II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 27 November 2002

relating to proceedings under Article 81 of the EC Treaty against BPB PLC, Gebrüder Knauf Westdeutsche Gipswerke KG, Société Lafarge SA and Gyproc Benelux NV

(Case No COMP/E-1/37.152 — Plasterboard)

(notified under document number C(2002) 4570)

(Only the English, French, German and Dutch versions are authentic)

(2005/471/EC)

On 27 November 2002, the Commission adopted a decision relating to a proceeding under Article 81 of the EC Treaty. In accordance with the provisions of Article 30 of Council Regulation (EC) No 1/2003 ([1]) replacing Article 21 of Regulation No 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 (http://europa.eu.int/comm/competition/index_en.html).

I. SUMMARY OF THE INFRINGEMENT

1. Addressees

(1) The following undertakings are the addressees of this Decision relating to the infringement of Article 81 of the Treaty:

— BPB plc (hereinafter: BPB),

— Gebrüder Knauf Westdeutsche Gipswerke KG (hereinafter: Knauf Westdeutsche Gipswerke),

— Société Lafarge SA (hereinafter: Lafarge),

— Gyproc Benelux NV (hereinafter: Gyproc).

([1]) 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 (OJ L 1, 4.1.2003, p. 1). Regulation as amended by Regulation (EC) No 411/2004 (OJ L 68, 6.3.2004, p. 1).

([2]) Council Regulation No 17 of 6 February 1962 (OJ 13, 21.2.1962, p. 204/62) Regulation as last amended by Regulation (EC) No 1/2003.

2. Nature of the infringement

(2) BPB, Knauf ([3]), Lafarge and Gyproc entered into and participated without interruption in a complex and continuing agreement contrary to Article 81(1) of the Treaty which was manifested in the following conduct constituting agreements or concerted practices:

— the representatives of BPB and Knauf met in London in 1992 and expressed the common desire to stabilise the markets in Germany (hereinafter: German market), the United Kingdom (hereinafter: UK market), France (hereinafter: French market) and the Netherlands, Belgium and Luxembourg (hereinafter: Benelux market),

— the representatives of BPB and Knauf established, as from 1992, information exchange arrangements, to which Lafarge and subsequently Gyproc acceded, relating to their sales volumes on the German, French, UK and Benelux plasterboard markets,

([3]) 'Knauf' means all the companies in the Knauf group, see section 1.3.3.2.

— the representatives of BPB, Knauf and Lafarge exchanged information, on various occasions, prior to price increases on the UK market,

— in view of particular developments on the German market, the representatives of BPB, Knauf, Lafarge and Gyproc met at Versailles in 1996, Brussels in 1997 and The Hague in 1998 with a view to sharing out or at least stabilising the German market,

— the representatives of BPB, Knauf, Lafarge and Gyproc exchanged information on various occasions and concerted their action on the application of price increases on the German market between 1996 and 1998.

3. **Duration**

(3) The undertakings concerned participated in the infringements for the following periods:

— BPB: from 31 March 1992, at the latest, to 25 November 1998,

— Knauf: from 31 March 1992, at the latest, to 25 November 1998,

— Lafarge: from 31 August 1992, at the latest, to 25 November 1998,

— Gyproc: from 6 June 1996, at the latest, to 25 November 1998.

4. **Procedural steps**

(4) On the basis of information received, the Commission carried out inspections pursuant to Commission Decisions under Article 14(3) of Regulation No 17 at the premises of several undertakings between November 1998 and July 1999. Following these inspections, the Commission sent requests for information to certain undertakings in January, July and September 1999 and in March 2000.

(5) On 18 April 2001, the Commission initiated proceedings in this case and adopted a statement of objections against five undertakings, namely: BPB, Knauf, Lafarge, Gyproc and Etex SA. All the parties to which the statement of objections had been addressed submitted written comments in response to the objections raised by the Commission. On 17 July 2001, a hearing took place in which all of the undertakings participated.

(6) The Commission considers that the evidence in its possession is insufficient to establish Etex SA's involvement in the single, complex and continuous infringement. Etex is therefore not an addressee of this Decision.

5. **Product and market**

(7) The product which is concerned in the instant case is plasterboard. This is a manufactured product used as a prefabricated construction material and consisting of a sheet of gypsum plaster sandwiched between two sheets of paper or some other material. Plasterboard is cut in various sizes and thicknesses and is typically used as an internal lining for walls, to form internal partitions inside buildings, as a roof lining and as a ceiling material for residential, commercial and administrative premises. Plasterboard is an attractive product for the building industry by virtue of its stability, durability, ease of application, fire resistance and low cost. Plasterboard is also an attractive product for consumers. It is largely used in the construction of modern homes and for DIY. Plasterboard is a well-known product and the firms concerned are house-hold names in several Member States (one talks of buying 'gyproc' in Belgium, 'placoplâtre' in France, etc.).

(8) The annual value of sales on the Benelux, French, German and UK markets covered by the present Decision was some ECU 1 210 million in 1997 and 1998 for a sales volume of some 692 million square metres in 1997 and some 710 million square meters in 1998. The undertakings together accounted for nearly all plasterboard sales on the four markets concerned.

II. **FINES**

1. **Basic amount**

(9) In fixing the amount of any fine the Commission must have regard to all relevant circumstances and in particular the gravity and duration of the infringement, which are the two criteria referred to expressly in Article 15(2) of Regulation 17.

(a) *Gravity*

(10) Having regard to the nature of the conduct in question, its practical impact on the plasterboard market and the fact that it covered the four principal markets at the heart of the European Community, the Commission considers that the addressees of the instant Decision committed a very serious infringement of Article 81(1) of the EC Treaty.

(b) *Differential treatment*

(11) Within the category of very serious infringements, the Commission may apply differential treatment to the undertakings concerned in order to take account of their effective economic capacity to cause significant damage to competition and in order to set the fine at a level which ensures it has sufficient deterrent effect. This is particularly necessary where, as in the present case, there is considerable disparity between the sizes of the undertakings which participated in the infringement. To this end the Decision divides the companies into three groups on the basis of their

respective market shares based on turnover from sales of the product on the four markets concerned in the last complete year of the infringement, i.e. 1997: the first group comprises BPB with a market share of some [40-45] %; the second group comprises Knauf and Lafarge with market shares of some [25-30] % and [20-25] % respectively; and the third group comprises Gyproc with a market share of some [7-10] %.

(12) In order to ensure that the fines imposed have a sufficient deterrent effect, and in view of its large size and world-wide resources, the Decision applies a 100 % multiplier to the starting amount of the fine set for Lafarge.

(c) *Duration*

(13) Knauf and BPB infringed Article 81(1) of the EC Treaty from, at the latest, 31 March 1992 to 25 November 1998. Lafarge committed the same infringement from, at the latest, 31 August 1992 to 25 November 1998. Gyproc actively participated in the infringement from, at the latest, 6 June 1996 to 25 November 1998.

(14) In the case of Knauf, BPB and Lafarge the infringement was thus of long duration (more than five years) and in the case of Gyproc, the infringement was of medium duration (between one and five years). The starting amount of the fine determined for gravity is therefore increased by 65 % for BPB and Knauf Westdeutsche Gipswerke, by 60 % for Lafarge and by 20 % for Gyproc.

2. **Aggravating circumstances**

(15) The Commission has previously adopted measures imposing fines on BPB De Eendracht NV [1] (a member of the BPB group, addressee of the draft Decision) for having taken part in an illegal agreement in the cartonboard sector and on Lafarge SA (then known as Lafarge Coppée SA) for having taken part in an illegal agreement in the cement sector [2].

(16) The facts as set out in the Decision establish that BPB and Lafarge actively continued to participate in a cartel in the plasterboard sector after the abovementioned Decisions were notified to them. The fact that these undertakings have repeated the same kind of behaviour in a different sector from the one concerned by the first Decisions, shows that sanctions imposed in the first case did not lead the undertakings to modify their conduct and thus constitutes an aggravating circumstance.

(17) In the case of BPB, the fact that Decision 94/601/EC of 13 July 1994 was addressed to a subsidiary of BPB, BPB De Eendracht NV, does not prevent the Commission from treating it as an aggravating circumstance in the instant case. Indeed, the Commission considers that since BPB De Eendracht NV was a subsidiary of BPB PLC at the time of the earlier Decision, these in fact form part of one and the same undertaking, within the meaning of Article 81(1) of the Treaty. Furthermore, it is the responsibility of an undertaking which is censured by the Commission both to bring to an end the anti-competitive conduct identified in the particular Decision which is addressed to it and to bring its commercial policy throughout the Community into line with that Decision. BPB did not do this, indeed quite the opposite, as set out in the Decision [3]. The mere fact that an undertaking has already been the subject of an infringement Decision and that, in spite of this finding and of the fine imposed, it has continued to engage in another analogous infringement in breach of the same provision of the Treaty is sufficient to constitute recidivism.

(18) With regard to the above aggravating factors, an increase of 50 % of the basic amount of the fine for BPB and Lafarge appears justified.

3. **Attenuating circumstances**

(19) Whilst Gyproc may be held responsible for the infringement as a whole for the period during which it was a participant, that is from June 1996 to November 1998, the available evidence shows that Gyproc was in an objectively different situation from that of the other addressees of the Decision, such that the Commission recognises that Gyproc did not play an identical role in the agreement to that of the other undertakings. The distinguishing circumstances recognised by the Commission are the fact that: during a substantial period of its involvement in the agreement, Gyproc appears to have had difficulties in preventing BPB from obtaining and transmitting information relating to it, as a result of BPB's being represented on Gyproc's board of directors; Gyproc was a constant destabilising element and contributed to the limitation of the effects of the agreement on the German market; and Gyproc was absent from the UK market where the agreement most frequently manifested itself.

(20) Gyproc will therefore be granted a 25 % reduction of the basic amount of the fine on the grounds of attenuating circumstances.

[1] Commission Decision 94/601/EC of 13 July 1994 (Case IV/C/33.833 — Cartonboard) (OJ L 243,19.9.1994, p. 1), relating to a proceeding under Article 85 (now 81) of the EC Treaty imposed a fine of ECU 1 750 000. On 14 May 1998, in Case T-311/94, the Court of First Instance reduced the fine to ECU 750 000 (ECR 1998, II-1129).

[2] Commission Decision 94/815/EC of 30 November 1994, Cases IV/33.126 and 33.322 — Cement, (OJ L 343, 30.12.1994, p. 1), relating to a procedure under Article 85 (now 81) of the EC Treaty imposed a fine of ECU 22 872 000. On 15 March 2000, in Case T 43/95, the Court of First Instance reduced the fine to EUR 14 248 000 (ECR 2000, II-491).

[3] See also Commission Decision 2002/405/EC of 20 June 2001 relating to a procedure applying Article 82 of the EC Treaty, Michelin (OJ L 143, 31.5.2002, p. 1, recitals 361 to 363).

4. **Application of the Commission Notice on the Non-imposition or Reduction of Fines in Cartel Cases (the Leniency Notice): significant reduction in the amount of the fine**

(21) Before the Commission adopted its statement of objections, BPB and Gyproc provided it with information and/or documents. The extent and quality of the co-operation afforded by these undertakings were nevertheless different.

(22) BPB was the first member of the agreement, following a request for information from the Commission, to provide additional evidence, complementary to that uncovered during the inspections and confirming the existence of the agreement, as set out above. This evidence comprised detailed information on the meetings in question, notably the meeting in London and on the exchanges of information in respect of the principal European markets and, in particular, the UK market. In addition, BPB also recognised in part the facts which were described in the statement of objections. BPB nevertheless contested the infringing nature of some of the facts described in the statement of objections, which are retained in the Decision.

(23) Gyproc also provided evidence which contributed to the establishment of the infringement. Following a request for information from the Commission, this undertaking provided information concerning the cartel meetings, specifying the periods during which the meetings took place in various Member States of the Community and the names of the participating undertakings. In the course of a meeting with the Commission services requested by Gyproc, a representative of the undertaking volunteered oral explanations regarding manuscript notes. In addition, Gyproc of its own accord provided the Commission with manuscript notes of which the Commission had not become aware during the inspection. These notes in particular contained information relating to the exchange of information regarding sales volumes during the meeting in Versailles. Gyproc does not contest the facts or their qualification as infringements of Community competition law.

(24) In the above circumstances, the Commission considers that it is appropriate to grant a 30 % reduction in the amount of the fine for BPB and a 40 % reduction in the amount of the fine for Gyproc.

5. **Final amount of fines imposed in this proceeding**

(25) By way of conclusion, the amounts of the fines to be imposed in accordance with Article 15(2)(a) of Regulation No 17 should be set as follows:

— BPB: EUR 138,6 million,

— Knauf Westdeutsche Gipswerke: EUR 85,8 million,

— Lafarge: EUR 249,6 million,

— Gyproc: EUR 4,32 million.

III. **DECISION**

(26) BPB plc, the Knauf Group, Société Lafarge SA and Gyproc Benelux NV have infringed Article 81(1) of the Treaty by participating in a set of agreements and concerted practices in the plasterboard business.

(27) The duration of the infringement was as follows:

(a) BPB plc: from 31 March 1992, at the latest, to 25 November 1998;

(b) Knauf: from 31 March 1992, at the latest, to 25 November 1998;

(c) Société Lafarge SA: from 31 August 1992, at the latest, to 25 November 1998;

(d) Gyproc Benelux NV: from 6 June 1996, at the latest, to 25 November 1998.

(28) The undertakings referred to in Article 1 shall put an end to the infringement referred to in that Article, if they have not already done so. In their plasterboard business they shall refrain from any agreement or concerted practice that might have an identical or similar object or effect to the infringement.

(29) In respect of the infringement referred to in Article 1, the following fines are imposed on the following undertakings:

— BPB plc: EUR 138,6 million,

— Gebrüder Knauf Westdeutsche Gipswerke KG: EUR 85,8 million,

— Société Lafarge SA: EUR 249,6 million,

— Gyproc Benelux NV: EUR 4,32 million.