



Brussels, 16.6.2017
C(2017) 4112 final

COMMISSION DECISION

of 16.6.2017

amending Decision C(2014) 9295 final relating to a proceeding under Article 101 of the Treaty on the Functioning of the European Union and Article 53 of the EEA Agreement

(AT.39780 - Envelopes)

(Only the English text is authentic)

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union¹,

Having regard to the Agreement on the European Economic Area,

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 Treaty², and in particular Article 7 and Article 23(2) thereof,

Having regard to Commission Decision C(2014) 9295 final of 10 December 2014 relating to a proceeding under Article 101 of the Treaty on the Functioning of the European Union and Article 53 of the EEA Agreement (AT/39780 - Envelopes),

Having regard to the Commission decision of 10 December 2014 to initiate proceedings in this case,

Having given the undertakings concerned the opportunity to make known its views,

After consulting the Advisory Committee on Restrictive Practices and Dominant Positions,

¹ OJ C 115, 9.5.2008, p. 47.

² OJ L 1, 4.1.2003, p.1. With effect from 1 December 2009, Articles 81 and 82 of the EC Treaty have become Articles 101 and 102, respectively, of the Treaty on the Functioning of the European Union ("TFEU"). The two sets of provisions are, in substance, identical. For the purposes of this Decision, references to Articles 101 and 102 of the TFEU should be understood as references to Articles 81 and 82, respectively, of the EC Treaty when where appropriate. The TFEU also introduced certain changes in terminology, such as the replacement of "Community" by "Union" and "common market" by "internal market".

Having regard to the final report of the hearing officer in this case³,

Whereas:

1. INTRODUCTION

- (1) Article 1 of Commission Decision C(2014) 9295 final⁴ ("the 2014 Decision") states that the addressees of that Decision infringed Article 101 of the Treaty and Article 53 of the EEA Agreement by participating in a single and continuous infringement covering Denmark, France, Germany, Norway, Sweden and the United Kingdom in the sector of standard/catalogue envelopes and special printed (transactional and/or bespoke) envelopes. The infringement consisted of price coordination, customer allocation and exchanges of commercially sensitive information.⁵
- (2) Article 2 (1)(e) of the 2014 Decision imposed a fine of EUR 4 729 000 jointly and severally on Printeos S.A., Tompla Sobre Expres S.L., Tompla Scandinavia AB, Tompla France SARL and Tompla Druckerzeugnisse Vertriebs GmbH (collectively formerly "Tompla", now known as "Printeos"), one of the addressees of that decision.⁶ This was based on a finding that those entities had participated in the infringement from 8 October 2003 until 22 April 2008. On 15 July 2015, the name of Tompla Sobre Expres S.L. was changed to Printeos Cartera Industrial, S.L.⁷
- (3) Following an appeal against the 2014 Decision to the General Court by Printeos, on 13 December 2016, the General Court delivered its judgment⁸ in Case T-95/15 ("the Judgment").
- (4) In the Judgment, the General Court found that the 2014 Decision was vitiated by failure to explain with sufficient clarity and precision the way in which the Commission decided to use its discretion when determining the basic amount of the fines and to apply to those amounts different rates of reduction.⁹ As a result, the General Court annulled Article 2(1)(e) of the 2014 Decision and considered it was not necessary to rule on any of the other grounds of annulment raised by the applicants.

³ Final Report of the Hearing Officer of 9 June 2017.

⁴ Commission Decision C(2014) 9295 final of 10 December 2014 relating to a proceeding under Article 101 of the Treaty on the Functioning of the European Union and Article 53 of the EEA Agreement (AT.39780 – Envelopes).

⁵ See Article 1 of the 2014 Decision, and also recital (1) thereof.

⁶ See Article 2(1)(e) of Decision C(2014) 9295 final.

⁷ According to Printeos' Reply to a Request for Information dated 15 December 2016, on 31 December 2014 there was a partial spin-off of Tompla Sobre Expres, S.L. as a result of which a newly incorporated company named Tompla Industria Internacional del Sobre, S.L. absorbed all the operational (industrial and commercial) activities of Tompla Sobre Expres, S.L. related to the manufacture of envelopes, as well as its shares in Tompla France S.A.R.L. Tompla Sobre Expres, S.L. kept the property of the shares of Tompla Scandinavia A.B. and Tompla Druckerzeugnisse Vertriebs GmbH (and was subsequently renamed as Printeos Cartera Industrial, S.L.).

⁸ Case T-95/15, Printeos, SA and Others v European Commission, ECLI:EU:T:2016:722.

⁹ See case T-95/15, paragraphs 49 to 57.

- (5) In order to comply with the Judgment, the Commission informed Printeos by letter dated 29 March 2017¹⁰ that it intended to propose the adoption of a new decision addressed to the legal entities covered by the judgment before the General Court and listed in Article 1(5) of the 2014 Decision. By that letter the Commission also informed Printeos that the new decision would provide further information on the facts that were taken into account in the 2014 Decision and explain in more detail the methodology that was applied by the Commission in reliance upon point 37 of the Guidelines on Fines¹¹ in order to adjust the basic amount of the fine. That letter also stated that the decision would impose the same fine on Printeos as was imposed in the 2014 Decision pursuant to Article 23(2) of Regulation (EC) No 1/2003 for having infringed Article 101 of the Treaty and Article 53 of the EEA Agreement during the period indicated in Article 1(5) of the 2014 Decision.
- (6) On 17 April 2017, Printeos replied to the letter of 29 March 2017¹² and informed the Commission that it believes that the Commission may not adopt a second decision on the same facts and against the same undertakings, since this would infringe Printeos' fundamental right of *ne bis in idem* guaranteed in Article 50 of the Charter of Fundamental Rights of the European Union ("the Charter") and Article 4(1) of Protocol No 7 of the European Convention on Human Rights. Printeos also disagrees that the infringement that led to the annulment of the 2014 Decision is procedural in nature, although it acknowledges that the Court did not, in its judgment, adjudicate on any other grounds it had raised. Furthermore, Printeos submits that the fine that the Commission indicated it intended to impose is discriminatory as regards the fines imposed on the other undertakings fined in the 2014 Decision. Finally, Printeos submits that, in addition, a further reduction of the fine, post leniency and settlement reductions, should be applied by the Commission to take account of the fine already imposed on it by the Spanish Competition Authority in its decision of 25 March 2013, which it argues is a requirement of natural justice in the sense of the *Walt Wilhelm* case-law.¹³
- (7) The Commission notes that the General Court annulled Article 2(1)(e) of the 2014 Decision due to a failure to state adequate reasons in relation to certain elements relied on when setting the fine, without ruling on any of the substantive pleas raised.¹⁴ The ground for annulment was therefore procedural and not substantial in nature. Nor did the General Court question either the finding of the infringement, which Printeos itself fully acknowledged in the course of the settlement procedure, or the parameters for the calculation of the fine as regards the value of sales, the gravity and duration of the infringement, the entry fee, the existence of aggravating and mitigating circumstances and the reduction on the basis of leniency and cooperation in settlement procedures. The annulment cannot therefore be regarded as a final

¹⁰ Letter of 29 March 2017, reference *D/2017/022104 COMP/G-2/MJ/dlj.

¹¹ Commission's Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation No 1/2003 (OJ C 210, 1.9.2006, p.2).

¹² Printeos had already informed the Commission in a letter dated 3 March 2017 that it believed that the Commission could not adopt a second decision on the same facts and against the same undertakings, since this would infringe Printeos' fundamental right of *ne bis in idem* guaranteed in Article 50 of the Charter of Fundamental Rights of the European Union and Article 4(1) of Protocol No 7 of the European Convention on Human Rights.

¹³ Judgment of 13 February 1969, *Walt Wilhelm/Bundeskartellamt*, C-14/68, ECLI:EU:C:1969:4, paragraph 11.

¹⁴ See paragraphs 57 and 58 of the Judgment.

acquittal within the meaning of Article 50 of the Charter. In line with the *PVC II* judgment¹⁵ the Commission therefore considers that this case falls squarely within the criteria which would allow it to readopt the decision. Those criteria also apply to the *partial* annulment of a decision,¹⁶ as is the case in hand. As the annulment of the 2014 Decision does not affect the legality of the preparatory acts, the Commission may take up the procedure at the point at which the illegality occurred, that is to say, the adoption of the 2014 Decision which was vitiated by a defective statement of reasons.¹⁷

- (8) In line with the Judgment, this Decision provides further information on the methodology that was applied and the facts that were taken into account by the Commission when adjusting and adapting the basic amounts of the fine, as set out in recitals (88) to (93) of the 2014 Decision (see recitals (10) to (22) of this Decision). This Decision also imposes the same fine on Printeos as was imposed in the 2014 Decision for its participation in the infringement found in Article 1 of the 2014 Decision (see recitals (24) to (69) and Article 1 of this Decision).
- (9) This Decision does not lead to any new objections, nor does it alter the substance of the objections as set out in the Statement of Objections adopted on 18 November 2014. This Decision is addressed only to Printeos. Therefore, it does not concern in any way the other addressees of the 2014 Decision.

2. ADAPTATIONS OF THE BASIC AMOUNTS IN THE 2014 DECISION

- (10) As explained in recital (88) of the 2014 Decision, there are exceptional circumstances in this case given that most parties' sales were generated mainly on a single market where they participated in a cartel for several years. This resulted in a situation where the basic amount of the fines for all undertakings exceeded the ceiling of the 10% of their respective total turnover ("the legal cap" or "the legal maximum"). In this scenario, the fine may not reflect the particular circumstances of the case.
- (11) The General Court observed in its judgment in *Putters International*¹⁸ that this kind of situation could raise possible concerns in view of the principle that penalties must be specific to the offence and the offender, because in certain circumstances it could lead to a situation where any distinction on the basis of gravity or mitigating circumstances would no longer be capable of impacting the fine.
- (12) As found in Section 4.1 of the 2014 Decision, Mayer-Kuvert had a different role and thereby a lesser involvement in the infringement than the other participants. The Commission therefore decided to grant it a 10% reduction in the fine to be imposed

¹⁵ See Judgment of the Court of 15 October 2002 in Joined Cases C-238/99, 244, 245, 247, 250-252 and 254/99 P, *Limburgse Vinyl Maatschappij e.a. v Commission* - otherwise known as *PVC II*, ECLI:EU:C:2002:582, paragraphs 59-63, 693-695.

¹⁶ Ibid - see paragraph 694 which clarifies that partial annulment of a Commission decision does not preclude the Commission from re-adopting the decision where the reason for annulment was procedural in nature.

¹⁷ See Joined Cases T-472/09 and T-55/10 *SP v Commission*, EU:T:2014:1040, paragraph 277; and Case T-91/10 *Lucchini v. Commission*, T-91/10, EU:T:2014:1033, paragraph 173.

¹⁸ Case T-211/08 *Putters International v Commission*, EU:T:2011:289, paragraph 75.

on it on the grounds of mitigating circumstances.¹⁹ Since, for the purposes of calculating the fine, mitigating circumstances are generally applied before the application of the legal maximum (by reducing the basic amount), in this case the recognition of Mayer-Kuvert's lesser involvement in the cartel would therefore not be reflected in the fine as the fines imposed on all parties, including Mayer-Kuvert, would be determined by the legal maximum.

- (13) In view of the above and in line with previous decisions,²⁰ the Commission decided to exercise its discretion further to point 37 of the Guidelines on Fines and adapted the basic amounts for all of the parties, bringing the basic amounts of all parties below their respective 10% legal maximum caps.²¹ The adjusted basic amounts then reflected each party's involvement in the infringement compared to the involvement of the other cartel participants and ensured that mitigating circumstances had an impact.
- (14) The Commission had regard to the minimum individual reductions necessary to bring the basic amounts of the fine to be imposed on each party below its respective 10% legal maximum while ensuring that the adjusted basic amounts reflected the parties' comparable involvement in the infringement. It must be noted in this respect that a uniform reduction for all parties would have led to a situation where all parties unjustifiably benefitted from the minimum reduction necessary to bring the basic amount below the 10% legal maximum for the party whose basic amount exceeds the legal maximum by the largest margin (in this case GPV Group). This would have resulted in the fines not reflecting the gravity of their infringement and not providing for sufficient deterrence.
- (15) Instead the basic amount was firstly adapted for each party by taking into account the proportion that the value of sales of the cartelised product represented of that party's total turnover (the "product/turnover ratio"). The adaptations in the 2014 Decision were, however, also intended to ensure that the adapted fines still reflected the overall gravity of the infringement and did not distort the relative weight of the parties' respective basic amounts, which is a reflection of the parties' comparable involvement in the cartel.²² Those elements of the methodology had an impact on the individual reductions granted to each of the undertakings.
- (16) As regards the product/turnover ratio, the 2014 Decision took into account the undertakings' individual product/turnover ratios calculated as the ratio of the total 2012 world-wide value of sales of the envelopes covered by the 2014 Decision to the total 2012 world-wide turnover of the undertaking concerned. An undertaking with a

¹⁹ See recital (32) of the 2014 Decision.

²⁰ Mountings case (Commission's Decision of 28 March 2012 in Case No COMP/39.452), the Shrimps case (Commission's Decision of 27 November 2013 in Case No COMP/39633) and the Steel abrasives case (Commission's Decision of 2 April 2014 in Case No COMP/39792).

²¹ See Article 23(2) of Regulation No 1/2003 and recital 32 of the Guidelines on Fines.

²² The basic amount is based on the value of a party's cartelised sales and the duration of its involvement. The basic amounts therefore illustrate the parties' comparable involvement in the cartel, before any adjustments are made in order to take into account mitigating or aggravating factors, the 10% legal maximum or any reductions granted under the Leniency Notice or the Settlement Notice. The reference to the parties' comparable involvement in this part of the methodology should therefore not be confused with the recognition of Mayer-Kuvert's lesser involvement (which is reflected in a 10% reduction on the already adapted basic amount).

higher product/turnover ratio received a product/turnover reduction greater than, or at least equal to, the reduction applied in respect of another undertaking with a lower product/turnover ratio. The individual ratios are set out in Table A. This shows that all undertakings, except Hamelin, had very high individual product/turnover ratios (GPV Group [...], Tompla [...], Bong [...], Mayer-Kuvert [...].) Due to its disposal of the envelopes production assets, Hamelin did not have any sales of the cartelised product in 2012.²³

- (17) The Commission found that a [...] reduction was the minimum reduction needed to bring GPV Group's turnover below its 10% legal maximum.²⁴ Since GPV Group was the party with the highest product/turnover ratio, all other parties received smaller reductions which were determined on an individual basis and reflected their respective product/turnover ratios as well as the relative weight of their basic amounts.
- (18) It must also be borne in mind that imposing a linear reduction by automatically translating the parties' individual product/turnover ratios into an equivalent reduction of the fines would have led to an unjustified result. A simple linear reduction would have distorted the relative weight of the basic amounts. For instance, it would have resulted in the adapted basic amount for Mayer-Kuvert (product/turnover ratio of [...]) being higher than the adapted basic amount of Tompla (product/turnover ratio of [...]) in a situation where Tompla's pre-adaptation basic amount was more than twice that of Mayer-Kuvert. The methodology used in the 2014 Decision therefore sought, on equitable grounds, to restore the balance between the adapted basic amounts by setting individual reductions that reflect not only the product/turnover ratio but also their comparable individual involvement, as reflected in the non-adjusted basic amounts.
- (19) Finally, as regards Hamelin, the Commission considered that, even though it had a considerably lower product/turnover ratio than the other parties, it was necessary to also reduce the fine to be imposed on Hamlin, to reflect the fact that Hamelin's role in the cartel was similar to that of the other parties. Given Hamelin's product/turnover ratio, the reduction of Hamelin's basic amount is the lowest compared with all the other parties.
- (20) If the Commission had not taken the second part of the methodology into account and had only based the reductions on the product/turnover nature of the undertakings, Hamelin would not have received a reduction and its basic amount would have been approximately 1275% higher than Tompla's adjusted basic amount in a situation where Hamelin's value of sales was only approximately 30 % higher than Tompla's.
- (21) The chosen methodology and the applied reduction resulted in the basic amount of Hamelin's fine reflecting its comparable involvement in the cartel as well as the gravity and duration of the infringement and provided for sufficient deterrence.

²³ Hamelin's product/turnover ratio (as set out in Table A) was therefore estimated by comparing the 2012 sales of the cartelised product by its former subsidiary to Hamelin's 2012 turnover.

²⁴ The turnover of the undertakings concerned is set out in Section 2.2 of the 2014 Decision.

- (22) The result of the adjustments and adaptations for each of the parties is set out in Table A, which is a more detailed version of Table 4 of the 2014 Decision.²⁵

Table A: Basic amount after the adaptations.

Undertaking	VoS (2007)	***	Duration (years)	Additional amount	Basic amount (EUR)	- Product/turnover ratio	Adjustment / Reduction	Adjusted basic amount
GPV Group	125 086 629	15%	4.5	15%	103 196 000	[...]	[...]	[...]
Tompla	143 316 000	15%	4.5	15%	118 235 000	[...]	[...]	[...]
Bong	140 000 000	15%	4.5	15%	115 500 000	[...]	[...]	[...]
Mayer-Kuvert	70 023 181	15%	4.5	15%	57 769 000	[...]	[...]	[...]
Hamelin	185 521 000	15%	4.416	15%	150 717 000	[...]	[...]	[...]

*** Coefficient for seriousness

- (23) The 2014 Decision set out the remaining steps of the fining methodology under the Guidelines on Fines, based on the adjusted basic amounts. None of those steps are affected by the Judgment and they will therefore not be further explained in this Decision. However, since Printeos has, also in the proceedings leading up to this Decision, raised the question of the impact of a fine imposed by the Spanish Competition Authority in separate proceedings, that issue will be addressed in recitals (46) to (55) of this Decision.

3. REMEDIES

3.1. Article 23(2) of Regulation (EC) No 1/2003 - Fines

- (24) 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 or Article 53 of the EEA Agreement. For each undertaking participating in the infringement, the fine must not exceed 10 % of its total turnover in the preceding business year.

²⁵ Contrary to Table 4 of the 2014 Decision, Table A only shows the basic amounts after the adaptations under point 37 of the Guidelines on Fines and does not include the 10% reduction granted to Mayer-Kuvert to reflect its limited involvement.

- (25) Based on the facts described in Section 4 of the 2014 Decision, the Commission considers that the infringement was committed intentionally.
- (26) As a consequence of the annulment of Article 2(1)(e) of the 2014 Decision, no penalty has been imposed on Printeos for its participation in the infringement. A fine should therefore be imposed on Printeos that reflects its involvement in the infringement.
- (27) Pursuant to Article 23(2) of Regulation (EC) No 1/2003, the Commission must, in fixing the amount of the fine to be imposed, have regard to all relevant circumstances and particularly the gravity and duration of the infringement, which are the two criteria explicitly referred to in that Regulation. In doing so, the Commission sets the fines at a level sufficient to ensure deterrence. Moreover, the role played by each undertaking party to an infringement is assessed on an individual basis. The fine imposed must reflect any aggravating and attenuating circumstances pertaining to each undertaking.
- (28) In setting the fines to be imposed, the Commission refers to the principles laid down in its Guidelines on Fines. Finally, the Commission applies, as appropriate, the provisions of the Leniency Notice²⁶ and the Settlement Notice²⁷.
- (29) The Commission considers that the specific circumstances of this particular case warrant that Printeos is placed in the same position as the other parties that introduced settlement submissions after having reached a common understanding with the Commission regarding the scope of the potential objections and the estimation of the range of likely fines. The fine should therefore be calculated on the basis of the same parameters that were used when setting the original fine in the 2014 Decision.²⁸ This means that Printeos should also benefit from the reduction provided to all addressees of the 2014 Decision in accordance with point 37 of the Guidelines on Fines.

3.2. Calculation of the fine

- (30) In accordance with the Guidelines on Fines, a basic amount is to be determined for each undertaking's fine, which results 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, irrespective of the duration of the infringement. The resulting basic amount can then be increased or reduced for each undertaking if either aggravating or

²⁶ Commission Notice on Immunity from fines and reduction of fines in cartel cases (OJ C 298, 8.12.2006, p.17).

²⁷ Commission 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 (OJ C 167, 2.7.2008, p.1-6).

²⁸ Reference is therefore made to recitals (71) to (75) (value of sales), recitals (76) to (79) (gravity), recitals (80) and (81) (duration) and recitals (82), (83) and (84) (additional amount and calculation of the basic amount) of the 2014 Decision. The relevant information in those recitals is, for convenience reasons, repeated in this Decision.

mitigating circumstances are found to be applicable. The Commission may depart from the methodology set out in the Guidelines on Fines where this is justified by the particularities of a given case or the need to achieve deterrence in a particular case (point 37 of the Guidelines on Fines).

3.3. The value of sales

- (31) The basic amount of the fine to be imposed on the undertakings concerned is to be set by reference to the value of sales,²⁹ that is to say, the value of the undertakings' sales of goods or services to which the infringement directly or indirectly related in the relevant geographic area in the EEA.
- (32) In this case, the relevant value of sales is Printeos' sales of stock/catalogue and special printed (transactional and/or bespoke) envelopes (as defined in Section 2 of the 2014 Decision) in the territories covered by the infringement.
- (33) The Commission normally takes the sales made by the undertakings during the last full business year of their participation in the infringement.³⁰ If the last year is not sufficiently representative, the Commission may take into account another year or years for the determination of the value of sales. Based on the foregoing and on the information provided by the parties in the context of the 2014 Decision, the Commission used the undertakings' sales in the last full business year of their participation in the infringement, which is 2007. Each addressee of the 2014 Decision confirmed the relevant value of sales for the calculation of the fines in their settlement submissions. The values of sales (for all addressees of the 2014 Decision) are set out in Table 1 of the 2014 Decision, which is reproduced below in recital (34).
- (34) The same sales figure should be used for Printeos for the purposes of this Decision, that is to say: EUR 143 316 000.

Table 1: Value of Sales

Undertaking	EUR VoS (2007)
GPV Group	125 086 629
Tompla	143 316 000
Bong	140 000 000
Mayer-Kuvert	70 023 181
Hamelin	185 521 000

²⁹ Point 12 of the Guidelines on Fines.

³⁰ Point 13 of the Guidelines on Fines.

3.4. Determination of the basic amount of the fine

(35) As set out above at recital (30), the basic amount of the fine consists of a variable amount, depending on the degree of gravity of the infringement, multiplied by the number of years of the undertaking's participation in the infringement, and an additional amount.

3.5. Gravity

(36) 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 has 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.³¹

(37) In this case, the infringement, which included price coordination, is, by its very nature, among the most harmful restrictions of competition. Therefore, the proportion of the value of sales taken into account for the infringement should be set at the higher end of the scale. The proportion of the value of sales to be taken into account should therefore be 15%.

3.6. Duration

(38) In calculating the fine to be imposed on each undertaking, the Commission also takes into consideration the duration of each undertaking's participation in the infringement, as set out in Section 6 of the 2014 Decision.

(39) The time periods taken into account for the purposes of calculating the fine and the increase of the fines corresponding to those periods ("multiplier") are set out in Table 2 of the 2014 Decision, which is also reproduced below. For Printeos, this concerns the period between 8 October 2003 to 22 April 2008, which results in a multiplier of 4.5.

Table 2: Duration.

Undertaking	Period of Participation	Multiplier
GPV Group	8 October 2003 – 22 April 2008	4.5
Tompla	8 October 2003 – 22 April 2008	4.5
Bong	8 October 2003 – 22 April 2008	4.5
Mayer-Kuvert	8 October 2003 – 22 April 2008	4.5
Hamelin	5 November 2003 – 22 April 2008	4.416

³¹ Point 21 and 22 of the Guidelines on Fines.

3.7. Additional amount

- (40) The infringement committed by the addressees of the 2014 Decision concerns a price coordination cartel. Therefore, a sum of between 15% and 25% of the value of sales should be included in the basic amount of each fine to deter the undertakings from entering into such illegal practices, which is determined on the basis of the criteria listed in recitals (77), (78) and (79) of the 2014 Decision with respect to the variable amount.³²
- (41) In this case, taking into account the nature of the infringement, the proportion of the value of sales to be taken into account for the purposes of calculating the additional amount is 15%.

3.8 Calculation of the basic amount

- (42) The application of the criteria set out in recitals (31) to (41)³³ leads to the basic amounts of the fine for each undertaking as set out in Table 3 of the 2014 Decision (which is reproduced below). For Printeos, the basic amount of the fine should be EUR 118 235 000.

Table 3: Basic Amounts of the Fine.

Undertaking	Basic Amount in EUR
GPV Group	103 196 000
Tompla	118 235 000
Bong	115 500 000
Mayer-Kuvert	57 769 000
Hamelin	150 717 000

3.9. Adjustments to the basic amounts: aggravating or mitigating circumstances

- (43) The Commission may increase the basic amount of the fine where there are aggravating circumstances. Those circumstances are listed in a non-exhaustive way in point 28 of the Guidelines on Fines. The Commission may also reduce the basic amount where mitigating circumstances exist. Those circumstances are listed in a non-exhaustive way in point 29 of the Guidelines on Fines.
- (44) The Commission did not consider there to be any aggravating circumstances resulting in an increase in any of the fines imposed by the 2014 Decision and does not consider there to be any aggravating circumstances which would result in an increase in the fine to be imposed by this Decision.
- (45) As set out in Section 4.1 of the 2014 Decision, Mayer-Kuyert's lesser involvement in the infringement was taken into account by granting it a reduction of 10%.³⁴ The

³² Point 25 of the Guidelines on Fines.

³³ See Recitals (71) to (83) of the 2014 Decision.

³⁴ See Recital (87) of the 2014 Decision.

Commission did not apply any other reduction on the grounds of mitigating circumstances to any of the fines imposed by the 2014 Decision and does not consider there to be any other mitigating circumstances which would result in a reduction in the fine to be imposed by this Decision.

- (46) During the administrative proceedings that resulted in the 2014 Decision, Printeos had argued that a fine imposed by the Spanish Competition Authority in a decision dated 25 March 2013 relating to a cartel in the Spanish envelopes market should be taken into account by the Commission, either as a mitigating circumstance or as an ad hoc reduction pursuant to point 37 of the Guidelines on Fines. The Commission had, during the settlement discussions and before Printeos submitted its settlement submission, explained why it did not consider it to be either necessary or appropriate to reflect that circumstance in the fine to be imposed on Printeos during the settlement discussions and before Printeos submitted its settlement submission. Printeos was therefore aware that the fine range that it accepted in the context of the settlement procedure did not include the requested reduction.
- (47) As stated in recital (6), Printeos has, in these proceedings reiterated its claims relating to the fine imposed by the Spanish Competition Authority. In particular it argues that the Spanish infringement was committed within the “organisational framework of the infringement” which is the subject of this Decision³⁵ and that the taking into account of that fine is a requirement of natural justice in the sense of the *Walt Wilhelm* case law.³⁶ In its reply to the letter of 29 March 2017, Printeos seems to suggest that the reduction should be applied as an ad hoc reduction after the leniency and settlement reductions.
- (48) For the reasons described in recitals (49) to (56) below, the Commission does not consider that such a reduction is justified, either on the ground of mitigating circumstances or as an ad hoc reduction at a later stage of the fine calculations.
- (49) The Commission has a margin of discretion to take into account objective factors that it believes would warrant a reduction of the fine. The *Specialty Graphite* case³⁷ referred to by Printeos is one of the rare cases where the Commission decided to reduce the fine due to the fact that the company concerned was in a delicate financial situation and had recently had a significant fine imposed on it. Although the Commission in that case rejected arguments made in relation to the application of the “*ne bis in idem*” principle, it concluded that it was, in view of the cumulative case-specific circumstances, not necessary to impose the full amount of the fine in order to ensure effective deterrence. The Commission therefore exercised its discretion and reduced the fine by 33%.
- (50) In contrast to the *Specialty Graphite* case, there is no evidence in this case that Printeos is in similar financial difficulty or that the combined impact of the two fines would be so significant that it has to be regarded as over deterrent. Printeos has not,

³⁵ As precedent, Printeos refers to Commission Decision 2006/460/EC of 17 December 2002 in Case COMP/E-1/37.667 – *Specialty Graphite*, where Printeos observes that the Commission “applied a 33% reduction on SGL’s fine to take account of the fact that it had already been fined by it for a contemporaneous, albeit separate, infringement”.

³⁶ Judgment of 13 February 1969, *Walt Wilhelm/Bundeskartellamt*, C-14/68, EU:C:1969:4, paragraph 11.

³⁷ See Commission Decision 2006/460/EC of 17 December 2002 (Case AT. 37.667 – *Specialty Graphite*).

at any point during the procedure requested a reduction on the grounds of its inability to pay, as referred to in point 35 of the Guidelines on Fines.³⁸ These elements therefore already distinguish that case from the circumstances of this case.

- (51) Printeos has also referred to the *Welded Steel Mesh* case,³⁹ where the Commission took into account fines already imposed by the French Competition Authority in relation to infringements under domestic law that were "committed within the organisational framework" of agreements also investigated by the Commission (on a geographically wider basis).
- (52) The *Welded Steel Mesh* case concerned a situation where the Commission and the French competition authority investigated the same case, where the Commission's case examined the wider effects of the infringement under EEC legislation, including effects on trade, but nonetheless still included the French territory.⁴⁰ In contrast, in this case, the Commission's procedure under Article 101 of the Treaty did not in any way cover the Spanish market. The *Walt Wilhelm* judgment which was found applicable in the *Welded Steel Mesh* case is therefore not relevant here.
- (53) In addition, the *Walt Wilhelm* judgment refers to the specific situation where there are two parallel procedures for "one set of facts".⁴¹ That is also not the case here, where the parties to the two infringements are not identical and the geographic coverage is different.
- (54) The Commission also considers that it is not necessary to reduce the fine to take into account the fine imposed by the Spanish Competition Authority as, firstly, it is clear and undisputed that the Spanish Competition Authority imposed fines on a cartel in Spain whereas the Commission has imposed fines on another cartel covering six *other* Contracting Parties to the EEA Agreement. Secondly, the value of sales used for the setting the fine in the 2014 Decision does *not* include sales in Spain, since Spanish territory was not part of the Commission's case. Thirdly, the applicant itself acknowledged the legal qualification of the cartel established by the Commission in the 2014 Decision in the administrative procedure, and did not dispute it before the General Court.
- (55) Finally, accepting Printeos' claim would *de facto* grant Printeos an advantage compared to the other addressees of the 2014 Decision, based on the simple fact that, unlike the other addressees, Printeos had also chosen to engage in cartel behaviour in Spain.
- (56) In conclusion, the Commission sees no reason to modify the position it expressed during the settlement discussions.

³⁸ Point 35 of the Guidelines on Fines 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.

³⁹ Commission Decision 89/515/EEC of 2 August 1989 in Case 31.553 – *Welded Steel Mesh*.

⁴⁰ Ibid. paragraphs 159 to 162.

⁴¹ See paragraphs 10 and 11. "In the second question the Kammergericht asks whether 'the risk of its resulting in a double sanction imposed by the Commission of the European Communities and by the national authority with jurisdiction in cartel matters . . . renders impossible the acceptance for one set of facts of two parallel procedures, the one Community and the other national.'"

3.10 Adaptation of the basic amount

- (57) As set out in recital (29), the Commission considers that Printeos should benefit from the reduction provided to the other addressees of the 2014 Decision further to point 37 of the Guidelines on Fines. For this reason, Printeos' basic amount should be adapted using the same methodology that was used in recitals (88) to (92) of the 2014 Decision and further explained in recitals 10 to 22 of this Decision.
- (58) In its reply to the letter of 29 March 2017 Printeos claimed that the reductions under point 37 of the Guidelines on Fines resulting from the adaptations of the basic amounts are discriminatory and that Printeos should benefit from a reduction of [...] of its basic amount in order to adequately reflect its product/turnover ratio. It also seems to suggest that the Commission has been dishonest regarding the reasons for the reduction granted to Hamelin.
- (59) The explanations in recitals (10) to (22) of this Decision show that the same underlying methodology was applied to all addressees of the 2014 Decision in order to adjust their respective basic amounts according to their particular situation. The explanations also show why the Commission decided to apply different individual reductions and the elements that were taken into account when setting those reductions. In its reply to the letter of 29 March 2017, Printeos also claimed that the adjusted basic amounts showed a clear discrepancy as regards the 10% legal maximum. However, contrary to what Printeos seems to suggest, the reductions were not set at a level that would ensure that the relationship between the adjusted basic amounts and the overall turnover would be the same for all parties. It also must be borne in mind, that according to settled case-law it is not contrary to the principles of proportionality and equal treatment that, through the application of the method of calculation of the basic amount of fines, an undertaking may receive a fine which represents a proportion of its overall turnover that is greater than that represented by the fines imposed respectively on each of the other undertakings.⁴² The Commission considers that the methodology used takes into account the parties' positions in a non-discriminatory manner and results in fair, proportionate and sufficiently deterrent fines for all addressees of the 2014 Decision. The Commission does therefore not see the need to grant a higher reduction to Printeos.
- (60) The resulting adjusted and adapted basic amounts for all undertakings were set out in Table 4 of the 2014 Decision (which is reproduced below). For Printeos, the adjusted basic amount is EUR [...].

⁴² See amongst others, Case T-352/09, *Novacke v Commission*, judgment of 12 December 2012, ECLI:EU:T:2012:673, paragraph 163, and Case T-5/00, *Nederlandse Federatieve Vereniging voor de Groothandel op Elektrotechnisch Gebied v Commission*, judgment of 21 September 2006, ECLI:EU:T:2006:592, paragraphs 431 and 432.

Table 4: Basic amount after the adjustment and adaptations

Undertaking	Adjusted basic amount
GPV Group	[...]
Tompla	[...]
Bong	[...]
Mayer-Kuvert	[...]
Hamelin	[...]

- (61) The Commission pays particular attention to the need to ensure that fines have a sufficiently deterrent effect. To that end, it may increase the fines to be imposed on undertakings that have a particularly large turnover beyond the sales of goods or services to which the infringement relates.⁴³
- (62) The Commission did not increase any of the fines imposed by the 2014 Decision for deterrence and sees no need to do so for the fine imposed on Printeos by this Decision.⁴⁴

3.11. Application of the 10% of turnover limit

- (63) Article 23(2) of Regulation (EC) No 1/2003 provides that the fine imposed on each undertaking participating in the infringement must not exceed 10% of its total turnover in the preceding business year.
- (64) Printeos has provided its total worldwide consolidated turnover for 2015 and has informed the Commission that the audited consolidated turnover for 2016 will be approved by the General Meeting of Shareholders around mid-June 2017. Printeos has also indicated that it estimates that its turnover for 2016 will be around 10% higher than the figure provided for 2015.⁴⁵ The turnover for 2015 amounts to EUR [...]. The Commission notes that the fine, after the adjustments and adaptations, does not exceed the legal maximum of 10% of Printeos' total turnover in 2015 or its estimated total turnover in 2016.

3.12. Application of the Leniency Notice

- (65) On 22 October 2010, Tompla applied under the Leniency Notice⁴⁶ for a reduction of any fine that would be imposed on it.
- (66) Tompla was the first undertaking to meet the requirements of points 24 and 25 of the Leniency Notice. On 10 December 2013, the Commission notified Tompla of the

⁴³ Point 30 of the Guidelines on Fines.

⁴⁴ Recitals (94) and (95) of the 2014 Decision.

⁴⁵ See Reply of Printeos S.A. of 9 January 2017 to the questionnaire attached to the Commission's letter of 15 December 2016 (D/2016/124010) p.2 and Annex 1.

⁴⁶ Commission Notice on Immunity from fines and reduction of fines in cartel cases (OJ C 298, 8.12.2006, p.17).

decision by which it announced its intention to grant Tompla a reduction of the fine within the range of 30 to 50%. Tompla provided detailed information on the set-up and the functioning of the cartel, including details on the majority of the cartel meetings and contacts. That information not only corroborated and complemented the evidence available to the Commission but was also very useful in clarifying the overall scheme of the infringement. In line with the 2014 Decision, Printeos should therefore now be granted a 50% reduction of the fine that would otherwise have been imposed in this decision.⁴⁷

3.13. Application of the Settlement Notice

- (67) In accordance with point 32 of the Settlement Notice,⁴⁸ the reward for settlement is a reduction of 10% of the amount of the fine to be imposed on an undertaking after the 10% of turnover limit has been applied. Pursuant to point 33 of the Settlement Notice, when settled cases involve leniency applicants, that reduction is added to their leniency reward.
- (68) Consequently, as Printeos entered into a settlement agreement with the Commission in relation to this case and thereby acknowledged liability for the infringement described in the 2014 Decision, the amount of the fine to be imposed on Printeos should be further reduced by 10%.⁴⁹
- (69) Printeos should therefore continue to benefit from the same reductions under the Leniency Notice and the Settlement Notices as were granted by the 2014 Decision.⁵⁰

4. CONCLUSION

- (70) In conclusion, for the abovementioned reasons, a fine of EUR 4 729 000 should be imposed on Printeos for having infringed Article 101 of the Treaty and Article 53 of the EEA Agreement, as described and outlined in the 2014 Decision. That fine is within the range that was disclosed to and accepted by Printeos in the context of the settlement procedure and does not exceed 10% of its total turnover in 2015 or its estimated total turnover in 2016.
- (71) This Decision does not raise any new objections against Printeos nor does it alter the substance of the objections as set out in the Statement of Objections adopted on 18 November 2014.

⁴⁷ For the leniency reductions granted to Hamelin and Mayer-Kuvert, see recitals 98 to 101 of the 2014 Decision.

⁴⁸ Commission 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 (OJ C 167, 2.7.2008, p.1).

⁴⁹ For reductions granted to Bong, GPV, Hamelin and Mayer-Kuvert under the Settlement Notice, see paragraph 103 of the 2014 Decision.

⁵⁰ Recitals (98) and (99) (leniency) and recitals (102) and (103) (settlement).

HAS ADOPTED THIS DECISION:

Article 1

Article 2 (1)(e) of Decision C(2014) 9295 final is replaced by the following:

"(e) PRINTEOS S.A., PRINTEOS CARTERA INDUSTRIAL S.L. (formerly TOMPLA SOBRE EXPRES S.L.), TOMPLA SCANDINAVIA AB, TOMPLA FRANCE SARL and TOMPLA DRUCKERZEUGNISSE VERTRIEBS GMBH, jointly and severally liable:

EUR 4 729 000".

Article 2

The fines shall be credited, in euro, within three months of the date of notification of this Decision, to the following bank 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/AT.39780

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 of this decision lodges an appeal, that undertaking shall cover the fine by the due date by either providing an acceptable financial guarantee or by making a provisional payment of the fine in accordance with Article 90 of Commission Delegated Regulation (EU) No 1268/2012.⁵¹

Article 3

This Decision is addressed to

Printeos S.A., C/Honduras 29, 28806 Alcalá de Henares, Spain

Printeos Cartera Industrial S.L., C/Honduras 29, 28806 Alcalá de Henares, Spain

Tompla Scandinavia AB, Johan Skyttes väg 200, 2 trappor, 125 34 Älvsjö, Sweden

⁵¹ Commission Delegated Regulation (EU) No 1268/2012 of 29 October 2012 on the rules of application of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union (OJ L 362, 31.12.2012, p. 1).

Tompla France SARL, 24, Rue Condorcet, 91700 Fleury Mérogis, France

Tompla Druckerzeugnisse Vertriebs GmbH, Römerstrasse 31-35, 71229 Leonberg,
Germany

This Decision shall be enforceable pursuant to Article 299 of the Treaty and Article 110 of the
EEA Agreement.

Done at Brussels, 16.6.2017

For the Commission
Margrethe VESTAGER
Member of the Commission