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DN: IP/00/589 Date: 07/06/2000

TXT: FR EN DE DA ES PT NL IT SW FI EL
 PDF: FR EN DE DA ES PT NL IT SW FI EL
 DOC: FR EN DE DA ES PT NL IT SW FI EL

ip/00/589

Brussels, 07 juin 2000

Commission fines ADM, Ajinomoto, others in lysine cartel

The Commission has today fined Archer Daniels Midland, Ajinomoto and three other companies a total of almost 110 million Euro for operating a global price-fixing cartel for lysine. The decision highlights the Commission's determination to fight cartels, the most damaging of all anti-competitive practices.

Lysine is the most important amino acid used in animal foodstuffs for nutritional purposes. Amino acids are building blocks of protein. They can be of vegetal or animal origin (e.g. soybeanmeal or fishmeal). They can also be manufactured. The five cartel participants manufacture and sell synthetic amino acids. The availability of synthetic amino acids enables nutritionists to compose protein diets that better meet the animal's feed requirements.

The Commission's extensive investigation found that Archer Daniels Midland Co (USA), Ajinomoto Co (Japan), Cheil (Korea), Kyowa Hakko (Japan) and Sewon (Korea) fixed lysine prices worldwide, including in the European Economic Area. They have also fixed sales quota for that market and operated an information exchange in order to underpin these quotas from at least July 1990 to June 1995.

The Commission considers that the cartel represents a very serious infringement of the EC competition rules and justifies heavy fines. The leading players in the cartel, Archer Daniels Midland and Ajinomoto are fined 47.3 million Euro and 28.3 million Euro respectively. The other three cartel participants, Cheil, Kyowa and Sewon receive a fine of 12.2 million, 13.2 million and 8.9 million Euro respectively.

This case started in July 1996, shortly before several cartel participants were charged by the US antitrust authorities with engaging in illegal conspiracy. In July 1996, Ajinomoto decided to inform the Commission about the existence of the cartel covering a period from Archer Daniels

Midland's entry into the EEA lysine market (June 1992) up to June 1995.

Ajinomoto's decision came right after the Commission had adopted its Leniency Notice on the non-imposition or reduction of fines in cartel cases (O.J. C 207 of 18 July 1996). This Notice sets out the conditions under which companies co-operating with the Commission during its investigation into a cartel may be exempted from fines or granted reductions in the fines which would otherwise have been imposed upon them. Three other cartel participants started to cooperate with the Commission at a later stage.

Pursuant to the Leniency Notice, the Commission has granted four co-operating companies significant reductions in the fines.

As said, Ajinomoto was the first to come in and give decisive evidence of the cartel. However, it was also a ring-leader in the cartel and failed to inform the Commission of an earlier cartel involving the then three Asian producers Ajinomoto, Kyowa and Sewon (a cartel dating back to July 1990). The Notice provides for a maximum reduction in the fine of 50% in such a case. The Commission takes the view that it can grant this maximum reduction to Ajinomoto.

The Commission also grants a 50% reduction to Sewon. This company informed the Commission about the earlier cartel while also producing further evidence of the later cartel.

Cheil and Kyowa also provided the Commission with evidence confirming the existence of the infringements. They receive smaller reductions of 30 % each.

Archer Daniels Midland did not co-operate with the Commission during the investigation. However, it did not contest the facts set out in the Commission's Statement of Objections. For this, the company receives a 10 % reduction in the fine.

Competition Commissioner Mario Monti said:

"This decision is rigorous and balanced. On the one hand, the Commission needs to be tough on these sort of hardcore cartels. That is why heavy fines are in order here. They must have a deterrent effect. On the other hand, we do take the Leniency Notice at heart. This is borne out by the significant reductions in the fines for Ajinomoto and Sewon, the two companies who co-operated most with my services".

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Commission fines five companies in citric acid cartel

DN: IP/01/1743 Date: 05/12/2001

TXT: FR EN DE DA ES PT NL IT SW FI EL
 PDF: FR EN DE DA ES PT NL IT SW FI EL
 DOC: FR EN DE DA ES PT NL IT SW FI EL

IP/01/1743

Brussels, 05 December 2001

Commission fines five companies in citric acid cartel

The European Commission today fined Hoffmann-La Roche AG, Archer Daniels Midland Co (ADM), Jungbunzlauer AG, Haarmann & Reimer Corp and Cerestar Bioproducts B.V. a total of € 135.22 million for participating in a price-fixing and market-sharing cartel in citric acid, the world's most widespread acidulent and preservative used mainly in non-alcoholic beverages and in preserved food such as jams, gelatine-based deserts and tinned fruit. "As with the vitamins case, the behaviour of ADM, Hoffmann-La Roche and others shows a disregard for their customers and, ultimately, the consumers which paid more for the products concerned than if the companies had engaged in healthy price competition," said Competition Commissioner Mario Monti. "The fact that some of the companies have only recently been sanctioned for similar conduct, ADM and Jungbunzlauer in the Sodium Gluconate case; Roche in the Vitamins case, illustrates how widespread these secret practices are, or at least used to be. I am confident that the message is now being clearly received. Companies must by now be fully aware of the risks they are taking should they be tempted to collude."

After a careful investigation which started in 1997, the European Commission has found that US companies Archer Daniels Midland (ADM) and Haarmann & Reimer (H&R), the latter ultimately owned by Bayer AG, Dutch company Cerestar Bioproducts B.V., Hoffmann-La Roche and Jungbunzlauer (JBL), both Swiss, participated in a worldwide cartel between 1991 and 1995, through which they fixed the price and shared out the market for citric acid.

Citric acid is one of the most widely used additives in the food and beverage industry both as an acidulent and preservative. It is found in non-alcoholic beverages as well as in jams, gelatine-based deserts and tinned vegetables and fruit. Citric acid is also used in household detergent products especially as a substitute for phosphates considered harmful for the environment. Citric acid also enters in the composition of dissolving tablets in the pharmaceuticals industry and is used in the cosmetics industry.

*house detergent
with it*

During the infringement period, the annual market was worth around €320 million in the European Economic Area the 15 EU member states plus Norway, Iceland and Liechtenstein.

The cartel started on 6 March 1991 at the Hotel Plaza in Basle (Switzerland), as stated by the companies in documents submitted to the Commission. There, and following on previous informal contacts, the founding members ADM, H&R, Roche and JBL agreed on the main features of their plan to eliminate competition between them. Cerestar joined the group in May 1992, shortly after it entered the citric acid market. The cartel continued until May 1995 and pursued four main objectives:

- Allocation of specific sales quotas for each member and adherence to these quotas;
- Fixing 'target' and 'floor prices' for citric acid;
- Exchanging specific customer information, and
- Eliminating price discounts.

A limited exception was made to the last objective in relation to the five major consumers of citric acid world-wide, since it was considered unrealistic by the cartel members to expect them to pay the price published on the public price lists. It was, however, agreed that a discount of no more than 3% would be offered to these larger consumers.

The companies held regular and frequent meetings, which were the hallmark of the cartel's organisation. After 1993 and in order to resolve certain grievances and market "difficulties" additional, more technically oriented, meetings were organised that become known as 'Sherpa' meetings in contrast to the more high-level and strategic 'Masters' meetings.

A sophisticated monitoring system was established, whereby each company would report its monthly sales figures to a previously agreed member, who would then ensure the distribution of the confidential information to all the others. In order to ensure that each player would stick to the quotas assigned, a compensation scheme was created, obliging any member that over-sold its allocated quota to provide compensation to the others.

A further striking feature of the cartel was the concerted action taken by the companies against Chinese manufacturers, who had increased their exports to the European market as a result of the significant rise in prices for citric acid during the time the cartel operated. The cartel participants tried to regain some of the customers lost to the Chinese suppliers through a concerted and carefully targeted price war. The list of the clients lost and targeted by the cartel for "recovery" came to be known as the 'Serbia List' and was regularly monitored during the 'Sherpa' meetings.

The companies' conduct was a very serious infringement of the competition rules, as set out in Article 81 of the European Union Treaty and Article 53 of the EEA-Agreement.

The following is a list of the individual fines (in million Euro):

- F. Hoffmann-La Roche AG : 63.5
- Archer Daniels Midland Company Inc : 39.69
- Jungbunzlauer AG (JBL) : 17.64
- Haarmann & Reimer Corp. : 14.22
- Cerestar Bioproducts B.V.: 0.17

Competition Commissioner Mario Monti again said: "This Decision sets out and punishes inadmissible and illegal behaviour by apparent competitors to raise prices and deceive consumers in a product essential for the food industry and illustrates how a few companies can be determined in their attempt to bypass competition, an essential pillar of a market economy."

Background

The Commission started to investigate the case in 1997, when it became aware that some of the addressees of the present decision had been charged by the US authorities with participating in an international conspiracy. The parties to the cartel pleaded guilty and paid fines in the US and/or in Canada.

Calculation of the fines

To calculate fines in cartel behaviour the Commission takes account of the gravity of the infringement, its duration and the existence of any aggravating or mitigating circumstances. It also takes account of a company's share of the market concerned and its overall size to ensure that the punishment is proportional and has a deterrence effect. The calculation of the fines is, therefore, not made solely with reference to a company's turnover, although the fine can never go beyond 10 percent of a company's total annual turnover, as set out in Regulation 17/62.

The citric acid cartel was a very serious violation of EU competition law, but was of a medium duration (between one and five years).

Because they acted as co-leaders of the cartel -- an aggravating factor, the basic fines on ADM and Roche were increased by 35 percent. This figure is below the level applied for a leadership role in previous cartel cases, which is usually 50%, but takes account of the fact that, whilst these two companies clearly had an outstanding role in the infringement, other members of the cartel also carried out activities usually associated with a leadership role (like chairing meetings or centralising data distribution).

Application of the Leniency notice

Part of the evidence on the cartel was provided to the Commission by the companies involved, under EU rules providing for full or partial immunity from fines for companies that co-operate with the Commission in cartel cases. See Leniency Notice on http://europa.eu.int/comm/competition/antitrust/legislation/96c207_en.html.

Cerestar Bioproducts was the first undertaking to provide the Commission with decisive information. But because its application for Leniency was not entirely spontaneous, and since it approached the Commission only after it was fully aware that the citric acid cartel was object of an on-going investigation by the Commission, it was granted a 90 percent reduction of the fine rather than full immunity.

All the other participants co-operated in one way or another with the Commission and were granted appropriate reductions. ADM provided detailed information, which together with that obtained from Cerestar Bioproducts was used to draft requests for information that largely contributed to trigger the admission by H&R, Roche and JBL of their participation in the citric acid cartel. ADM was able to provide the Commission with documents contemporaneous to the infringement, including *inter alia* hand-written notes taken during cartel meetings and price instructions related to the decisions taken by the cartel. On these grounds, ADM was granted a 50 percent reduction.

JBL and H&R confirmed the vast majority of the meetings, the identity of the participants, as well as the facts in question. JBL also submitted to the Commission a number of tables created contemporaneously to the time of the infringement, indicating the quotas that were allocated to each of the cartel participants. Nevertheless, a large part of the information submitted by both companies was provided in reply to detailed requests for information and therefore fell within the ambit of an undertaking's duty to fully reply to these requests as set out in Article 11 of Regulation 17. The Commission

these requests as set out in Article 11 of Regulation 17. The Commission granted these two companies a reduction of 40% and 30 percent of their respective fines.

Roche confirmed its participation in the cartel and the purpose of the meetings related to it prior to the receipt of the Commission's Statement of Objections, which was sent on March 28, 2000. The Commission therefore granted Hoffmann-La Roche a 20 percent reduction of its fine.

10 largest cartel fines: Total amount per case		
*fines reduced by Court judgments		
Year	Case	Total amount (€ million)
2001	Vitamins	855.23
1998	TACA	272.940
2001	Graphite Electrodes	218.8
2001	Citric Acid	135.22
1994	Cartonboard*	117.08
2000	Amino acids	109.990
1994	Cement*	109.335
1999	Seamless steel tubes	99.000
1998	Pre-insulated pipes	92.210
2001	Belgian beer	91.655

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Commission fines five companies in sodium gluconate cartel**
This is a revised version of the original press release following the adoption of a new Commission decision on 19 March 2002 withdrawing the decision of 2 October 2001 to the extent that it was addressed and notified to one of the addressees of that earlier decision.

DN: IP/01/1355 Date: 02/10/2001

TXT: FR EN DE NL
 PDF: FR EN DE NL
 DOC: FR EN DE NL

IP/01/1355

Rev.Version

Brussels, 19 March 2002

Commission fines five companies in sodium gluconate cartel*(1)

The European Commission today fined Archer Daniels Midland Company Inc., Akzo Nobel N.V, Avebe B.A., Fujisawa Pharmaceutical Company Ltd. and Roquette Frères S.A. a total of € 37,13 million for fixing the price and sharing the market for sodium gluconate, a chemical mainly used to clean metal and glass, with applications such as bottle washing, utensil cleaning and paint removal. The decision comes after a thorough investigation, which established that the five companies, which together accounted for the quasi totality of the production world-wide, operated a secret cartel from 1987 until 1995.

Following an investigation which started in 1997, the European Commission has established that US company Archer Daniels Midland, Akzo Nobel and Avebe (both of the Netherlands), Fujisawa Pharmaceutical (Japan) and Roquette (France) participated in a worldwide cartel between 1987 and 1995, through which they fixed the price and shared out the market for sodium gluconate.

Sodium gluconate is a chemical mainly used to clean metal and glass, with applications such as bottle washing, utensil cleaning and surface treatment. During the infringement period, the market was worth €18 million annually in the European Economic Area the 15 EU member states plus Norway, Iceland and Liechtenstein.

The cartel started in 1987 and continued until June 1995. The companies

held regular meetings, where they agreed on individual sales quotas, fixed "minimum" and "target" prices and shared out specific customers. The Commission gathered evidence on over 25 cartel meetings, held in places like Amsterdam, London, Paris, but also Hakone (Japan), Chicago, Vancouver or Zürich. Compliance with agreed sales quotas was carefully monitored, and the rule was that if a company had over-sold at the end of a given year, its sales quota for the next year would be reduced accordingly.

Part of the evidence on the cartel was provided to the Commission by the companies involved, under European Union rules providing for full or partial immunity from fines for companies that cooperate with the Commission in cartel cases. See Leniency Notice on http://europa.eu.int/comm/competition/antitrust/legislation/96c207_en.html.

Fujisawa got a reduction of 80% of its fine for being the first to supply decisive evidence of the cartel, before the Commission had carried out "surprise" investigations. It is the first time that the Commission grants such a large reduction. Whilst the Commission could have granted total immunity to Fujisawa in this respect, it did not do so given that Fujisawa started to cooperate only after it received a request for information from the Commission. Fujisawa's cooperation was therefore not entirely spontaneous.

The Commission characterised the companies' conduct as a very serious infringement of the competition rules and adopted a Decision under Article 81 of the EC-Treaty and Article 53 of the EEA-Agreement, imposing fines totalling €37,13 million.

Following is a list of the individual fines in million Euro:

- Archer Daniels Midland Company Inc.: 10.13
- Akzo Nobel N.V.: 9
- Avebe B.A.: 3.6
- Fujisawa Pharmaceutical Company Ltd.: 3.6
- Roquette Frères S.A.: 10.8

Competition Commissioner Mario Monti said:

"This Decision is again the proof that the Commission is determined to uncover and punish hard-core cartels, which are the worst kind of violation of competition rules. The unprecedented reduction in fine for one of the companies shows that the Commission adequately rewards firms for confessing and, therefore, playing a key role in unearthing price-fixing cartels".

Background

The Commission takes into account the gravity of antitrust violations, their duration and the existence or not of aggravating/mitigating circumstances to calculate fines. It also bears in mind the companies' share of the market concerned and their overall size. The calculation of the fines is therefore not made only in reference to the companies turnover even though the final figure cannot be higher than 10 percent of a company's total annual sales.

In the sodium gluconate cartel, the infringement was very serious, and most of the cartel participants infringed the law for more than five years. In defining the starting amounts for the fines, the Commission took into account the limited size of the sodium gluconate market.

The Commission started to investigate the case in 1997, when it learnt that some of the addressees of the present decision had been charged by the US authorities with international conspiracy in the US and elsewhere. Most of the parties to the cartel pleaded guilty and paid fines in the US and in Canada.

During Spring 1998, shortly after the Commission sent out requests for information, Fujisawa filed an application under the Leniency Notice and provided the Commission with decisive evidence of the cartel. In September 1998, « surprise » investigations were carried out. All involved companies subsequently filed an application under the Leniency Notice.

The Commission granted a reduction of 40% to both ADM and Roquette, in view of the value added of their cooperation. As for Akzo and Avebe, they did not provide to the Commission any information above and beyond that was already in its possession, but they corroborated some of that information before the Commission issued its Statement of Objections. The Commission therefore considered that only a reduction of 20% was appropriate.

(1)* This is a revised version of the original press release following the adoption of a new Commission decision on 19 March 2002 withdrawing the decision of 2 October 2001 to the extent that it was addressed and notified to one of the addressees of that earlier decision.