Commission adopts cartel decision imposing fines on copper plumbing tube producers

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In September 2004, the Commission imposed fines totalling EUR 222.3 million on the major European copper plumbing tube producers for operating a 13-year cartel in the copper plumbing tubes market. These companies include the KME group, the IMI group, the Boliden group, the Outokumpu group, the Wieland group, Halcor and HME Nederland BV. The Commission granted Mueller Industries full immunity under the 1996 Leniency Notice for disclosing the cartel existence first. This is the Commission's first decision against hard core cartels adopted in 2004. Some of these copper tube producers were recently fined for being involved in another contemporaneous EEA-wide cartel (in the Commission's Industrial Tubes decision of December 2003).

On 3 September 2004, the Commission adopted a decision imposing fines on the leading European copper plumbing tube producers for operating a price-fixing and market-sharing cartel in the EEA market for copper plumbing tubes, in breach of Article 81 EC, between at least June 1988 (concerning the first SANCO-club meetings) and March 2001. Some of these copper tube producers were recently fined by the Commission in the Industrial Tubes Decision (1) for being involved in another EEA-wide cartel, which was contemporaneous to the present one.

The participants in the cartel include the following companies: (i) the KME group (Europa Metal AG and its wholly-owned subsidiaries Europa Metalli SpA and Tréfimétaux SA), the IMI group (IMI plc and its former subsidiaries IMI Kynoch Ltd. and IMI Yorkshire Copper Tube Ltd.); (ii) the Boliden group (Boliden AB and its former subsidiaries Boliden Fabrication AB and Boliden Cuivre & Zinc S.A., hereinafter ‘BCZ’); (iii) the Outokumpu group (Outokumpu Copper Products Oy and its parent company Outokumpu Oyj); (iv) the Wieland group (Wieland Werke AG and its fully controlled subsidiaries Austria Buntmetall AG and Buntmetall Amstetten Ges.m.b.H.); (v) Halcor S.A.; (vi) HME Nederland BV; and (vii) Mueller Industries, Inc. (together with its subsidiaries WTC Holding Company, Inc., Mueller Europe Ltd., DENO Holding Company, Inc. and DENO Acquisition EURL), which was the first company to approach the Commission and cooperate under the 1996 Leniency Notice.

Copper plumbing tubes are generally used for water, oil, gas and heating installations in the construction industry. These include two subfamilies of products, i.e. plain copper plumbing tubes and insulated (or plastic-coated) copper plumbing tubes. For the purposes of the decision, both plain tubes and insulated tubes were treated as part of one product group, which the Commission estimated to be worth some EUR 1.15 billion in the EEA in 2000.

In consideration of different customers, end uses and technical specifications, the Commission considered that copper plumbing tubes and industrial tubes are different products (2). Unlike industrial tubes, which are generally sold to industrial customers, original equipment manufacturers and part manufacturers, main customers for copper plumbing tubes include distributors, wholesalers and retailers, who sell these to installers and other end-consumers.

Tubes made of other materials, such as plastic or compounds (i.e. plastic with layers of aluminium), which have increasingly been used for the production of plumbing tubes since the early 1990s, put a certain amount of competitive pressure on plumbing tubes made of copper. However, for the purposes of this decision, the Commission treated copper plumbing tubes as a separate product.

The Commission launched an investigation in March 2001, after Mueller Industries disclosed the cartel existence and started to cooperate with the Commission under the 1996 Leniency Notice. The Commission carried out dawn raids at some companies’ premises in March 2001 (3) and sent a Statement of Objections to the parties in September 2003. The Commission found that the copper tube producers had participated in a single, continuous, complex and, with respect to KME,

(2) In line with the Commission findings in Case No COMP/M.3284, Outokumpu/Boliden.
Wieland and Boliden, a ‘multiform’ infringement (relating to both the wider European cooperation, the SANCO club and/or the WICU/Cuproterm arrangements) of Article 81 of the EC Treaty and Article 53 of the EEA Agreement of long duration. In particular, the companies operated a price-fixing and market-sharing cartel in which they agreed on allocating volumes, market shares and customers, as well as on fixing price targets and joint price increases, discount rates and other commercial terms for plain copper plumbing tubes. As far as KME and Wieland are concerned, the agreement also covered plastic-coated copper plumbing tubes. The cartel members also established a system for monitoring the implementation of the anti-competitive arrangements, through an exchange of confidential information (on sales, orders, market shares and prices) and a market leader agreement, based on which each national ‘market leader’ reported on developments in its home market to the other participants, so that these could better coordinate their behaviour.

The anti-competitive conduct took place at both the European-wide and national level. However, the decision is principally limited to the European-wide arrangements. The cartel operated through regular meetings at both a top management level (so-called ‘Elephant meetings’ as of 1997) and an operational level (so-called "Sweepers meetings" as of 1997).

Producers market their copper plumbing tubes under different brands, depending on the various applications and on whether copper plumbing tubes are plastic-coated. Three brands, ‘SANCO’, ‘WICU’ and ‘Cuproterm’, were critical to the organisation and implementation of the cartel both at an initial phase and throughout its entire duration. ‘SANCO’ is a trademark for plain copper plumbing tubes produced by the KME Group, Wieland and BCZ. ‘WICU’ and ‘Cuprotherm’ are brand names for plastic-coated copper plumbing tubes produced by Wieland and KME (until 1998, also BCZ produced insulated tubes under the ‘WICU’ trademark). The SANCO brand provided a framework within which the SANCO producers, by regularly meeting in a so-called ‘SANCO-club’, were able to organize their co-operation and to implement their agreements, among other things through an exchange of confidential information. KME and Boliden started their illegal cooperation in June 1988 at the latest. Wieland joined later in 1989. KME and Wieland also cooperated with respect to WICU® and Cuprotherm plastic-insulated copper plumbing tubes.

The cartel was organized at three levels, the SANCO club representing the first and oldest level of the cooperation between the copper plumbing tubes producers. In parallel to the SANCO club, the largest European copper tube producers started a broader level of cooperation from at least September 1989, i.e. KME, Wieland, Outokumpu and IMI. Mueller joined this group in 1997, to form the so-called ‘group of the five’. As described in the minutes of a participant in the first European-wide meeting, the objective was ‘to keep the prices in the high price level countries high — if possible to increase even more’, by limiting quantities according to demand. Furthermore, the plan was to increase prices by creating shortages.

The cooperation reached its third level in 1998, when four smaller producers joined the ‘group of the five’, i.e. Halcor (just until August 1999), HME Nederland BV, Boliden and Buntmetall (to form the so-called ‘group of the nine’). These companies, as well as Mueller, had occasionally participated in the cartel between 1989 and 1994. However, the Commission could not establish continuity of the infringement with respect to these companies because it was not proven that they had any contacts at the European level during the period from 1994 until 1997 or 1998.

The way the meetings were organized and the intensity of the contact between the participants varied throughout the cartel duration.

The Commission characterised the behaviour in question as a ‘very serious’ infringement of Article 81 EC and Article 53 EEA and imposed fines for a total amount of EUR 222.3 million. The highest fine was imposed on the companies of the KME group, amounting to EUR 67.08 million. The IMI group was fined EUR 44.98 million, the Boliden group EUR 32.6 million, the Outokumpu group EUR 36.14 million, the Wieland group EUR 27.8411 million, Halcor S.A. EUR 9.16 million and HME Nederland BV EUR 4.49 million. Mueller was granted full immunity.

The addressee companies had undergone internal restructuring by the time of the Commission’s decision. This resulted in a complex allocation of liabilities.

For instance, as concerns the KME group, including KM Europa Metal (‘KME’), Europa Metalli and Tréfimétaux, two different periods were distinguished for the purposes of allocation of liability. During the first period (between 1988 and 1995), Tréfimétaux was wholly-owned by Europa Metalli and the two companies’ management was closely interlinked so that they were considered to have formed a single undertaking,
implying joint and several liability for the infringement. Although in 1990 their ultimate parent company, SMI (Società Metallurgica Italiana SpA), acquired some 77% of Kabelmetall AG (renamed later KM Europa Metal), the Commission found that Kabelmetall AG 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 this restructuring, when KME acquired 100% shareholding in both Europa Metalli and Tréfimétaux. During the period from 1995 to 2001, the KME group was treated as a single undertaking with joint and several liability for the infringement.

In a similar way, two different periods were distinguished for the purposes of the allocation of liability within the Wieland-group. Wieland Werke AG acquired sole control over the Buntmetall group in 1999. Accordingly, Wieland Werke AG and the Buntmetall group were treated as a single undertaking with joint and several liability for the infringement only as of 1999.

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 of aggravating and/or mitigating circumstances, as appropriate. All the companies concerned were found to have committed a ‘very serious’ infringement. The KME group, the Wieland group, the Outokumpu group, the IMI group and the Boliden group committed an infringement of long duration (exceeding five years). Fines were adjusted according to the companies’ relative importance on the market concerned. Further upward adjustment for ‘deterrence’ was made in Outokumpu’s case, with regard to its larger size compared to other competitors and its overall resources. Outokumpu's fine was also increased for recidivism, since the company had been the 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 an attenuating factor for being the first undertaking to disclose the whole duration of the cartel extending over more than 12 years, by analogy to the 2002 Leniency Notice, which is not applicable in this case (see below). Its fine was therefore reduced accordingly. The KME group was also granted a mitigating factor for its cooperation in the proceedings, since it was the first undertaking to provide sufficient evidence enabling the Commission to establish the existence of a continuous infringement with respect to the WICU/Cuprotherm arrangements starting from at least the beginning of 1991.

Application of the 1996 Leniency Notice

Since the copper plumbing tubes investigation started in 2001, the 1996 Leniency Notice applied in this case. Mueller was granted full immunity from fines for having approached and cooperated with the Commission first. With the exception of HME, all the other companies involved in the proceedings cooperated with the Commission’s investigation, but only after inspections had taken place. Since the inspections had produced sufficient evidence allowing the Commission to open proceedings and adopt a decision imposing fines, the Commission applied Section D of the 1996 Leniency Notice.

Outokumpu applied for leniency immediately after the Commission's inspections. It began cooperating with the Commission significantly earlier than the other participants and its cooperation was complete and extensive. As mentioned above, Outokumpu disclosed the whole cartel duration from the end of the 1980s until 2001, for which it was granted an attenuating circumstance and its fine was reduced accordingly. The company was given a 50% discount, which is the maximum reduction allowed under Section D of the 1996 Leniency Notice.

Wieland Werke and KME started cooperating with the Commission at a later stage in the procedure, more than a year and a half after the inspections took place and after the Commission had sent formal information requests in the context of the Industrial Tubes investigation (Case IV/38.240), in which these companies were also involved. KME was the only company besides Outokumpu to have provided an overall description of the arrangements for the period 1988 to 2001. Also, it contributed by providing explanations for the content and duration of national arrangements. Wieland provided a detailed description of meetings from 1993 until 2001, numerous minutes of cartel meetings of its employees, which helped in particular to establish continuity of the infringement. As a result, KME and Wieland were rewarded with a reduction of 35%.

Halcor also started cooperating after having received a formal request for information. Although the company provided detailed descriptions of how the cartel functioned and of its participation in the meetings at the European level in 1998 and 1999, and submitted contemporaneous notes of certain cartel meetings, its cooperation had only limited value because the Commission was already in possession of evidence proving the infringement for the relevant period. Also, Halcor did not clarify its role in meetings between 1989 and 1994 or at a national level. As a result, Halcor was rewarded with a 15% reduction. Since IMI and Boliden started cooperating after receiving the Statement of Objections, they could only benefit from a 10% reduction for not contesting the facts.