Commission adopts a cartel decision imposing fines on industrial copper tube producers

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In the fifth decision against had core cartels adopted in 2003, the Commission imposed fines totalling EUR 79 million on the major European copper tubes producers, including Outokumpu, KME-group and Wieland Werke, for operating a cartel in the market for industrial copper tubes.

In a decision adopted on 16 December 2003, the Commission found that the leading European copper tubes producers, KM Europa Metal AG (together with its wholly-owned subsidiaries Europa Metalli SpA and Tréfimétaux SA), Wieland Werke AG and Outokumpu Oyj (together with its wholly-owned subsidiary Outokumpu Copper Products Oy), had breached cartel rules by colluding to fix prices and allocate market shares in the EEA market for industrial copper tubes in level-wound-coils (LWCs). Following an investigation which started in 2001, the Commission established that the infringement lasted from 1988 to early 2001.

The relevant product, LWC, is used primarily in air-conditioning and refrigeration (ACR) industry, the other industrial applications being fittings, refrigeration, gas heater, filter dryer and telecommunication. Industrial copper tubes are generally not sold to wholesalers but they are used by and supplied directly to industrial customers, original equipment manufacturers or part manufacturers in lengths ranging up to several kilometers. The estimated EEA market value of LWC tubes was ca. EUR 290 million in 2000 which was the last full year of the infringement.

The main purpose of the cartel was to stop price erosion and stabilise market shares. It was organised within the framework of the Swiss-based Cuproclima Quality Association for ACR Tubes which was established in 1985 with the legitimate purpose of promoting a quality standard for these industrial tubes. The regular meetings of this association held every autumn among the competing manufactures gave the participants an opportunity to agree upon target prices, the compliance of which was monitored by exchanging in the spring meetings detailed information on sales volumes and prices charged to customers. The cartel meetings, which were conducted without documentary support, mostly took place on the second day of the Cuproclima meeting session, after the official agenda had been discussed. While the trade association as such was not subject to the Commission's proceedings, it was put into liquidation immediately after the Commission initiated its investigation.

The Commission characterised the behaviour in question as a ‘very serious’ infringement of the Community and EEA competition rules, and adopted a Decision under Article 81(1) and Article 53(1) of the EEA Agreement, imposing fines of a total amount of EUR 78,73 million. The highest fine was imposed on the companies of the KME-group, amounting to EUR 39,81 million, whereas Wieland Werke received a fine of EUR 20,79 million and Outokumpu of EUR 18,13 million.

This case was characterized by a number of reorganisations of some of the groups participating in the infringement, which resulted in a complex exercise of imputation of liabilities among different companies.

Outokumpu Oyj, the parent company of the Finnish Outokumpu-group, participated directly in the infringement from May 1988 until December 1988, whereafter its newly-formed subsidiary Outokumpu Copper Products Oy (‘OCP’) took over the industrial tubes activity and continued the infringement. Outokumpu Oyj has controlled the entire capital of OCP sine the formation of the latter. The Commission regarded Outokumpu Oyj and OCP as a single undertaking, jointly and severally liable for the infringement.

As regards the KME-group, including KM Europa Metal (‘KME’), Europa Metalli and Tréfimétaux, two different periods were distinguished for the purposes of imputation of liabilities. During the first period from 1988 to 1995, Tréfimétaux was wholly-owned by Europa Metalli and their management was closely intertwined so that they were considered to have formed a single undertaking, implying joint and several liability for the infringement. Although their ultimate holding-company SMI (Società Metallurgica Italiana SpA) acquired around 77% of Kabelmetall AG (renamed as KM Europa Metal) in 1990, the Commission found that it formed a separate undertaking from Europa Metalli and Tréfimétaux until the restructuring of the group in 1995. KME’s management was separate from that of its sister companies until the said restructuring, in which
KME obtained 100% control in both Europa Metalli and Tréfimétaux. During the period from 1995 to 2001, the KME-group was treated as a single undertaking with KME, Europa Metalli and Tréfimétaux having joint and several liability for the infringement.

**Calculation of fines**

In fixing the amount of the fines, the Commission took into account the gravity and duration of the infringement, as well as the existence, as appropriate, of aggravating and/or mitigating circumstances. The role played by each undertaking was assessed on an individual basis. In particular, the Commission took into account the subsequent reorganisations in the KME-group.

All the undertakings concerned were found to have committed a very serious infringement. Within this category, the undertakings were divided into two groups according to their relative importance in the market concerned. Further upward adjustment was made in the case of Outokumpu, with regard to its large size and overall resources. All participants committed an infringement of long duration (exceeding five years).

In Outokumpu's case, the Commission took into consideration the fact that it had been addressee of a previous decision finding an infringement of the same type [Commission decision 90/417/ECSC Cold-rolled Stainless steel flat products (1)]. On the other hand, Outokumpu was rewarded by a mitigating factor for its cooperation outside the 1996 Leniency Notice, as it was the first undertaking to disclose the whole duration of the cartel extending over more than 12 years (see below).

**Application of the Leniency Notice**

As the investigation into the industrial tubes cartel started in 2001, the 1996 Leniency Notice was applicable in this case. All the addressees of the decision cooperated with the Commission in its investigation. In this case, the only applicable section of the 1996 Leniency Notice was Section D, since all the addressees came forward only after the inspections which produced sufficiently evidence for the Commission to open the proceedings and fine the undertakings for an infringement of at least four years.

Outokumpu applied for leniency immediately after the Commission's inspections, disclosing the existence of the cartel from 1988 to 2001. It started cooperating with the Commission significantly earlier than the other participants and its cooperation was complete and extensive. It was therefore granted the maximum reduction of 50% for its cooperation.

Wieland Werke and KME started cooperating with the Commission at a later stage in the procedure, more than a year and a half had lapsed from the inspections, and only as response to the Commission's formal requests for information. They were therefore rewarded with smaller reductions than Outokumpu, 20% and 30%, respectively. The difference reflects KME's more extensive disclosure in terms of the duration and continuity of the infringement.

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