



C/2024/5666

26.9.2024

**Final Report of the Hearing Officer ⁽¹⁾
(AT.40882 - IFF - deletion of data)**

(C/2024/5666)

1. The draft decision, addressed to International Flavors & Fragrances Inc. and IFF (France) SAS (hereinafter, together, 'IFF') finds that IFF has infringed Article 20(4) read in conjunction with Article 23(1)(c) of Council Regulation (EC) No 1/2003 ⁽²⁾ by intentionally producing the required books or other records related to the business in incomplete form during an inspection.
2. On 10 February 2023, the Commission adopted an inspection Decision C(2023)1094, pursuant to Article 20(4) of Regulation (EC) No 1/2003 in an ongoing investigation in case AT.40826 - *Consumer Fragrances*. The inspection at the premises took place between 7 and 10 March 2023. During the inspections the Commission detected that an employee of IFF had deleted WhatsApp messages from his mobile device after he was informed that he was a target of the inspection.
3. On 12 March 2024, the Commission initiated proceedings against IFF with a view to engage in cooperation discussions.
4. On 29 and 30 April 2024, IFF submitted a formal request to cooperate with the Commission in this case (the 'Cooperation Submission') ⁽³⁾. The Cooperation Submission contained:
 - a) an acknowledgement in clear and unequivocal terms of IFF's liability for the infringement, the main facts, their legal qualification and the duration of the infringement;
 - b) an indication of the maximum amount of the fine that IFF would accept in the framework of a cooperation procedure;
 - c) IFF's confirmation that it had been sufficiently informed of the objections the Commission envisaged raising against it and that it had been given sufficient opportunity to make its views known to the Commission;
 - d) IFF's confirmation that it had been granted access to the evidence supporting the objections and sufficient opportunity to access any other documents in the Commission's file (on the basis of a list provided by the Commission), and that it did not envisage requesting further access to the file or to be heard again in the form of an oral hearing, unless the Commission did not reflect the contents of the Cooperation Submission in the Statement of Objections ('SO'); and
 - e) IFF's agreement to receive the statement of objections and the final decision pursuant to Article 23(l)(c) of Regulation (EC) No 1/2003 in English.
5. On 16 May 2024, the Commission adopted a SO addressed to IFF. IFF replied to the SO by confirming that it reflected the contents of the Cooperation Submission and that IFF therefore remained committed to following the cooperation procedure.
6. The infringement found and the fine imposed in the decision correspond to those acknowledged and accepted in the Cooperation Submission.

⁽¹⁾ Pursuant to Articles 16 and 17 of Decision 2011/695/EU of the President of the European Commission of 13 October 2011 on the function and terms of reference of the hearing officer in certain competition proceedings (OJ L 275, 20.10.2011, p. 29).

⁽²⁾ 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 of 4.1.2003, p. 1).

⁽³⁾ A submission was first made on 29 April 2024, followed by an addendum to that submission made on 30 April 2024.

7. The amount of the total fine is reduced by 50 % on the ground that IFF has cooperated with the Commission by (i) admitting to the deletion of the messages to which the infringement relates at the time where their deletion was detected and recorded in minutes, (ii) helping to timely restore the deleted information to IFF's fullest ability through a backup system, and (iii) engaging in a cooperation procedure, where IFF acknowledged liability for the infringement and accepted the imposition of a fine that does not exceed a given, specified amount, as reflected in the Cooperation Submission.
8. Pursuant to Article 16 of Decision 2011/695/EU, I have examined whether the draft decision deals only with objections in respect of which IFF has been afforded the opportunity of making known its views. I conclude that it does.
9. Overall, I consider that the effective exercise of procedural rights has been respected in this case.

Brussels, 21 June 2024.

Eric GIPPINI FOURNIER
