EUROPEAN COMMISSION
Competition DG

CASE AT.39792 – Steel Abrasives

(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: 02/04/2014

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EUROPEAN
COMMISSION

Brussels, 2.4.2014
C(2014) 2074 final

COMMISSION DECISION

of 2.4.2014

addressed to:
- Ervin Industries Inc.
- Ervin Amasteel
- WHA Holding SAS
- Winoa SA
- Metalltechnik Schmidt GmbH & Co. KG
- Eisenwerk Würth GmbH

relating to a proceeding under Article 101 of the Treaty on the Functioning of the European Union and Article 53 of the EEA Agreement
(AT.39792 - Steel Abrasives)

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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,

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[1] OJ L 1, 4.1.2003, p.1.With effect from 1 December 2009, Articles 81 and 82 of the EC Treaty have become Articles 101 and 102, respectively, of the Treaty on the Functioning of the European Union ("TFEU"). The two sets of provisions are, in substance, identical. For the purposes of this Decision, references to Articles 101 and 102 of the TFEU should be understood as references to Articles 81 and 82, respectively, of the EC Treaty when where appropriate. The TFEU also introduced certain changes in terminology, such as the replacement of "Community" by "Union" and "common market" by "internal market". The terminology of the TFEU will be used throughout this Decision.

[2] OJ L 123, 27.4.2004, p. 18, as 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 regard to the Commission decision of 16 January 2013 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 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 participated in a single and continuous infringement of Article 101 of the Treaty and Article 53 of the Agreement on the European Economic Area (EEA Agreement). The infringement consisted of coordination regarding the pricing of steel abrasives. It covered the EEA as regards all participants. The infringement lasted from 3 October 2003 to 15 June 2010 with variations regarding the start or end date for various participants.

(2) The Decision is addressed to the following legal entities:

- Ervin Industries Inc. and Ervin Amasteel (Ervin)
- WHA Holding SAS and Winoa SA (Winoa)
- Metalltechnik Schmidt GmbH & Co. KG (MTS)
- Eisenwerk Würth GmbH (Würth)

2. THE INDUSTRY SUBJECT TO THE PROCEEDINGS

2.1. The product

(3) The products subject to the anticompetitive conduct are steel abrasives. Steel abrasives are loose steel particles, either in round (steel shot) or angular (steel grit) form, with their main applications in the steel, automotive, metallurgy, petrochemical and stone cutting industries. They are produced by the atomisation of molten steel from steel scrap, followed by a series of thermal and mechanical treatments in order to give them final characteristics. The anti-competitive conduct identified in this case covers both steel shot and steel grit in all their grades.

[3] Final report of the Hearing Officer of 31 March 2014.

2.2. The undertakings subject to the proceedings

The undertakings subject to the proceedings and to the settlement procedure

2.2.1. Ervin

(4) The relevant legal entities are:

(a) Ervin Industries Inc. with registered offices at 3893 Research Park Drive, Ann Arbor, 48108-1168 Michigan, USA; as well as its subsidiary:

(b) Ervin Amasteel with registered offices at George Henry Road, Great Bridge, Tipton, West Midlands, DY4 7BZ, United Kingdom.

(5) The undertaking's world-wide turnover in 2012 was EUR [120 000 000 – 145 000 000]. It mainly produces steel abrasives for use in blast cleaning, cutting, and etching applications.

2.2.2. Winoa

(6) The relevant legal entities are:

(a) WHA Holding SAS with registered offices at 528, Avenue de Savoie, 38570 Le Cheylas, France; as well as its subsidiary:

(b) Winoa SA with registered offices at 528, Avenue de Savoie, 38570 Le Cheylas, France.

(7) Winoa SA was known as "Wheelabrator Allevard SA" until July 2011, when it was renamed. For the purpose of this Decision the new name "Winoa" will be used as far as possible and any reference to "Wheelabrator" or "WA" prior to July 2011 concerns therefore Winoa.

(8) The undertaking's worldwide turnover in 2012 was EUR 370 660 000. Winoa mainly produces steel abrasives, but also mobile blasting solutions. It also used to produce diamond tools until this activity was sold in February and March 2013.

2.2.3. MTS

(9) The relevant legal entity is Metalltechnik Schmidt GmbH & Co. KG, with registered offices at Schulstr. 41, 70794 Filderstadt, Germany.

(10) The undertaking's worldwide turnover in 2012 was EUR [37 250 000 – 43 520 000]. MTS does not produce angular grit and the steel abrasives produced by MTS are not used in all industry applications.

2.2.4. Würth

(11) The relevant legal entity is Eisenwerk Würth GmbH with registered offices at Jagstfelder Str. 14, 74177 Bad Friedrichshall, Germany.

(12) The undertaking's worldwide turnover in 2012 was EUR [13 600 000- 16 500 000]. Würth produces steel abrasives and chilled iron. Würth does not produce angular steel grit and the steel abrasives produced by Würth are not used in all industry applications.

The undertaking subject to the proceedings but not to the settlement procedure

2.2.5. [Another undertaking]

(13) The relevant legal entity is […].

(14) […].

(15) […] is not an addressee of this Decision[4].

3. PROCEDURE

(16) On 13 April 2010, Ervin applied for immunity under the Leniency Notice[5]. Ervin's immunity application was followed by a number of submissions consisting of oral statements and documentary evidence. On 31 May 2010, the Commission granted Ervin conditional immunity from fines pursuant to point 8(a) of the Leniency Notice.

(17) On 15, 16 and 17 June 2010, the Commission carried out unannounced inspections at the premises of various producers of steel abrasives.

(18) The Commission subsequently sent several requests for information under Article 18 of Regulation (EC) No 1/2003 to the undertakings under investigation, that is to say, to Ervin, Winoa, MTS, Würth and [another undertaking] (the parties).

(19) On 16 January 2013, the Commission initiated proceedings pursuant to Article 11(6) of Regulation (EC) No 1/2003 against the parties with a view to engaging in settlement discussions with them. After each party had confirmed its willingness to engage in settlement discussions, the discussions started in the period between […].

(20) Settlement meetings between each party and the Commission took place between February 2013 and December 2013. During those meetings, the Commission informed the parties of the objections it envisaged raising against them and disclosed the main pieces of evidence in the Commission file relied on to establish these potential objections. The parties were also given a copy of the

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4 [Another undertaking] did not submit a formal request to settle pursuant to Article 10a(2) of Regulation (EC) No 773/2004. Therefore, this Decision is not addressed to [another undertaking]. This Decision is based on matters of fact as accepted by Erwin, Winoa, MTS and Würth in the settlement procedure. In sections 3 and 4, the conduct referred to involving the non-settling party […] is exclusively used to establish liability of the settling parties for an infringement of Article 101 of the Treaty and Article 53 of the EEA Agreement. The administrative proceedings under Article 7 of Regulation (EC) No 1/2003 against the non-settling party […] are pending.

5 Commission notice on immunity from fines and reduction of fines in cartel cases (OJ C 298, 8.12.2006, p. 17).

relevant pieces of evidence in the file as well as a list of all the documents in the file. Further, the parties were given access to the oral statements at the Commission premises. The Commission also provided the parties with an estimation of the range of fines likely to be imposed.

(21) Each party 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, Ervin, Winoa, MTS and Würth 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) Between […], Ervin, Winoa, MTS and Würth (the settling parties) submitted their formal request to settle to the Commission pursuant to Article 10a (2) of Regulation (EC) No 773/2004 (the settlement submissions). The settlement submission of each settling party contained:

(a) an acknowledgement in clear and unequivocal terms of the settling party's liability for the infringement summarily described as regards its object, the main facts, their legal qualification, including the settling party's role and the duration of its participation in the infringement in accordance with the results of the settlement discussions;

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

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

(d) the settling party's confirmation that it did not envisage requesting access to the file or requesting to be heard again in an oral hearing, unless the Commission did not reflect its settlement submission in the Statement of Objections and the Decision;

(e) the settling 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) Each of the settling parties made its settlement submission conditional upon the imposition of a fine by the Commission which would not exceed the amount specified in its settlement submission.

(24) […] did not submit a formal request to settle pursuant to Article 10a (2) of Regulation (EC) No 773/2004.

(25) On 13 February 2014, the Commission adopted a Statement of Objections addressed to Ervin, Winoa, MTS and Würth. All the settling 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.

4. DESCRIPTION OF THE EVENTS

4.1. Nature and scope of the conduct

(26) Ervin, Winoa, [another undertaking], MTS and Würth engaged in frequent contacts on bilateral as well as multilateral bases, in which they discussed the key price components applicable to all their EEA steel abrasives sales, that is to say the scrap and energy surcharges. They also discussed (mainly through bilateral contacts) which parameters of competition would be allowed between them as regards individual customers. In the framework of that overall understanding, the parties engaged in behaviour covering the EEA.

(27) The parties used those contacts to:

(a) coordinate the introduction of a uniform calculation model for a common scrap surcharge - a variable surcharge that would be applicable to the price of all steel abrasives in the EEA; the common surcharge was applicable throughout the entire period concerned by this Decision[6];

(b) introduce an energy surcharge[7];

(c) coordinate behaviour with respect to individual customers; in principle price competition was restricted, which limited competition only to quality and services. Whilst the ultimate aim of the behaviour with respect to individual customers was to limit price competition, in some instances parties for that purpose also coordinated or discussed on supply relations with customers[8].

(28) In October 2003, Winoa, Ervin and [another undertaking] met at the Lago di Garda (Italy) to agree on a uniform calculation model for a common scrap surcharge to be applied by all of them[9]. They agreed to use a single formula using as reference the Eurofer index[10] for the whole EEA, except in Italy where they agreed to use a national index as reference because scrap prices in Italy were significantly higher. The Eurofer index is calculated on the basis of average prices. After that meeting, the participants exchanged several emails coordinating in detail the introduction of the new scrap surcharge system[11] and the common starting date, which was set as 1 February 2004.

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6 See for example ID […] and ID […]. Metal scrap constitutes a significant part of the production costs of steel abrasives. The scrap surcharge consists in averaging out the various individual scrap surcharges applied in certain EEA countries. A little over 1.1mt of scrap is needed to produce 1mt of finished product.

7 See for example ID[…], ID […], ID […] and ID […].

8 See for example ID […]

9 See for example ID […]

10 The Eurofer scrap price index is released monthly by Eurofer (the European Steel Association), which provides referential price information. It is referential price information on steel scrap for several types of scrap metal based on bid and ask prices collected from major participants in Germany, France, Italy, Spain and the UK. At that time the parties found that using this index minus an offset with the value of "68 EUR" was resulting in an acceptable price, that is to say, the agreed formula was "Eurofer index minus the offset 68".

11 See for example ID […]

(29) In parallel, MTS and Würth were also informed or became aware about the agreement on the uniform calculation model and the specific arrangement for the Italian market[12]. However, they did not participate in the initial stages of the process when the agreement between Winoa, Ervin and [another undertaking] was concluded.

(30) The uniform surcharge formula was applied by the parties from 2004[13]. Winoa was in charge of communicating the new surcharge to the participants each month[14] and, as of May 2004, also published the surcharge on its own website[15]. From October 2007 Winoa published the monthly scrap surcharge on a dedicated website called "www.scrapsurcharge.com". As a result, all that the producers had to do was to follow the current scrap surcharge published on the website and apply the formula.

(31) The contacts continued with [another undertaking] until 16 May 2007 […][16].

(32) In summer 2007, Winoa, Ervin, MTS and Würth[17] revised the scrap surcharge. An adaptation of the scrap surcharge seemed necessary to the participants, as scrap prices had risen in 2007 and also with a view to including the losses during the production process of about 10% of scrap when melting it in a furnace. The four undertakings therefore agreed to revise[18] their surcharge formula accordingly[19].

(33) Consistent with their agreement, the participants introduced the revised surcharge formula in two stages. Firstly, at some time after 1 October 2007, they reduced the offset to 50 EUR. Secondly, as of 1 July 2008 (Winoa and MTS) and 1 August 2008 (Ervin and Würth), they introduced the new 1.1 multiplier to the Eurofer Index.[20] They all announced the introduction of the new formula to their employees and customers[21].

(34) The first discussions concerning the introduction of a new energy surcharge started as early as 2006[22]. In summer 2008[23], following a significant rise in energy prices, Ervin, Winoa, MTS and Würth agreed to introduce the new surcharge, which was denominated the Energy Evolution Complement ("EEC")[24].

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12 See for example ID […]and ID […] and ID[…]; ID […] and […]

13 See for example ID […]

14 See for example ID […] and ID […]

15 See for example ID […]

16 See for example ID […]

17 See for example ID […]

18 The parties agreed to reduce the offset from 68 EUR to 50 EUR to increase the price with the smaller deduction of 50.They also added a multiplier of 1.1 to the Eurofer Index to take account of the 10% yield when melting the scrap.

19 See for example ID […]

20 See for example ID […] and ID […]

21 See for example ID[…], ID […] and ID […]

22 See for example ID […]

23 See for example ID […] and ID […]

24 See for example ID[…], ID[…], ID […]

(35) While there is no evidence showing that the parties reached an explicit agreement to implement a uniform method for calculating the new energy surcharge in the same way they agreed on a common scrap surcharge, the evidence clearly shows a concurrence of wills between the parties on the principle and timing of the introduction of the energy surcharge, which led to the reduction of uncertainty as to their commercial behaviour in the market[25]. Ervin, Winoa, MTS and Würth, put an energy surcharge in place. They informed each other of the dates on which they would start to apply the new surcharge – Ervin on 1 November 2008, Winoa, MTS and Würth on 1 January 2009 – and of the levels of their respective surcharges[26]. They all informed their customers about the introduction of a new energy surcharge[27].

(36) During the whole duration of the contacts, the parties also coordinated their activities with respect to individual customers[28]. The coordination manifested itself in various ways. For example, some parties agreed in principle that one supplier should not seek to poach another supplier's established customers, at least not by means of price cuts[29]. Where customers were multi-sourcing, suppliers would seek to coordinate pricing, including price increases and the implementation of surcharges[30]. However, contacts involving Ervin and Winoa were more frequent than those involving the other three parties. There is evidence of occasional contacts involving MTS, while there is far less evidence showing Würth's participation in such activities.

4.2. Geographic scope of the conduct

(37) The geographic scope of the conduct, as regards all five parties, was EEA-wide during the entire period concerned by this Decision.

4.3. Duration of the participation in the conduct

(38) The evidence demonstrates that contacts involving Winoa, Ervin and [another undertaking] evolved into a pattern of behaviour as of October 2003. Following preparatory exchanges, the three undertakings met on 3 October 2003 to agree on a common scrap surcharge calculation system[31]. Hence the Commission takes the date of 3 October 2003 meeting as the start date of the steel abrasives cartel for Winoa and Ervin.

(39) The participants of the meeting of 3 October 2003 were subsequently in contact with the two German steel abrasives producers, MTS and Würth, with a view to including them within the new scrap surcharge calculation system. Taking into account the circumstances set out in recitals (29) and (30), the Commission

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25 See for example ID[…], ID[…], ID […]
26 See for example ID […] and ID […]
27 See for example ID […]
28 See for example ID[…], ID […] and ID[…].
29 See for example, ID […]
30 See for example, ID […]
31 See for example ID […]

takes 15 October 2003 as the start date of the steel abrasives cartel for MTS[32] and 19 January 2004 as the start date for Würth[33].

(40) Based on the available evidence, the contacts between Winoa, MTS and Würth continued until the date of the inspection[34]. Therefore, the Commission considers the date of the inspection, namely 15 June 2010, as the end date of the involvement of Winoa, MTS and Würth. For Ervin, the immunity applicant, the date of the application for a marker, namely 30 March 2010, is the end date of its involvement in the cartel.

5. LEGAL ASSESSMENT

(41) Having regard to the body of evidence, the facts as described in Section 4 and the settling parties' clear and unequivocal acknowledgement of the facts and the legal qualification thereof, and their replies to the Statement of Objections, the legal assessment is set out in recitals (42)-(66).

5.1. Jurisdiction

(42) In this case the Commission has jurisdiction to apply 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 and between contracting parties to the EEA Agreement (see recitals (62) and (63))

5.2. Application of Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement

5.2.1. Nature of the infringement

5.2.1.1. Agreements and concerted practices

(a) Principles

(43) 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.

(44) An *agreement* may be said to exist when the parties adhere to a common plan which limits or is likely to limit their individual commercial conduct by determining the lines of their mutual action or abstention from action in the market. Although Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement draw a distinction between the concept of *concerted practice* and that of *agreements between undertakings*, the object is to bring within the prohibition of those Articles a form of coordination between undertakings by which, without having reached the stage where an agreement properly so-called

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32 See for example ID […]

33 See for example ID […]

34 The energy surcharge was introduced only in summer 2008.

has been concluded, they knowingly substitute practical cooperation between them for the risks of competition. Thus, conduct may fall under Article 101 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 coordination of their commercial behaviour.[35]

(45) 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 illegal behaviour. The concepts of *agreement* and *concerted practice* may overlap. It would 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. A cartel may therefore be an agreement and a concerted practice at the same time[36].

(b) Application to this case

(46) The conduct of Ervin, Winoa, MTS and Würth can be qualified as an infringement consisting of various actions which formed part of an overall scheme which can be classified as an agreement and/or concerted practice, within which the competitors knowingly substituted the risks of competition between them for practical co-operation. 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.[37]

5.2.1.2. Single and continuous infringement

(a) Principles

(47) The concept of "single agreement" or "single infringement" presupposes a complex of practices adopted by various parties in pursuit of a single anticompetitive economic aim.[38] The cartel may well be varied from time to time, or its mechanisms adapted or strengthened to take account of new developments. 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 progressively would manifest itself in both agreements and concerted practices. Moreover the Court has considered that interpretation of the "single and continuous infringement" cannot be challenged on the ground that one or several elements of a series of acts or continuous conduct could also constitute in themselves an infringement of Article 101 of the Treaty and Article 53 of the EEA Agreement[39].

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35 See Case T-7/89 *Hercules* v *Commission* [1991] ECR II-1711, at paragraph 256. See also Case 48/69, *Imperial Chemical Industries* v *Commission* [1972] ECR 619, at paragraph 64, and Joined Cases 40-48/73, etc. *Suiker Unie and others* v *Commission* [1975] ECR 1663, at paragraphs 173-174.

36 See Case T-7/89 *Hercules v Commission* [1991] ECR II-1711, paragraph 264.

37 See Cases 48/69 *Imperial Chemical Industries Ltd v Commission* [1972] ECR 619, paragraph 64

38 Joined Cases T-25/95 and others *Cement* [2000] ECR II-491, paragraph 369.

39 See Case T-53/03 *BPB plc v Commission* [2008] ECR II-01333, at paragraph 252.

(48) 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 anticompetitive object or 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, 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.[40]

(b) Application to this case

(49) In this case, the Commission considers that Ervin, Winoa, MTS and Würth, in participating in the conduct described in Section 4, participated in a single and continuous infringement of Article 101 of the Treaty and Article 53 of the EEA Agreement.[41]

(50) With their contacts, the parties pursued a single anti-competitive object and a single economic aim, namely the distortion of the normal movement of prices in relation to steel abrasives.

(51) Ervin, Winoa, MTS and Würth participated in a cartel, the overall aim of which was to coordinate prices of steel abrasives and to restrict price competition. In order to achieve their aim the parties engaged in frequent anticompetitive contacts on bilateral, as well as multilateral, bases. Those contacts were used by the parties to discuss the key price components applicable to all their EEA steel abrasives sales and in particular to:

(a) coordinate the introduction of a uniform calculation model for a common scrap surcharge - a variable surcharge that would be applicable to the price of all steel abrasives in the EEA; the common surcharge was applicable throughout the entire period of the infringement;

(b) introduce an energy surcharge;

(c) coordinate behaviour with respect to individual customers; the parties discussed (mainly through bilateral contacts) which parameters of competition would be allowed between them as regards individual customers: in principle price competition was restricted, which limited competition only to quality and

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[40] In Case 49/92 P *Commission v Anic Partecipazioni* [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."*

[41] See 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-123, paragraph 258.

services. With the ultimate aim to limit price competition, in some instances parties also allocated customers.

(52) The coordination on all these three pricing elements was carried out with full participation and/or knowledge of [top level management] of each of the undertakings involved. The parties often discussed all or several elements of the cartel at the same meetings and/or in the same communications.[42]

(53) The evidence shows that the contacts between the parties were of a continuous nature, with recurrent bilateral contacts taking place in parallel with multilateral contacts.

(54) The contacts had a varying intensity over the course of the cartel. The contacts were less intense during the period between the establishment of the common scrap surcharge in autumn 2003 and the revision of the scrap surcharge in summer 2007. This is because there was no need for them to communicate further, because changes in the index were automatically applicable according to the agreed method. The participating producers needed to communicate only when a disagreement arose. The same applies to the period after the revision of the scrap surcharge in the summer of 2007 until the date of the inspection (15 June 2010). Apart from the communications on the scrap surcharge, the evidence shows that the parties communicated in the meantime with regard to customers and, also as of summer 2008, with regard to a new energy surcharge.

(55) There is no evidence available that any of the parties to the cartel at any point in time disassociated itself from the cartel arrangements.

(56) The evidence available shows that the conduct described above was an on-going process and not an isolated or sporadic occurrence. The different elements of the infringement were in pursuit of a single anti-competitive object. The existence of a single and continuous infringement is supported by the fact that the cartel followed the same pattern throughout the infringement period, the undertakings as well as the individuals involved were essentially the same, the contacts between competitors concerned the same products and there was a continuity of method.

5.2.2. Restriction of competition

(a) Principles

(57) Article 101(1) of the Treaty and Article 53 of the EEA Agreement expressly prohibit as incompatible with the internal market such agreements and concerted practices which have as their object or effect the restriction of competition by directly or indirectly fixing prices or any other trading conditions.

(58) It is settled case-law that, for the purpose of the application of Article 101 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

[42] See for example ID[…], ID […] and ID[…].

prevention, restriction or distortion of competition within the internal market.[43] The same applies to concerted practices.[44]

(b) Application to this case

(59) It is clear from the facts described in Section 4, that Ervin, Winoa, MTS and Würth were involved in horizontal anticompetitive arrangements which formed part of an overall scheme pursuing a single anti-competitive object of restricting competition on the price of steel abrasives. Within that overall scheme, described in recitals (26)-(36), Ervin, Winoa, MTS and Würth coordinated their behaviour to remove uncertainty between themselves in relation to pricing in the steel abrasives market. Therefore, the object of the behaviour of Ervin, Winoa, MTS and Würth was to restrict competition within the meaning of Article 101 of the Treaty and Article 53 of the EEA Agreement.

5.2.3. Effect upon trade between Member States and between Contracting Parties to the EEA Agreement

(a) Principles

(60) Article 101 of the Treaty is aimed at agreements and concerted practices 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 internal market. Similarly, Article 53 of the EEA Agreement is directed at agreements that undermine the achievement of a homogeneous EEA.

(61) The application of Article 101 of the Treaty and Article 53 of the EEA Agreement to a cartel is not, however, limited to that part of the cartel members' sales that actually involve the transfer of goods from one Member State or Contracting Party to another. Nor is it necessary, in order for those provisions to apply, to show that the individual conduct of each participant, as opposed to the cartel as a whole, affected trade between Member States or between Contracting Parties to the EEA Agreement.

(b) Application to this case

(62) During the relevant period, the steel abrasives producers with production facilities in certain Member States sold significant quantities of steel abrasives in different Member States and Contracting Parties to the EEA Agreement.

(63) The market for steel abrasives is characterised by a substantial volume of trade between Member States and between Contracting Parties to the EEA Agreement. The cartel arrangements covered the entire EEA and related to trade within the EEA. The pricing coordination by Ervin, Winoa, MTS and Würth

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

[44] Case C-199/92 *P Hüls* v *Commission*, [1999] ECR I-4287, paragraphs 158-166.

was therefore capable of having an appreciable effect upon trade between Member States and between Contracting Parties to the EEA Agreement.[45]

5.2.4. Appreciability

(64) All of the arrangements covered by this Decision had the object of restricting price competition. Such agreements cannot benefit from the de minimis thresholds in the Notice on agreements of minor importance[46]. The Commission refers, in this respect, also to the judgment of the ECJ of 13 December 2012 in Case C-226/11 *Expedia,* in which the Court stated in a preliminary ruling: *"It must therefore be held that an agreement that may affect trade between Member States and that has an anti-competitive object constitutes, by its nature and independently of any concrete effect that it may have, an appreciable restriction on competition."*

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

(65) The provisions of Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement may be declared inapplicable pursuant to Article 101(3) of the Treaty and Article 53(3) of the EEA Agreement.

(66) 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 the cartel in this case.

6. DURATION OF THE INFRINGEMENT

(67) The duration of each settling undertaking's involvement in the conduct described in Section 4 (see recitals (38), (39) and (40)) was as follows:

– Ervin: From 3 October 2003 to 30 March 2010;

– Winoa: From 3 October 2003 to 15 June 2010;

– MTS: From 15 October 2003 to 15 June 2010;

– Würth: From 19 January 2004 to 15 June 2010.

7. LIABILITY

(68) Article 101 of the Treaty applies to undertakings and associations of undertakings.[47] The notion "*undertaking*" covers any entity engaged in an

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45 See Case C-125/07P *Erste Bank der österreichischen Sparkassen v Commission* [2009] ECR I-08681, paragraph 39.

46 Commission Notice on agreements of minor importance which do not appreciably restrict competition under Article 81(1) of the Treaty establishing the European Community (*de minimis*) (OJ C 368/13, 22.12.2001).

47 Joined Cases C-204/00 P, C-205/00 P, C-211/00 P, C-213/00 P, C-217/00 P and C-219/00 P *Aalborg Portland and Others v Commission* [2004] ECR I-123, paragraph 59.

economic activity, regardless of its legal status and the way in which it is financed.[48]

(69) The term "*undertaking*" must be understood as designating an economic unit even if in law that economic unit consists of several natural or legal persons.[49] In order to determine whether separate legal entities form part of the same undertaking, regard must be had especially to the economic, organisational and legal links between those entities.[50]

(70) According to the settled case-law, where a parent company has a 100% shareholding in a subsidiary which has infringed the competition rules of the Union, the parent company can exercise decisive influence over the conduct of the subsidiary and there is a rebuttable presumption that the parent company does in fact exercise decisive influence over the conduct of its subsidiary[51].

(71) Having regard to the body of evidence and the facts described in Section 4, the parties' clear and unequivocal acknowledgements of the facts and the legal qualification thereof, this Decision is addressed to the legal entities listed in Sections 7.1 to 7.4.

7.1. Ervin

(72) Ervin Industries Inc.'s subsidiary, Ervin Amasteel, clearly and unequivocally acknowledges liability for its direct participation in the cartel. Ervin Industries Inc. clearly and unequivocally acknowledges that it is liable for the single and continuous infringement for the behaviour of its wholly owned subsidiary Ervin Amasteel. Liability for the single and continuous infringement is therefore imputed jointly and severally to Ervin Industries Inc. and Ervin Amasteel.

7.2. Winoa

(73) WHA Holding SAS and its subsidiary Winoa SA clearly and unequivocally acknowledge liability for their direct participation in the cartel and that they are liable for the single and continuous infringement. WHA Holding SAS and Winoa SA clearly and unequivocally acknowledge that they are liable for the behaviour of their directly or indirectly wholly owned relevant subsidiaries and WHA Holding SAS clearly and unequivocally acknowledges that it is liable for the behaviour of Winoa SA in the single and continuous infringement. Liability for the single and continuous infringement is therefore imputed jointly and severally to WHA Holding SAS and Winoa SA.

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48 Joined Cases C-189/02 P, C-202/02 P, C-205/02 P to C-208/02 P and C-213/02 P *Dansk Rørindustri and Others v Commission* [2005] ECR I-5425, paragraph 112; Case C-222/04 *Cassa di Risparmio di Firenze and Others* [2006] ECR I-289, paragraph 107; and Case C-205/03 P *FENIN v Commission* [2006] ECR I-6295, paragraph 25.

49 Joined Cases C-201/09 P and C-216/09 P *Arcelor v Mittal and Luxembourg v Commission and Others* [2011] ECR I, point 95.

50 Case C-97/08 P *Akzo Nobel and Others v Commission* [2009] ECR I-8237, paragraph 58 and the case-law cited.

51 See Case C-97/08 P *Akzo Nobel and others v Commission* [2009] ECR 1-08237, paragraph 60.

(74) However, the joint and several liability of WHA Holding SAS is limited to the period between 6 October 2005 and 15 June 2010. Winoa SA, formerly Wheelabrator Allevard SA, was wholly acquired by WHA Holding SAS on 6 October 2005.

(75) Moreover Wheelabrator Allevard SA changed its name to Winoa SA on 1 July 2011. Winoa SA is therefore, as the successor company, liable for the participation of Wheelabrator Allevard SA in the cartel between 3 October 2003 and 15 Jun 2010.

7.3. MTS

(76) Metalltechnik Schmidt GmbH & Co. KG clearly and unequivocally acknowledges liability for its direct participation in the cartel. Liability for the single and continuous infringement is therefore imputed to Metalltechnik Schmidt GmbH & Co. KG.

7.4. Würth

(77) Eisenwerk Würth GmbH clearly and unequivocally acknowledges liability for its direct participation in the cartel. Liability for the single and continuous infringement is therefore imputed to Eisenwerk Würth GmbH.

8. REMEDIES

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

(78) 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 of Regulation (EC) No 1/2003.

(79) Given the secrecy in which the cartel arrangements were carried out, in this case it is not possible to declare 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 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 – Fines

(80) Under Article 23(2) of Regulation (EC) No 1/2003, 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 Article 53 of the EEA Agreement[52]. For each undertaking participating in the

[52] According to Article 5 of Council Regulation (EC) No 2894/94 of 28 November 1994 concerning arrangements for implementing the Agreement on the European Economic Area, "the Community rules giving effect to the principles set out in Articles 85 and 86 [now Articles 101 and 102 of the Treaty] of the EC Treaty […] shall apply *mutatis mutandis*" (OJ L 305, 30.11.1994, p.6.).

infringement, the fine must not exceed 10% of its total turnover in the preceding business year.

(81) In this case, based on the facts described in this Decision, the Commission considers that the infringement was committed intentionally.

(82) The Commission imposes fines in this case on the undertakings to which this Decision is addressed.

(83) Pursuant to Article 23(3) of Regulation (EC) No 1/2003, the Commission must, in fixing the amount of the fine to be imposed, have regard to all relevant circumstances and particularly the gravity and duration of the infringement, which are the two criteria explicitly referred to in that Regulation. In doing so, the Commission sets the fines at a level sufficient to ensure deterrence. Moreover, the role played by each undertaking party to an infringement is assessed on an individual basis. The fine imposed must reflect any aggravating and attenuating circumstances pertaining to each undertaking.

(84) In setting the fines to be imposed, the Commission refers to the principles laid down in its Guidelines on fines[53]. Finally, the Commission applies, as appropriate, the provisions of the Leniency Notice and the Settlement Notice [54].

8.3. Calculation of the fines

(85) According to the Guidelines on fines, the basic amount of the fine to be imposed on each undertaking concerned 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 by the number of years of the undertaking's participation in that infringement. The additional amount ("entry fee") 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 undertaking if aggravating or mitigating circumstances are found to be applicable.

8.3.1. The value of sales

(86) The basic amount of the fine to be imposed on the undertakings concerned is to be set by reference to the value of sales,[55] that is to say, the value of the undertakings' sales of goods or services to which the infringement directly or indirectly related in the relevant geographic area in the EEA.

(87) In this case the relevant value of sales is the undertaking's sales of steel abrasives (as defined in recital (3)) in the EEA.

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53 Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation (EC) No 1/2003 (OJ C 210, 1.09.2006, p. 2).

54 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 (OJ C 167, 2.7.2008, p. 1).

55 Point 12 of the Guidelines on fines.

(88) The Commission normally takes the sales made by the undertakings during the last full business year of their participation in the infringement[56]. 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.

(89) Based on the foregoing and on the information provided by the parties, the Commission uses the undertakings' sales in the last full business year of their participation in the infringement, that is to say, 2009.

(90) Accordingly, the value of sales for each undertaking is as set out in Table 1.

Table 1. The value of sales

Undertaking	Value of sales (EUR)		
	EEA(18)	EEA(28)	EEA(30)
Ervin	[10 500 000 – 13 000 000]	[11 300 000 – 14 000 000]	[11 300 000 – 14 000 000]
Winoa	[80 000 000 – 100 000 000]	[90 000 000 – 110 000 000]	[90 000 000 – 110 000 000]
MTS	[18 350 000 – 21 950 000]	[19 250 000 – 22 100 000]	[19 520 000 – 22 200 000]
Würth	[3 100 000 - 3 750 000]	[3 200 000 – 3 900 000]	[3 200 000 – 3 900 000]

8.3.2. Determination of the basic amount of the fine

(91) The basic amount consists of an amount of up to 30% of an undertaking's relevant sales, depending on the degree of gravity of the infringement, 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 the undertaking's relevant sales, irrespective of duration.[57]

8.3.2.1. Gravity

(92) 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 has 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.[58]

(93) In its assessment, the Commission considers the facts described in this Decision, and in particular the fact that price coordination arrangements are, by their very

[56] Point 13 of the Guidelines on fines.
[57] Points 19-26 of the Guidelines on fines.
[58] Points 21 and 22 of the Guidelines on fines.

nature, among the most harmful restrictions of competition. Therefore, the proportion of the value of sales taken into account for such infringements will generally be set at the higher end of the scale of the value of sales.[59]

(94) The Commission also takes into account in the assessment the fact that the infringement covered the entire EEA.

(95) Given the specific circumstances of this case and taking into account the nature and the geographic scope of the infringement, the proportion of the value of sales to be taken into account is 16%.

8.3.2.2. Duration

(96) In calculating the fine to be imposed on each undertaking, the Commission also takes into consideration the duration of the infringement[60].

(97) The duration to be taken into account for the purposes of calculating the fine to be imposed on each addressee, rounded down to the month, and the resulting multipliers for duration are set out in Table 2.

Table 2. Duration

Entity	**Duration**	**Multipliers**
Ervin	3 October 2003 - 30 March 2010	6.41
Winoa	3 October 2003 - 15 June 2010	6.66[61]
MTS	15 October 2003 - 15 June 2010	6.66
Würth	19 January 2004 - 15 June 2010	6.33

8.3.2.3. Additional amount

(98) The infringement concerns a price coordination cartel. Therefore, the Commission includes in the basic amount of each fine a sum of between 15% and 25% of the value of sales to deter the undertakings from entering into such illegal practices on the basis of the criteria listed in recital (95) with respect to the variable amount.[62]

(99) Taking into account the factors listed in Section 8.3.2.1 relating to the nature and the geographic scope of the infringement, the percentage to be applied for the purposes of calculating the additional amount is 16%.

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59 Point 23 of the Guidelines on fines.

60 Point 24 of the Guidelines on fines.

61 The duration of the infringement by WHA Holding SAS starts on 6 October 2005, which is the date on which it acquired Winoa SA.

62 Point 25 of the Guidelines on fines.

8.3.2.4. Calculation of the basic amount

(100) Based on the criteria explained in recitals (85)-(99), the basic amount of the fine to be imposed on each undertaking is set out in Table 3.

Table 3. Basic amounts of the fine

Undertaking	**Basic amount in EUR**
Ervin	[…]
Winoa	[…]
MTS	[…]
Würth	[…]

8.3.3. Adjustments to the basic amount of the fine: aggravating or mitigating factors

(101) The Commission may increase the basic amount where it considers that aggravating circumstances apply. Those circumstances are listed in a non-exhaustive way in point 28 of the Guidelines on fines. The Commission may also reduce the basic amount where it considers that mitigating circumstances apply. Those circumstances are listed in a non-exhaustive way in point 29 of the Guidelines on fines.

(102) The Commission does not consider that any aggravating circumstances apply in this case.

(103) The evidence shows that MTS and Würth contributed to a lesser extent than other parties in some of the arrangements for maintaining the cartel, as described in Section 4.1. The Commission therefore considers that mitigating circumstances apply resulting in a reduction of 10% in the fine to be imposed on MTS and a reduction of 15% in the fine to be imposed on Würth. The adjusted basic amounts are set out in Table 4.

Table 4. Adjusted basic amounts

Undertaking	**Adjusted basic amount (EUR)**
Ervin	[…]
Winoa	[…]
MTS	[…]
Würth	[…]

8.3.4. Adaptation of the adjusted basic amount

(104) In this case, the adjusted basic amount is adapted, taking into account that that amount would reach the 10% turnover limit laid down in Article 23(2) of

Regulation (EC) No 1/2003 for all the undertakings concerned, that for each settling party the value of sales of the cartelised product represents a high proportion of the total turnover and that there are differences between the settling parties with regard to their individual participation in the infringement.

(105) In view of the specific circumstances of this case, the Commission deems it appropriate to exercise its discretion and to apply point 37 of the Guidelines on Fines which allows it to depart from the methodology of the Guidelines[63]. Whilst the case law confirms that the Commission can impose fines that reach the upper limit of 10% of each undertaking's total turnover[64], the Commission considers, using its discretion under Regulation (EC) No 1/2003 and the Guidelines as interpreted in the case law, that it is appropriate to apply a partially different methodology for setting the fines in this case. Overall, the fines are set at a level that is proportionate to the infringement and achieves a sufficiently deterrent effect.

(106) The resulting fines are set out in Table 5.

Table 5. Fines after adaptation

Undertaking	Amount (EUR)
Ervin	4 118 250
Winoa	30 628 000
MTS	2 310 120
Würth	1 181 466

8.4. Application of the 10% turnover limit

(107) Article 23(2) of Regulation (EC) No 1/2003 provides that the fine imposed on each undertaking participating in the infringement must not exceed 10% of its total turnover relating to the business year preceding the date of the Commission decision. To the extent that information on the total turnover for that year is not available the Commission uses as a reference for the 10% of turnover limit the relevant figures for the most recent business year available. In this case it is 2012.

(108) In this case, none of the fines exceed 10% of an undertaking's total turnover for 2012.

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63 This is in line with the case law of the EU courts. See for instance the judgment of 16 June 2011 in case T-211/08 *Putters v Commission*, [2011] ECR II-03729, paragraph 75.

64 Judgment of 12 July 2012 in Case C-181/11 P *Cetarsa v Commission*, paragraph 80, not yet reported. See also to this effect judgment of 28 June 2005 in Joined Cases C-189/02 P, C-202/02 P, C-205/02 P to C-208/02 P and C-213/02 P, *Dansk Rørindustri and others v Commission*, [2005] ECR I-5425 paragraphs. 277 - 278; judgment of 29 June 2006 in Case C-308/04 P *SGL Carbon v Commission*, [2006] ECR I-5977, paragraph 82; judgment of 20 March 2002 in Case T-9/99, *HFB and others v Commission*, [2002] ECR II-1487, paragraph 453; judgment of 13 September 2010 in Case T-26/06, *Trioplast Wittenheim v Commission*, [2010] ECR II-188, paragraph 148; and judgment of 29 November 2005 in Case T-62/02, *Union Pigments v Commission*, [2005] ECR II-5057, paragraph 158.

8.5. Application of the Leniency Notice

(109) On 13 April 2010 Ervin applied for immunity under the Leniency Notice. On 31 May 2010, the Commission granted Ervin conditional immunity from fines pursuant to point 8(a) of the Leniency Notice. Ervin's co-operation fulfilled the requirements of the Leniency Notice. Ervin is therefore granted immunity from fines for the infringement that is the subject of this Decision.

8.6. Application of the Settlement Notice

(110) In accordance with point 32 of the Settlement Notice, the reward for settlement is a reduction of 10% of the amount of the fine to be imposed on an undertaking 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 is added to their leniency reward.

(111) As a result of the application of the Settlement Notice, the amount of the fines to be imposed on Ervin, Winoa, MTS and Würth is reduced by 10%.

8.7. Ability to pay

(112) 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.

(113) The inability to pay claim submitted by […] is rejected for the following reasons [Confidential Annex 1 accessible to […]].

8.8. Conclusion: Final amount of individual fines to be imposed in this Decision

(114) The fines to be imposed pursuant to Article 23(2) of Regulation (EC) No 1/2003 are set out in Table 6.

Table 6. Fines

Undertaking	Fines (in EUR)
Ervin	0
Winoa of which:	27 565 000
Winoa SA	8 046 000
Winoa SA and WHA Holding SAS jointly and severally	19 519 000
MTS	2 079 000
Würth	1 063 000

(115) Winoa SA, formerly Wheelabrator Allevard SA, was wholly acquired by WHA Holding SAS on 6 October 2005. The total amount of the fine to be imposed on Winoa was apportioned between Winoa SA (solely liable) and Winoa SA and WHA Holding SAS (jointly and severally liable) proportionally to the duration of each entity's involvement in the infringement,

HAS ADOPTED THIS DECISION:

Article 1

The following undertakings infringed Article 101 of the Treaty and Article 53 of the EEA Agreement by participating, during the periods indicated, in a single and continuous infringement covering the entire EEA in the steel abrasives sector, which consisted of the coordination of their pricing behaviour:

(a) Ervin Industries Inc. and Ervin Amasteel, from 3 October 2003 until 30 March 2010;

(b) Winoa SA, from 3 October 2003 until 15 June 2010;

(c) WHA Holding SAS, from 6 October 2005 until 15 June 2010;

(d) Metalltechnik Schmidt GmbH & Co. KG, from 15 October 2003 until 15 June 2010;

(e) Eisenwerk Würth GmbH, from 19 January 2004 to 15 June 2010.

Article 2

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

(a) Ervin Industries Inc. and Ervin Amasteel, jointly and severally: EUR 0;

(b) Winoa SA: EUR 8 046 000;

(c) Winoa SA and WHA Holding SAS jointly and severally: EUR 19 519 000;

(d) Metalltechnik Schmidt GmbH & Co. KG: EUR 2 079 000;

(e) Eisenwerk Würth GmbH: EUR 1 063 000.

The fines shall be paid in euros within three months of the date of the notification of this Decision to the following bank 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/AT.39792

After the expiry of that period, interest will 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 90 of Commission Delegated Regulation (EU) No 1268/2012.[65]

Article 3

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 4

This Decision is addressed to:

(a) Ervin Industries Inc., 3893 Research Park Drive, Ann Arbor, 48108-1168 Michigan, USA;

(b) Ervin Amasteel, George Henry Road, Great Bridge, Tipton, West Midlands, DY4 7BZ, United Kingdom;

(c) WHA Holding SAS, 528, Avenue de Savoie, 38570 Le Cheylas, France;

(d) Winoa SA, 528, Avenue de Savoie, 38570 Le Cheylas, France;

(e) Metalltechnik Schmidt GmbH & Co. KG, Schulstr. 41, 70794 Filderstadt, Germany;

(f) Eisenwerk Würth GmbH, Jagstfelder Str. 14, 74177 Bad Friedrichshall, Germany.

This Decision shall be enforceable pursuant to Article 299 of the Treaty and Article 110 of the EEA Agreement.

Done at Brussels, 2.4.2014

For the Commission

Joaquín ALMUNIA
Vice-President

[65] Commission Delegated Regulation (EU) No 1268/2012 of 29 October 2012 on the rules of application of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union (OJ L 362, 31.12.2012, p. 1).