**The Bathroom fittings and fixtures cartel**

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**Introduction**

On 23 June 2009, the Commission adopted a prohibition decision against 17 manufacturers of bathroom fittings and fixtures producers. The Decision found that Masco (including the Hansgrohe and Hüppe sub-groups), Grohe, Trane, the former Ideal Standard group (which notably included Trane and Wabco), Hansa, Roca (including Laufen), Duravit, Dornbracht, Sanitec, Villeroy & Boch, Duscholux, Kludi, Artweger, Cisal, Mamoli, RAF, Teorema and Zucchetti had operated a single and continuous cartel in the bathroom fittings and fixtures sector. The Commission imposed a total amount of fines of more than EUR 622 million on them for infringing Article 101 of the TFEU and Article 53 of the EEA Agreement.

The cartel covered six Member States: Germany, Austria, Italy, France, Belgium and the Netherlands. The cartel meetings took place in 13 national trade associations and bilateral meetings were held between the undertakings concerned. The anti-competitive conduct covered the time period 1992 – 2004. (2)

**Products concerned**

The infringement concerned the following three product groups:

- Taps and fittings, including pillars, single and double head mixers and thermostatic taps and mixers;
- Shower enclosures, including shower cubicles and bath screens;
- Ceramics or ‘ceramic sanitary ware’, including WCs and cisterns, washbasins, pedestals, bidets, urinals, sinks and shower trays.

The anti-competitive conduct affected sales to wholesalers, which accounted for most sales made by the manufacturers. The wholesalers sold the products either directly to end consumers or, to a larger extent, to plumbers, who again sold to end consumers. Prices for the products were typically adjusted each year.

**Procedure**

The case was opened on the basis of an immunity application made by Masco under the Commission’s 2002 Leniency Notice on 15 July 2004. The Commission obtained further evidence from inspections that took place in November 2004 at the premises of several addressees of the Decision in Austria, Belgium, Germany, Italy and the Netherlands. Following those inspections, the Commission received leniency applications from Grohe, Ideal Standard, Hansa, Dornbracht, Roca and Artweger and sent out several requests for information.


**The cartel**

**Content of coordination**

The anti-competitive conduct of the undertakings included regular coordination of annual price increases within the framework of meetings of 13 national industry associations. During the meetings, the undertakings would communicate to each other in a round-table discussion their yearly planned price increases expressed in percentages, in most cases before the increases were communicated to customers. In certain cases, coordination included additional pricing elements, such as setting minimum prices and rebates. Furthermore, the infringement covered the coordination of pricing on several other occasions connected to specific events, such as the increase of raw material costs, the introduction of the Euro and the introduction of road tolls. Additional disclosure and exchanging sensitive business information supported and facilitated the overall price coordination scheme.

**Single and continuous infringement**

The Commission found in its Decision that the cartel constituted one single and continuous infringement (SCCI) for the three product groups in the above-mentioned six Member States.

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(1) The authors would like to mention the substantial contribution of previous case handlers, including Ms Iona Hamilton, Mr Andreas Klafki and Mr Dimitrios Loukas.

(2) The content of this article does not necessarily reflect the official position of the European Commission. Responsibility for the information and views expressed lies entirely with the authors.

(3) The duration of the participation of the specific undertakings within this time frame varied.
Several features of the cartel served as a basis for this legal qualification of the infringement, including the following:

- All products covered by the cartel are generally considered as general bathroom equipment and are referred to as ‘products before the wall’ (‘Produkte vor der Wand’);
- One central group of undertakings participated in the cartel in several Member States;
- So-called ‘umbrella associations’ covered all three product groups and ‘cross-product’ associations, in which coordination covered two product groups;
- Many of the multinational undertakings had central pricing mechanisms, with headquarters controlling the pricing. This centralised system (and the ensuing two-way flow of information between parents and national subsidiaries) facilitated the coherent organisation of the cartel across Member States and product groups;
- A common method of distribution for all product groups (via wholesalers);
- The cartel followed the same recurring pattern and used the same mechanisms (in particular systematic exchange of annual price increases at regular meetings of associations), for all Member States and product groups concerned;
- A high volume of trade flows between the Member States concerned could be established for most products;
- The cartel arrangements continued (following the same design) even when some members withdrew.

As a second step, the Commission established the extent of each participant’s awareness of the overall scope of the cartel. In terms of product scope, this was established mostly on the basis of the undertakings’ participation in cartel meetings of umbrella or cross-product associations. In terms of geographic scope, the parties’ awareness was established using various factors, such as their geographical presence in several Member States, the high volume of trade flows, central pricing mechanisms and the fact that they continued to meet the same competitors in meetings in several Member States. As a result, out of the 17 groups of undertakings concerned, 8 were held liable for the SCCI in all six countries (i.e. Masco, American Standard, Grohe, Hansa, Duravit, Duscholux, Sanitec and Villeroy & Boch), as the fact that they were aware or could not reasonably have been unaware of the overall scheme of the infringement was established. The remaining undertakings were held liable for the SCCI only for countries in which they were active in the cartel, because their awareness of the overall geographic scope of the cartel could not be established. (4)

Remedies

The Decision adopted by the Commission ordered all addressees to put an end to the infringement, to the extent that it was still ongoing, and to refrain from repeating any act or conduct with the same or equivalent object or effect. It also imposed fines on these undertakings. However the undertakings that participated in the anti-competitive arrangements in the Netherlands were not fined for their participation in that country as the part of the infringement covering that territory could not be established for the period after 31 December 1999 and was therefore limited.

Calculating the fines

In accordance with the 2006 Guidelines on fines, the Commission calculated the basic amount of the fine as a proportion of the value of sales of bathroom fittings and fixtures products made to wholesalers by each undertaking in the relevant geographic area in the last full business year of the infringement (i.e. 2003 for most companies), multiplied by the number of years and months of participation in the infringement (‘variable amount’), taking into account the duration of participation of each individual undertaking in the infringement. An additional amount, also calculated as a proportion of the value of sales, was applied for the purpose of deterring horizontal concerted practice consisting of price fixing (‘entry fee’).

To establish the proportion of the value of sales to be taken into account, the Commission may look at:

(1) See in this regard Joined Cases T-109/02, T-118/02 etc. Bolloré SA and Others v Commission [2007] ECR II-947, paragraph 247: ‘It must be said at the outset that where participants in cartel meetings have contacts with their (equally) large international competitors active in other Member States for a very long period of time, it is scarcely conceivable that, while participants rubbed shoulders with competitors participating in the entire territory of the cartel in the cartel meetings, they were unaware of the broader geographic scope of the arrangements.’.

(2) Those undertakings are Roca (held liable for Austria and France), Dornbracht and Khudi (held liable for Austria and Germany), Artweger (held liable for Austria), and the Italian undertakings Cisal, Mamoli, RAF, Teorema, Zucchetti (all held liable for Italy, where coordination as set out in the Decision only covered taps and fittings and ceramics).


(4) For the purpose of calculation of fines, the relevant geographic area covered the countries in which the undertakings directly participated in the cartel arrangements.
a number of factors, such as the nature of the infringement, the combined market share of all the undertakings concerned, the geographic scope and implementation of the infringement. (7) In this case, the Commission decided to apply a starting percentage of 15%, in particular in view of the nature of the infringement. (8) The entry free was also set at 15%. (9) No aggravating or mitigating circumstances were found applicable in this case. The 10% turnover limit provided in Article 23(2) of Regulation 1/2003 was reached for all but two undertakings. The fines were adjusted accordingly.

Application of the 2002 Leniency Notice

The 2002 Leniency Notice was applied to this case. (10) Masco was granted full immunity from fines and the fines for Grohe and Ideal Standard were reduced by 30%. The leniency applications made by Hansa, Roca, Dornbracht and Artweger were rejected for not having provided significant added value compared to the information already in the Commission’s possession. Ideal Standard also benefited from the application of point 23, last paragraph, of the 2002 Leniency Notice. (11) As a result, the Commission did not take into account the facts relating to ceramics in Belgium and taps and fittings and ceramics in France when setting the fine for Ideal Standard, since they were previously unknown to the Commission.

Ability to pay a fine

Ten undertakings cited inability to pay under point 35 of the 2006 Guidelines on fines. (12) The Commission considered these claims and analysed the financial situation of those undertakings and the specific social and economic context.

In assessing the undertakings’ financial situation, the Commission examined the companies’ recent and current financial statements as well as their projections for subsequent years. The Commission considered a number of financial ratios measuring the companies’ solidity, profitability, solvency, and liquidity as well as their equity and cash flow situation. In addition, the Commission took into account relations with external financial partners, such as banks, and relations with shareholders. The analysis also looked at restructuring plans.

The Commission assessed the specific social and economic context for each undertaking whose financial situation was found to be sufficiently critical. In this context, the impact of the global economic and financial crisis on the bathroom fitting sector was taken into account. The Commission concluded that the fine would cause the assets of the five undertakings to lose significant value. As a result, the fines of three companies were reduced by 50% and those of another two by 25%.


(11) Paragraph 35 of the 2006 Fining Guidelines provides that ‘in exceptional cases, the Commission may, upon request, take account of the undertaking’s inability to pay in a specific social and economic context. It will not base any reduction granted for this reason in the fine on the mere finding of an adverse or loss-making financial situation. 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’.

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