EUROPEAN COMMISSION
Competition DG

CASE COMP/39611 – Water Management Products

(Only the English text is authentic)

CARTEL PROCEDURE

Council Regulation (EC) 1/2003

Article 7 Regulation (EC) 1/2003

Date: 27/06/2012

This text is made available for information purposes only. A summary of this decision is published in all EU languages in the Official Journal of the European Union.

Parts of this text have been edited to ensure that confidential information is not disclosed. Those parts are replaced by a non-confidential summary in square brackets or are shown as [...].

EUROPEAN COMMISSION

Brussels, 27.6.2012
C(2012) 4313 final

COMMISSION DECISION

of 27.6.2012

relating to a proceeding under Article 101 of the Treaty on the Functioning of the European Union
(COMP/39611 – Water Management Products)

(Only the English text is authentic)

TABLE OF CONTENTS

COMMISSION DECISION

of 27.6.2012

relating to a proceeding under Article 101 of the Treaty on the Functioning of the European Union
(COMP/39611 – Water Management Products)

(Only the English text is authentic)

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty[1], and in particular Article 7 and Article 23(2) thereof,

Having regard to Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the EC Treaty[2], and in particular Article 10a thereof,

Having regard to the Commission decision of 27 January 2011 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 OJ L 1, 4.1.2003, p. 1. With effect from 1 December 2009, Article 81 of the EC Treaty has become Article 101 of the Treaty on the Functioning of the European Union ("TFEU"). The provisions are, in substance, identical. For the purposes of this Decision, references to Article 101 of the TFEU should be understood as references to Article 81 of the EC Treaty, 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 Treaty will be used throughout this Decision.

2 OJ L 123, 27.4.2004, p. 18.

3 Final report of the Hearing Officer of 25.06.2012.

1. INTRODUCTION

(1) The addressees of this Decision ("the parties") participated in a single and continuous infringement of Article 101 of the Treaty. The infringement consisted in price coordination for water management products. It covered Germany, for all undertakings involved, while two undertakings extended the price coordination to 13 other Member States for a limited time period. The infringement lasted from 21 June 2006 until 15 May 2008.

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

- Flamco GmbH (formerly Flamco Wemefa GmbH), Flamco Holding B.V., voestalpine Polynorm B.V. (formerly, voestalpine Polynorm N.V.) and voestalpine AG ("Flamco");
- Reflex Winkelmann GmbH & Co. KG and Winkelmann Group GmbH & Co. KG ("Reflex");
- TA Hydronics Switzerland AG (formerly Pneumatex AG and hereafter referred to as "Pneumatex").

2. THE INDUSTRY SUBJECT TO THE PROCEEDINGS

2.1. The product

(3) The products concerned by the anticompetitive conduct are defined as water management products ("WMP"). For the purposes of this Decision, WMP comprise pressurisation systems and products for quality assurance. Pressurisation systems cover pressure maintenance systems (also known as pressurisation units), expansion vessels (also known as household expansion tanks/vessels and expansion vessels applied for drinking water systems) and water make-up systems (also known as automats). Products for quality assurance cover degassing systems, air vents, separators and safety valves.

2.2. The undertakings subject to the proceedings

2.2.1. Flamco

(4) The relevant legal entities are:

- Flamco GmbH, which has its registered office at Steinbrink 3, DE-42555, Velbert, Germany;
- Flamco Holding B.V., which has its registered office at Amersfoortseweg 9, NL-3751 LJ, Bunschoten, the Netherlands;
- voestalpine Polynorm B.V., which has its registered office at Amersfoortseweg 9, NL-3751 LJ, Bunschoten, the Netherlands; and
- voestalpine AG, which has its registered office at voestalpine-Straße 1, A-4020, Linz, Austria.

(5) Flamco's world-wide turnover is approximately EUR 12.1 billion. It produces steel and is also active in the automotive industry as well as other sectors such as WMP.

2.2.2. Reflex

(6) The relevant legal entities are:

- Reflex Winkelmann GmbH & Co. KG, which has its registered office at Gersteinstrasse 19, 59227 Ahlen, Germany; and

- Winkelmann Group GmbH & Co. KG, which has its registered office at Heinrich-Winkelmann-Platz 1, 59227 Ahlen, Germany.

(7) Reflex' world-wide turnover is approximately EUR [200-600] million. It produces WMP[4], engine components, components for fuel rail systems and high-precision products for various applications in many different industries.

2.2.3. Pneumatex

(8) The relevant legal entity is

- TA Hydronics Switzerland AG, which has its registered office at Mühlerainstrasse 26, 4414 Füllinsdorf, Switzerland.

(9) Pneumatex' world-wide turnover is approximately EUR [30-80] million. It produces WMP.

3. PROCEDURE

(10) On 21 October 2008, Pneumatex applied for immunity under the Commission notice on immunity from fines and reduction of fines in cartel cases[5] ("the Leniency Notice"). Pneumatex' immunity application was followed by a number of submissions [...]. On 5 December 2008, the Commission granted Pneumatex conditional immunity from fines pursuant to point 8(a) of the Leniency Notice.

(11) In December 2008 and April 2009, the Commission carried out unannounced inspections at the premises of Flamco, Reflex and Pneumatex.

(12) The Commission sent several requests for information under Article 18 of Regulation (EC) No 1/2003.

(13) On 27 January 2011, the Commission initiated proceedings pursuant to Article 11(6) of Regulation (EC) No 1/2003 against the addressees of this Decision with a view to engaging in settlement discussions with the parties. After each party had confirmed its willingness to engage in settlement discussions, the discussions started on 16 February 2011.

---

4 Reflex started selling separators only in 2008.

5 OJ C 298, 8.12.2006, p. 17.

(14) Settlement meetings between each party and the Commission took place between 16 February 2011 and 20 March 2012. 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 those objections. Between 16 February 2011 and 4 March 2011, the parties had access to the relevant part of the file at the Commission premises [...]. Later the parties were also given a copy of the relevant pieces of evidence to which they had already had access as well as a list of all the documents in the file and were offered the opportunity to access all the documents listed (none of the parties exercised this right). The Commission also provided the parties with an estimation of the range of fines likely to be imposed.

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

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

- an acknowledgement in clear and unequivocal terms of the party's liability for the infringement summarily described as regards its object, the main facts, their legal qualification, including the party's role and the duration of its participation in the infringement;
- an indication of the maximum amount of the fine the party expects to be imposed by the Commission and which it would accept in the framework of a settlement procedure;
- the party's confirmation that it has been sufficiently informed of the objections the Commission envisages raising against it and that it has been given sufficient opportunity to make its views known to the Commission;
- the party's confirmation that it does not envisage requesting access to the file or requesting to be heard again in an oral hearing, unless the Commission does not reflect its settlement submission in the statement of objections and the decision;
- the party's agreement to receive the statement of objections and the final decision pursuant to Articles 7 and 23 of Regulation (EC) No 1/2003 in English.

(17) On 25 April 2012, the Commission adopted a Statement of Objections addressed to Flamco, Reflex and Pneumatex. All the parties replied to the Statement of Objections by confirming that it corresponded to the contents of their settlement submissions and that they therefore remained committed to following the settlement procedure.

4. DESCRIPTION OF THE EVENTS

4.1. Nature and scope of the infringement

(18) Flamco, Pneumatex and Reflex participated in a cartel, the overall aim of which was to coordinate prices in the WMP sector in Germany. In autumn 2006, Reflex and Pneumatex also aimed at coordinating prices in some other Member States[6]. Flamco was involved in contacts only as regards the German market for WMP.

(19) The undertakings informed each other through bilateral contacts of the amount and date of planned price increases[7] and exchanged information on current prices, including gross price lists[8], and other commercially sensitive information[9] with the ultimate aim to coordinate prices of WMP.

(20) The undertakings communicated and/or received information from each other regarding their pricing intentions and are presumed to have taken this into account when determining their own conduct on the market[10].

(21) The cartel contacts had a varying intensity in the course of the overall duration of the cartel. The contacts were less intense during the period from mid-December 2006 to mid-April 2008[11]. It is therefore considered that this period constituted a period of limited activity of the cartel.

4.2. Geographic scope of the infringement

(22) The geographic scope of the infringement, as regards all three participants, concerned Germany[12] during the entire period of the infringement. In addition, in autumn 2006 Reflex and Pneumatex exchanged information on price increases amounting to price coordination concerning some other Member States, namely, France, Belgium, Spain, Portugal, Luxembourg, Italy, Finland, Sweden, Hungary, the United Kingdom, Greece, the Netherlands and Denmark[13].

4.3. Duration

(23) The evidence demonstrates that a pattern of cartel contacts involving all three undertakings emerged as of 21 June 2006. On that date Reflex not only informed Pneumatex about its own future intention to increase prices but also stated that Flamco would participate in any such price increase[14]. Hence the Commission takes the date of the evidence revealing discussions between the three undertakings, that is to say, 21 June 2006, as the starting date of the WMP cartel for Reflex, Flamco and Pneumatex.

---

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

(24) Based on the available evidence, Reflex ended its participation in the infringement on 13 May 2008 [15] and Flamco and Pneumatex on 15 May 2008[16].

(25) The three undertakings had numerous anti-competitive contacts throughout the entire period from mid-June 2006 to mid-May 2008. However, for the period between 20 December 2006[17] and 15 April 2008[18], the evidence reveals significantly fewer instances of anticompetitive contacts[19]. Therefore, that period is considered as a period of limited (but continued) cartel activity.

5. APPLICATION OF ARTICLE 101(1) OF THE TREATY

(26) Having regard to the body of evidence and the facts as described in Section (17) and the parties' clear and unequivocal acknowledgement of the facts and the legal qualification thereof contained in their settlement submissions, and their replies to the Statement of Objections, the legal assessment is set out below.

5.1. Jurisdiction

(27) In this case the Commission is competent to apply Article 101 of the Treaty, since the cartel arrangements were capable of having an appreciable effect upon trade between Member States.

5.2. The nature of the infringement

5.2.1. Principles

(28) Article 101(1) of the Treaty prohibits *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.

(29) 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 draws a distinction between the concept of *concerted practice* and that of *agreements between undertakings*, the object is to bring within the prohibition of that Article a form of coordination between undertakings by which, without having reached the stage where an agreement properly so-called 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 as a *concerted practice* even where the parties have not explicitly subscribed to a

---

15 See for example [...].
16 See for example [...].
17 See [...].
18 See [...].
19 See for example [...].

common plan defining their action in the market but knowingly adopt or adhere to collusive devices which facilitate the coordination of their commercial behaviour.[20]

(30) The concepts of *agreement* and *concerted practice* are fluid and may overlap. Indeed, it may not even be possible to make such a distinction, as an infringement may present simultaneously the characteristics of each form of prohibited conduct, while when considered in isolation some of its manifestations could accurately be described as one rather than the other.

(31) A complex cartel may properly be viewed as a single and continuous infringement for the time frame in which it existed. When the different actions form part of an 'overall plan', because their identical object distorts competition within the internal market, the Commission is entitled to impute responsibility for those actions on the basis of participation in the infringement considered as a whole.[21]

(32) 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.[22]

5.2.2. Application to this case

(33) As is apparent from the facts described in Section 4, the undertakings subject to the proceedings in this case were involved in horizontal anti-competitive arrangements which formed part of an overall scheme pursuing a single anti-competitive object and single anti-competitive aim of restricting price competition. Within that overall scheme, the parties aimed at coordinating their pricing behaviour through various forms of conduct.

(34) Those different forms of conduct constitute an agreement and/or concerted practice. The undertakings subject to the proceedings in this case knowingly substituted the risks of competition between them for practical co-operation. Indeed, pre-pricing communication between them decreased the uncertainty concerning the future setting

---

20 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.

21 Joined Cases C-204/00 etc. *Aalborg Portland et al.* [2004] ECR I-123, paragraph 258.

22 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."*

of prices by the individual undertakings concerned. Their behaviour had therefore all the characteristics of an "agreement" and/or "concerted practice" within the meaning of Article 101(1) of the Treaty.

(35) The conduct of the cartel members in this case, as described in Section 4, constitutes a single and continuous infringement of Article 101 of the Treaty.

(36) The three undertakings used bilateral contacts as a means to pursue a single anti-competitive object and a single economic aim, namely that of coordinating prices of WMP.

(37) Although all contacts were bilateral, the undertakings were aware of the fact that all three undertakings (Reflex, Flamco and Pneumatex) discussed price increase intentions with each other and exchanged other commercially sensitive information during the contacts on a bilateral basis. This is demonstrated by the fact that during bilateral contacts one of the undertakings participating in those contacts referred to previous contacts/meetings it had had with the third undertaking[23] or to the importance of the third undertaking participating in the arrangement[24].

(38) For the period from 21 June 2006 to 15 May 2008, the collusive behaviour of all the cartel members concerned only Germany. In addition, in autumn 2006, Reflex and Pneumatex coordinated prices in relation to price increases as regards some other Member States (see recital (22) above). Flamco was involved in contacts only as regards the German market and was not aware of the price coordination between Reflex and Pneumatex as regards some other Member States.

(39) The evidence available shows that the conduct described above in Section 4 was an ongoing process and not an isolated or sporadic occurrence. The different elements of the infringement were in pursuit of a single anti-competitive object, which remained the same before, during and after the period of limited activity, namely to resort to price coordination with competitors. The existence of a single and continuous infringement is supported by the fact that the cartel followed the same pattern throughout the entire period of infringement, the individuals involved were essentially the same and the contacts between competitors concerned the same products.

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

5.3. Restriction of competition

(41) Article 101(1) of the Treaty expressly prohibits 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.

(42) In this case the cartel participants coordinated their behaviour to remove uncertainty between themselves in relation to pricing and ultimately to restrict competition

---

[23] See for example [...].

[24] See for example [...].

within the meaning of Article 101(1) of the Treaty in the WMP market. The agreements and/or concerted practices therefore had as their object the restriction of competition.

5.4. Effect upon trade between Member States

(43) Article 101(1) of the Treaty is aimed at agreements and concerted practices which might harm the attainment of an internal market between the Member States, whether by partitioning national markets or by affecting the structure of competition within the internal market.

(44) During the relevant period, the WMP producers with production facilities in certain Member States sold large quantities of WMP to wholesalers and end users based in different Member States. Several large customers and wholesalers of WMP buy WMP in one Member State (for example, Germany) and sell the products in several Member States. Therefore, the market for WMP was characterised by a substantial volume of trade between the Member States.

(45) The application of Article 101 of the Treaty to a cartel is not, however, limited to that part of the participants' sales that actually involves the transfer of goods from one Member State to another. Nor is it necessary, in order for this provision to apply, to show that the individual conduct of each participant, as opposed to the cartel as a whole, affected trade between Member States.

(46) As described in Section 4.1, the cartel arrangements covered Germany in the case of all addressees and, for a certain period of time, 13 additional Member States in the case of Reflex and Pneumatex. Therefore, the pricing coordination and thus the infringement between the undertakings concerned were capable of having an appreciable effect upon trade between Member States.[25]

5.5. Non-applicability of Article 101(3) of the Treaty

(47) On the basis of the facts before the Commission, there are no indications that the conditions of Article 101(3) of the Treaty could be fulfilled with regard to the cartel to which this Decision relates.

6. ADDRESSEES

(48) 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[26]. The division of tasks being a normal phenomenon in a group, the fact that the parent company and its subsidiary operate on separate markets or that the subsidiary manages specific aspects of its commercial

---

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

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

policy and was responsible for the day-to-day management of the activity relating to the infringement is not sufficient to prove the subsidiary's independence.[27]

(49) 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 contained in their settlement submissions, as well as their replies to the Statement of Objections, this Decision should be addressed to the legal entities and undertakings listed below in Section 6.1 - 6.3.

6.1. Flamco

(50) Flamco GmbH acknowledged liability for its direct participation in the cartel. Flamco GmbH is 100% owned by Flamco Holding B.V. The latter is wholly owned by voestalpine Polynorm B.V. which is in turn wholly owned by voestalpine AG. Flamco Holding B.V., voestalpine Polynorm B.V. and voestalpine AG clearly and unequivocally acknowledged that they are liable for the behaviour/participation of their wholly owned subsidiary Flamco GmbH in the single and continuous infringement. The liability for the single and continuous infringement should therefore be imputed jointly and severally to Flamco GmbH, Flamco Holding B.V., voestalpine Polynorm B.V. and voestalpine AG.

6.2. Reflex

(51) Reflex Winkelmann GmbH & Co. KG acknowledged liability for its direct participation in the cartel and Winkelmann Group GmbH & Co. KG clearly and unequivocally acknowledged that it is liable, as a parent company, for the behaviour/participation of its wholly owned subsidiary Reflex Winkelmann GmbH & Co. KG in the single and continuous infringement. The liability for the single and continuous infringement should therefore be imputed jointly and severally to Reflex Winkelmann GmbH & Co. KG and Winkelmann Group GmbH & Co. KG.

6.3. Pneumatex

(52) TA Hydronics Switzerland AG clearly and unequivocally acknowledged that it is liable for its own behaviour/participation in the single and continuous infringement. The liability for the single and continuous infringement should therefore be imputed to TA Hydronics Switzerland AG.

7. DURATION OF THE INFRINGEMENT

(53) As set out in Section 4.3, Flamco, Reflex and Pneumatex started their participation in the cartel on 21 June 2006. Flamco and Pneumatex' participation in the cartel ended on 15 May 2008. Reflex' participation ended on 13 May 2008.

---

[27] See Case T-112/05 *Akzo Nobel and Others* v *Commission* [2007] ECR II-05049, paragraphs 63 and 64, upheld by Case C-97/08 P *Akzo Nobel and Others* v *Commission* (see fn 26), paragraphs 65 and 75) and Case T-197/06 *FMC Corp.* v *Commission* [2011] not yet reported, paragraphs 105 and 132.

(54) The cartel went through a period of limited activity, which lasted from 20 December 2006 to 15 April 2008 for all three undertakings. That period of limited activity will not be taken into account for fines calculation purposes.

8. REMEDIES

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

(55) Where the Commission finds that there is an infringement of Article 101 of the Treaty it may by decision require the undertakings concerned to bring such infringement to an end in accordance with Article 7(1) of Regulation (EC) No 1/2003.

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

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

(57) 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. For each undertaking participating in the infringement, the fine must not exceed 10% of its total turnover in the preceding business year.

(58) In this case, on the basis of the facts described in Section 4, the infringement consisted of price coordination with respect to WMP. With respect to that type of obvious infringement, parties cannot claim that they did not act intentionally[28].

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

(60) In setting the fines to be imposed, the Commission refers to the principles laid down in its Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation No 1/2003[29] (the "Guidelines on fines"). Finally, the Commission applies, as appropriate, the provisions of the Leniency Notice and the Commission

---

[28] See, for example, Case T-143/89 Ferriere Nord SpA v Commission, [1995] ECR II-917, paragraph 42; see also Case C-219/95 P Ferriere Nord SpA v Commission, ,[1997] ECR I-4411, paragraph 50; see also judgment of 19 May 2010 in Case T-11/05 Wieland Werke AG, Buntmetall Amstetten GmbH and Austria Buntmetall AG v Commission, not yet reported, paragraph 140.

[29] OJ C 210, 1.9.2006, p. 2.

Notice on the conduct of settlement procedures in view of the adoption of Decisions pursuant to Article 7 and Article 23 of Council Regulation (EC) No 1/2003 in cartel cases (the "Settlement Notice")[30].

8.3. Basic amount of the fine

(61) In applying the Guidelines on fines, the basic amounts for each party result 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 the 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 company if either aggravating or mitigating circumstances are retained.

8.3.1. Calculation of the value of sales

(62) The basic amount of the fine to be imposed on the undertakings concerned is to be set by reference to the value of their sales[31], that is the value of the undertakings' sales of goods or services to which the infringement directly or indirectly related in the relevant geographic area within the EEA. In this case the relevant value of sales is the undertaking's sales of WMP (as defined in Section 2.1) in the geographic area as defined in Section 4.2.

(63) In accordance with point 13 of the Guidelines on fines, the Commission took the undertakings' sales in the last full business year of their participation in the infringement, namely 2007.

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

Table 1: The value of sales

Undertaking	**Value of sales (EUR)** [RANGES]	
	Germany	13 Member States[32]
Flamco	12,000,000 - 24,000,000	
Reflex	35,000,000 – 55,000,000	10,000,000-18,000,000
Pneumatex	4,000,000-8,000,000	12,000,000-24,000,000

[30] OJ C 167, 2.7.2008, p. 1.
[31] Point 12 of the Guidelines on fines.
[32] See section 4.2.

8.3.2. Determination of the basic amount of the fine

(65) The basic amount of the fine to be imposed consists of an amount of up to 30% of an undertaking's relevant sales, depending on the degree of gravity of the infringement and multiplied by the number of years of the undertaking's participation in the infringement, and an additional amount of between 15% and 25% of the value of an undertaking's relevant sales, irrespective of duration[33].

8.3.2.1. Gravity

(66) The gravity of the infringement determines the percentage of the value of sales taken into account in setting the fine. In assessing the gravity of the infringement, the Commission may have regard to a number of factors, such as the nature of the infringement, the combined market share of all the undertakings concerned, the geographic scope of the infringement and whether or not the infringement has been implemented[34].

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

(68) Given the specific circumstances of this case and taking into account the nature of the infringement, the proportion of the value of sales to be taken into account should be 15 %.

8.3.2.2. Duration

(69) According to point 24 of the Guidelines on fines, the amount determined on the basis of the value of sales is multiplied by the number of years of participation in the infringement in order to take fully into account the duration of the participation of each undertaking in the infringement individually[35].

(70) For the application of point 24 of the Guidelines on fines, the periods of participation in the infringement of each addressee of this Decision are as follows:

(a) Flamco and Pneumatex, from 21 June 2006 until 15 May 2008;

(b) Reflex, from 21 June 2006 until 13 May 2008;

(71) As specified in Section 4.3, the cartel went through a period of limited activity which should not be taken into account for the purposes of calculating the fines. That period of limited cartel activity lasted from 20 December 2006 to 15 April 2008 for all three undertakings (Flamco, Reflex and Pneumatex).

---

33 Points 19 to 26 of the Guidelines on fines.

34 Points 21 and 22 of the Guidelines on fines.

35 Point 24 of the Guidelines on fines.

(72) 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 presented in Table 2:

Table 2: Duration

Entity	Duration	Multipliers
Flamco	6 months	0,5
Reflex	6 months	0,5
Pneumatex	6 months	0,5

8.3.3. Determination of the additional amount

(73) Point 25 of the Guidelines on fines provides that, irrespective of the duration of the undertaking's participation in the infringement, the basic amount will include a sum of between 15% and 25% of the value of sales, on the basis of the factors listed in Section 8.3.2.1 of this Decision with respect to the variable amount, in order to deter undertakings from even entering into such illegal practices[36].

(74) Taking into account the factors listed in Section 8.3.2.1. relating to the nature of the infringement, the percentage to be applied for the purposes of calculating the additional amount is 15 %.

8.3.4. Calculations and conclusions on basic amounts

(75) Based on the criteria explained above, the basic amount of the fine to be imposed on each party is presented in Table 3.

Table 3: Basic amounts of the fine

Undertaking	Basic Amount in EUR (rounded) [RANGES]
Flamco	3,000,000-8,000,000
Reflex	7,000,000-18,000,000
Pneumatex	2,000,000-6,000,000

8.4. Adjustments to the basic amount of the fine

8.4.1. Aggravating circumstances

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

---

[36] Point 25 of the Guidelines on fines.

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

8.4.2. Mitigating circumstances

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

(79) There are no mitigating circumstances in this case.

8.4.3. Specific increase for deterrence

(80) Particular attention should be paid to the need to ensure that fines have a sufficiently deterrent effect; to that end, the fine to be imposed on undertakings which have a particularly large turnover beyond the sales of goods or services to which the infringement relates may be increased[37].

(81) In this case, there is no need to increase the fine in order to achieve a sufficiently deterrent effect.

8.5. Application of the 10% of turnover limit

(82) Article 23(2) of Regulation (EC) No 1/2003 provides that the fine imposed on each undertaking must not exceed 10% of its total turnover in the preceding business year. In this particular case, the adjusted basic amounts do not exceed 10% of the total turnover of any of the undertakings. Therefore, it is not necessary to adjust the amounts in the light of the parties' turnover in 2011.

8.6. Application of the Leniency Notice

8.6.1. Immunity from fines

(83) Pneumatex submitted an immunity application on 21 October 2008. Pneumatex was granted conditional immunity from fines on 5 December 2008. Pneumatex' cooperation fulfilled the requirements of the Leniency Notice. Pneumatex should, therefore, be granted immunity from fines in this case.

8.6.2. Reduction of fines

(84) No other undertaking applied for immunity or alternatively for a reduction of fines under the Leniency Notice. Consequently, no reduction of fines under the Leniency Notice should be granted in this case.

8.7. Application of the Settlement Notice

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

---

[37] Point 30 of the Guidelines on fines.

applicants, the reduction of the fine granted to them for settlement will be added to their leniency reward.

(86) As a result of the application of the Settlement Notice, the amount of the fine to be imposed on Reflex and Flamco should be reduced by 10%.

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

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

Table 4: Fines

Undertaking	Fines (in EUR)
Flamco	3 870 000
Reflex	9 791 000
Pneumatex	0

HAS ADOPTED THIS DECISION:

Article 1

The following undertakings infringed Article 101 of the Treaty by participating, during the periods indicated below, in a continuing agreement and/or concerted practice in the sector for Water Management Products covering the territory of Germany (and for a period of three months also the territory of France, Belgium, Spain, Portugal, Luxembourg, Italy, Finland, Sweden, Hungary, United Kingdom, Greece, the Netherlands and Denmark):

(a) Reflex Winkelmann GmbH & Co. KG and Winkelmann Group GmbH & Co. KG from 21 June 2006 to 13 May 2008;

(b) TA Hydronics Switzerland AG from 21 June 2006 to 15 May 2008.

The following undertaking infringed Article 101 of the Treaty by participating, during the periods indicated below, in a continuing agreement and/or concerted practice in the sector for Water Management Products covering the territory of Germany:

(c) Flamco GmbH, Flamco Holding B.V., voestalpine Polynorm B.V. and voestalpine AG from 21 June 2006 to 15 May 2008.

Article 2

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

(a) Reflex Winkelmann GmbH & Co. KG and Winkelmann Group GmbH & Co. KG, jointly and severally: EUR 9 791 000;

(b) TA Hydronics Switzerland AG : EUR 0;

(c) Flamco GmbH, Flamco Holding B.V., voestalpine Polynorm B.V. and voestalpine AG, jointly and severally: EUR 3 870 000.

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

BANQUE ET CAISSE D'EPARGNE DE L'ETAT

1-2, Place de Metz

L-1930 Luxembourg

IBAN: LU02 0019 3155 9887 1000

BIC: BCEELULL

Ref: European Commission – BUFI/COMP/39611

After the expiry of that period, interest shall automatically be payable at the interest rate applied by the European Central Bank to its main refinancing operations on the first day of the month in which this Decision is adopted, plus 3.5 percentage points.

Where an undertaking referred to in Article 1 lodges an appeal, that undertaking shall cover the fine by the due date by either providing an acceptable bank guarantee or making a provisional payment of the fine in accordance with Article 85a(1) of Commission Regulation (EC, Euratom) No 2342/2002[38].

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) Flamco GmbH, Steinbrink 3, DE-42555, Velbert, Germany

(b) Flamco Holding B.V., Amersfoortseweg 9, NL-3751 LJ, Bunschoten, the Netherlands

---

38 OJ L 357, 31.12.2002, p. 1.

(c) voestalpine Polynorm B.V., Amersfoortseweg 9, NL-3751 LJ, Bunschoten, the Netherlands

(d) voestalpine AG, voestalpine-Straße 1, A-4020, Linz, Austria

(e) Reflex Winkelmann GmbH & Co. KG, Gersteinstrasse 19, 59227 Ahlen, Germany

(f) Winkelmann Group GmbH & Co. KG, Heinrich-Winkelmann-Platz 1, 59227 Ahlen, Germany

(g) TA Hydronics Switzerland AG, Mühlerainstrasse 26, 4414 Füllinsdorf, Switzerland

This Decision shall be enforceable pursuant to Article 299 of the Treaty.

Done at Brussels,

For the Commission

Joaquín Almunia
Vice-President