

Summary of Commission Decision**of 21 February 2007****relating to a proceeding under Article 81 of the Treaty establishing the European Community****(Case COMP/E-1/38.823 — Elevators and Escalators)***(notified under document number C(2007) 512 final)***(Only the English version is authentic)**

(2008/C 75/10)

I. SUMMARY OF THE INFRINGEMENTS**Introduction**

1. The decision was addressed to KONE Belgium SA, KONE GmbH, KONE Luxembourg SARL, KONE BV Liften en Roltrappen, KONE Corporation (hereinafter 'KONE'), Mitsubishi Elevator Europe BV, NV OTIS SA, Otis GmbH & Co. OHG, General Technic-Otis SARL, General Technic SARL, Otis BV, Otis Elevator Company, United Technologies Corporation (hereinafter 'Otis'), Schindler SA/NV, Schindler Deutschland Holding GmbH, Schindler SARL, Schindler Liften BV, Schindler Holding Ltd (hereinafter 'Schindler'), ThyssenKrupp Liften Ascenseurs NV/SA, ThyssenKrupp Aufzüge GmbH, ThyssenKrupp Fahrtreppen GmbH, ThyssenKrupp Ascenseurs Luxembourg SARL, ThyssenKrupp Liften BV, ThyssenKrupp Elevator AG and ThyssenKrupp AG (hereinafter 'ThyssenKrupp').
2. The addressees participated in four separate but related single and continuous infringements of Article 81 of the Treaty in Belgium, Germany, Luxembourg and the Netherlands regarding **elevators and escalators**. Each of the four infringements covered the whole territory of one of these Member States.

Procedure

3. The Commission initiated the investigation on its own initiative (*ex-officio*) in early 2004 using information brought to its attention. Three rounds of inspections (Belgium, and Germany: January 2004; Belgium, Germany and Luxembourg: March 2004 and the Netherlands: April 2004) and a large number of leniency applications under the 2002 Leniency Notice confirmed that cartels were run in Belgium, Germany, Luxembourg and the Netherlands. The infringements covered both new installations and services, except in Germany where the evidence would suggest that only new installations were covered.
4. All four cartels displayed some common elements, such as, for instance:
 - **KONE, Otis, Schindler and ThyssenKrupp were all involved in the infringements in each of the four Member States.**
 - the cartels covered the same products and services in each Member State at issue, with the exception of Germany where — to the knowledge of the Commission — services were not directly part of the cartel agreements,
 - the managers responsible for the subsidiaries involved (and participants in the cartels) were sometimes simultaneously or successively responsible for several Member States,
 - the time periods of infringement investigated by the Commission largely overlapped, even though they were not always of exactly the same overall duration,
 - **the method for the allocation of projects concerning the sale and installation of elevators and escalators was very similar, sometimes identical, in at least some if not all Member States concerned (regarding, for example, the principles governing market and customer sharing, the maintenance of 'status quo' in market shares, the structure of the meetings, compensation schemes, and use of project lists, etc.),**
 - the method for the allocation of projects for the sale and installation of elevators and escalators through the use of so-called project lists was similar, if not identical, in all Member States concerned except the Netherlands where the Commission is not aware of any use of project lists,

- the method for the allocation of projects concerning maintenance and modernization was very similar, sometimes identical, in Belgium, Luxembourg and the Netherlands (for example, the principles governing customer sharing, establishment and maintenance of contacts, communication methods between the undertakings and compensation schemes).
5. The Statement of Objections was notified to the parties in October 2005. The addressees of the Statement of Objections did not request an oral hearing.

Functioning of the cartels

6. The **periods of infringements** retained in the decision are:
- from 9 May 1996 to 29 January 2004 in Belgium,
 - from 1 August 1995 to 5 December 2003 in Germany,
 - from 7 December 1995 to 9 March 2004 in Luxembourg, and
 - from 15 April 1998 to 5 March 2004 in the Netherlands.
7. In particular, **the following infringements** were committed in one, several or all of the Member States concerned:
- agreeing to share elevator and escalator **sales** and installations,
 - agreeing on the allocation of **public and private tenders**, as well as of other contracts, for the sale and installation of elevators and escalators in accordance with each undertaking's pre-agreed shares of sales,
 - agreeing on the allocation of projects for the sale and installation of new elevators and/or escalators in accordance with the principle that existing customer relationships should be respected,
 - **agreement not to compete with each other for maintenance contracts** for elevators and escalators already in function and on how to bid for those contracts,
 - **agreeing not to compete with each other for maintenance contracts** for new elevators and escalators and agreeing on how to bid for those contracts, and
 - **agreeing not to compete with each other for modernization contracts.**

The infringements' main features also included exchange of commercially important and confidential market and company (internal) information including bidding patterns and prices. The participants met regularly to agree to the above restrictions and they monitored their implementation within the national markets. There is evidence that the companies were aware that their behaviour was illegal and they took care to avoid detection; their employees usually met in bars and restaurants, they travelled to the countryside or even abroad, and they used pre-paid mobile phone cards to avoid tracking.

II. FINES

Gravity

8. Regarding the gravity of the infringements, impact on the market and their geographic scope, the infringements must be qualified as very serious.

Differential treatment

9. The undertakings were divided into different categories according to their relative importance in the markets to account for the specific weight and therefore the real impact of each undertaking on the market.
10. As the basis for comparing the relative importance of an undertaking in the market concerned, the Commission considered it appropriate to take the undertakings' Belgium-wide, Germany-wide, Luxembourg-wide and the Netherlands-wide turnovers, respectively. The comparison was made on the basis of these national-wide product turnovers in the last full year of the infringements: 2003 for all the undertakings concerned in respect of each of the four infringements, except for Schindler in Germany, for whom 2000 was the reference year, when it exited the cartel.

11. As regards the infringement in Belgium, Schindler and KONE were jointly placed in a first, Otis in a second and ThyssenKrupp in a third category. As regards in infringement in Germany, KONE, Otis and ThyssenKrupp were placed in one category. Schindler, whose illegal behaviour was confined to escalators and who exited the cartel in 2000, was placed in a separate category. In respect of the infringement in Luxembourg, Otis and Schindler were jointly placed in a first category and Kone and ThyssenKrupp were jointly placed in a second category. Finally, as regards the infringement in the Netherlands, KONE was placed in a first, Otis in a second and Schindler in a third category. ThyssenKrupp and Mitsubishi were jointly placed in a fourth category.

Sufficient deterrence

12. In order to set the amount of the fine at a level ensuring a sufficiently deterrent effect, the Commission considered it appropriate to apply a multiplication factor to the fines imposed.
13. With their respective worldwide turnovers, ThyssenKrupp and Otis are much larger players than the other addressees. Accordingly, and in compliance with previous Commission decisions, the Commission considered it appropriate to multiply the respective fines for ThyssenKrupp and Otis.

Increase for duration

14. Individual multiplying factors were also applied according to the duration of the infringements by each legal entity.

Aggravating circumstances

15. ThyssenKrupp was considered to have committed a repeated infringement, since two entities controlled by Krupp and/or Thyssen (before these two undertakings merged in 1999) had already been addressees of a previous Commission decision concerning cartel activities in *Alloy Surcharge* ⁽¹⁾. The fact that the undertakings have repeated the same type of conduct in the same or in different business fields shows that the initial penalties did not prompt them to change their conduct. This constitutes an aggravating circumstance justifying an increase in the basic amount of the fine to be imposed on ThyssenKrupp.

Application of the 2002 Leniency Notice

16. KONE, Otis, ThyssenKrupp and Schindler submitted applications under the Leniency Notice. They co-operated with the Commission at different stages of the investigation with a view to receiving favourable treatment under the Leniency Notice.

Point 8(a) — Immunity

17. Otis was granted full immunity under point 8(a) of the Leniency Notice concerning a cartel in the Netherlands since it enabled the Commission to carry out inspections in the Netherlands.

Point 8(b) — Immunity

18. In respect of the infringements in Belgium and Luxembourg, KONE's submission enabled the Commission to find an infringement of Article 81 of the Treaty. Hence, KONE qualified for a full immunity from the fine in respect of the infringements in Belgium and Luxembourg.

⁽¹⁾ See Joined Cases T-45/98 and T-47/98, *ThyssenKrupp Stainless and ThyssenKrupp Acciai speciali Terni v Commission* ('Alloy Surcharge'), [2001] ECR II 3757, and Joined Cases C-65/02 P and C-73/02 P, *ThyssenKrupp Stainless and ThyssenKrupp Acciai speciali Terni v Commission*, judgment of 14 July 2005.

Point 23(b), first indent (reduction of 30-50 %)

19. The evidence submitted by Otis relating to the cartels in Belgium and Luxembourg represented significant added value with respect to the evidence already in the Commission's possession, strengthening the Commission's ability to prove the infringement. Otis was the first undertaking to meet point 21 of the Leniency Notice and was granted a 40 % reduction of the fine for both infringements. Similarly, KONE's submission in relation to the cartel in Germany, as well as ThyssenKrupp's submission in relation to the cartel in the Netherlands, represented significant added value within the meaning of the Leniency Notice. These two undertakings were first to meet point 21 of the Leniency Notice in relation to the respective cartels, and the Commission granted KONE a 50 % reduction of the fine in respect of the infringement in Germany and ThyssenKrupp a 40 % reduction of the fine in respect of the infringement in the Netherlands.

Point 23(b), second indent (reduction of 20-30 %)

20. The evidence submitted by Otis relating to the cartel in Germany represented significant added value with respect to the evidence already in the Commission's possession, strengthening the Commission's ability to prove the infringement in Germany. Otis was the second undertaking to meet point 21 of the Leniency Notice and was granted a 25 % reduction of the fine for the infringement in Germany. Similarly, in respect of the infringement in Belgium, ThyssenKrupp's submission represented a significant added value within the meaning of the Leniency Notice. ThyssenKrupp was second to meet point 21 of the Leniency Notice and was granted a 20 % reduction of the fine in respect of the infringement in Belgium.

Point 23(b), third indent (reduction of up to 20 %)

21. The evidence submitted by Schindler relating to the cartel in Germany represented significant added value with respect to the evidence already in the Commission's possession, strengthening the Commission's ability to prove the infringement in Germany. Schindler was the third undertaking to meet point 21 of the Leniency Notice and was granted a 15 % reduction of the fine in respect of the infringement in Germany.

III. DECISION

22. The following undertakings infringed Article 81 of the Treaty by allocating tenders and other contracts among them in Belgium, Germany, Luxembourg and the Netherlands, with a view to sharing markets and fixing prices, agreeing on a compensation mechanism in some cases, exchanging information on sales volumes and prices, and, participating in regular meetings and other contacts to agree and implement the above restrictions:

In Belgium:

- (a) Kone Corporation and KONE Belgium SA, from 9 May 1996 to 29 January 2004;
- (b) United Technologies Corporation, Otis Elevator Company and NV OTIS SA, from 9 May 1996 to 29 January 2004;
- (c) Schindler Holding Ltd and Schindler SA/NV, from 9 May 1996 to 29 January 2004; and
- (d) ThyssenKrupp AG, ThyssenKrupp Elevator AG and ThyssenKrupp Liften Ascenseurs NV/SA, from 9 May 1996 to 29 January 2004.

In Germany:

- (e) Kone Corporation and KONE GmbH, from 1 August 1995 to 5 December 2003;
- (f) United Technologies Corporation, Otis Elevator Company and Otis GmbH & Co. OHG, from 1 August 1995 to 5 December 2003;

- (g) Schindler Holding Ltd and Schindler Deutschland Holding GmbH, from 1 August 1995 to 6 December 2000; and
- (h) ThyssenKrupp AG, ThyssenKrupp Elevator AG, ThyssenKrupp Aufzüge GmbH and ThyssenKrupp Fahrtreppen GmbH, from 1 August 1995 to 5 December 2003.

In Luxembourg:

- (i) Kone Corporation and KONE Luxembourg SARL, from 7 December 1995 to 29 January 2004;
- (j) United Technologies Corporation, Otis Elevator Company, NV Otis SA, General Technic-Otis SARL and General Technic SARL, from 7 December 1995 to 9 March 2004;
- (k) Schindler Holding Ltd and Schindler SARL, from 7 December 1995 to 9 March 2004; and
- (l) ThyssenKrupp AG, ThyssenKrupp Elevator AG and ThyssenKrupp Ascenseurs Luxembourg SARL, from 7 December 1995 to 9 March 2004.

In the Netherlands:

- (m) Kone Corporation and KONE BV Liften en Roltrappen, from 1 June 1999 to 5 March 2004;
- (n) United Technologies Corporation, Otis Elevator Company and Otis BV, from 15 April 1998 to 5 March 2004;
- (o) Schindler Holding Ltd and Schindler Liften BV, from 1 June 1999 to 5 March 2004;
- (p) ThyssenKrupp AG and ThyssenKrupp Liften BV, from 15 April 1998 to 5 March 2004; and
- (q) Mitsubishi Elevator Europe BV, from 11 January 2000 to 5 March 2004.

23. **For the infringements referred to in the previous recital, the following fines were imposed:**

In Belgium:

- (a) Kone Corporation and KONE Belgium SA, jointly and severally: EUR 0;
- (b) United Technologies Corporation, Otis Elevator Company and NV OTIS SA, jointly and severally: EUR 47 713 050;
- (c) Schindler Holding Ltd and Schindler SA/NV, jointly and severally: EUR 69 300 000; and
- (d) ThyssenKrupp AG, ThyssenKrupp Elevator AG and ThyssenKrupp Liften Ascenseurs NV/SA, jointly and severally: EUR 68 607 000.

In Germany:

- (e) Kone Corporation and KONE GmbH, jointly and severally: EUR 62 370 000;
- (f) United Technologies Corporation, Otis Elevator Company and Otis GmbH & Co. OHG, jointly and severally: EUR 159 043 500;
- (g) Schindler Holding Ltd and Schindler Deutschland Holding GmbH, jointly and severally: EUR 21 458 250; and
- (h) ThyssenKrupp AG, ThyssenKrupp Elevator AG, ThyssenKrupp Aufzüge GmbH and ThyssenKrupp Fahrtreppen GmbH, jointly and severally: EUR 374 220 000.

In Luxembourg:

- (i) Kone Corporation and KONE Luxembourg SARL, jointly and severally: EUR 0;
- (j) United Technologies Corporation, Otis Elevator Company, NV Otis SA, General Technic-Otis SARL and General Technic SARL, jointly and severally: EUR 18 176 400;
- (k) Schindler Holding Ltd and Schindler SARL, jointly and severally: EUR 17 820 000; and
- (l) ThyssenKrupp AG, ThyssenKrupp Elevator AG and ThyssenKrupp Ascenseurs Luxembourg SARL, jointly and severally: EUR 13 365 000.

In the Netherlands:

- (m) Kone Corporation Ltd and KONE BV Liften en Roltrappen, jointly and severally: EUR 79 750 000;
 - (n) United Technologies Corporation, Otis Elevator Company and Otis BV, jointly and severally: EUR 0;
 - (o) Schindler Holding Ltd and Schindler Liften BV, jointly and severally: EUR 35 169 750;
 - (p) ThyssenKrupp AG and ThyssenKrupp Liften BV, jointly and severally: EUR 23 477 850; and
 - (q) Mitsubishi Elevator Europe BV: EUR 1 841 400.
24. The undertakings listed in the previous recital shall immediately bring their infringement to an end, insofar 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 any act or conduct having the same or similar object or effect.
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