COMMISSION DECISION

of 16 December 2003

relating to a proceeding under Article 81 of the EC Treaty and Article 53 of the EEA Agreement against Wieland Werke AG, Outokumpu Copper Products OY, Outokumpu Oyj, KM Europa Metal AG, Tréfimétaux SA and Europa Metalli SpA

(Case C.38.240 — Industrial tubes) [1]

(notified under document number C(2003) 4820)

(Only the Finnish, French, German and Italian texts are authentic)

(Text with EEA relevance)

(2004/421/EC)

On 16 December 2003, the Commission adopted a decision relating to a proceeding under Article 81 of the EC Treaty and Article 53 of the EEA Agreement. In accordance with the provisions of Article 21 of Regulation 17 [2], the Commission herewith publishes the names of the parties and the main content of the decision, having regard to the legitimate interest of undertakings in the protection of their business interests. A non-confidential version of the full text of the decision can be found in the authentic languages of the case and in the Commission's working languages at DG COMP's website at http://europa.eu.int/comm/competition/index_en.html.

I. SUMMARY OF THE INFRINGEMENT

Addressees and nature of the infringement

(1) The Decision is addressed to Wieland Werke AG (Wieland Werke), Outokumpu Copper Products OY (OCP) and Outokumpu Oyj (collectively referred to as Outokumpu), KM Europa Metal AG (KME or KM Europa Metal), Tréfimétaux SA (TMX or Tréfimétaux) and Europa Metalli SpA (EM or Europa Metalli).

(2) The addressees participated in a single, complex and continuous infringement of Article 81(1) of the Treaty establishing the European Community (hereinafter the Treaty) and, from 1 January 1994, of Article 53(1) of the Agreement on the European Economic Area (hereinafter the EEA Agreement), covering most of the EEA territory, by fixing prices, allocating markets and exchanging confidential information in the industrial copper tube market.

Imputation of liabilities

(3) Outokumpu Oyj participated directly in the infringement from May 1988 until December 1988, when its industrial tubes business was vested to its newly-formed subsidiary OCP who continued the infringement. After the achievement of the formation of OCP in December 1988, Outokumpu Oyj has controlled the entire capital of OCP. The parent company and its wholly-owned subsidiary are held jointly and severally liable for the infringement after the formation of the latter.

(4) With regard to the KME-group including KM Europa Metal (Germany), Tréfimétaux (France) and Europa Metalli (Italy), two separate periods have been distinguished for the purposes of imputation of liabilities. During the first period from 1988 to 1995, KME is considered to have been a separate undertaking from EM and TMX, regardless of the fact that their common holding-company Società Metallurgicà Italiana (SMI) acquired majority control of KME in 1990. KME's management board and operational management were coordinated with those of EM and TMX only after the restructuring of the group in 1995, when KME obtained 100 % of the shares in EM and TMX. As to the period from 1995 to 2001, the entities of the KME-group are considered to have formed a single economic unit on the market, implying joint and several liability for the infringement during that period.

[1] Opinion of the Advisory Committee (OJ C 102 of 28.4.2004)
[2] OJ 13, 21.2.1962, p. 204/62. Regulation as last amended by Regulation (EC) No 1216/1999 (OJ L 148, 15.6.1999, p. 5).

(5) During the period from 1988 to 1995, Europa Metalli and its wholly-owned subsidiary TMX are regarded as having formed one economic unit and thus a single undertaking, with joint and several liability for the infringement.

Duration of the infringement

(6) The undertakings participated in the infringement during at least the following periods:

(a) Wieland Werke AG from 3 May 1988 until 22 March 2001;

(b) Outokumpu Oyj individually from 3 May 1988 until 30 December 1988, and jointly and severally with Outokumpu Copper Products Oy from 31 December 1988 until 22 March 2001;

(c) Outokumpu Copper Products OY from 31 December 1988 until 22 March 2001 (jointly and severally with Outokumpu Oyj);

(d) KM Europa Metal AG individually from 3 May 1988 until 19 June 1995, and jointly and severally with Tréfimétaux SA and Europa Metalli SpA from 20 June 1995 to 22 March 2001;

(e) Europa Metalli SpA., jointly and severally with TMX from 3 May 1988 to 19 June 1995, and jointly and severally with KM Europa Metal AG and Tréfimétaux SA from 20 June 1995 to 22 March 2001;

(f) Tréfimétaux SA, jointly and severally with Europa Metalli SpA from 3 May 1988 to 19 June 1995, and jointly and severally with KM Europa Metal AG and Europa Metalli SpA from 20 June 1995 to 22 March 2001.

The market for industrial copper tubes

(7) Copper tubes are generally divided into two product groups: plumbing tubes used for water, oil, gas and heating installations, and industrial tubes which are divided into sub-groups based on the end use. The most important of the latter in terms of volume is air-conditioning and refrigeration (ACR) industry, the other industrial applications being mainly fittings, refrigeration, gas heater, filter dryer and telecommunication tubes.

(8) Industrial tubes, ACR-tubes in particular, are typically supplied in annealed level wound coils (LWC) in lengths ranging up to several kilometres. LWC's, to which the Decision is confined, were introduced in the 1980's as a substitute for straight length tubes and they were specifically developed for automated manufacturing lines of air-conditioning producers. Unlike sanitary tubes, industrial tubes are generally not sold to wholesalers of plumbing supplies but they are normally used by and supplied directly to industrial customers, original equipment manufacturers or part manufacturers. On average, industrial tubes are higher added value products than sanitary tubes and their production costs also differ significantly from those of the latter.

(9) The estimated EEA market value of LWC tubes was ca. EUR 290 million in 2000. The major producers of LWC tubes in Europe are currently KME (including EM and TMX), Outokumpu and Wieland Werke. These undertakings together accounted for about 75-85 % of the total EEA market. Other significant producers within the European market include Feinrohren S.p.A of Italy and Halcor S.A. of Greece.

Functioning of the cartel

(10) The cartel was organised within the framework of Cuproclima Quality Association for ACR Tubes (air conditioning and refrigeration) established in Switzerland, with the primary purpose of promoting a quality standard for these industrial tubes (hereinafter Cuproclima). At the latest in the spring of 1988, the members of Cuproclima, including the addressees of the Decision, extended the scope of their cooperation to competition. Discussions concerning prices, customers, individual sales volumes and market shares mostly took place on the second day of the Cuproclima meeting session after the official agenda had been discussed. The unofficial meetings, which were conducted without documentary support, were normally held at least once in the spring and once in the autumn, and sometimes more frequently.

(11) In this context, the producers in question agreed on price targets and other commercial terms for industrial tubes, coordinated price increases, as well as allocated customers and market shares in the European territories. The target prices were generally fixed in the autumn meeting for the following year and the spring meeting was to monitor compliance with the agreed principles by comparing the sales and market share data. Further to the exchange of confidential information on sales, market shares and pricing, the participants also appointed market leaders among each other for the allocated territories and customers to collect market information and monitor customer visits.

II. **FINES**

Basic amount

(12) The infringement consists mainly of price-fixing and market allocation practices, which are by their nature very serious violations of Article 81(1) of the Treaty and Article 53(1) of EEA Agreement. The cartel covered the whole of the common market and, following its creation, most of EEA. It has been established that the cartel agreements were also implemented in practice and that they must have produced effect on the market, even if such effect cannot be quantified in a reliable manner. The Commission therefore considers that the addressees committed a very serious infringement.

Differential treatment

(13) Within the category of very serious infringements, the scale of likely fines makes it possible to apply differential treatment to undertakings in order to take account of the effective economic capacity of the offenders to cause significant damage to competition, as well as to set the fine at a level which ensures that it has sufficient deterrent effect.

(14) In this case, the undertakings have been divided into two categories. With a market share of 30-50 %, the KME-group was the largest player on the EEA market for LWC tubes in 2000, the last full year of the infringement. It is therefore placed in the first category. Outokumpu and Wieland Werke, having relevant market shares within the range of 10-20 %, are placed in a second category, consisting of companies that can be considered as medium-size operators within the EEA market of LWC tubes.

(15) As to the KME-group, the Commission takes into account the corporate reorganisations that occurred during the infringement period so that the basic amount of the fine is divided into parts, allocated among the different undertakings within the group.

Duration

(16) Wieland Werke, Outokumpu, KM Europa Metal, Tréfimétaux and Europa Metalli infringed Article 81(1) of the Treaty and Article 53(1) of the EEA Agreement (since it came into force on 1 January 1994) from at least 3 May 1988 to 22 March 2001, i.e. a period of 12 years and 10 months.

(17) While the different entities of the KME-group participated in the infringement throughout its whole duration, their organisation into different undertakings during part of the infringement period is taken into consideration in the calculation of the increase of the fine for duration. With regard to the period from 1988 to 1995, this increase is therefore calculated separately for KME AG, on the one hand, and for the undertaking formed by EM and TMX, on the other hand. For the rest of the duration from 1995 to 2001, the increase for duration is common to the whole KME-group.

Aggravating circumstances

(18) The Commission has found an aggravating circumstance in the repeated infringement of Outokumpu Oyj, as it was addressee of the Commission decision 90/417/ECSC Cold-rolled Stainless steel flat products [1] finding an infringement of the same type.

[1] OJ L 220, 15.8.1990, p. 28.

Attenuating circumstances

(19) To Outokumpu, the Commission has applied an attenuating factor for cooperation outside the 1996 Leniency Notice. Outokumpu was the first to disclose the whole duration of the cartel in the industrial tubes sector. Based on the evidence obtained prior to Outokumpu's leniency application, the Commission could have established a continuous infringement of only four years. Outokumpu's cooperation allowed to prove the existence of a long-term infringement of 12 years and 10 months. Accordingly, the basic amount of Outokumpu's fine is reduced by a lump sum so that it is the same as the hypothetical amount of fine that would have been imposed on Outokumpu for a four-year infringement.

Application of the 1996 leniency notice

Significant reduction of a fine (Section D: reduction from 10 % to 50 %)

(20) All the addressees of the decision cooperated with the Commission in its investigation. The only applicable section of the 1996 Leniency Notice is Section D, since all the addressees applied for leniency only after the inspections which produced sufficient evidence to open the proceedings and fine the undertakings for an infringement of at least four years.

(21) Outokumpu applied for leniency immediately after the Commission's inspections, disclosing the existence of the cartel from 1988 to 2001. In view of Outokumpu's early and extensive cooperation, it is granted a 50 % reduction of the fine that would otherwise have been imposed.

(22) Wieland Werke and KME did not start cooperating with the Commission until more than a year and a half had lapsed from the inspections. Furthermore, this cooperation was not entirely spontaneous, as it started only after the Commission had addressed formal requests for information to these undertakings. They were therefore rewarded with smaller reductions than Outokumpu, 20 % for Wieland Werke and 30 % for KME. The difference between the latter two reflects KME's more extensive disclosure in terms of the duration and continuity of the infringement.

Decision

1. The following fines are imposed:

a)	Wieland Werke AG:	EUR 20,79 million
b)	Outokumpu Oyj and Outokumpu Copper Products Oy: jointly and severally	EUR 18,13 million
c)	KM Europa Metal AG, Tréfimétaux SA and Europa Metalli SpA: jointly and severally	EUR 18,99 million
d)	KM Europa Metal AG:	EUR 10,41 million
e)	Europa Metalli SpA and Tréfimétaux SA: jointly and severally	EUR 10,41 million

2. The undertakings listed shall immediately bring the infringements to an end, in so far as they have not already done so. They shall refrain from repeating any act or conduct as the infringement found in this case and from adopting any measure having equivalent object or effect.