Commission Decision of 23 April 1986 relating to a proceeding under Article 85 of the EEC Treaty (IV/31.149 - Polypropylene) [EXCERPT]

The EEC polypropylene market is currently supplied by some sixteen Western European producers, including those located in Spain and Portugal which are not parties to the present proceedings (3). Certain structural changes have occurred in the industry since the date of the last known producers' meeting in late 1983, notably the creation by Montepolimeri and Hercules of a jointly-owned subsidiary known as Himont. SAGA Chemicals AS & Co., the Norwegian producer, was absorbed by the state-owned oil company Statoil at the end of 1983 and now constitutes a profit centre in that producer's business having ceased to exist as a separate legal entity.

The west European market for polypropylene is supplied almost exclusively from European-based production facilities. Supplies from the United States,

eastern Europe and Japan are relatively insignificant (between 1 % and 2,5 % per annum over the past five years) although no official quantitative import restrictions are in force.

The total demand for polypropylene (all grades) in western Europe in 1983 was estimated at some 1,6 million tonnes. Exports by the western European producers to 'deep sea' markets accounted for around 350 000 tonnes. Estimated 'nameplate' capacity in western Europe in 1983 was some 2 430 000 tonnes, but 'effective' capability was somewhat less (about 2 100 000 tonnes) (4).

The four major producers, Montepolimeri, Hoechst, ICI and Shell together account for around 50 % of the EEC polypropylene market (in 1977 their combined share was 64 %). Montepolimeri owned several plants in Italy and was joint owner with Petrofina of a manufacturing facility in Belgium. Hoechst, the leading German producer, owned production units in France and Spain as well as in Germany. Likewise ICI had a plant not only in the United Kingdom but also in the Netherlands, and the Shell group factories were in the United Kingdom, Netherlands and France.

There is a substantial trade in polypropylene between Member States. Production facilities are located in Belgium, France, Germany, Italy, the Netherlands, Spain, Portugal and the United Kingdom, and each of the then EEC producers supplied the product in most if not all Member States.

Montepolimeri, (part of the Montedison group) the largest producer in the EEC, had around 15 % of the market in 1982. After taking over the business of another Italian producer, ANIC, in 1983, it had around 18 % of the European market.

On 1 October 1983 Montepolimeri formed a joint venture known as Himont with Hercules, the leading producer of polypropylene in the United States, of which Hercules Chemicals SA is the European chemical subsidiary. The new Himont company combines the world-wide production facilities of the two groups, although separate marketing facilities have been maintained in Europe. Montepolimeri is now known as Montedipe following an internal reorganization of the Montedison group.

ICI, Shell and Hoechst are of comparable size and each currently holds a market share in western Europe of around 11 %. Prior to the formation of Himont, Hercules had just under 6 % of the west European market. ATO, BASF, DSM, Huels, LINZ, Solvay and SAGA (now Statoil) each had between 3 and 5 % of the market. The last producer to enter the market, Petrofina, is the smallest producer with under 2 % of the market in 1983 (see Table 1).

The largest national market in the EEC for polypropylene is Germany, which in 1982 accounted for some 24 % of western European consumption, followed by Italy (23 %), the United Kingdom (19 %) and France with 16 % (see Table 2).

Since 1970 consumption of polypropylene in western Europe has increased five-fold. During the 1970s, average growth in demand was 15 to 20 % per annum. In the 1980s annual growth in demand slowed somewhat but was still on average 9 %. Sales in 1983 of over 1,6 million tonnes in western Europe represented a 15 % increase over 1982, which itself showed growth of 6 % compared with the previous year.

Prior to 1977, the polypropylene market in western Europe (amounting in that year to some 960 000 tonnes) was supplied by ten producers. Besides the four majors, the other producers were ANIC in Italy, Rhone-Poulenc in France, Alcudia in Spain, Huels and BASF in Germany and the Austrian state-owned producer LINZ.

The controlling patents held by Montedison expired in most of Europe in 1976 to 1978.

Seven new producers came on stream in western Europe in 1977: Amoco and Hercules in Belgium, ATO and Solvay in France, SIR in Italy, DSM in the Netherlands and Taqsa in Spain. SAGA, the Norwegian producer, began operations in mid-1978. In addition the established producers, Shell and ICI, built new plants in France and the Netherlands which came on stream during 1978. The Montefina plant in Belgium (jointly owned by Petrofina and Montepolimeri) was commissioned in early 1980. At first Montefina acted as a joint selling company on behalf of both shareholders. Since March 1982 Petrofina has itself marketed its share of the output of this plant, the rest being marketed by Montepolimeri.

Since the date of the Commission's investigations a number of producers have expanded the capacity of their existing polypropylene facilities or constructed new plant.

The arrival in 1977/78 of the new producers, with nameplate capacity of some 480 000 tonnes, brought

a substantial increase in installed capacity in western Europe which was not for several years matched by the increase in demand in that market.

According to figures supplied by ICI, polypropylene consumption in western Europe in 1977 was sufficient to occupy only 51 % of effective capacity, although by 1983 domestic western European demand filled 72 % of available capacity. Including production for overseas exports, plant utilization rates were 60 % in 1977 and 90 % in 1983.

The industry opinion, as expressed in documentation obtained by the Commission, is that from 1982 onwards supply and demand were roughly in balance, and indeed even on the figures supplied by ICI the average utilization rate of the European producers in 1983 had risen to 90 % occupacity (including exports).

During 1977, after seven new polypropylene producers came on stream in western Europe, the established producers initiated discussions with a view to avoiding a substantial drop in price levels and attendant losses.

As part of these discussions the major producers, Montepolimeri (then Montedison), Hoechst, ICI and Shell, initiated a 'floor price agreement' which was to be in operation by 1 August 1977. The original arrangement did not involve a volume control but if it proved successful, tonnage restrictions were envisaged for 1978. The floor price agreement was to run for an initial four months. Details of this floor price agreement were communicated to other producers including Hercules.

The 'floor prices' (as noted by the Marketing Director of Hercules) for the major grades for each Member State were based on a raffia grade market price of DM 1,25/kg.

The participants in the agreement were named as the four majors but provision was also made in the scheme for unnamed 'importers' to apply somewhat lower prices.

ICI and Shell admit that there were contacts with other producers as to how the price slide could be checked. According to ICI a price level may have been suggested below which prices should not be permitted to fall. It is confirmed by ICI and Shell that discussions were not limited to the 'big four'. A document dated 6 September 1977 found at Solvay shows that a meeting took place on 30 August 1977 between that company and Shell SA, the Shell Belgian company, in order to discuss the price of polypropylene. Hercules was also at least very well informed of the outcome of the price discussions. The identity of other producers involved in discussions at this time could not however be established.

Precise details of the operation of the floor price agreement could not be ascertained. However by November 1977 when the raffia price was reported as

having fallen to around 1,00 DM/kg, Montedison announced an increase to 1,30 DM/kg due to take effect on 1 December and on 25 November the trade press quoted the other three majors as expressing their support for the move with similar increases planned from the same date or later in December.

It was at about this time that the system of regular meetings of the polypropylene producers began. ICI claims that meetings were not held until December 1977 (i.e. after the Montedison announcement) but admitted that contact was occuring between producers before that date probably by telephone and on an ad hoc basis.

Shell says that its executives 'may have had discussions concerning price with Montepolimeri in or about November 1977 and Montepolimeri may have suggested the possibility of increasing prices and may have sought (Shell's) views on its reactions to any increase' (reply of Shell to Statement of Objections).

While there is no direct evidence of any group meetings being held to fix prices before December 1977, the producers were already informing meetings of a trade association of customers (EATP: European Association for Textile Polyolefins) held in May and November of 1977, of the perceived need for common action to be taken to improve price levels. Hercules in May 1977 had stressed that the 'traditional industry leaders' should take the initiative while Hoechst had indicated its belief that prices needed to rise by 30 to 40 % (source: EATP minutes).

The Montedison initiative (aiming at a price of 1,30 DM/kg from 1 December) was announced in the trade press only a few days before the EATP meeting of 22 November 1977, in which Hercules, Hoechst, ICI, LINZ, Rhône-Poulenc, SAGA and Solvay - which attended as 'associate members' - all stated that they would be 'supporting' the move. Their speeches as recorded in the minutes show that the 1,30 DM/kg level set by Montedison had been accepted by the other producers as a general industry 'target'.

Despite some discounting this price initiative was effective and by April 1978 European polypropylene prices were reported as having increased by 25 to 30 % since November 1977.

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One of the main tasks of the meetings of producers which began at the end of 1977 was to set so-called 'target prices' for each principal grade of polypropylene.

For ease of reference, the agreed targets were usually referred to in terms of the raffia grade price in DM for Germany (West German prices tend to determine the general European level). It was however the practice

to draw up a detailed table of targets in each national currency for several grades - raffia, fine fibre, homopolymer injection moulding, copolymer, battery grade and film grade. Examples of such tables were attached to the ICI reports of meetings of January 1981, 13 May 1982 and 2 September 1982, as well as the Hercules report of a meeting of 10 March 1982.

The system, which was suggested by the Hercules representative, requires some explanation. 'Key' customers were identified in Belgium, Italy, Germany and the United Kingdom and a 'coordinator' nominated for each one. In December 1982 a more general adoption of the system was proposed, with an account leader named for each major customer who would 'guide, discuss and organize price moves'. Other producers which had regular dealings with the customer were known as 'contenders' and would cooperate with the account leader in quoting prices to the customer in question. To 'protect' the account leader and contenders, any other producers approached by the customer were to quote prices higher than the desired target. These producers were called 'non-contenders'.

During 1979 the price of propylene increased substantially.

It was generally recognized that in order to achieve market conditions favourable to the success of agreed price initiatives some permanent system of volume control was required.

Prior to the assumption by ICI of the leadership of the group in August 1982 various schemes for sharing the market were applied. While percentage shares of the estimated available business had been allocated to each producer, there was not at this stage any systematic limitation in advance of overall production. Thus estimates of the total market had to be revised on a rolling basis and the sales in absolute tonnage terms of each producer had to be adjusted to fit the percentage entitlement.

The schemes for sharing the market between the producers were referred to as involving (variously) 'volume targets', 'target volumes', 'quotas' or sometimes 'aspirations'.

Each producer taking part was allocated a quota or target expressed either in tonnes or in percentages. In arriving at a quota scheme allowance had to be made for producers which did not attend meetings and so had not participated in the detailed discussions. In 1979 Hercules had its own individual quota but after that date was grouped together with Amoco or with Amoco and BP.

While offering various alternative interpretations of the nature and purpose of the meetings, the undertakings have not produced any documentary account of meetings or any oral evidence which might cast doubt on the accuracy of the ICI notes.

The account of two meetings as given by ICI in its internal reports is confirmed in every material respect by notes of the same meetings found at Hercules.

CI, Montepolimeri, Hoechst and Shell as the 'big four' together constituted the nucleus of the arrangements which evolved from the 'floor price agreement'. After the system of regular meetings had evolved Montepolimeri assumed the leadership of the group, a responsibility which was ceded to ICI in August 1982. Hoechst, ICI and Montepolimeri were all regular participants in the bosses' and experts' meetings.

Shell did not attend these meetings but it was involved in the original floor price agreement, took part in ad hoc meetings with the other major producers and participated in the quota arrangements. On Shell's own admission prior to bosses' and experts' meetings its views were sometimes sought on the feasibility of price increases, and after such meetings it was informed by Montepolimeri or ICI that particular 'targets' had been proposed and passed on the information to its operating companies. Shell's internal documents confirm that it knew of and was participating in price 'initiatives', sometimes even as the ostensible leader. From the end of 1982 onward its representative regularly attended 'pre-meetings' of the four major producers. Operating companies of the Shell group took part in national meetings.

Apart from the 'big four' the other participants in the original 'floor price' agreement of mid-1977 cannot be identified with certainty. However, the later 1 December 1977 initiative by Montepolimeri, Hoechst, ICI and Shell had the express 'support' of Hercules, LINZ, Rhône-Poulenc, SAGA and Solvay at least. The participation of all these producers in collusive arrangements therefore dates from 1977, whatever the precise date on which each began to attend meetings.

The system of regular meetings began at about the end of 1977 but it is not possible to identify the precise date on which each individual producer began to attend (6).

1999/60/EC: Commission Decision of 21 October 1998 relating to a proceeding under Article 85 of the EC Treaty (Case No IV/35.691/E-4: - Pre-Insulated Pipe Cartel) [EXCERPT]

Pre-insulated pipes, used principally in district heating systems, consist essentially of steel pipes enclosed within pipes, with a layer of foam insulation between.

District heating systems are commonly employed in the more northerly West European countries and in the former Eastern Bloc countries, where the climate is severe. Water is heated in a central location and transported via underground pipes through a municipality or district to provide heat to individual residential and commercial buildings.

As environmental concerns have grown, particularly in connection with the efficient use of energy, the potential for district heating systems has increasingly been recognised, for example in the combination of powerplants with district heating systems ('co-generation`): surplus heat generated by power stations or by industry is used for district heating.

Given that the hot water (or steam) has to be transported underground over long distances, the temperature is very high (up to 140 °C) and to ensure efficient and safe distribution the pipes have to be pre-insulated.

In Western Europe the final customers for district heating pipes are primarily municipally-owned energy or specialist district heating supply companies. Contracts may relate either to specific projects or to annual supply agreements.

In the first type of contract, the municipality or other public/local authority engages a civil engineering contractor for the particular project following the appropriate tendering procedure and the successful contractor then calls for offers for pre-insulated pipes from the pipe manufacturers. (Contracts for the supply of pipes worth over ECU 400 000 are also subject to Community Public Procurement rules (3)). The installation of the pipes supplied by the pipe manufacturer is carried out by the contractor. This type of contract accounts for some 60 % of the total European market.

In the case of annual contracts (also known as the 'retail` market) the municipality or other end-user agrees to purchase pipes and fittings up to a designated value each year directly from a pipe manufacturer, usually for the partial replacement or maintenance of an existing district heating system. (In some cases, the contractual period may be three or even five years.)

(7) The Community market for district heating pipes in 1995 was worth some ECU 400 million, involving an increase over the previous year of 15 %. The product is marketed in virtually all the Member States. There is a substantial trade between Member States. ABB has production facilities in several Member States. Henss/Isoplus produces in Austria and Germany. Denmark, the main centre of production, accounts for around 50 % of Community pipe manufacturing capacity and supplies the product to all the other Member States where district heating is used. Germany is the largest Community national market (at some ECU 160 million accounting for 40 % of total Community consumption). At least two-thirds of the district heating pipes laid in Germany are supplied from other Member States, primarily

Denmark, but also Austria, Finland and Sweden. Denmark is the Community's second largest national market, with 20 % of total consumption. The Community-based producers together supply a European export market (Eastern Europe, Nordic and Baltic States) worth another ECU 100 million, and further rapidly expanding markets are Russia and China.

(8) During the material period, eight producers supplied the West European market with preinsulated pipes on an appreciable scale: ABB, Løgstør, Dansk Rør ('Starpipe`), Tarco, Pan-Isovit, Henss/Isoplus, KWH and Powerpipe. Community production is particularly concentrated in Denmark where four of the producers are located, three of them in the town of Fredericia.

ALLEGED CARTEL 1

Agreement was reached between the four Danish producers on the basic principles for general cooperation on their domestic market at a meeting in Jutland at the end of 1990. At the time imports from Germany into Denmark were negligible. The participants were all senior company officers holding the rank of managing director or above (ABB's Article 11 Reply, p. 49; Løgstør, Article 11, Reply, Statement I, p. 72; Tarco statement of 26 April 1996, p. 2).

One of the first actions was to coordinate a price increase which was due to come into effect in Denmark in two steps totalling 10 to 12 % (there were different dates for the different producers) and on export markets between 6 and 10 % (Appendix 19).

To finalise the detailed terms of the agreement, which was to include a quota and customer allocation system, there followed several more meetings: the managing directors (who adopted the sobriquet 'the Popes`) met on 16 January 1991.

(32) Quotas - supposed to be valid for the next two years, 1991 and 1992 - were agreed in the 16 January meeting but were modified two months later (on 4 March 1991) to give ABB and Løgstør a slightly larger allocation.

The basic principle on which the market-sharing system for Denmark was based was the observance of 'established customer` relationships: each supplier kept its existing customers and there was to be no aggressive targeting of another producer's customers.

The quota scheme agreed by the managing directors was implemented and monitored by the lower-tier group of sales managers (the 'Sales` or 'Contact` group) which met once (per Tarco) or even twice (per ABB) a month.

The managing directors met about every three months to resolve difficulties or disputes.

EXTENSION TO OTHER MARKETS

The cooperation between the Danish producers had not been confined to their national market: the first concerted price increase applied also to export markets, effective from 1 January 1991. In Germany, ABB's increase was 7 %, Tarco and Løgstør 10 % and Starpipe 6 % as of 1 December 1990 (Appendix 19).

Further, at the same time (late 1990, early 1991) as the Danish producers were finalising their secret arrangements to control the market in Denmark, initiatives had already begun to extend the cooperation on market-sharing to other markets and to bring in the German producers.

Such moves were at first relatively fragmented. ABB - which had taken over Isolrohr in 1987 and so had a foot in both German and Danish camps - was involved in bilateral discussions with Pan-Isovit in December 1990 to January 1991 on forming an 'informal strategic alliance` (Appendices 30 and 31, ABB's Article 11 Reply, pp 7-9). These two producers together supplied the major part of the German market at the time: Isoplus, which had only recently bought Isolrohr's Austrian factory, was still in the process of being set up as a serious contender to enter the German market, with Henss as its commercial agents.

There was no question at this time of a formal alliance being formed between all four Danish producers and Pan-Isovit: the latter regarded Løgstør, Tarco and Starpipe as 'pirates` who had attempted to seize market share in Germany by low prices. ABB as the owner of Isolrohr in Germany was its natural partner. It no doubt served ABB's strategic interest to have an understanding with both sides.

In addition to technical cooperation, the discussions between ABB and Pan-Isovit covered the framework for a division of the market between them as the two largest producers supplying in Germany. The underlying idea was to divide client areas and to maintain existing market shares.

(39) It was agreed that a structure would be set up, involving the formation of a 'Board Group` and a 'Strategy Group`, to coordinate the activities of the two producers and ensure their joint domination of the German market.

Pan-Isovit also expressed its support for the 6 to 8 % price increases which ABB (and the Danish producers) had recently agreed on their export markets, including Germany.

According to ABB, Pan-Isovit subsequently had reservations regarding the technical cooperation proposed and, after it had also declined an invitation to join EuHP (7), the bilateral discussions on market cooperation lapsed in April 1991.

(40) The arrangements between the Danish producers extended to Italy, even if in March 1991 Tarco was reporting that on price ABB IC Møller and Løgstør were 'not behaving entirely in accordance with the agreements for the Italian market`: ABB had only applied the 6 % increase in the second half of the year, while Løgstør had increased its list prices but simultaneously given rebates which kept prices at 1990 levels

Is was envisaged that the agreement was to be put in writing and signed, but this final step was apparently never taken. Løgstør claims it refused to sign because it never wanted to make any agreement for Germany, but this assertion leaves unexplained Løgstør's willing participation in the audit by the Swiss accountants and is contrary to Pan-Isovit's assessment that Løgstør was interested in a quota system.

The other producers were not willing to go ahead on the basis of handshakes.

FUTHER EXTENSION OF THE CARTEL

ABB explains that the 'price war` of late 1993 and early 1994 had resulted in such heavy losses for nearly all the district heating suppliers that the smaller producers amongst them were forced to seek a concerted effort to return the price level to the status quo ante bellum.

It would seem that the common price list was immediately put into use to coordinate price offers for individual projects, although its employment was problematic. The invitation sent out on 10 June 1994 for a directors' meeting on 18 August 1994 refers to the 'list of 9 May` stating that as it had in some respects been incomplete, having led to 'confrontation an differences of interpretation` when offers were being compared. The cartel coordinator therefore attached a modified and extended price list to the invitation

Løgstør also attributes the authorship of the list to Henss and the cartel coordinator

At this time KWH was a member of EuHP but had not yet been admitted to the cartel and was not present. In any case it had almost no presence in Germany. At an EuHP technical meeting a few days later (on 23 August) its representative became aware of some understanding between the other participants, and wrote in his diary 'the boys met, it seems as if the market has been agreed?`

According to KWH, it came under sustained pressure from the other producers either to quit the market entirely or to come to an accommodation with the cartel.

NATIONAL CONTACT GROUPS

'Marketing` or 'contact` groups consisting of local sales managers were set up in each important national market and were given the task of administering the cartel arrangements under the overall supervision of the directors' club.

The contact group for Germany, where the market for 1995 was initially estimated at almost ECU 180 million (later revised to ECU 160 million), met every week or fortnight.

The new Danish contact group was set up in October 1994. It met approximately once a month, usually in hotels in Jutland.

The Netherlands contact group was originally supposed to meet only twice a year.

There is substantial evidence that arrangements for market-sharing in Austria predated the setting-up of the contact group and the accession of Austria to the European Union. However, any local cartel arrangements in this market prior to the accession of Austria are outside the scope of this procedure.

The contract group for Italy originally consisted of ABB, Socoløgstør (a Løgstør joint venture company) (9), Tarco and Pan-Isovit who were soon joined by Sigma. It first met in Milan on 21 March 1995. A note made a few days later by the Managing Director of Pan-Isovit concerning the Italian market (Appendix 111) shows that already several large projects had been allocated to Løgstør and Pan-Isovit.

For Sweden the regular members of the contact group were ABB and Løgstør. Between them, these two producers had 85 % of the market (worth around ECU 35 million). Tarco and KWH were less frequent participants and Starpipe may have attended one meeting.

A number of national meetings concerning the market in Finland (worth around ECU 15 million) were held during the relevant period between ABB, Løgstør and KWH. Tarco and Starpipe do not supply in that market.

Case T-380/10, Wabco Europe and Others v European Commission [EXCERPT]

First, it states that from the early 1990s until 1995 or 1996, the applicants – as they acknowledged in their application under the 2002 Leniency Notice – took part, in Italy, in unlawful discussions concerning ceramics within the association Federceramica, whose members were ceramic manufacturers. However, since those discussions took place before the date which the Commission set in the contested decision as the start of the infringement for the purpose of penalising the applicants, namely 15 March 1993, the Commission took those discussions into account solely in so far as they were 'indicative of the overall behavioural pattern of certain producers ([the applicants] and Pozzi Ginori [SpA]), which also engaged in the anti-competitive practices within the framework of [the cross-product association] Euroitalia' from 15 March 1993 (see recital 409 to the contested decision and footnotes 501 to 505 thereto).

Secondly, from 15 March 1993 to 15 October 2004, which are the exact dates taken into consideration by the Commission in relation to the duration of the ceramics-related infringement in Italy, the applicants are said to have taken part in meetings at which price increases were coordinated within Euroitalia for taps and fittings and for ceramics. As regards ceramics more particularly, regular price increases and other pricing elements, such as minimum prices and discounts, were allegedly discussed, in the same way and at the same meetings as taps and fittings, as is said to be shown in particular by the notes taken at the Euroitalia meetings held on 9 July 1993, 12 March 1996, 31 January 1997, 15 October 1999, 21 January 2000 and 14 February 2003 (see recitals 411 to 460 to the contested decision, footnotes 506 to 580 thereto and Annexes 6 and 7 thereto, which concern the dates of the meetings of Euroitalia and of the Michelangelo group).

Thirdly, according to the contested decision, the applicants participated, from 12 March 1996 to 25 July 2003, in Michelangelo meetings at which, as with the Euroitalia meetings, the prices of ceramics were mentioned, as is shown by the notes taken at the meetings on 12 May and 20 July 2000 in particular (see recitals 411 to 460 to the contested decision, footnotes 506 to 580 of that decision and Annexes 6 and 7 thereto, which concern the dates of the Euroitalia and Michelangelo meetings).

The applicants submit that, although, as they acknowledged in the administrative procedure, they took part in an infringement covering taps and fittings in Italy, the Commission none the less could not reasonably infer that they were involved in a ceramics-related infringement in Italy in the absence of sufficient evidence to establish such an infringement.

The Commission disputes those arguments, contending (i) that the absence of any challenge by the applicants during the administrative procedure is additional evidence of their participation in a ceramics-related infringement in Italy and (ii) that it provided sufficient proof of their involvement in such an infringement.

By their first complaint, the applicants argue that the discussions that were held within Euroitalia and Michelangelo did not support the conclusion that a cartel existed. First, the Commission failed to establish how the applicants distorted competition on the ceramics market although (i) they were the only manufacturer of that product sub-group which attended the Euroitalia meetings and (ii) they were also, in most cases, the only manufacturer of that sub-group to attend Michelangelo meetings. Secondly, and in any event, the information relating to ceramics that was provided at the Euroitalia and Michelangelo meetings had no anti-competitive significance.

By their second complaint, the applicants maintain that the Commission could not rely on their participation at the Federceramica meetings to establish the infringement. First, since the Commission did not formally censure the applicants, in the contested decision, for that conduct, the presumption of innocence bars the Commission from inferring, on the basis of their involvement in Federceramica, that they engaged elsewhere in a ceramics-related infringement in the context of Euroitalia or Michelangelo. Secondly, the Commission cannot rely on their participation in the Federceramica meetings for the purpose of establishing an infringement in the context of Euroitalia and Michelangelo and, as a consequence, impose a fine on them, since that amounts to a breach of the last sentence of point 23(b) of the 2002 Leniency Notice.