



C/2024/5664

26.9.2024

**Summary of Commission Decision**  
**of 24 June 2024**  
**pursuant to Article 23(1)(c) of Council Regulation (EC) No 1/2003**  
**(Case AT.40882 – IFF – deletion of data)**  
*(notified under document number C(2024) 4256 final)*  
**(Only the English text is authentic)**  
  
(C/2024/5664)

On 24 June 2024, the Commission adopted a decision pursuant to Article 23(1)(c) of Council Regulation (EC) No 1/2003 <sup>(1)</sup>. In accordance with the provisions of Article 30 of Regulation (EC) No 1/2003, the Commission herewith publishes the names of the parties and the main content of the decision, including any penalties imposed, having regard to the legitimate interest of undertakings in the protection of their business secrets. A non-confidential version of the decision is available on the Competition Directorate-General website (<http://ec.europa.eu/competition/antitrust/cases/>)

## INTRODUCTION

The decision imposes a fine of EUR 15 900 000 on International Flavors & Fragrances Inc. and International Flavors & Fragrances IFF (France) SAS for infringing Article 20(4) read in conjunction with Article 23(1)(c) of Regulation EC No 1/2003. They produced information in incomplete form during an inspection.

## PROCEDURE

Between 7 and 10 March 2023, the Commission carried out inspections at the premises of International Flavors & Fragrances IFF (France) SAS in the framework of Case AT.40826 - *Consumer Fragrances*. The inspection decision C(2023) 1094 of 10 February 2023 required International Flavors & Fragrances Inc., together with all undertakings directly or indirectly controlled by it, including International Flavors & Fragrances IFF (France) SAS, to submit to an inspection concerning its possible participation in anti-competitive agreements and/or concerted practices contrary to Article 101 TFEU and Article 53 of the EEA Agreement in the sector of consumer fragrances and fragrance ingredients.

During the inspections, the Commission detected that an employee of International Flavors & Fragrances IFF (France) SAS had deleted WhatsApp messages from his professional mobile phone.

The Commission decided on 12 March 2024 to initiate separate proceedings against International Flavors & Fragrances Inc. and International Flavors & Fragrances IFF (France) SAS (together 'IFF') for this conduct in Case AT.40882 – IFF - *deletion of data*.

The Commission engaged in a cooperation procedure with IFF, leading to a common understanding as regards the scope of the objections and the range of likely fines to be imposed by the Commission. On 29 April 2024, IFF introduced a cooperation submission which reflected the Commission's view of the case, including an acceptance of liability and the maximum amount of fine foreseen to be imposed by the Commission.

The Commission adopted the Statement of Objections on 16 May 2024. IFF unequivocally confirmed that the Statement of Objections corresponded to the content of its cooperation submission and that it remained committed to the cooperation procedure.

On 20 June 2024 the Advisory Committee on Restrictive Practices and Dominant Positions was consulted and gave a positive opinion. The Hearing Officer issued his final report immediately thereafter.

<sup>(1)</sup> Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ L 1, 4.1.2003, p. 1).

### FACTS

During the inspection in Case AT.40826 – *Consumer Fragrances*, at the premises of International Flavors & Fragrances IFF (France) SAS, the Commission inspectors detected, when examining a professional mobile telephone submitted for inspection, that the custodian had deleted WhatsApp messages exchanged with a competitor on this device after he was informed that he was a target of the inspection. This custodian was a senior employee of International Flavors & Fragrances IFF (France) SAS and International Flavors & Fragrances Inc.

IFF had not informed the Commission about the deletion when it submitted the device for inspection. The Commission inspectors managed to restore most or possibly all the deleted data which were relevant for the investigation. IFF admitted the deletion on the spot and supported the Commission pro-actively in restoring the deleted data.

### LEGAL ASSESSMENT

The conduct consists of the intentional production of the required business records in incomplete form during an inspection. This qualifies as an infringement of Article 20(4) read in conjunction with Article 23(1)(c) of Regulation (EC) No 1/2003.

IFF produced the records requested for examination in incomplete form, given that the custodian of the mobile device that contained these records had intentionally deleted some records before producing the device to the Commission for examination. This manipulation of business records took place during the inspection and the records deleted related to the subject matter of the investigation.

### FINES

Article 23(1)(c) of Regulation 1/2003 allows the Commission to impose a fine not exceeding 1 % of the total turnover in the preceding business year when an undertaking, intentionally or negligently, produces the required books or other records related to the business in incomplete form during inspections under Article 20 of Regulation 1/2003 or refuses to submit to inspections ordered by a decision adopted pursuant to Article 20(4) of the same regulation.

In fixing the amount of any fine, pursuant to Article 23(3) of Regulation (EC) No 1/2003, regard shall be had both to the gravity and to the duration of the infringement.

In assessing the gravity of the conduct at stake, the Commission takes into account that the infringement was very serious by nature and was committed intentionally. The information was deleted by a senior employee and was relevant for the investigation. The Commission also takes into account that the fine needs to be sufficiently deterrent. On the basis of these elements, the Commission considers that a fine set at 0,30 % of IFF's turnover would be appropriate.

However, the Commission also takes into account the particular circumstances of the case. IFF pro-actively cooperated with the Commission after the detection of the deletion of the information by the Commission. IFF immediately admitted the facts and helped to timely restore the deleted information to its fullest ability. Furthermore, IFF engaged in a cooperation procedure where it acknowledged liability for the infringement and accepted a maximum fine. On the basis of these elements, the Commission considers it appropriate to reduce the amount of the fine to be imposed on IFF by 50 %.

In assessing the duration, considering that the conduct constituted an instantaneous infringement, the amount of the fine is not further increased for duration.

On the basis of all the elements above, the fine is set at 0,15 % of IFF's total turnover in 2023. Considering that the turnover of IFF amounted to EUR 10 615 000 000 in 2023, the fine is set, after rounding, at EUR 15 900 000.

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