EUROPEAN COMMISSION
Competition DG

CASE COMP/39600-Refrigeration compressors

(Only the English text is authentic)

CARTEL PROCEDURE

Council Regulation (EC) 1/2003 and Commission Regulation (EC) 773/2004

Article 7 Regulation (EC) 1/2003

Date: 7/12/2011

EUROPEAN COMMISSION

Brussels, 7.12.2011
C(2011) 8923 final

COMMISSION DECISION

of 7.12.2011

relating to a proceeding under Article 101 of the Treaty on the Functioning of the European Union and Article 53 of the EEA Agreement
(COMP/39600 – Refrigeration Compressors)

Only the English text is authentic

TABLE OF CONTENTS

COMMISSION DECISION

of 7.12.2011

relating to a proceeding under Article 101 of the Treaty on the Functioning of the European Union and Article 53 of the EEA Agreement (COMP/39600 –Refrigeration Compressors)

Only the English text is authentic

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

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 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], and in particular Article 10a thereof,

Having regard to the Commission decision of 13 October 2010 to initiate proceedings in this case,

---

1 OJ L 1, 4.1.2003, p. 1. With effect from 1 December 2009, Article 81 of the EC Treaty has become Article 101 of the Treaty on the Functioning of the European Union ("the Treaty"). The provisions are, in substance, identical. For the purposes of this Decision, references to Article 101 of the Treaty should be understood as references to Article 81 of the EC Treaty, where appropriate. The Treaty also introduced certain changes in terminology, such as the replacement of "Community" by "Union" and "common market" by "internal market". Where the meaning remains unchanged, the terminology of the Treaty will be used throughout this Decision.

2 OJ L 123, 27.4.2004, p. 18. Regulation (EC) No 773/2004 of 7 April 2004 has been amended by Commission Regulation (EC) No 622/2008 of 30 June 2008 as regards the conduct of settlement procedures in cartel cases, (OJ L 171, 1.7.2008, p. 3).

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 11(1) of Regulation (EC) No 773/2004,

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) The addressees of this Decision ("the parties") participated in a single and continuous infringement of Article 101 of the Treaty and Article 53 of the European Economic Agreement ("the EEA Agreement"). The infringement covered the entire territory of the EEA and lasted from 13 April 2004 until 9 October 2007.

(2) This Decision is addressed to the following companies:

(a) Appliances Components Companies S.p.A. and Elettromeccanica S.p.A. ("ACC");

(b) Danfoss A/S and Danfoss Flensburg GmbH (formerly Danfoss Compressors GmbH) ("Danfoss");

(c) Whirlpool S.A. and Embraco Europe S.r.l. ("Embraco");

(d) Panasonic Corporation ("Panasonic");

(e) Tecumseh Products Company Inc., Tecumseh do Brasil Ltda. and Tecumseh Europe S.A. ("Tecumseh").

2. THE INDUSTRY SUBJECT TO THE PROCEEDINGS

2.1. The product

(3) The products concerned by the anti-competitive conduct are small hermetic reciprocating compressors (maximum 1.5 horsepower or "HP") that are used predominantly in the domestic refrigeration and freezing ("R and F") segment, but also in the commercial segment ("household and commercial compressors"). Household compressors are used in household appliances such as fridges and freezers. Commercial compressors up to 1.5 HP are installed in commercial

[3] Final report of the Hearing Officer of 5.12.2011.

equipment, such as vending machines, display cabinets, ice cream coolers, cold-rooms, etc., which are used by restaurants, bars, petrol stations, supermarkets, etc.[4]

2.2. The undertakings subject to the proceedings

2.2.1. ACC

(4) The relevant legal entities are:

(a) Appliances Components Companies S.p.A. having its registered office at Via Lino Zanussi 11, 33170 Pordenone, Italy; and

(b) Elettromeccanica S.p.A. having its registered office at Via Lino Zanussi 11, 33170 Pordenone, Italy.

(5) ACC's world-wide turnover is approximately EUR 407 million. It produces household refrigeration compressors and industrial motors.

2.2.2. Danfoss

(6) The relevant legal entities are:

(a) Danfoss A/S having its registered office at Nordborgvej 81, 6430 Nordborg, Denmark; and

(b) Danfoss Flensburg GmbH (formerly Danfoss Compressors GmbH) having its registered office at Mads-Clausen-Strasse 7, 24939 Flensburg, Germany.

(7) Danfoss's world-wide turnover is approximately EUR 4.2 billion.[5] In the relevant period, it was mainly active in the following business areas: (a) Refrigeration and Air-Conditioning; (b) Heating and Water; (c) Motion Controls; and (d) Mobile Hydraulics.

2.2.3. Embraco

(8) The relevant legal entities are:

(a) Whirlpool S.A. having its registered office at Avenida das Nações Unidas, 12.995, 32° andar, Brooklin, São Paulo-SP, 04578-000, Brasil; and

(b) Embraco Europe S.r.l. having its registered office at Piazza Solferino,20, 10121 Torino, Italy.

(9) Embraco's world-wide turnover is approximately EUR 4.1 billion. It produces household appliances, such as washing machines, refrigerators. It also manufactures refrigeration compressors.

---

4 Compressors used for air-conditioning are not concerned by the anticompetitive conduct.

5 In this Decision 1 billion equals 1 000 million.

2.2.4. Panasonic

(10) The legal entity concerned is:

– Panasonic Corporation (formerly Matsushita) having its registered office at 1006 Kadoma, Kadoma City, Osaka 571-8501, Japan.

(11) Panasonic's world-wide turnover is approximately EUR 76.8 billion. It manufactures electronics and electronic products and sells compressors through its Refrigeration Devices Business Unit.

2.2.5. Tecumseh

(12) The relevant legal entities are:

(a) Tecumseh Products Company Inc. having its registered office at 1136 Oak Valley Dr. Ann Arbor, Michigan 48108, the United States of America;

(b) Tecumseh do Brasil Ltda. having its registered office at Rua José Augusto de Oliveira Salles, 478, São Carlos - SP. 13565-900, Brazil; and

(c) Tecumseh Europe S.A. having its registered office at Plate-forme Logistique, 2 Avenue Blaise Pascal, Site Prologis Bat. B, 38090 Vaulx-Milieu, France.

Tecumseh's world-wide turnover is approximately EUR 704 million. It produces refrigeration and air-conditioning compressors.

3. PROCEDURE

(13) [...] Tecumseh applied for immunity under the Commission notice on Immunity from fines and reduction of fines in cartel cases[6] ("the Leniency Notice"). Tecumseh's immunity application was followed by a number of submissions [...]. On 11 February 2009, the Commission granted Tecumseh conditional immunity from fines pursuant to point 8(a) of the Leniency Notice.

(14) In February 2009, the Commission carried out unannounced inspections at the premises of ACC, Danfoss and Embraco.

(15) [...] Panasonic submitted an application for immunity and alternatively for a reduction of fines under the Leniency Notice. Panasonic supplemented its application[...].

(16) [...] ACC and [...]Embraco submitted applications for immunity and alternatively for a reduction of fines under the Leniency Notice. Both undertakings supplemented their applications[...].

(17) [...], Danfoss submitted an application for a reduction of fines under the Leniency Notice [...].

---

[6] OJ C 298, 8.12.2006, p. 17.

(18) As of November 2009, the Commission sent several requests for information under Article 18 of Regulation (EC) No 1/2003.

(19) On 13 October 2010, the Commission initiated proceedings pursuant to Article 11(6) of Regulation (EC) No 1/2003 with a view to engage in settlement discussions with them. After each of the parties had confirmed its willingness to engage in settlement discussions, the discussions started on 15 November 2010.

(20) Settlement meetings between each of the parties and the Commission took place between 15 November 2010 and 14 September 2011. During those meetings, the Commission informed the parties of the objections it envisaged raising against them and disclosed the evidence in the Commission file relied on to establish these objections. Between 15 November 2010 and 29 November 2010, the parties had access to the relevant file in the Commission premises [...]. The parties were also given a list of all the documents in the Commission file and a copy of evidence that had already been shown to them. Upon motivated request, the parties were granted access to additional documents listed in the Commission case file. The Commission also provided the parties with an estimation of the range of fines likely to be imposed by it.

(21) Each of the parties expressed its view on the objections which the Commission envisaged raising against it. The parties' comments were carefully considered by the Commission and, where appropriate, taken into account. At the end of the settlement discussions, all of the parties considered that there was a sufficient common understanding as regards the potential objections and the estimation of the range of likely fines to continue the settlement process.

(22) [...] the parties submitted to the Commission their formal request to settle pursuant to Article 10a(2) of Regulation (EC) No 773/2004 (the "settlement submissions"). The settlement submission of each party contained:

(a) an acknowledgement in clear and unequivocal terms of the party's liability for the infringement as well as a description as regards its object, its possible implementation, the main facts, their legal qualification, including the party's role and the duration of its participation in the infringement;

(b) an indication of the maximum amount of the fine the party expects to be imposed by the Commission and which it would accept in the framework of a settlement procedure;

(c) the party's confirmation that it has been sufficiently informed of the objections the Commission envisages raising against it and that it has been given sufficient opportunity to make its views known to the Commission;

(d) the party's confirmation that it does not envisage requesting access to the Commission file or requesting to be heard again in an oral hearing, unless the Commission does not reflect its settlement submissions in the statement of objections and the decision;

(e) the party's agreement to receive the statement of objections and the final decision pursuant to Articles 7 and 23 of Regulation (EC) No 1/2003 in English.

(23) On 11 October 2011, the Commission adopted a Statement of Objections addressed to ACC, Danfoss, Embraco, Panasonic and Tecumseh. All the parties replied to the Statement of Objections by confirming that it corresponded to the contents of their settlement submissions and that they therefore remained committed to following the settlement procedure.

(24) Having regard to the clear and unequivocal acknowledgments of all the parties to these proceedings of the facts and the legal qualification thereof contained in their settlement submissions and to their clear and unequivocal confirmation that the Statement of Objections reflected their settlement submissions, it is concluded that the addressees of this Decision should be held liable for the infringement as described in Sections 4 to 7.

4. DESCRIPTION OF THE EVENTS

4.1. Nature and scope of the infringement

(25) ACC, Danfoss, Embraco, Panasonic and Tecumseh participated in an EEA-wide cartel relating to the production and sale of household and commercial compressors (maximum 1.5 HP) which was aimed at coordinating European pricing policies and keeping market shares stable in an attempt to recover cost increases[7]. The overall duration of the cartel was from 13 April 2004[8] until 9 October 2007[9].

(26) The cartel members engaged in direct and indirect price coordination activities. In this regard, the cartel participants made arrangements jointly to coordinate their European pricing strategies. This included:

(a) an agreement on target prices, expressed in percentage increases, and their timing;[10]

(b) on certain occasions, agreements regarding prices to be charged to specific European customers;[11]

(c) on certain occasions, agreements not to enter into fixed term contracts with customers;[12] and

(d) on one particular occasion, an agreement not to compromise price levels for the purpose of increasing sales volumes.[13]

---

7 See [...].
8 See, for example, [...].
9 See, for example, [...].
10 See, for example, [...].
11 See, [...].
12 See, for example, [...].
13 See, for example, [...]

(27) The cartel members exchanged sensitive market information, including information about individual suppliers' production capacity, output and supply to certain individual European customers[14].

(28) The cartel participants held bilateral, trilateral and multilateral meetings[15]. Multilateral meetings took place in Europe between Tecumseh, Embraco, ACC and Danfoss (Panasonic attended on one occasion only). The parties convened these meetings "in turn" (with the exception of Panasonic). The meetings were usually held in hotels located in the Frankfurt and Munich airports, sometimes under a fictitious name, such as the International Association of Compressors ("IAC")[16]. On at least one occasion, the meeting was timed to coincide with the [...] Trade Fair [...][17].

(29) In the course of the multilateral meetings, the cartel members discussed and agreed upon the need to increase prices of their compressor products in Europe to cover the increase in material costs. They discussed general ranges of price increases recently achieved for companies in Europe and agreed on timing and general ranges of target price increases in Europe[18]. On certain occasions, the cartel members discussed the terms of their contracts with certain European customers and agreed not to enter into fixed term contracts and/or not to compromise price levels for the purpose of increasing sales volumes. They exchanged sensitive commercial information on capacity, production and sales trends relating to the European market[19].

(30) Apart from the multilateral meetings there were trilateral anti-competitive contacts between various parties. In addition, there were numerous bilateral meetings and regular bilateral phone calls.[20] Most of the parties frequently visited each others' premises and plants and several cartel discussions took place during a number of such courtesy visits.[21]

(31) The cartel involved the same core group of employees both at executive level as well as at operational level (such as sales managers).

(32) Panasonic participated in only one multilateral cartel meeting [...][22]. It declined to attend a subsequent multilateral meeting and there is no evidence that Panasonic attended any other such meetings. It remained active, however, in the cartel by means of bilateral cartel meetings with Embraco[23] and Danfoss[24]. Panasonic participated in the multilateral meeting [...]in which commercial compressors were discussed. But Panasonic's other cartel activities related throughout the cartel duration almost exclusively to household compressors, in which regard Panasonic

---

14 See, for example, [...].
15 See, for example[...].
16 See, for example, [...].
17 See [...].
18 See, for example, [...].
19 See, for example, [...].
20 See, for example, [...].
21 See, [...].
22 See, for example, [...].
23 See, for example, [...]
24 See, for example, [...]

coordinated with its competitors, directly and indirectly, prices and pricing strategy towards European customers.

4.2. Geographic scope of the cartel

(33) The cartel concerned European pricing strategies and covered the entire territory of the EEA.

4.3. Duration

(34) The pattern of continuous cartel contacts started on 13 April 2004[25]. Between April 2004 and October 2007, there were continuous and regular anti-competitive contacts between the parties. However, the last anti-competitive contact involving Panasonic for which the Commission has evidence is a bilateral exchange with Embraco that occurred on 15 November 2006.

5. APPLICATION OF ARTICLE 101(1) OF THE TREATY AND ARTICLE 53(1) OF THE EEA AGREEMENT

(35) Having regard to the body of evidence and the facts as described in Section 4 and the parties' clear and unequivocal acknowledgement of the facts and the legal qualification thereof contained in their settlement submissions, and their replies to the Statement of Objections, the legal assessment is set out as follows.

5.1. Jurisdiction

(36) In this case the Commission is competent to apply both Article 101 of the Treaty and Article 53 of the EEA Agreement, since the cartel arrangements were capable of having an appreciable effect upon trade between Member States of the Union and between contracting parties to the EEA Agreement.

5.2. The nature of the infringement

5.2.1. Principles

(37) Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement prohibit *agreements* between undertakings, decisions by associations of undertakings and *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 internal market. In the case of a complex infringement of long duration, it is not necessary for the Commission to characterise the conduct as exclusively *agreement* or *concerted practice*.[26] The concepts of *agreement* and *concerted practice* are fluid

---

25 See, [...].

26 See paragraph 696 of the Judgment of the Court of First Instance of 20 April 1999 in Limburgse Vinyl Maatschappij NV and others v Commission, Joined Cases T-305/94, T-306/94, T-307/94, T-313/94 to T-316/94, T-318/94, T-325/94, T-328/94, T-329/94 and T-335/94, [1999] ECR II-00931 (the "*PVC II*" judgment). In the PVC II judgment, the Court stated that *"In the context of a complex infringement which involves many producers seeking over a number of years to regulate the market between them, the Commission cannot be expected to classify the infringement precisely, for each undertaking and for*

and may overlap. Indeed, it may not even be possible to make such a distinction, as an infringement may present simultaneously the characteristics of each form of prohibited conduct, while when considered in isolation some of its manifestations could accurately be described as one rather than the other.

(38) A complex cartel may properly be viewed as a single and continuous infringement for the time frame in which it existed. 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 101 of the Treaty. When the different actions form part of an 'overall plan', because their identical object distorts competition within the internal market, the Commission is entitled to impute responsibility for those actions on the basis of participation in the infringement considered as a whole.[27] This conclusion is not at odds with the principle that responsibility for such infringements is individual in nature, nor does it neglect an individual analysis of the evidence adduced or the applicable rules of evidence, nor does it infringe the rights of defence of the undertakings involved.[28] 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 where it is established that the undertaking in question was aware of the unlawful behaviour of the other participants or could reasonably have foreseen it and was prepared to take the risk.[29]

5.2.2. Application to this case

(39) The conduct of the cartel members in this case constitutes a complex infringement, consisting of various actions which can be classified as an agreement and/or concerted practice, within which the competitors knowingly substituted practical cooperation between them for the risks of competition.

(40) The undertakings concerned entered into a scheme of anti-competitive contacts with the aim to limit their individual commercial conduct when determining the lines of their action or abstention from action in the market. In addition, they exchanged commercially sensitive information.[30] Their behaviour therefore had all the characteristics of an agreement and/or concerted practice within the meaning of Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement.

---

any given moment, as in any event both forms of infringement are covered by Article [81] of the Treaty."

27 See paragraph 258 of the Judgment of the Court of Justice of 7 January 2004 in Joined Cases C-204/00 P, C-205/00 P, C-211/00 P, C 213/00 P, C-217/00 P and C-219/00 P, Aalborg Portland A/S and Others v Commission [2004] ECR I-00123.

28 See Case C-49/92P *Commission v Anic Partecipazioni SpA* [1999] ECR I-4125, paragraphs 78 to 81, 83, 84, 85 and 203.

29 In Case 49/92P *Commission v Anic Partecipazioni* SpA [1999] ECR I-4125, paragraph 83, the Court of Justice ruled that: *"... an undertaking that had taken part in such an infringement through conduct of its own which formed an agreement or concerted practice having an anti-competitive object for the purposes of Article 85(1) of the Treaty and which was intended to help bring about the infringement as a whole was also responsible, throughout the entire period of its participation in that infringement, for conduct put into effect by other undertakings in the context of the same infringement. That is the case where it is established that the undertaking in question was aware of the offending conduct of the other participants or that it could reasonably have foreseen it and that it was prepared to take the risk."*

30 For details see Section 4.1.

(41) The agreements and/or concerted practices formed part of an overall scheme to restrict competition. The cartel members pursued a single anticompetitive objective and single economic aim, namely that of preventing and distorting competition on prices on the household and commercial compressor markets (maximum 1.5 HP) which aimed at coordinating European pricing policies and keeping market shares stable in an attempt to recover cost increases. The agreements and/or concerted practices described above were complementary, that is to say they all contributed to the realisation of the overall scheme.

(42) The arrangements throughout the entire period of the infringement covered the same elements of the overall scheme, included the same undertakings as well as the same core group of employees participating in the contacts.

(43) The contacts between the various cartel participants were of a continuous nature, with ongoing bilateral contacts in between meetings.[31]

(44) The infringement covered both household and commercial compressors (maximum 1.5 HP). In most of the meetings, the cartel participants discussed market conditions and pricing for both household and commercial compressors.[32] In addition, they discussed other topics related to pricing, namely the use, or more specifically, the non-use of fixed term contracts for customers.[33] Four of the five cartel members[34] were active in both household and commercial compressors in the EEA throughout the relevant period of infringement.[35]

(45) The undertakings involved knew or should have known that their anti-competitive activities formed part of an overall scheme as the same core group of employees participated in anti-competitive contacts on a regular basis.

(46) All those elements taken together demonstrate that the addressees of this Decision participated in a single and continuous infringement of Article 101 of the Treaty and Article 53 of the EEA Agreement.

5.3. Restriction of competition

(47) Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement expressly prohibit as incompatible with the internal market and the functioning of that Agreement such agreements and concerted practices which have as their object or

---

31 For details see Section 4.1.

32 For example for the meeting [...], there was one single general session in which the parameters of both product markets were discussed. In certain other meetings, for example, [...]the meeting began with a general session which applied to both household and commercial compressors and then progressed to discussions of these markets in two respective subgroups.

33 See, for example, [...].

34 As regards Panasonic, it sold during its entire infringement period just 38 units of commercial compressors, of which 25 were light commercial compressors sold pursuant to an arrangement with a customer which was made in May 2003. The remaining 13 being sample sales of light commercial compressors. Moreover, as described above, Panasonic participated in the cartel almost exclusively in relation to household compressors with the exception of its attendance at one meeting at which commercial compressors were also discussed[...].

35 For details, see Section 4.1.

effect the restriction of competition by directly or indirectly fixing prices or any other trading conditions.

(48) In this case, the purpose of the conduct of the cartel participants was to restrict competition within the meaning of Article 101(1) Treaty and Article 53(1) of the EEA Agreement.[36] The agreements and/or concerted practices therefore had as their object the restriction of competition.

5.4. Effect upon trade between Member States of the Union and between EEA Contracting Parties

(49) Article 101 of the Treaty is aimed at agreements and concerted practices which might harm the attainment of the single market between the Member States, whether by partitioning national markets or by affecting the structure of competition within the internal market. Similarly, Article 53 of the EEA Agreement is directed at agreements that undermine the achievement of a homogenous European Economic Area.

(50) The markets for household and commercial compressors were characterised by a substantial volume of trade between and into the Member States and there was also considerable volume of trade between Member States and between Contracting Parties to the EEA Agreement. On the basis of the sales data provided by the parties, there is ample evidence of direct sales made within and into the EEA. Moreover, the cartel arrangements in this case covered the entire EEA and related to trade within the EEA.[37]

(51) As a result, the agreements and/or concerted practices at issue were capable of having an appreciable effect upon trade between Member States and between Contracting Parties to the EEA Agreement.

5.5. Non-applicability of Article 101(3) of the Treaty and Article 53 (3) of the EEA Agreement

(52) On the basis of the facts before the Commission, there are no indications that the conditions of Article 101(3) of the Treaty and Article 53(3) of the EEA Agreement could be fulfilled with regard to this cartel.

6. ADDRESSEES

(53) Having regard to the body of evidence referred to above, the facts described in Section 4, the parties' clear and unequivocal acknowledgements of the facts and the legal qualification thereof contained in their settlement submissions, as well as their replies to the Statement of Objections, this Decision should be addressed to the following legal entities and undertakings.

---

[36] See, Section 5.1.

[37] See, Section 4.2.

6.1. ACC

(54) Appliances Components Companies S.p.A. clearly and unequivocally acknowledged that it is liable for the single and continuous infringement for its own behaviour and the behaviour of its wholly owned subsidiary Elettromeccanica S.p.A. The liability for the single and continuous infringement should therefore be imputed jointly and severally to Appliances Components Companies S.p.A. and Elettromeccanica S.p.A.

6.2. Danfoss

(55) Danfoss Flensburg GmbH participated directly in the cartel and Danfoss A/S clearly and unequivocally acknowledged that it is liable, as a parent company, for the single and continuous infringement for the behaviour of its wholly owned subsidiary Danfoss Flensburg GmbH. The liability for the single and continuous infringement should therefore be imputed jointly and severally to Danfoss A/S and Danfoss Flensburg GmbH.

6.3. Embraco

(56) Whirlpool S.A. clearly and unequivocally acknowledged that it is liable for the single and continuous infringement for its own behaviour as well as for the behaviour of its wholly owned subsidiary Embraco Europe S.r.l. The liability for the single and continuous infringement should therefore be imputed jointly and severally to Whirlpool S.A. and Embraco Europe S.r.l.

6.4. Panasonic

(57) Panasonic Corporation clearly and unequivocally acknowledged that it is liable for the single and continuous infringement for its own behaviour. The liability for the single and continuous infringement should therefore be imputed to Panasonic Corporation.

6.5. Tecumseh

(58) Tecumseh Products Company clearly and unequivocally acknowledged that it is liable, as a parent company, for the single and continuous infringement for the behaviour of its wholly owned subsidiaries Tecumseh do Brasil Ltda (TdB) and Tecumseh Europe S.A. The liability for the single and continuous infringement should therefore be imputed jointly and severally to Tecumseh Products Company, Tecumseh do Brasil Ltda (TdB) and Tecumseh Europe S.A.

7. DURATION OF THE INFRINGEMENT

(59) As set out in Section 4.3, ACC, Danfoss, Embraco and Tecumseh participated in the cartel from 13 April 2004 until 9 October 2007. Panasonic participated in the cartel from 13 April 2004 until 15 November 2006.

8. REMEDIES

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

(60) Where the Commission finds that there is an infringement of Article 101 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(1) of Regulation (EC) No 1/2003.

(61) In this case, given the secrecy with which the cartel arrangements were carried out, it is not possible to declare with absolute certainty that the infringement has ceased. It is therefore necessary for the Commission to require that the addressees of this Decision bring the infringement to an end, if they have not already done so, and to refrain from any agreement or concerted practice which may have the same or a similar object or effect.

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

(62) Under Article 23(2) of Regulation (EC) No 1/2003,[38] the Commission may by decision impose fines on undertakings and associations of undertakings where, either intentionally or negligently, they infringe Article 101 of the Treaty and/or Article 53 of the EEA Agreement.[39] For each undertaking participating in the infringement, the fine must not exceed 10% of its total turnover in the preceding business year.

(63) In this case, on the basis of the facts described in Section 4, it appears that the infringement was committed intentionally. The infringement consisted of direct and indirect price coordination activities with respect to refrigeration compressors. With respect to that type of obvious infringement, the parties cannot claim that they did not act intentionally[40].

(64) 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 Article 23(3) of Regulation (EC) No 1/2003. In doing so, the Commission sets the fines at a level sufficient to ensure deterrence. Moreover, the role played by each undertaking party to the infringement is assessed on an individual basis. The fine imposed must reflect any aggravating and attenuating circumstances pertaining to each undertaking.

---

38 Formerly Article 15(2) of Regulation No 17/1962. First Regulation implementing Articles 85 and 86 of the Treaty (OJ P 13,21.2.1962, p. 204).

39 According to Article 5(1) of Council Regulation (EC) No 2894/94 of 28 November 1994 concerning arrangements for implementing the Agreement on the European Economic Area: "[...] the Community rules giving effect to the principles set out in Articles 85 and 86 [now Articles 101 and 102 of the Treaty] of the EC Treaty [...] shall apply *mutatis mutandis*" (OJ L 305, 30.11. 1994, p. 6).

40 See, for example, paragraph 42 of the Judgment of the Court of First Instance of 6 April 1995 in Ferriere Nord SpA v Commission, Case T-143/89, [1995] ECR II-917; See also paragraph 50 of the Judgment of the Court of 17 July 1997 in Ferriere Nord SpA v Commission, Case C-219/95 P,[1997] ECR I-4411; See paragraph 140 of the Judgment of the General Court of 19 May 2010 in Wieland Werke AG, Buntmetall Amstetten GmbH and Austria Buntmetall AG v Commission, Case T-11/05. (not yet published).

(65) In setting the fines to be imposed, the Commission refers to the principles laid down in its Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation No 1/2003[41] (the "Guidelines on fines"). Finally, the Commission applies, as appropriate, the provisions of the Leniency Notice and the Commission Notice on the conduct of settlement procedures in view of the adoption of Decisions pursuant to Article 7 and Article 23 of Council Regulation (EC) No 1/2003 in cartel cases (the "Settlement Notice")[42].

8.3. Basic amount of the fine

(66) In applying the Guidelines on fines, the basic amounts for each party results from the addition of a variable amount and an additional amount. The variable amount results from a percentage of up to 30% of the value of sales of goods or services to which the infringement relates in a given year (normally, the last full business year of the infringement) multiplied with the number of years of the undertaking's participation in the infringement. The additional amount is calculated as a percentage between 15% and 25% of the value of sales. The resulting basic amount can then be increased or reduced for each company if either aggravating or mitigating circumstances are retained.

8.3.1. Calculation of the value of sales

(67) The basic amount of the fine to be imposed on the undertakings concerned is to be set by reference to the value of their sales[43], that is the value of the undertakings' sales of goods or services to which the infringement directly or indirectly related in the relevant geographic area within the EEA. In this case the relevant value of sales is the undertaking's sales of household and commercial refrigeration compressors (as defined in Section 2.1) within the EEA.

(68) The Commission normally takes into account the sales made by the undertakings during the last full business year of their participation in the infringement[44]. If the last year is not sufficiently representative, the Commission may take into account another year and/or other years for the determination of the value of sales. In this case, there is no reason to depart from the normal practice to take the undertakings' sales in the last full business year of their participation in the infringement.

(69) Accordingly, the value of sales for each party is as set out in Table 1:

Table 1: The value of sales

Undertaking	**Value of sales (EUR)**
ACC	260 000 000 – 360 000 000
Danfoss	120 000 000 – 180 000 000

41 OJ C 210, 1.9.2006, p. 2.
42 OJ C 167, 2.7.2008, p. 1.
43 Point 12 of the Guidelines on fines.
44 Point 13 of the Guidelines on fines.

Embraco	100 000 000 – 140 000 000
Panasonic	15 000 000 – 35 000 000
Tecumseh	70 000 000 – 120 000 000

8.3.2. Determination of the basic amount of the fine

(70) The basic amount of the fine to be imposed consists of an amount of up to 30% of an undertaking's relevant sales within the EEA, depending on the degree of gravity of the infringement and multiplied by the number of years of the undertaking's participation in the infringement, and an additional amount of between 15% and 25% of the value of an undertaking's relevant sales, irrespective of duration[45].

8.3.2.1. Gravity

(71) The gravity of the infringement determines the percentage of the value of sales taken into account in setting the fine. In assessing the gravity of the infringement, the Commission may 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/or whether or not the infringement has been implemented[46]. The relevant elements in this case are assessed as follows.

(72) The addressees of this Decision participated in a single and continuous infringement of Article 101 of the Treaty and Article 53 of the EEA Agreement the aim of which was to coordinate prices, as described in Section 4. That type of anti-competitive behaviour is by its very nature among the most harmful restrictions of competition.

(73) The infringement covered the entire EEA and the undertakings participating in the infringement had a high combined market share of around [...] within the EEA.

(74) Given the specific circumstances of this case, taking into account the nature and the geographic scope of the infringement, as well as the high combined market share of the undertakings concerned, the proportion of the value of sales to be taken into account should be 17 %.

8.3.2.2. Duration

(75) According to point 24 of the Guidelines on fines, the amount determined on the basis of the value of sales is multiplied by the number of years of participation in the infringement in order to take fully into account the duration of the participation of each undertaking in the infringement individually[47].

(76) For the application of point 24 of the Guidelines on fines, the starting and ending dates for the participation in the infringement by each addressee of this Decision are as follows:

---

45 Points 19 to 26 of the Guidelines on fines.
46 Points 21 and 22 of the Guidelines on fines.
47 Point 24 of the Guidelines on fines.

(a) ACC, Danfoss, Embraco and Tecumseh participated in the infringement from 13 April 2004 until 9 October 2007;

(b) Panasonic participated in the infringement from 13 April 2004 until 15 November 2006;

(77) The duration to be taken into account for the purposes of calculating the fine per addressee, rounded down to the month, and the resulting multipliers for duration are presented in Table 2:

Table 2: Duration

Entity	Duration	Multipliers
ACC	3 years 5 months	3,41
Danfoss	3 years 5 months	3,41
Embraco	3 years 5 months	3,41
Panasonic	2 years 7 months	2,58
Tecumseh	3 years 5 months	3,41

8.3.3. Determination of the additional amount

(78) Point 25 of the Guidelines on fines provides that, irrespective of the duration of the undertaking's participation in the infringement, the basic amount will include a sum of between 15% and 25% of the value of sales, on the basis of the factors listed in Section 8.3.2.1 with respect to the variable amount, in order to deter undertakings from even entering into such illegal practices[48].

(79) Taking into account the factors listed in Section 8.3.2.1. relating to the nature and the geographic scope of the infringement as well as the high combined market share of the undertakings concerned, the percentage to be applied for the purposes of calculating this additional amount is 17 %.

8.3.4. Calculations and conclusions on basic amounts

(80) Based on the criteria explained above, the basic amount of the fine for each party is presented in Table 3.

Table 3: Basic amounts of the fine

Undertaking	Basic Amount in EUR (rounded)
ACC	180 000 -250 000

[48] Point 25 of the Guidelines on fines.

	000
Danfoss	90 000 000 – 130 000
Embraco	80 000 000 -100 000 000
Panasonic	11 000 000 – 16 000 000
Tecumseh	50 000 000 – 75 000 000

8.4. Adjustments to the basic amount of the fine

8.4.1. Aggravating circumstances

(81) The basic amount of the fine may be increased where there are aggravating circumstances. Point 28 of the Guidelines on fines sets out a non-exhaustive list of such circumstances.

(82) There are no aggravating circumstances in this case.

8.4.2. Mitigating circumstances

(83) The basic amount of the fine may be reduced where there are mitigating circumstances. Point 29 of the Guidelines sets out a non-exhaustive list of such circumstances.

(84) As described in Section 4.1, Panasonic contributed only to a lesser extent to maintaining the cartel and its involvement in the infringement was limited. Therefore, the fine to be imposed on Panasonic is reduced by 10%.

(85) Embraco was the first undertaking to provide the evidence [...] which allowed the Commission to take into account that period as regards [...]the single and continuous infringement for the purposes of calculating the fine for the relevant companies. This submission did not broaden the scope or duration of the cartel as such (under point 26 of the Leniency Notice), but in view of the need to maintain the incentives for companies to provide material information to the Commission and to assist them to comply with the competition rules, it is appropriate to grant a reduction of Embraco's fine for cooperation outside leniency. The fine to be imposed on Embraco is therefore reduced by 18% in view of its effective cooperation outside leniency.

8.4.3. Specific increase for deterrence

(86) Particular attention should be paid to the need to ensure that fines have a sufficiently deterrent effect; to that end, the fine to be imposed on undertakings which have a

particularly large turnover beyond the sales of goods or services to which the infringement relates may be increased[49].

(87) In this case, in order to ensure a deterrence in accordance with point 30 of the Guidelines on fines, it is appropriate to apply a multiplier factor to the fine to be imposed on Panasonic which has a world-wide turnover of EUR 76.8 billion. Therefore, the fine to be imposed on Panasonic is multiplied by 1.2.

8.5. Application of the 10% turnover limit

(88) Article 23(2) of Regulation (EC) No 1/2003 provides that the fine imposed on each undertaking must not exceed 10% of its total turnover in the preceding business year. In this particular case, the adjusted basic amount of ACC exceeds 10% of the total turnover of that undertaking in the preceding financial year. Therefore, ACC's fine is capped to EUR 40.7 million, that is to say, 10% of its total turnover in 2010.

8.6. Application of the Leniency Notice

8.6.1. Immunity from fines

(89) Tecumseh submitted an immunity application [...]. Tecumseh was granted conditional immunity from fines on 11 February 2009. Tecumseh's cooperation fulfilled the requirements in the Leniency Notice. Tecumseh is, therefore, granted immunity from fines in this case.

8.6.2. Reduction of fines

(90) [...] Panasonic applied for a reduction of fines based on the Leniency Notice. Panasonic has provided with its leniency application several pieces of contemporaneous evidence which strengthened the Commission's ability to prove the case and added significant value to the Commission's investigation, in particular as regards the first six months of its participation. [...]. Consequently, a reduction of the fine of 40 % is granted to Panasonic.

(91) [...] ACC submitted a leniency application. ACC provided to the Commission contemporaneous evidence of a compelling nature. The new evidence submitted by ACC added significant value to the evidence already in the Commission's possession. This evidence strengthened the Commission's ability to prove the alleged cartel. ACC's further cooperation was, however, of a more limited nature. Consequently a reduction of the fine of 25% is granted to ACC.

(92) [...] Embraco applied for leniency. Embraco provided the Commission with further new contemporaneous evidence and corroborating evidence of a detailed nature. Furthermore, Embraco's oral statements significantly contributed to the Commission's investigation into the functioning of the cartel. Therefore, the evidence provided by Embraco further strengthened the Commission's ability to prove the alleged cartel. Furthermore, Embraco provided particularly detailed records of the infringement. Consequently, Embraco is granted a reduction of the fine of 20%.

---

[49] Point 30 of the Guidelines on fines.

(93) [...] Danfoss applied for a reduction of the fine. Danfoss provided to the Commission evidence that contributed to the establishment of the cartel activities and illuminated the general functioning of the cartel. Furthermore, Danfoss submitted evidence that corroborated evidence already in the Commission's possession. Therefore, Danfoss submitted further evidence that further strengthened the Commission's ability to prove the cartel. Consequently, Danfoss is granted a reduction of the fine of 15%.

8.7. Application of the Settlement Notice

(94) In accordance with point 32 of the Settlement Notice, the reward for settlement results in a reduction of 10% of the amount of the fine to be imposed on a party after the 10% of turnover cap has been applied having regard to the Guidelines on fines. Pursuant to point 33 of the Settlement Notice, when settled cases involve leniency applicants, the reduction of the fine granted to them for settlement will be added to their leniency reward.

(95) As a result of the application of the Settlement Notice, the amount of the fine to be imposed on ACC, Danfoss, Embraco and Panasonic is reduced by 10%.

8.8. Ability to Pay

(96) According to point 35 of the Guidelines on fines, '*In exceptional cases, the Commission may, upon request, take account of the undertaking's inability to pay in a specific social and economic context. [...] A reduction could be granted solely on the basis of objective evidence that the imposition of the fine as provided for in these Guidelines would irretrievably jeopardise the economic viability of the undertaking concerned and cause its assets to lose all their value.*' In exercising its discretion under point 35 of the 2006 Guidelines on fines, the Commission carries out an overall assessment of the undertaking's financial situation, with the primary focus on the undertaking's capacity to pay the fine in a specific social and economic context.

(97) Only ACC invoked its 'inability to pay' under point 35 of the Guidelines on fines. ACC's inability to pay claim should be accepted because ACC has shown that the imposition of the fine in the full amount would irretrievably jeopardise its economic viability and cause its assets to lose their value. ACC's distressed financial situation brought it under the insolvency scheme according to Article 67 of the Italian bankruptcy law. [...] The fine in the full amount would frustrate the ongoing financial restructuring of the group, and hence lead to its insolvency.

(98) On the basis of the financial data and information submitted by ACC and in order to avoid the imposition of a fine which is very likely to irretrievably jeopardise the economic viability of ACC, the final amount of the fine imposed on ACC is reduced to EUR 9 million in application of point 35 of the Guidelines on fines.

8.9. Conclusion: final amount of individual fines to be imposed in this Decision

(99) The fines to be imposed pursuant to Article 23(2) of Regulation (EC) No 1/2003 are set out in Table 4.

Table 4: Fines

Undertaking	Fines (in EUR)
ACC	9 000 000
Danfoss	90 000 000
Embraco	54 530 000
Panasonic	7 668 000
Tecumseh	0

HAS ADOPTED THIS DECISION:

Article 1

The following undertakings infringed Article 101 of the Treaty and Article 53 of the Agreement on the European Economic Area by participating, during the periods indicated below, in anti-competitive practices with a view to restricting price competition within the European Economic Area in the market for small hermetic reciprocating compressors (maximum 1.5 horsepower or "HP"):

(a) Appliances Components Companies S.p.A. and Elettromeccanica S.p.A. from 13 April 2004 to 9 October 2007;

(b) Danfoss A/S and Danfoss Flensburg GmbH (formerly Danfoss Compressors GmbH) from 13 April 2004 to 9 October 2007;

(c) Whirlpool S.A. and Embraco Europe S.r.l. from 13 April 2004 to 9 October 2007;

(d) Panasonic Corporation (formerly Matsushita) from 13 April 2004 to 15 November 2006;

(e) Tecumseh Products Company Inc., Tecumseh do Brasil Ltda. and Tecumseh Europe S.A. from 13 April 2004 to 9 October 2007.

Article 2

For the infringement referred to in Article 1, the following fines are imposed on:

(a) Appliances Components Companies S.p.A. and Elettromeccanica S.p.A., jointly and severally: EUR 9 000 000;

(b) Danfoss A/S and Danfoss Flensburg GmbH (formerly Danfoss Compressors GmbH), jointly and severally: EUR 90 000 000;

(c) Whirlpool S.A. and Embraco Europe S.r.l., jointly and severally: EUR 54 530 000;

(d) Panasonic Corporation (formerly Matsushita): EUR 7 668 000

(e) Tecumseh Products Company Inc., Tecumseh do Brasil Ltda. and Tecumseh Europe S.A., jointly and severally: EUR 0

The fines shall be paid in euro within three months of the date of notification of this Decision to the following account held in the name of the European Commission:

BANQUE ET CAISSE D'EPARGNE DE L'ETAT

1-2, Place de Metz

L-1930 Luxembourg

IBAN: LU02 0019 3155 9887 1000

BIC: BCEELULL

Ref: European Commission – BUFI/COMP/39600

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.

Where an undertaking referred to in Article 1 lodges an appeal, that undertaking shall cover the fine by the due date by either providing an acceptable bank guarantee or making a provisional payment of the fine in accordance with Article 85a(1) of Commission Regulation (EC, Euratom) No 2342/2002[50].

Article 3

1. The fine imposed on the undertakings listed in point (a) of Article 2 may be paid in instalments provided that 1/3 of the fine amount is paid within three months of the date of notification of this Decision. The remaining amount, including interest calculated for the whole payment period in accordance with paragraph 2 of this Article, shall be paid in two equal annual instalments, on the anniversary of the first payment.

2. The outstanding amounts of the fine imposed on the undertakings listed in point (a) of Article 2 shall bear interest. The interest shall be calculated 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 1.5 percentage points.

---

50 OJ L 357, 31.12.2002, p. 1.

3. The outstanding amounts of the fine imposed on the undertakings listed in point (a) of Article 2, interest included, shall be covered by an acceptable bank guarantee, issued by a bank with an AA-rating and situated within the European Union.

The undertakings listed in point (a) of Article 2 may, at any time, replace that bank guarantee, in whole or in part, by a payment for some or all of the amount outstanding.

Article 4

The undertakings listed in Article 1 shall immediately bring to an end the infringement 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 5

This Decision is addressed to:

(a) Appliances Components Companies S.p.A., Via Lino Zanussi 11, 33170 Pordenone, Italy

(b) Elettromeccanica S.p.A., Via Lino Zanussi 11, 33170 Pordenone, Italy

(c) Danfoss A/S, Nordborgvej 81, 6430 Nordborg, Denmark

(d) Danfoss Flensburg GmbH, Mads-Clausen-Strasse 7, 24939 Flensburg, Germany.

(e) Whirlpool S.A., Avenida das Nações Unidas, 12.995, 32° andar, Brooklin, São Paulo-SP, 04578-000, Brazil

(f) Embraco Europe S.r.l., Piazza Solferino, 20, 10121 Torino, Italy.

(g) Panasonic Corporation, 1006 Kadoma, Kadoma City, Osaka 571-8501, Japan

(h) Tecumseh Products Company Inc., 1136 Oak Valley Dr. Ann Arbor, Michigan 48108, United States of America.

(i) Tecumseh do Brasil Ltda., Rua José Augusto de Oliveira Salles, 478, São Carlos - SP. 13565-900, Brazil

(j) Tecumseh Europe S.A., Plate-forme Logistique, 2 Avenue Blaise Pascal, Site Prologis Bat. B, 38090 Vaulx-Milieu, France.

This Decision shall be enforceable pursuant to Article 299 of the Treaty and Article 110 of the Agreement on the European Economic Area.

Done at Brussels,

For the Commission

Vice-President