym Consumer v Commission*, judgment of 12 September 2007, not yet reported, paragraphs 146-148.

363. Trelleborg AB, through its subsidiary Trelleborg Holding France SAS, has owned 100% of TISAS since 28 March 1996. It can therefore be presumed that it exercised decisive influence on its subsidiary's conduct as of that date. Moreover, there is factual evidence that reinforces the presumption that Trelleborg AB exercised control over TISAS:

(a) Since 1996, among the directors, chairmen and managing directors of TISAS, there have been several individuals based in Sweden and holding simultaneously high-ranking offices in Trelleborg AB. For example, among the company directors in office in 1996 (year of the acquisition of TISAS by Trelleborg AB), at least three persons simultaneously held high-ranking offices at Trelleborg AB: […] was the President of the Trelleborg AB business area Hose & Supply,[670] and […] and […] (consecutively Chairmen of the Board of TISAS) were the Presidents of Rubber Products at Trelleborg AB.[671] […], Managing Director at Trelleborg Industrie SAS in 2002-2004, simultaneously held the position of the President of Trelleborg AB's Business Area Engineered Systems. […], Director at TISAS in 2002-2004, simultaneously held the position of CEO at Trelleborg AB. […], Director at TISAS in 2000-2002, simultaneously held the position of Deputy CEO and Vice President responsible for business development at Trelleborg AB. […], Director at TISAS in 2001/2002 simultaneously held the office of president of Trelleborg Engineered Systems until he left Trelleborg for Nolato in 2002.[672] Similarly, the TISAS management committee established in 2005 consisted predominantly of Trelleborg Group employees: […] (President of Trelleborg AB), […] (Senior Vice President, General Counsel and Secretary of Trelleborg AB), and […] (Business Area Manager Engineered Systems, Trelleborg Group);[673]

(b) […] (President of Trelleborg Engineered Systems, later of the Trelleborg Group) discussed detailed business issues with […] and […] in October 2003 [674] and again in May 2003 ([…] also went to the annual offshore trade fair OTC in Houston with Messrs. […] and […] that year) and October 2005.[675]

364. Trelleborg AB does not contest its liability for the behaviour of its subsidiary.

365. It is therefore concluded that Trelleborg AB should be held liable for the conduct of TISAS from 28 March 1996 until 2 May 2007.

6.2.5. Parker ITR (Parker ITR Srl, Parker Hannifin Corporation)

366. As noted in recital 32 above, ITR Rubber Srl, the entity that would later be renamed Parker ITR Srl, was created on 19 June 2001 and by 1 January 2002 the marine hose business had been transferred into it.

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670 Trelleborg AB Annual Report 1995, p. 25.
671 Trelleborg AB Annual Report 1995, p. 24 and Annual Report 1996, p. 4.
672 Trelleborg Reply to Request for information of 29 June 2007, Commission file p. 571/1-2.
673 Trelleborg Reply to Request for information of 29 June 2007, Commission file p. 574/1.
674 Inspection findings, Commission file pp. 1172/14-17.
675 Inspection findings, Commission file pp. 1172/102-105.

367. As has been shown in section 4 above, Parker ITR Srl and the entities previously owning its marine hoses business (ITR SpA, Pirelli/Treg SpA) were involved in the infringement described in this Decision from 1 April 1986 until 2 May 2007.

368. The Statement of Objections informed Parker Hannifin Corporation of the Commission's intention to hold Parker Hannifin Corporation liable for the conduct of Parker ITR Srl from 31 January 2002.

6.2.5.1. The arguments raised by Parker ITR Srl and Parker Hannifin Corporation

369. In their replies to the Statement of Objections, Parker ITR Srl and Parker Hannifin Corporation argued that:

(a) Parker ITR Srl cannot be held liable for the conduct of ITR SpA/Pirelli Treg SpA before 1 January 2002, the day on which the marine hoses business was transferred to it from ITR SpA. None of the cases in which the Commission may, by way of exception to the principle of personal responsibility, rely on the criterion of economic continuity, is applicable to Parker ITR Srl.[676] ITR SpA (now Comital Brands SpA), which held the marine hoses business assets before, still exists and is doing business, and there are currently no structural links between Parker ITR Srl and ITR SpA or any other legal entity of the Saiag group. Moreover the application of the criterion of economic continuity is not justified by the facts of this case and constitutes a circumvention of Article 25 of Regulation (EC) No 1/2003 and ultimately of the principle of legal certainty, as the criterion of economic continuity is applied only because the Commission finds itself time-barred from imposing a fine on ITR SpA. The Commission is, furthermore, deviating from its recent practice as manifested in the '*Gas Insulated Switchgear* Decision',[677] in which in a very similar situation the new legal entities were not held liable for the infringement to which their assets had contributed before their incorporation.

(b) Neither Parker ITR Srl nor Parker Hannifin Corporation should be held liable for the infringement as both are victims of a major fraud scheme set up by a former Parker ITR employee. That former employee concealed the existence of the cartel from Parker Hannifin Corporation when it bought Parker ITR Srl and used the cartel as a vehicle to facilitate its fraudulent scheme. This scheme included the outsourcing of certain commercial activities to consultancies in which he held a share, the payment of finders' fees to these consultancies when due to the cartel allocation there was no activity required from them to obtain tenders for Parker ITR, and the stealing of know-how. Neither Parker ITR Srl nor Parker Hannifin Corporation benefited from that fraud, and both estimate that they have suffered substantial financial losses, as according to calculations submitted by them to the Commission the

676 Referring inter alia to Case 40/73 *Suiker Unie v Commission* [1975] ECR 1663, paragraphs 84-87; Joint Cases C-204, 205, 211, 217 and 219/00 P *Aalborg Portland and Others v Commission* [2004] ECR I-123, paragraphs 358-359; Case C-280/06 *Autorità Garante della Concorrenza e del Mercato v ETI and others* [2007] ECR I-10893, judgment paragraphs 37, 39, 48, 52 and Opinion of Advocate General Kokott, paragraphs 89-103.

677 Decision of 24 January 2007 in Case COMP/F/38.899 Gas Insulated Switchgear, OJ C 5 of 10 January 2008, p. 7–10, recitals 357, 366, and 367.

approximate net earnings of the marine hoses division would have been considerably higher in the absence of this fraud. It would appear contrary to the interests of justice and the purposes of deterrence to hold Parker ITR Srl and Parker Hannifin Corporation liable for the illegal activities of the former employee while they were the primary victims of such activities and not even to address this Decision to the companies linked to the former employee In that context reference is made to US and German case law concerning similar scenarios (Cases *Standard Oil Co. of Tex. v United States*, 307 F.2d 120 (5th Cir. 1962); *United States v Ridglea State Bank*, 357 F.2d 495 (5th Cir. 1966); Bundesgerichtshof Judgement in Case 3 StR 94/81 of 20 May 1981, NJW 1981, p. 1793). Parker ITR Srl and Parker Hannifin Corporation claim that the cartel activities remained hidden from them while they were investigating the oil and gas operation after the former employee was made redundant in suspicion of various illegalities."

(c) In any case, Parker Hannifin Corporation cannot be held liable for the conduct of the oil and gas operation of Parker ITR Srl which was run independently of Parker ITR Srl by its former […].

6.2.5.2. Appraisal by the Commission

Liability of Parker ITR Srl for the conduct before 31 January 2002

370. Parker ITR Srl should be held liable for the conduct of ITR SpA/Pirelli Treg SpA between 1 April 1986 and 31 December 2001 on the basis of the considerations laid out in recital 328 above. In line with the considerations laid out in recital 327 above, on 1 January 2002, ITR SpA bore liability for its own conduct and for the conduct of its economic predecessor Pirelli Treg SpA which was purely and simply absorbed by ITR SpA in December 1990. On 1 January 2002, ITR SpA transferred its marine hoses business to its wholly owned subsidiary Parker ITR Srl (at that time named ITR Rubber Srl) in the framework of an internal reorganization of the group. At the time of the transfer ITR SpA and ITR Rubber Srl shared the economic links of a parent and a wholly owned subsidiary and belonged to the same undertaking. As indicated in recital 328 above, in such a case, liability for past behaviour of the transferor may pass to the transferee, notwithstanding the fact that the transferor remains in existence.

371. A different conclusion would not be justified by the fact that the transfer of the marine hoses business assets from ITR SpA to ITR Rubber Srl may have occurred in view of the sale of the marine hoses business to Parker Hannifin Corporation pursuant to a sales agreement of 5 December 2001, and ITR Rubber Srl was sold to Parker Hannifin Corporation on 31 January 2002. For the application of the case law set out in recital 328 above, it is only relevant whether the transferor and the transferee shared economic links, that is to say when they belonged to the same undertaking at the time of the infringement at issue – here the time before 31 January 2002 for which attribution of liability is at issue.[678] Any successive severing of those links does not alter the conclusion that at the

[678] Case C-280/06 *Autorità Garante della Concorrenza e del Mercato v ETI and others* [2007] ECR I-10893, paragraphs 48-50.

time of occurrence the transfer of the marine hoses business assets to ITR Rubber Srl was an internal reorganisation of the ITR SpA group.

372. The fact that in another case the Commission may not have relied on the case law concerning internal group reorganisation in a similar way does not impede it in law from reaching a different conclusion in this case on the basis of a different set of facts.

373. For these reasons, Parker ITR Srl should be held liable for the conduct of ITR SpA/Pirelli Treg SpA between 1 April 1986 and 31 December 2001.

Liability of Parker ITR Srl for conduct from January 2002 onwards

374. In its reply to the Statement of Objections, Parker ITR referred to some documents[679] suggesting that the existence of the cartel was deliberately concealed from Parker Hannifin Corporation in the course of the purchase of Parker ITR Srl and that other cartel members were informed about that. Parker ITR also refers to several documents which show that a former Parker ITR employee tried to fend off attempts by Parker Hannifin Corporation to integrate sales and marketing of marine hoses with Parker Hannifin Corporation 's other sales and marketing channels, because he feared that this would interfere with cartel tender allocation.

375. According to the case law, the fact that an undertaking did not benefit from an infringement cannot preclude the imposition of fines since otherwise the fines would cease to have a deterrent effect.[680] The Commission is thus not required to take into consideration any lack of benefit from the infringement. Moreover, the Commission is not required to show awareness of an undertaking's senior management about an infringement, as long as the individual contributing to the infringement was authorised to act for the undertaking.[681]

376. It follows that any concealment of the cartel from Parker ITR Srl and Parker Hannifin Corporation does not affect their liability for the infringement.

377. In its reply to the Statement of Objections, Parker ITR argued that in this case an exception should be made to that rule and the actions of the former Parker ITR employee should not be imputed to Parker ITR Srl because that employee acted exclusively for the purpose of his personal interest and benefit.

378. According to the case law, for the finding that an undertaking infringed Article 81 of the Treaty it is irrelevant whether the person representing the undertaking in the infringement disobeyed internal instructions to the contrary, as any decision imposing a fine on it may be addressed to the organs directing the

679 Manuli's Leniency application of 2 July 2007, Commission file p. 1129/61.

680 Case T-25/95 *Cimenteries CBR v Commission* [2000] ECR II-491, paragraph 1389, paragraph 4881.

681 Case T-9/99 *HFB Holding and others v Commission* [2002] ECR II-1487, paragraph 275; Joint Cases C-100-103/80 *Musique Diffusion Française and others v Commission* [1983] ECR 1825, paragraph 97; T-15/99 *Brugg Rohrsysteme v. Commission*; [2002] ECR II-1613, paragraph 58; Case T-236/01 *Tokai Carbon v Commission*, [2002] ECR II-1181, paragraph 277.

undertaking, and the rules of competition would be easily circumvented if the Commission were required to ascertain and to prove who was the author of the various activities, which could have the effect of preventing it from penalising the undertaking which benefited from the cartel.[682] In any event, the Commission is not convinced that Parker ITR's participation in the cartel occurred exclusively for the benefit and the personal interest of the former employee.

379. Certain documents do suggest that a former Parker ITR employee was involved and held a share in some consultancies. There is however no clear indication that his activities served exclusively his personal interests and was without any benefit to Parker ITR Srl. The documents on file suggest that the network of consultancy companies (including [cartel coordinator's company], […],[…]) set up by Mr. [cartel coordinator], in cooperation with the former Parker ITR employee, actually served to provide a structure for the cartel coordination. Invoices show that apart from Parker ITR, at least Bridgestone and Yokohama also paid fees to some of those consultants ([…]and […], later [cartel coordinator's company]).[683] This confirms that these consultants were essentially used to channel payments for the cartel coordination. Moreover correspondence sent from [cartel coordinator's company] concerns tender allocation and not marketing or sales of Parker ITR.[684] This shows that the network of consultancies provided structure and funding related at least partially to the cartel coordination in the interest of all cartel members, including Parker ITR. Hence, the former Parker ITR employee's contribution to that network cannot be seen as being exclusively in his personal interest, but was also in the interest of Parker ITR. While it is unknown if a part of Parker ITR's payments to that network of consultancies were ultimately channelled to the former Parker ITR employee, it is clear that at least partially they contributed to the financing of the cartel coordination. Even if the sum of payments to such consultancies exceeded the economic benefit Parker ITR received from the cartel, that is not capable of showing that cartel participation served exclusively the purpose of benefiting the former Parker ITR employee. It is likewise irrelevant whether the marine hoses unit of Parker ITR made any profits during the time of the infringement. In any event, the undertaking benefited from its employee's involvement in the cartel in that it lead to the awarding of tenders to the undertaking and shielded it from competition. The allegation that a part or all such benefits were fraudulently retained by this same employee does not alter the fact that they were generated in the first place.

380. Any activities of the former Parker ITR employee aimed at engaging in possible competing business activities may have violated his contractual obligations towards Parker ITR, but there is no convincing indication that the cartel was an integral part of such behaviour. Such behaviour would have been possible without the existence of the cartel, and the cartel could have existed without such behaviour. Moreover, such behaviour concerned only Parker ITR while the cartel also concerned all other addressees of this Decision.

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682 Case T-53/03 *BPB v Commission* judgment of 8 July 2008, not yet published, paragraph 360.

683 Inspection findings, Commission file p. 469/158.

684 See for example documents quoted in recital 221.

381. It should also be observed that, despite its claim of having been the victim of a large scale fraud, Parker ITR had not yet filed a complaint about the alleged fraud with the police or prosecuting authorities by the time of the Oral Hearing in this case (that is 14 months after the Commission inspections).

Liability of Parker Hannifin Corporation for the conduct of Parker ITR Srl

382. Parker Hannifin Corporation, through various subsidiaries, has owned 100% of ITR Rubber Srl, later Parker ITR Srl, since 31 January 2002. It can therefore be presumed that it exercised decisive influence on its subsidiary's conduct.

383. Moreover, there are factual indicia that Parker Hannifin Corporation exercised control over Parker ITR Srl. Parker ITR Srl is fully integrated into the management and reporting structure of Parker Hannifin Corporation's Fluid Connectors Group[685]. In its reply to the Statement of Objections, Parker ITR claimed that its reply to a Commission request for information which the Commission quotes to support that conclusion in fact indicates that the marine oil and gas hose business unit has historically operated independently with minimum reporting and therefore does not support the conclusion that Parker Hannifin Corporation exercised decisive influence over Parker ITR Srl. In a further submission prompted by the Commission's questions in the Oral Hearing Parker ITR indicated that Parker ITR Srl and its representatives are not obliged to request any authorisation from Parker Hannifin for making investments or incurring debts, and submits a copy of a power to act of […] which shows that he was authorised to sign a broad range of business transactions. In response, the Commission notes that the relevant reply to the Commission request for information relied on by the Commission shows that the business unit manager Oil & Gas reported to the Parker Hannifin VP Operations Fluid Connectors Group Europe, initially via the Parker ITR General Manager and as of July 2004 directly. Moreover it shows that the Parker Hannifin VP Operations Fluid Connectors Group Europe was responsible for carrying out general performance supervision including a weekly/monthly performance review, and approving a 3 month rolling forecast, the annual plan, the resource plan and individual requests for expenditure and hire, while investments of fixed assets and the annual plan were subject to approval by the Parker Hannifin President of the Worldwide Fluid Connectors Group. This is an indication that Parker Hannifin Corporation imposed objectives and policies which affected the performance of the group and its coherence. Given the apparent existence of such management links, it is not relevant whether they are qualified by Parker ITR in a general way as independent operation with minimum reporting requirements. The fact that the power to act towards third parties as conferred upon the […] by Parker ITR may have been broader does not give any indication for the question at issue here, that is whether *internally* within the Parker Hannifin Group he was required to request prior authorisation for certain of the business transactions covered by the power to act before making use of that power. Hence, Parker ITR does not indicate that these management links do not apply to the marine hoses unit, and

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the Commission has no reason to conclude otherwise as this is confirmed by several contemporaneous documents.[686]

384. In its reply to the Statement of Objections, Parker ITR argued that in order to rebut the presumption of decisive influence, it is sufficient to show that Parker Hannifin Corporation did not exercise decisive influence on the marine hoses business, while the situation with regard to other business areas of Parker ITR Srl is not relevant in this regard.[687] It provides the following elements to rebut the presumption of decisive influence. It claims that Parker Hannifin Corporation did not engage in integrating the marine oil and gas hose business of Parker ITR Srl in its business structures, as Parker Hannifin Corporation had never been active in that business and due to the fundamentally different nature of the products (highly customized) and the customers served there was no possibility to create synergies with Parker Hannifin Corporation's other businesses. It refers to several documents which show that during the entire period of Parker Hannifin Corporation's ownership, the responsible […]actively sought to avoid Parker Hannifin's discovery of his fraudulent and illegal activities and to do so needed to operate the business independently of Parker Hannifin Corporation.[688] He therefore systematically refused to comply with the Parker group's directives and commercial policy, for example, by knowingly and systematically ignoring Parker's code of ethics, and successfully resisted Parker Hannifin's attempts to intervene in the operation of the marine oil and gas hose business. The documents referred to by Parker ITR dating from 2002-2005 indicate that Parker Hannifin Corporation intended to introduce some cooperation between its dealership network for other products and the marine hoses sales organisation, and that it forwarded some information on business opportunities for marine hoses to the […], but the latter convinced Parker Hannifin Corporation to keep a separate marine hoses sales organisation.[689] Moreover, one email suggests that the […] may not have reported sufficiently clearly and in a sufficiently timely manner about marine hoses incomes and sales forecasts.[690]

385. According to the case law quoted above (recital 325), the parent company can rebut the presumption of decisive influence by producing sufficient evidence that the subsidiary "*decided independently on its own conduct on the market rather than carrying out the instructions given to it by its parent company and such that they fall outside the definition of an 'undertaking.*"[691] That case law refers to the conduct of the subsidiary as a whole; the reference to '*conduct on the market'* does not affect that conclusion. If the parent company can be presumed or shown

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686 Viking's Reply to Request for Information of 13 June 2007, Commission file pp. 445/587-592, 447/1384, 447/1373, 447/936-938, 447/732-734, 447/736-737, 447/740-741, 447/743, 447/756-758, 447/797-798, 447/799-802.

687 Referring to the notion '*conduct on the market*' in Case T-112/05 *Akzo Nobel v Commission*, judgment of 12 December 2007, not yet published, paragraph 58.

688 Inspection findings, Commission file p. 469/294; Viking's Reply to Request for Information of 13 June 2007, Commission file pp. 445/614, 1131/165, 75/403, 445/581; 445/598.

689 Inspection findings, Commission file p. 469/294; Viking's Reply to Request for Information of 13 June 2007, Commission file pp. 445/614, 1131/165, 75/403, 445/581.

690 Viking's Reply to Request for Information of 13 June 2007, Commission file p 445/598.

691 Court of First Instance in Joined Cases T-71/03 etc. *Tokai Carbon and Others v Commission*, [2005] ECR II-10, paragraph 61.

to have exercised decisive influence over the business strategy of a subsidiary, that necessarily affects all of the subsidiary's products.

386. The documents referred to by Parker ITR do not demonstrate that this subsidiary acted fully independently from its parent. They merely show that Parker Hannifin Corporation did not succeed in imposing cooperation on sales and marketing between Parker ITR's Oil & Marine Division and Parker Hannifin Corporation's dealership network, and that in 2005 there were some divergences concerning reporting from the Oil & Marine Division. The exercise of decisive influence on the commercial policy of a subsidiary does not require day-to-day management of the subsidiary's operation, which may well be entrusted to the subsidiary. The documents adduced by Parker ITR do not disprove that Parker Hannifin Corporation imposed objectives and policies which affected the performance of the group and its coherence or that it disciplined any behaviour which may depart from those objectives and policies. In fact they show that in spite of the former […] apparent reluctance, Parker Hannifin Corporation did request some form of reporting from the Oil & Gas Unit. Moreover, the entire body of email correspondence between the former […] and the consultant […] of 2005 and early 2006, out of which Parker ITR quotes only two documents to support its position, is not conclusive as to whether the Oil & Marine Division acted independently from Parker Hannifin Corporation. Other samples of that correspondence show that Parker Hannifin was involved in strategic business decisions of that unit.[692] Moreover, the documents only related to the Oil & Gas Business Unit, which was only a small part of Parker ITR.

387. In its reply to the Statement of Objections, Parker ITR referred to some documents[693] suggesting that the existence of the cartel was deliberately concealed from Parker Hannifin Corporation in the course of the purchase of Parker ITR Srl and that other cartel members were informed about that concealment.

388. According to the case law, the Commission is not required to show that an undertaking's senior management was aware of an infringement, as long as the individual contributing to the infringement was authorised to act for the undertaking.[694] In particular, where as in this case, a mother company exercises decisive influence on its subsidiary's conduct, it is liable for the conduct of the subsidiary unless it is shown that the subsidiary acted in a fully autonomous manner. It follows that any concealment of the cartel from Parker ITR Srl and Parker Hannifin Corporation does not affect the liability of Parker Hannifin for the infringement.

389. On the basis of the above, it is concluded that Parker ITR Srl should be held liable for its conduct from 1 January 2002 until 2 May 2007 and for the conduct

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692 Viking's Reply to Request for Information of 13 June 2007, Commission file pp. 445/587-592, 447/1384, 447/1373, 447/936-938, 447/732-734, 447/736-737, 447/740-741, 447/743, 447/756-758, 447/797-798, 447/799-802.

693 […]

694 Case T-9/99 *HFB Holding and others v Commission* [2002] ECR II-1487, paragraph 275; Case C-100-103/80 *Musique Diffusion Francaise and others v Commission* [1983] ECR 1825, paragraph 97.

of ITR SpA/Pirelli Treg SpA between 1 April 1986 and 31 December 2001, and that Parker ITR Srl and Parker Hannifin Corporation should be held jointly and severally liable for the conduct of Parker ITR Srl between 31 January 2002 and 2 May 2007.

6.2.6. Manuli (Manuli Rubber Industries SpA)

390. It is established by the facts described in section 4 above that employees of MRI participated in the cartel between 1 April 1986 and 1 August 1992, and again between 3 September 1996 and 12 March 2003, and after the dissolution of MOM and the transfer of MOM's employees to MRI between 1 January and 2 May 2007, and that employees of MOM participated in the cartel between 1 April 1986 and 1 August 1992, and between 3 September 1996 and its dissolution on 31 December 2006.

391. […]

392. […] [695] [696] [697]

393. […][698] [699]

394. Furthermore, […] was a consultant to Manuli between 2000 and 2003.

395. According to the case law, the acts of an agent can be imputed to the principal where the companies acted as a single entity in the market.[700] Where an agent works for the benefit of its principal, it may in principle be treated as an auxiliary body forming an integral part of the principal's business, who must carry out its principal's instructions and thus, like a commercial employee, forms an economic unit within that undertaking.

396. The Commission considers that in this case, […] acted in the market vis-à-vis third parties, customers, sub-agents and competitors of the applicant as an organ of Manuli.

397. First it is demonstrated that […] represented Manuli in contacts with competitors concerning the participation of Manuli in the cartel. He participated in the general cartel meetings between 2000 and 2002, and the other participants considered him to be a representative of Manuli.

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698 Case C-279/98 P *Cascades* v *Commission,* [2000] ECR I-9693, paragraphs 78-79: *"It falls, in principle, to the natural or legal person managing the undertaking in question when the infringement was committed to answer for that infringement, even if, when the Decision finding the infringement was adopted, another person had assumed responsibility for operating the undertaking ... Moreover, those companies were not purely and simply absorbed by the appellant but continued their activities as its subsidiaries. They must, therefore, answer themselves for their unlawful activity prior to their acquisition by the appellant, which cannot be held responsible for it".*

699 Case T-305/94 *PVC II,* [1999] ECR II-931, paragraph 953.

700 Case T-66/99 *Minoan Lines v Commission*, [2003] ECR II-05515, paragraph 7.

398. Secondly, Manuli acknowledges that […] acted under the direction of MRI's President at the time, […]. This is corroborated by internal Manuli correspondence, which shows that […] submitted all major decisions with regard to his negotiations with other cartel members for approval to MRI senior management.

399. For these reasons […]'s acts described in this Decision can be imputed to MRI.

400. Therefore, the Commission considers that Manuli Rubber Industries SpA should be held liable for its conduct and the conduct of […] between 1 April 1986 and 1 August 1992, between 3 September 1996 and 12 March 2003, and between 1 January 2007 and 2 May 2007, and for the conduct of Uniroyal Manuli (USA) Inc. between 1 April 1986 and 1 August 1992, and between 3 September 1996 and 31 December 2006.

7. DURATION OF THE INFRINGEMENT

7.1. The beginning and the end of the infringement

401. The infringement started on 1 April 1986 for all undertakings involved in the infringement in this case, with the exception of DOM for which it started on 12 December 1997 (see sections 4.3.1, 4.4, and 6.2 above).

402. Manuli interrupted participation as of 1 August 1992 (see section 4.3.2.2 above) and resumed participation again on 3 September 1996 (see section 4.3.2.4 above).

403. The participation of Yokohama ended on 1 June 2006, and the infringement as a whole ended on 2 May 2007 (see recital 227 and section 4.3.5 above).

7.2. Conclusion

404. On the basis of the above considerations, the Commission concludes that the duration of the infringement for each of the addressees is as follows:

- Bridgestone Corporation: from 1 April 1986 until 2 May 2007;
- Bridgestone Industrial Limited: from 19 December 1989 until 2 May 2007;
- The Yokohama Rubber Company Limited: from 1 April 1986 until 1 June 2006;
- Dunlop Oil & Marine Limited: from 12 December 1997 until 2 May 2007;
- ContiTech AG: from 28 July 2000 until 2 May 2007;
- Continental AG: from 9 March 2005 until 2 May 2007;
- Trelleborg Industrie SAS: from 1 April 1986 until 2 May 2007;
- Trelleborg AB: from 28 March 1996 until 2 May 2007;
- Parker ITR Srl: from 1 April 1986 until 2 May 2007;
- Parker Hannifin Corporation: from 31 January 2002 until 2 May 2007; and
- Manuli Rubber Industries SpA: from 1 April 1986 until 1 August 1992 and from 3 September 1996 until 2 May 2007.

8. REMEDIES

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

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

406. Given the secrecy in which the cartel arrangements were carried out, it is not possible to determine with absolute certainty that the infringement has ceased. 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.

407. The prohibition applies to all secret meetings and multilateral or bilateral contacts between competitors in view of restricting competition between them or enabling them to concert their market behaviour.

8.2. Article 23(2) of Regulation (EC) No 1/2003

408. Under Article 23(2) of Regulation (EC) No 1/2003[701], the Commission may by decision impose fines upon undertakings where, either intentionally or negligently, they infringe Article 81 of the Treaty and/or Article 53 of the EEA Agreement. Under Article 15(2) of Regulation No 17, which was applicable during parts of the infringement, the fine for each undertaking participating in the infringement could not exceed 10% of its total turnover in the preceding business year. The same limitation results from Article 23(2) of Regulation (EC) No 1/2003.

409. Pursuant to Article 23(3) of Regulation (EC) No 1/2003 and Regulation No 17 the Commission must, in fixing the amount of the fine, have regard to all relevant circumstances and particularly the gravity and duration of the infringement, which are the two criteria explicitly referred to in those Regulations.

410. In doing so, the Commission will set the fines at a level sufficient to ensure deterrence. Moreover, the role played by each undertaking party to the infringement will be assessed on an individual basis. In particular, the Commission will reflect in the fines imposed any aggravating or mitigating circumstances pertaining to each undertaking. In setting the fines to be imposed, the Commission will refer to the principles laid down in its Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation (EC)

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[701] Under Article 5 of Council Regulation (EC) No 2894/94 of 28 November 1994 concerning arrangements of 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 305/6 of 30 November 1994).

No 1/2003[702] (hereafter, "*the Guidelines on fines*"). Finally, the Commission will apply, as appropriate, the provisions of the Leniency Notice.

8.3. Article 25 of Regulation (EC) No 1/2003

411. The limitation period provided for in the second sentence of Article 25(2) of Regulation (EC) No 1/2003 and Article 1(2) of Regulation (EEC) No 2988/74 which applied previously starts to run on the day on which the infringement ceases in the case of continuing or repeated infringements, in this case on 2 May 2007, the day of the inspections.

412. Due to the interruption of Manuli's participation in the infringement on 1 August 1992 and the considerable time which elapsed before 3 September 1996, the date as of which its participation in tender allocation can be proven again, the limitation period may apply to Manuli's conduct before that date. Therefore the Commission in its discretion does not impose a fine for the period ending 1 August 1992.

413. In its reply to the Statement of Objections, Manuli argued that any infringement in place before came to an end in 1997 and is therefore covered by the limitation period under Article 25(1)(b) of Regulation (EC) No 1/2003. Trelleborg argued that previously, in a very similar case the Commission considered itself to be time-barred as it did not have enough elements to establish the existence of one single and continuous infringement.[703] Trelleborg also argued that the Commission cannot rely on the notion of '*repeated infringement'* in Article 25 of Regulation (EC) No 1/2003, as this implies a degree of continuity, regularity and repetition and does not mean committing an infringement for a second time. If in a case such as this the limitation period was not applied to the earlier part of the infringement, this would be contrary to the wording and the intention and purpose of the Regulation on limitation, as it would amount to the creation of a rule that limitation is not certain but conditional on a requirement that the undertaking does not at any time in the future '*re-offend*' in respect of the product subject of the original infringing conduct. This would be contrary to the principle of legal certainty.[704]

414. The Commission recalls that, as shown in Section 5.3.4 above, the infringement at issue was a single and continuous infringement in place from 1 April 1986 until 2 May 2007, and the fact that the cartel underwent a period of limited activity between 13 May 1997 and 11 June 1999 (between 13 May 1997 and 21 June 1999 for DOM and Trelleborg, between 13 May 1997 and 9 May 2000 for Manuli) does not affect the conclusion that it constituted a single and continuous infringement. The fact that in this case the Commission finds a single and continuous infringement also distinguishes this case from the Decision in the

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702 OJ C 210, 01.09.2006, p. 2.

703 Referring to the Commission Decision of 24 July 2002 in Case COMP/E-3/36.700 – *Industrial and medical gases* OJ L 84 of 1 April 2003, p. 1 at paragraph 387.

704 For the objective of the principle of legal certainty, Trelleborg refers to Joint Cases T-22 and 23/02 *Sumitomo Chemicals and others v Commission* [2005] ECR II-4065, paragraph 81.

Industrial and medical gases case relied on by Trelleborg.[705] In the case of a single and continuous infringement, the second sentence of Article 25(2) of Regulation (EC) No 1/2003 or Article 1 (2) of Regulation (EEC) No 2988/74 applies, and the limitation period starts to run on the day on which the infringement ceases. But even if the period of limited activity between 13 May 1997 and 11 June 1999 (between 13 May 1997 and 21 June 1999 for DOM and Trelleborg, between 13 May 1997 and 9 May 2000 for Manuli) were considered as a complete interruption of cartel activity for all undertakings for a long period, in view of the clear continuity of the cartel, and the fact that the parties themselves considered their conduct since 1999 as a continuation of their earlier conduct (see recitals 299-305 above), they participated in the same cartel between 1986 and 2007 and have therefore committed at least a repeated infringement[706] of Article 81 of the Treaty and Article 53 of the EEA Agreement (see recital 307 above). Even in such a case there was at least a single and repeated infringement and according to the second sentence of Article 25(2) of Regulation (EC) No 1/2003, and Article 1(2) of Regulation (EEC) No 2988/74 which applied previously, the limitation period likewise started to run on the day on which the last manifestation of this single and repeated infringement ceased.

415. Hence, with the proviso referred to in recital 412 above, the limitation period for the Commission's power to impose a fine did not expire when the Commission took action to investigate the infringement on 2 May 2007.

8.4. The basic amount of the fines

8.4.1. Methodology

416. The basic amount of the fine to be imposed on the undertakings concerned is to be set by reference to the value of sales.

417. According to the Guidelines on fines, the basic amount of the fine consists of an amount of between 0% and 30% of a company's relevant sales, depending on the degree of gravity of the infringement, multiplied by the number of years of the company's participation in the infringement, and an additional amount of between 15% and 25% of the value of a company's sales, irrespective of duration.

418. The Commission has used the figures provided by the undertakings for the calculation of the fines to be imposed.

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705 Commission Decision of 24 July 2002 in Case COMP/E-3/36.700 – *Industrial and medical gases* OJ L84 of 1 April 2003, p. 1 at paragraph 387; for the Commission practice see also Commission Decision of 17 October 1983 in Case IV/30.064 – *Cast iron and steel rolls*, OJ L317 of 5 November 1983, p. 1-18, paragraph 68.

706 See Article 25(2) of Regulation (EC) No 1/2003 and Article 1 (2) of Regulation (EEC) No 2988/74 and recital 283 above.

8.4.2. The value of sales

419. In determining the basic amount of the fine to be imposed, the Commission starts from the value of the undertaking's sales of the goods or services to which the infringement relates in the relevant geographic area within the EEA.

Relevant sales

420. Table 11 shows an overview of the size and turnover of the main marine hoses producers in the EEA and worldwide in 2002-2006:

Table 11: turnover in Marine Hoses

World wide Turn-over (Euro)	**2002**	**2003**	**2004**	**2005**	**2006**	**2003-2005 average**	**2004-2006 average**
Bridge-stone[707]							
Yoko-hama[708]							
DOM[709]							
Trelle-borg[710]							
Parker ITR[711]							
Manuli [712]							
Total	[…]						

EEA Turn-over (in Euro)	**2002**	**2003**	**2004**	**2005**	**2006**	**2003-2005 average**	**2004-2006 average**
Bridge-stone[713]	[…]						

707 Bridgestone's Reply to Request for Information of 7 March 2008, Commission file p. 1180/3

708 […]

709 DOM's Reply to Request for Information of 20 March 2008, Commission file p. 1116/3, and of 7 April 2008, Commission file p. 1163/3.

710 Trelleborg's Reply to Request for Information of 7 March 2008, Commission file p. 1119/1.

711 Parker ITR's Reply to Request for Information of 3 April 2008, Commission file p. 1149/1.

712 […]

Yoko-hama[714]	
DOM[715]	
Trelle-borg[716]	
Parker ITR[717]	
Manuli [718]	
Total	

421. The Commission is not aware of any other supplier with significant sales to the EEA, and none of the addressees of the Statement of Objections has contested that the undertakings indicated in Table 11 are the main marine hoses suppliers in the EEA and worldwide.[719] It follows that sales by other suppliers, in particular inside the EEA, are, and have always been, negligible.

422. The Commission will normally use the sales made by the undertaking during the last full business year of its participation in the infringement. However, given the volatility of annual sales in this case, it appears more appropriate to use the average sales of the last three years before the end of the infringement. In accordance with the findings on the duration of the involvement in the infringement (see section 7), the last three full business years are 2003, 2004 and 2005 for Yokohama and 2004, 2005 and 2006 for all other undertakings.

423. The Commission considers that the EEA market is composed of all sales invoiced to a purchaser located in the EEA.[720]

Arguments of the parties

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713 Bridgestone's Reply to Request for Information of 7 March 2008, Commission file p. 1180/3.

714 […]

715 DOM's Reply to Request for Information of 20 March 2008, Commission file p. 1116/3, and of 7 April 2008, Commission file p. 1163/3.

716 Trelleborg's Reply to Request for Information of 7 March 2008, Commission file p. 1119/1.

717 Parker ITR's Reply to Request for Information of 3 April 2008, Commission file p. 1149/1.

718 […]

719 As indicated in recital 46 above, for the early years of the cartel including […] (until 1986) and [...] (until 1995).

720 The Commission had asked the undertakings concerned to provide separately (1) sales with a final destination (location of use) in the EEA, and (2) sales with a final destination (location of use) outside the EEA but invoiced to a purchaser located in the EEA. In this Decision, the Commission counts as EEA sales all sales invoiced to a purchaser located in the EEA. The Commission considers that an analysis of the turnover data shows that all sales falling under (1) are also invoiced to a purchaser located in the EEA. Hence, the Commission considers that both categories of sales can be referred to jointly as 'sales invoiced to a purchaser located in the EEA'. In order to arrive at the EEA sales as presented in this Decision, the Commission has summed up the sales provided by the undertakings concerned under (1) and (2).

424. In its reply to the Statement of Objections, Parker ITR argued that the EEA market, in so far as it will be used to determine the value of sales for the purpose of calculating the fines to be imposed, should be composed only of sales of marine hoses with a final destination inside the EEA. Parker ITR argued that the Guidelines on Fines use the wording "*aggregate sales within the EEA*" which implicitly refers to the actual place of delivery of the goods and not to the place of invoicing. Moreover, in the context of turnover allocation in the area of merger control, clear preference is given to the criterion of delivery.[721]

425. DOM argued that any agreements or concerted practices referring to sales of marine hoses for delivery and use outside the EEA do not affect trade between Member States and therefore fall outside the jurisdiction of the Commission. While several OEM manufacturers have their registered offices in the EEA, marine hoses used for FPSO vessels or SBMs are generally constructed by the OEMs in Asia and then sent off to their location of use.

Appraisal by the Commission

426. Although it should be noted that the Commission would not be prevented from taking even the worldwide product turnover into consideration for the purpose of evaluating cartel participants' effective economic capacity to cause damage to competition within the EEA,[722] the EEA market, in so far as it will be used to determine the value of sales for purposes of fines calculation, consists of the undertakings' '*sales within the EEA'* under the Guidelines on fines. Unlike what is suggested by Parker ITR, the wording of the Guidelines on fines as such does not give an indication according to which criterion sales are considered to be within the EEA. In fact, a sale of goods is composed of several components, including the negotiation of the sale, the payment, and the delivery of the goods at the place of use.

427. The Commission considers that in this case the location where the entity to which the sales are invoiced is based is the most adequate criterion to assess whether sales are '*within the EEA'*, since this is the most reliable criterion to determine where competition affected by the cartel took place. As explained in section 2.3.1 above, a considerable amount of marine hoses is purchased by OEM manufacturers for integration into FPSOs or SBMs assembled by them. In such cases sales are negotiated with the OEM manufacturer and not with the ultimate user of the facilities. Moreover even during use the facilities may remain property of the OEM manufacturer. Hence, in the case of a purchase by an OEM manufacturer, competition takes place at the level of OEM manufacturers. That would not be reflected if the geographic place of the sales would be determined by the place of end use, where the OEM manufacturer may not even have any premises. Even if, as DOM claims, the majority of marine hoses sold to OEM manufacturers was delivered to third countries where the FPSOs or SBMs are

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721 Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings by the Commission, OJ C 95 of 16.04.2008, p. 1, paragraphs 196-198.

722 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* 2004 ECR II-1181, paragraph 200.

assembled,[723] there is no evidence that such sites are anything more than assembly companies, to which assembly may be subcontracted, and that competition could arguably take place at those sites. The fact that the location where the entity to which the sales are invoiced is based is the most adequate criterion for geographic allocation of marine hoses sales is also confirmed by the fact that this appears to be the most common criterion within the business itself. In their replies to the Commission's requests for information, four out of five undertakings initially made a geographic allocation of customers or turnover on the basis of the place of invoice, and not of the place of delivery / end use, although the Commission had not indicated any method for the geographic allocation of sales to the parties at the time.[724]

428. Any reference to the Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings[725] which guides the application of the notion '*goods sold to undertakings or consumers in the Community'* in Article 5(1) of Regulation (EC) No 139/2004,[726] does not contradict that conclusion. Paragraphs 196-198 of that Notice indicate that while, as a general rule, the Commission looks at the place where the customer is located, the underlying rationale is to look at the place where competition with alternative suppliers takes place. Depending on where competition takes place, the place where the purchase agreement was entered into and the place of delivery may even be more important than the billing address. The Notice also states that in case of a central purchasing organisation, competition may take place at the place where the subsidiary is located participating in that organisation in case of direct links between the seller and the different subsidiaries. The Commission holds the view that in view of the specificities of the marine hoses business explained in recital 427 above, sales to OEM manufacturers and their relationship with the end user of the hoses cannot be compared with the situation of a company group with a central purchasing strategy, as there are no structural links between the OEM manufacturer and the end user.

Worldwide market shares

429. In the Statement of Objections, the Commission indicated that as in this case the relevant sales of the undertakings within the EEA do not properly reflect the weight of each undertaking in the infringement, which has a worldwide scope and includes elements of geographic market sharing, in order to reflect both the aggregate size of the relevant sales within the EEA and the relative weight of each undertaking in the infringement, it intended to calculate the value of sales for the purpose of setting the basic amount of the fine to be imposed on each undertaking concerned by applying the worldwide market share of each undertaking to the aggregate sales within the EEA of the undertakings concerned, in line with Point 18 of the Guidelines on fines.

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723 It should be noted that DOM has not provided any material to substantiate that claim, and none of the evidence in the Commission's possession would confirm that claim.

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725 OJ C 95, 16.4.2008, p. 1, paragraphs 196-198.

726 OJ L 24, 29.1.2004, p. 1.

430. Both Bridgestone and Manuli argue that the Commission should apply the market shares prevailing in the EEA rather than worldwide, since the marine hose cartel did not involve market sharing. According to Bridgestone, the cartel was not worldwide, as, for example, it did not cover Japan.

431. According to the Commission, the marine hoses cartel was a worldwide cartel which involved certain elements of market sharing. This has been elaborated in section 4 above.[727] As regards Japan, Bridgestone does not adduce any proof that Japan was not covered by the agreement (it does not state whether free competition prevailed on the market for marine hoses in the country[728]); the absence of exchanges between the parties is not proof of the absence of a cartel as the cartel rules envisaged home markets that were allocated to one or more home producers and where sales were not accounted for under worldwide quotas.

432. Given the global character of the cartel arrangements, the worldwide sales figures give the most appropriate picture of the participating undertakings' capacity to cause significant damage to other operators in the EEA. This approach is supported by the fact that the object of the cartel was, *inter alia*, to allocate markets on a worldwide level. Thus, the worldwide turnover 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. The comparison is made on the basis of the average worldwide product turnover in the last three full years of the infringement for each undertaking.

433. Worldwide market shares of the parties were as follows:

Bridgestone	[…]
Yokohama	[…]
DOM	[…]
Trelleborg	[…]
Parker ITR	[…]
Manuli	[…]

727 See in particular recitals 91-96.

728 The recent conviction of among others Bridgestone and Yokohama by the Japanese Fair trade Commission in relation to a cartel in marine hoses is indicative.

434. The average market share for each party has been calculated as the sum of worldwide sales for the three years 2004, 2005 and 2006 divided by the total sales of all the parties involved in the infringement for those three years.[729]

435. The average size of the EEA market over the period 2004 to 2006 was EUR […] (the figure that applies to Yokohama, the average size of the EEA market for the period 2003 to 2005, was EUR […]) (see table 11).

436. In line with the conclusion in recital 431 above, relevant sales need to be imputed to the undertakings on the basis of their worldwide market shares applied to the sales of all undertakings inside the EEA, that is to say by multiplying the size of the EEA market of EUR […] (EUR […] for Yokohama) by their respective worldwide market shares. Relevant sales are then as follows:

	EUR
Bridgestone	
Yokohama	
DOM	
Trelleborg	
Parker ITR	
Manuli	
Total	

8.4.3. Gravity

437. As a general rule, the proportion of the value of sales taken into account will be set at a level of up to 30%. In order to decide whether the proportion of the value of sales should be at the lower or at the higher end of the scale, the Commission will have regard to a number of factors, such as the nature of the infringement, the combined market share of all the undertakings concerned, the geographic scope of the infringement and whether or not the infringement has been implemented.

438. The marine hose cartel was a multi-faceted cartel involving the allocation of tenders (bid rigging), fixing prices, fixing quotas, fixing sales conditions,

729 For Yokohama the data for 2003-2005 have been taken. This explains why the market shares do not add up to exactly 100%.

geographic market sharing and the exchange of sensitive information on prices, sales volumes and procurement tenders.

8.4.3.1. Nature

439. Horizontal price and quota fixing, tender allocation and geographic market sharing are by their very nature among the most harmful restrictions of competition, as these practices distort competition with regard to the main parameters of competition The addressees of this Decision participated in a single, complex and continuous infringement of Article 81 of the Treaty and Article 53 of the EEA Agreement, with the common objective to distort competition in the market for marine hoses (see also sections 4.2-4.3.3 and 5.3.2).

440. The Commission observes that, according to point 23 of the Guidelines on fines, cartels will, as a matter of policy, be highly fined. The economic importance of the sector is reflected by the basic amount which is based on the value of sales and does not require further adjustment.

441. Several parties argue that the marine hose business only constitutes a minor part of their commercial activities. Some of the undertakings appear to suggest that this alleged minor importance should diminish their respective responsibility and fine. The Commission observes that the importance of a business translates into the value of sales realised in this business and that therefore, the Guidelines on fines take this figure as a starting point. The Commission does not, however, consider that the alleged minor importance of a business should have any effect on the assessment of the gravity or other factors determining the fine. The Commission also observes that the undertakings have not given up their activities in the marine hose sector suggesting that it is profitable for them and that the undertakings cannot, as a consequence, escape from the responsibility for the conduct of the organisation in charge of the business.

8.4.3.2. Combined market share

442. The combined market share of the undertakings for which the infringement could be established is more than 90%, which is well above 80%, as explained in recital 421. Even in the years when Manuli (with a market share below 10% and a quota never exceeding 10%) had interrupted its cartel activities between 1992 and 1996 that market share exceeded 80%.

8.4.3.3. Geographic scope

443. As regards the geographic scope, the infringement covered the entire EEA as the undertakings involved sold marine hoses in all Contracting Parties to the EEA Agreement where there is a demand for marine hoses. In fact, the geographic scope of the cartel was more than EEA wide, namely practically worldwide.

8.4.3.4. Implementation

444. As described in sections 4.2-4.4 above, the arrangements were indeed implemented (although not always completely successful) and monitored. After

coming to agreements on the basic principles of collusion, cartel members implemented them by agreeing on the allocation of specific tenders and the price levels quoted during these tenders (see sections 4.3.2.3 and 4.3.4.3 above). Evidence also shows that cartel members monitored the implementation of the agreed market shares (see sections 4.3.2.3 and 4.3.4.3 above). Contemporaneous documents also suggest that over specific periods the cartel led to an inflation of marine hoses prices.[730]

8.4.3.5. Conclusion on gravity

445. Given the specific circumstances of this case, taking into account the criteria discussed in this section relating to the nature of the infringement and the geographic scope, the proportion of the value of sales to be taken into account should be 25 %.

8.4.4. Duration

446. Point 24 of the Guidelines on fines provides that "*In order to take fully into account the duration of the participation of each undertaking in the infringement, the amount determined on the basis of the value of sales (see points 20 to 23 above) will be multiplied by the number of years of participation in the infringement. Periods of less than six months will be counted as half a year; periods longer than six months but shorter than one year will be counted as a full year*".

447. Recital 404 sets out the conclusions concerning the duration of the infringement by the undertakings involved in this case. The Commission considers that given the limited evidence of collusion available for the period between 13 May 1997 and 11 June 1999 (21 June 1999 for DOM and Trelleborg and 9 May 2000 for Manuli) this period should not be taken into account for purposes of calculating the fines (see recital 283 above).

448. The application of point 24 of the Guidelines on fines leads to the following multipliers:

Legal entity	Period of liability taken into account for purposes of calculating the fines	Number of years and months and days	Multipliers
Bridgestone Corporation	From 1 April 1986 until 13 May 1997 and from 11 June 1999 until 2 May 2007	19 years, 0 months and 5 days	19
Bridgestone Industrial Limited	From 19 December 1989 until 13 May 1997 and from 11 June 1999 until 2 May 2007	15 years, 3 months and 17 days	15,5

730 For example, inspection findings, Commission file p. 469/8-9.

Legal entity	Period of liability taken into account for purposes of calculating the fines	Number of years and months and days	Multipliers
Yokohama Rubber Company Limited	From 1 April 1986 until 13 May 1997 and from 11 June 1999 until 1 June 2006	18 years, 1 months and 5 days	18,5
Dunlop Oil & Marine Limited	From 21 June 1999 until 2 May 2007	7 years, 10 months and 12 days	8
ContiTech AG	From 28 July 2000 until 2 May 2007	6 years, 9 months and 5 days	7
Continental AG	From 9 March 2005 until 2 May 2007	2 years, 1 month and 24 days	2.5
Trelleborg Industrie SAS	From 1 April 1986 until 13 May 1997 and from 21 June 1999 until 2 May 2007	18 years, 11 months and 23 days	19
Trelleborg AB	From 28 March 1996 until 13 May 1997 and from 21 June 1999 until 2 May 2007	8 years, 11 months and 28 days	9
Parker ITR Srl	From 1 April 1986 until 13 May 1997 and from 11 June 1999 until 2 May 2007	19 years, 0 months and 5 days	19
Parker Hannifin Corporation	From 31 January 2002 until 2 May 2007	5 years, 3 months and 3 days	5,5
Manuli Rubber Industries SpA	From 3 September 1996 until 13 May 1997 and from 9 May 2000 until 2 May 2007	7 years, 8 months and 5 days	8

8.4.5. The percentage to be applied for the additional amount

449. Point 25 of the Guidelines on fines provides that "*irrespective of the duration of the undertaking's participation in the infringement, the Commission will include in the basic amount a sum of between 15% and 25% of the value of sales […] in order to deter undertakings from even entering into horizontal price-fixing, market-sharing and output limitation agreements*".

450. Given the specific circumstances of this case, taking into account the criteria discussed in section 8.4.3 above relating to the nature of the infringement and the geographic scope, the percentage to be applied for the purposes of calculating the additional amount to be imposed pursuant to point 25 of the Guidelines on fines should be 25 %.

8.4.6. Calculation and conclusion on basic amounts of the fines to be imposed

8.4.6.1. Bridgestone

451. The basic amount of the fine to be imposed on Bridgestone is as follows:

Legal Entity	Basic amount:
Bridgestone Corporation	EUR 45 000 000
Bridgestone Industrial Limited	EUR 37 000 000

8.4.6.2. Yokohama

452. The basic amount of the fine to be imposed on Yokohama is as follows:

Legal Entity	Basic amount:
Yokohama Rubber Company Limited	EUR 14 400 000

8.4.6.3. DOM

453. The basic amount of the fine to be imposed on DOM is as follows:

Legal Entity	Basic amount:
Dunlop Oil & Marine Limited	EUR 18 000 000
ContiTech AG	EUR 16 000 000
Continental AG	EUR 7 100 000

8.4.6.4. Trelleborg

454. The basic amount of the fine to be imposed on Trelleborg is as follows:

Legal Entity	Basic amount:
Trelleborg Industrie SAS	EUR 24 500 000
Trelleborg AB	EUR 12 200 000

8.4.6.5. Parker ITR

455. The basic amount of the fine to be imposed on Parker ITR is as follows:

Legal Entity	Basic amount:
Parker ITR Srl	EUR 19 700 000
Parker Hannifin Corporation	EUR 6 400 000

8.4.6.6. Manuli

456. The basic amount of the fine to be imposed on Manuli is as follows:

Legal Entity	Basic amount:
Manuli Rubber Industries SpA	EUR […]

8.5. Adjustments to the basic amount

8.5.1. Aggravating circumstances

8.5.1.1. Leading Role

457. Point 28 of the Guidelines on fines provides that "*The basic amount may be increased where the Commission finds that there are aggravating circumstances, such as: (...) role of leader in, or instigator of, the infringement (...)*". In the Statement of Objections, the Commission stated that it would "*take account of the role of a leader of the infringement of DOM, Bridgestone, and ITR. DOM, Bridgestone, and ITR each served during a certain period of the infringement as coordinator of one of the two groups of undertaking giving structure and organisation to the cartel. As such, they chaired meetings, served as hubs for communication among cartel members, and took initiatives to promote and develop the cartel*"[731].

458. As indicated in recitals 239-241 and 243, the facts show that between 1 April 1986 and 14 March 1997, […] and Bridgestone coordinated the cartel ([…] vis-à-vis the European members and Bridgestone vis-à-vis the Japanese members). However, as DOM should not be held liable for the conduct of […] prior to December 1997, it should not be held liable for leadership of the cartel in the period from 1986 to 1997. When the cartel was strengthened again in 1999 after the period of limited activity, Parker ITR, together with Mr. [cartel coordinator], was the driving force behind the move to overcome the internal struggles among the cartelists and re-establish the elaborate formal '*Club*'-structure. From that time until late 2001, Parker ITR was the coordinator of one cartel group, while the other group was coordinated by Mr. [cartel coordinator]. Inquiries from the cartel group were registered with Parker ITR, and Parker ITR took over the role of coordinating and deciding on the allocation of tenders, as well as giving bidding instructions to all cartel members.

Arguments by the parties

459. In its reply to the Statement of Objections, Parker ITR submitted that the leadership function of its former business unit manager was exercised through a number of legal entities not part of the Parker group and not linked to the Parker Hannifin Corporation and/or Parker ITR Srl. Entities such as […] and […] should be held liable for that aspect of the infringement.

460. Bridgestone claims that its fine should not be increased on the grounds of leadership of the cartel. That claim appears to be based on the fact that that

[731] Paragraph 367 of the Statement of Objections

leadership was principally in the period from 1986 to 1997, a period in respect of which Bridgestone contends that it should not be held liable.

Assessment by the Commission

461. […] of Parker ITR chaired at least one cartel meeting (the important meeting of December 1999, see recital 190), he sent faxes regarding the cartel marked 'ITR' to the other parties (recital 191) and spoke on behalf of the joint cartel partner Yokohama-Parker ITR to the cartel (recital 195). It is clear that […] led the cartel. It is also clear that he led the cartel as an employee of and on behalf of Parker ITR. It is not possible to separate […] presence at the cartel meetings and his other activities within the cartel on behalf of Parker ITR from his leadership of the cartel. Moreover, […] was never present at the meeting as a representative of […] and/or […] or any of the other companies through which […] led the cartel, according to Parker ITR. Finally, if the arguments of Parker ITR were accepted, leadership of a cartel could never be imputed to an undertaking (except perhaps in case of a specific instructions from the CEO to exercise the leadership of a cartel) as it could always be argued that the leadership function is separate from membership and that an employee exercised the leadership for personal reasons.

462. With regard to Bridgestone's claim that its leadership was principally in the period from 1986 to 1997, a period in respect of which Bridgestone contends that it should not be held liable, the Commission considers that Bridgestone should be held liable in respect of that period (see sections 5.3.4 and 8.3 above) and that its leadership should therefore also be taken into account as an aggravating factor.

463. In view of the above, the basic amount of the fine to be imposed on Parker ITR and Bridgestone should be increased by 30%.

8.5.2. Mitigating circumstances

8.5.2.1. Passive and/or Minor Role

464. Several undertakings involved claim that their marine hose business is a minor activity. The Commission generally considers that this cannot be the basis for a finding of a passive or minor role which only takes into account what kind of role an undertaking played in a cartel but not the importance of the business in the group. The Commission also observes that despite the minor importance of the business all of the undertakings involved considered the marine hose business important enough to maintain, presumably for reasons of profitability (except Bridgestone that has stopped its business since the end of the infringement). The Commission finally observes that the relative importance of the business is sufficiently reflected in the calculation of the basic amount and does not furthermore need to be taken into account.

8.5.2.2. Co-operation outside the scope of the Leniency Notice

465. Bridgestone claims that it should be granted a reduction of fines outside the scope of the Leniency Notice if it is not granted a reduction under the Leniency

Notice.[732] This should be its reward for the cooperation given by Bridgestone and for its voluntary submission of information.

466. The Commission considers that the former is the undertaking's legal obligation while the latter should be handled under the Leniency Notice (see below, section 8.7). A reduction of fines should therefore not be granted.

8.5.3. Conclusions on the adjusted basic amounts of the fines to be imposed

8.5.3.1. Bridgestone

467. The adjusted basic amount of the fine to be imposed on Bridgestone is as follows:

Legal Entity	Adjusted basic amount:
Bridgestone Corporation	EUR 58 500 000
Bridgestone Industrial Limited	EUR 48 100 000

8.5.3.2. Yokohama

468. The adjusted basic amount of the fine to be imposed on Yokohama is as follows:

Legal Entity	Adjusted basic amount:
Yokohama Rubber Company Limited	EUR 14 400 000

8.5.3.3. DOM

469. The adjusted basic amount of the fine to be imposed on DOM is as follows:

Legal Entity	Adjusted basic amount:
Dunlop Oil & Marine Limited	EUR 18 000 000
ContiTech AG	EUR 16 000 000
Continental AG	EUR 7 100 000

8.5.3.4. Trelleborg

470. The adjusted basic amount of the fine to be imposed on Trelleborg is as follows:

Legal Entity	Adjusted basic amount:
Trelleborg Industrie SAS	EUR 24 500 000
Trelleborg AB	EUR 12 200 000

[732] Bridgestone's reply to the Statement of Objections, p. 1478/49

8.5.3.5. Parker ITR

471. The adjusted basic amount of the fine to be imposed on Parker ITR is as follows:

Legal Entity	Adjusted basic amount:
Parker ITR Srl	EUR 25 610 000
Parker Hannifin Corporation	EUR 8 320 000

8.5.3.6. Manuli

472. The adjusted basic amount of the fine to be imposed on Manuli is as follows:

Legal Entity	Adjusted basic amount:
Manuli Rubber Industries SpA	[…]

8.6. Application of the 10% of turnover limit

473. Article 23(2) of Regulation (EC) No 1/2003 provides that "*For each undertaking and association of undertakings participating in the infringement, the fine shall not exceed 10 % of its total turnover in the preceding business year*".

474. The adjusted basic amounts set out in section 8.5 do not exceed 10% of total turnover for any of the undertakings concerned (see section 2.2 above). Therefore the amounts need not be modified in the light of the undertakings' turnover.

8.7. Application of the Leniency Notice

475. Yokohama, Manuli, Parker ITR Parker and Bridgestone submitted applications under the Leniency Notice.

8.7.1. Yokohama

476. Under point 8(a) of the Leniency Notice, the Commission will grant immunity from fines "*to an undertaking disclosing its participation in an alleged cartel affecting the Community if that undertaking is the first to submit information and evidence which in the Commission's view will enable it to: (a) carry out a targeted inspection in connection with the alleged cartel [3]; or (b) find an infringement of Article 81 EC in connection with the alleged cartel*.".

477. The Commission has verified that no other application for immunity had previously been filed for the sector of marine hoses and that no Commission investigation was pending in the sector. Yokohama was therefore the first undertaking to submit evidence on the infringement described in this Decision. The evidence submitted enabled the Commission to adopt a Decision to carry out an investigation with regard to the alleged infringement in the sector.

478. There is no evidence that Yokohama had not terminated its involvement in the suspected infringement before the application for immunity.

479. Yokohama should therefore benefit from immunity from fines pursuant to point 8 of the Leniency Notice. Consequently, the fine to be imposed on Yokohama should be reduced by 100%.

8.7.2. Manuli

480. On 4 May 2007 Manuli submitted an application under the Leniency Notice, consisting of a written application with annexes.

481. Manuli provided evidence regarding the cartel from the late 1980s[733]. It provided the Commission with significant added value as regards its ability to prove to the requisite standard the infringement described in this Decision and is therefore the first undertaking to meet point 21 of the Leniency Notice.

482. Evidence provided by Manuli refined the information available to the Commission with regard to Manuli's presence in cartel meetings and the identity of cartel meeting participants. Manuli also provided the Commission with an internal November 1989 document which shows that cartel members exchanged detailed sales statistics for the period 1986-1989. That document strengthened the Commission's ability to prove that already in the 1980s cartel members kept such sales statistics, used to implement and supervise the market sharing and tender allocation agreements.

483. The document of November 1989, and two further documents of 2000 exchanged with the cartel coordinator also strengthened the Commission's ability to prove that the cartel included an element of geographic market sharing, by way of attributing '*home markets'* to cartel members.

484. Finally, Manuli provided the Commission with internal contemporaneous documents from early 1997 concerning the existence of cartel arrangements, and Manuli's own role in the cartel in the period 1996-1997. This information strengthened the Commission's ability to prove the existence of the cartel in the second half of the 1990s.

485. However, at the time the Commission was approached by Manuli, it was already in possession of a vast amount of documents, on the basis of which it was able to prove the main elements of the cartel.

486. Considering the value of its contribution to this case, the early stage at which it provided that contribution and the extent of its cooperation following its submissions, Manuli should be granted a 30% reduction of the fine that would otherwise have been imposed on it.

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[733] For example, footnotes 77, 108, 199, 203, 220-226, 228, 232, 237-245, 253, 254, 265, 281, 284, 306, 311, 318, 319, 322, 323, 341, 357, 361, 371, 372, 377-379, 383-389, 405, 420; 421, 428, 695, 696.

487. In its reply to the Statement of Objections, Manuli claimed that the period of 1996/1997 should not be taken into account for the calculation of the fine to be imposed on it pursuant to point 26 (2) of the Leniency Notice, because the Commission can only prove Manuli's participation during that period on the basis of evidence provided by Manuli. In response, the Commission notes that the Leniency Notice requires the applicant to submit evidence which the Commission uses to establish additional facts increasing the gravity or the duration of the infringement. In this case, the evidence provided by Manuli was used by the Commission to prove Manuli's participation in the infringement for a certain time period. The Commission did not use that evidence to increase the duration of the infringement as a whole.

488. Consequently, the fine to be imposed on Manuli should be reduced by 30%.

8.7.3. Parker ITR

489. On 17 July 2007 Parker ITR submitted an application under the Leniency Notice. Parker ITR's application consisted of a corporate statement indicating cartel contacts between 1972 and 2006, and Parker ITR's attempt to leave the cartel '*softly'* in 2006/2007, meeting minutes and correspondence for 1972 to 1981, and correspondence among cartel members (tender allocation and circulation of market information) for 1989 and 1999 to 2003.

490. Whereas the overall picture of Parker ITR's statement was consistent with the submissions of Yokohama and the conclusions drawn from the material found during the inspections, it contained little that could be qualified as providing '*substantial added value'* as regards the period 1986-2007. The infringement during that period is fully proven by the extensive evidence submitted by the immunity applicant and the first leniency applicant, and by the documents collected during the inspections.

491. Parker ITR's submission contained evidence of an infringement in the marine hose industry for the period 1972 until the early 1980s. The evidence for the period after 1 April 1981, that is five years before the start of the infringement described in the current Decision, is so inconsequential that any proof for the period from 1972 would necessarily be subject to the limitation period for the imposition of fines.

492. Point 36 of the Leniency Notice states that "*The Commission will not take a position on whether or not to grant conditional immunity, or otherwise on whether or not to reward any application, if it becomes apparent that the application concerns infringements covered by the five years limitation period for the imposition of penalties stipulated in Article 25(1)(b) of Regulation 1/2003, as such applications would be devoid of purpose.*" The part of the submission concerning that period should therefore not be taken into account for assessing whether Parker ITR contributed significant added value.

493. On the basis of the above, Parker ITR should not be granted any reduction in the fine to be imposed on it.

8.7.4. Bridgestone

494. Bridgestone submitted an application under the Leniency Notice on 7 December 2007. Bridgestone's application consisted of a written statement confirming cartel contacts between 1986 and 2007, two pieces of correspondence among cartel members (tender allocation) for 1994, and internal emails referring to tender allocation in 1999-2006.

495. Whereas the overall picture of Bridgestone's statement was consistent with the submissions of Yokohama and the conclusions drawn from the material found during the inspections, it contained little that could be qualified as providing 'added value'.

496. Bridgestone claims that it submitted, in good faith, five leniency applications providing evidence on the nature and functioning of the cartel, as well as details of Bridgestone representatives and other marine hose competitors meeting to discuss ways of updating the OCIMF guidelines to exclude new entrants. The Commission considers the last element not to be related to the infringement in this case. With regard to the remainder of the evidence submitted by Bridgestone, it claims that it "*fulfilled the criteria under paragraphs 24-25 of the 2006 Leniency Notice*". The Commission notes that while Bridgestone admitted to having participated in the cartel, it provided no information that was of any '*substantial added value'* and can therefore not be granted a reduction in fines. The infringement is fully proven by the extensive evidence submitted by the immunity applicant and the first leniency applicant, and by the documents collected during the inspections. In fact, the Commission has not relied upon evidence provided by Bridgestone to prove the infringement in this case. Where Bridgestone's submissions under the Leniency Notice were cited in the text of this Decision (see footnotes 261, 283, 565 and 622), this happened in the context of Bridgestone's claims for the exculpatory or attenuating use of that evidence, not in order to establish an infringement.

497. Therefore, Bridgestone should not be granted any reduction in the fine to be imposed on it.

8.7.5. Conclusion on the application of the Leniency Notice

8.7.5.1. Yokohama

498. The fine to be imposed on Yokohama following the application of the Leniency Notice should be as follows:

Adjusted basic amount:	EUR	14 400 000
Reduction:	%	100
Total fine:	EUR	0

8.7.5.2. Manuli

499. The fine to be imposed on Manuli following the application of the Leniency Notice should be as follows:

Adjusted basic amount:	EUR	7 000 000
Reduction:	%	30
Total fine:	EUR	4 900 000

8.8. The amounts of the fines to be imposed in this Decision

500. The total fines to be imposed pursuant to Article 23(2) of Regulation (EC) No 1/2003 should therefore be as follows:

8.8.1. Bridgestone

501. The total fine to be imposed on Bridgestone is as follows:

Legal Entity	Total fine:
Bridgestone Corporation	EUR 58 500 000
Bridgestone Industrial Limited	EUR 48 100 000

8.8.2. Yokohama

502. The total fine to be imposed on Yokohama is as follows:

Legal Entity	Total fine:
Yokohama Rubber Company Limited	EUR 0

8.8.3. DOM

503. The total fine to be imposed on DOM is as follows:

Legal Entity	Total fine:
Dunlop Oil & Marine Limited	EUR 18 000 000
ContiTech AG	EUR 16 000 000
Continental AG	EUR 7 100 000

8.8.4. Trelleborg

504. The total fine to be imposed on Trelleborg is as follows:

Legal Entity	Total fine:
Trelleborg Industrie SAS	EUR 24 500 000
Trelleborg AB	EUR 12 200 000

8.8.5. Parker ITR

505. The total fine to be imposed on Parker ITR is as follows:

Legal Entity	Total fine:
Parker ITR Srl	EUR 25 610 000
Parker Hannifin Corporation	EUR 8 320 000

8.8.6. Manuli

506. The total fine to be imposed on Manuli is as follows:

Legal Entity	Total fine:
Manuli Rubber Industries SpA	EUR 4 900 000

8.9. Ability to pay

507. None of the addresses has argued that it is unable to pay the fine.

HAS ADOPTED THIS DECISION:

Article 1

The following undertakings infringed Article 81 of the Treaty and, as of 1 January 1994, Article 53 of the EEA Agreement by participating, during the periods indicated, in a single and continuous infringement in the marine hose sector in the EEA, which consisted of allocating tenders, fixing prices, fixing quotas, fixing sales conditions, geographic market sharing, and the exchange of sensitive information on prices, sales volumes and procurement tenders:

(a) Bridgestone Corporation: from 1 April 1986 until 2 May 2007;

(b) Bridgestone Industrial Limited: from 19 December 1989 until 2 May 2007;

(c) The Yokohama Rubber Company Limited: from 1 April 1986 until 1 June 2006;

(d) Dunlop Oil & Marine Limited: from 12 December 1997 until 2 May 2007;

(e) ContiTech AG: from 28 July 2000 until 2 May 2007;

(f) Continental AG: from 9 March 2005 until 2 May 2007;

(g) Trelleborg Industrie SAS: from 1 April 1986 until 2 May 2007;

(h) Trelleborg AB: from 28 March 1996 until 2 May 2007;

(i) Parker ITR Srl: from 1 April 1986 until 2 May 2007;

(j) Parker Hannifin Corporation: from 31 January 2002 until 2 May 2007; and

(k) Manuli Rubber Industries SpA: from 1 April 1986 until 1 August 1992 and from 3 September 1996 until 2 May 2007.

Article 2

For the infringements referred to in Article 1, the following fines are imposed:

(a) Bridgestone Corporation: EUR 58 500 000;

of which jointly and severally with Bridgestone Industrial Limited for EUR 48 100 000;

(b) The Yokohama Rubber Company Limited: EUR: 0;

(c) Dunlop Oil & Marine Limited: EUR 18 000 000

of which jointly and severally with ContiTech AG for EUR 16 000 000

of which jointly and severally with Continental AG for EUR 7 100 000;

(d) Trelleborg Industrie SAS: EUR 24 500 000

of which jointly and severally with Trelleborg AB for EUR 12 200 000;

(e) Parker ITR Srl: EUR 25 610 000

of which jointly and severally with Parker Hannifin Corporation for EUR 8 320 000;

(f) Manuli Rubber Industries SpA: EUR 4 900 000.

The fines shall be paid in Euros, within three months of the date of the notification of this Decision, to the following account:

Account No:

SOCIETE GENERALE

Cours Valmy 17

F-92800 PUTEAUX

IBAN: FR76 30003 06990 00101611532 82

Code SWIFT: SOGEFRPPXXX

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.

Article 3

The undertakings listed in Article 1 shall immediately bring to an end the infringements referred to in that Article, insofar 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:

Bridgestone Corporation
10-1, Kyobashi 1-chome
Chuo-ku, Tokyo 104-8340,
Japan

Bridgestone Industrial Limited
2nd Floor West CP House
97-107 Uxbridge Road
Ealing
London W5 5TL
United Kingdom

The Yokohama Rubber Company Limited
Minato-Ku Tokyo 105-8685,
36-11, Shimbashi 5-Chome
Japan

Dunlop Oil & Marine Limited
Moody Lane, Pyewipe,
Grimsby
North East Lincolnshire
DN31 2SY
United Kingdom

ContiTech AG
Vahrenwalderstraße 9
D-30165 Hannover
Germany

Continental AG
Vahrenwalderstraße 9
D-30165 Hannover
Germany

Trelleborg Industrie SAS
ZI La Combaude, Rue de Chantemerle
F-63050 Clermont-Ferrand
France

Trelleborg AB
Johan Kocksgatan 10
231 22 Trelleborg
Sweden

Parker ITR S.r.l
Via G.B. Pirelli 6
IT-22070 Veniano (CO)
Italy

Parker Hannifin Corporation
6035 Parkland Boulevard
44124 Cleveland
OH USA

Manuli Rubber Industries S.p.A.
Piazza della Repubblica 14/16
20124 Milan
Italy

This Decision shall be enforceable pursuant to Article 256 of the Treaty and Article 110 of the EEA Agreement.

Done at Brussels,

For the Commission

Neelie Kroes
Member of the Commission