

Commission adopts eight new decisions imposing fines on hard-core cartels

Following-up on two Decisions adopted earlier in the year 2001 (Decisions *SAS-Maersk* and *Graphite electrodes*, both adopted on 18 July 2001: see Competition Newsletter 2001, Issue n°3), the Commission adopted during the second semester of 2001 eight new Decisions under Article 81(1) of the Treaty and (in most cases) Article 53(1) of the EEA Agreement, imposing heavy fines on a string of hard core cartels. The products concerned by the illegal market-sharing and price-fixing agreements ranged from vitamins and food additives (citric acid) to financial services (currency exchange charges) and from beverage products (beer) to paper and chemicals (sodium gluconate, zinc phosphate).

In all, fines were imposed on 56 companies in 2001 (3 of which were fined twice), totalling a record amount of € 1 836 million. In the *Vitamins* case the highest cumulative fine ever, totalling € 462 million, was imposed on the Swiss company F. Hoffmann-La Roche AG with regard to its simultaneous involvement in several cartels. In the *Carbonless paper* case, British company Arjo Wiggins Appleton Limited (AWA) received a fine of €184.27 million, the highest fine ever imposed on a company for a single infringement.

For the first time in 2001, the Commission applied section B of its Notice on the non-imposition or reduction of fines in cartel cases (hereafter: 'the Leniency Notice'). Section B was applied in five cases (*Sodium Gluconate*, *Vitamins*, *Citric Acid*, *Luxembourg Brewers*, *Carbonless paper*). The reductions granted under this section ranged from 80% to 100% (total exemption from fine) according to the specific circumstances of each case.

1. The sodium gluconate cartel

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On 2 October 2001, the Commission fined Archer Daniels Midland Company Inc., Akzo Nobel N.V., Avebe B.A., Fujisawa Pharmaceutical Company Ltd., Jungbunzlauer AG and Roquette Frères S.A. a total of € 57.53 million for fixing the price and sharing the market for sodium gluconate. For the first time, the Commission granted a reduction of fine pursuant to Section B of its Leniency Notice: Fujisawa got a reduction of 80% of its fine.

Sodium gluconate is a chemical used to clean metal and glass, with applications such as bottle washing, utensil cleaning, and paint removal. The product is also used as a retarder and water reducer in concrete admixtures, as a paper and textile bleaching admixture, as well as as an additive in food and in various chemical applications.

Following an investigation which started in 1997, the Commission established that Archer Daniels Midland Company Inc. ('ADM'); Avebe B.A. ('Avebe', as a parent of Glucona B.V.); Akzo Nobel N.V. ('Akzo', as a former parent of Glucona B.V.); Fujisawa Pharmaceutical Company Ltd. ('Fujisawa'); Jungbunzlauer AG ('Jungbun-

lauer'); and Roquette Frères S.A. ('Roquette') participated in a worldwide cartel between 1987 and 1995, through which they fixed the price and shared out the market for sodium gluconate. The cartel agreements were implemented through detailed sales monitoring, the holding of regular multi- and bi-lateral meetings, and the enforcement of a pluri-annual compensation scheme.

At the material time, the quasi-totality of the sodium gluconate produced world-wide was in the hands of Fujisawa, Glucona B.V. (a 50/50 joint-venture between Akzo and Avebe), Jungbunzlauer and Roquette. After it entered the market in 1990, ADM also became a significant player, until its withdrawal in the course of 1995. The EEA market for sodium gluconate was worth about € 20 million in 1995.

From 1987 until June 1995, the companies mentioned above held regular meetings, where they agreed on individual sales quotas, fixed 'minimum' and 'target' prices and shared out specific customers. The Commission gathered evidence of over 25 cartel meetings, held in places such as

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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 oversold at the end of a given year, its sales quota for the next year would be reduced accordingly.

The Commission characterised the companies' behaviour as a 'very serious' infringement of the Community and EEA competition rules, and adopted a Decision under Article 81(1) of the Treaty and Article 53(1) of the EEA Agreement, imposing heavy fines. The leader of the cartel, Jungbunzlauer, was fined € 20.4 million. As to the other cartel participants ADM, Akzo, Avebe, Fujisawa and Roquette, they were fined € 10.13 million, € 9 million, € 3.6 million, € 3.6 million and € 10.8 million respectively.

Calculation of fines and application of the Leniency Notice

In fixing the amount of the fines, the Commission took into account the gravity and duration of the infringement, as well as the existence, as appropriate, of aggravating and/or mitigating circumstances. The role played by each undertaking was assessed on an individual basis. The Leniency Notice was applied.

All the undertakings concerned were found to have committed a very serious infringement. Within this category, the undertakings were divided into two groups according to their relative importance in the market concerned. Further upward adjustments were made in the case of two companies, with regard to their very large size and thus of their overall resources.

With the exception of ADM which committed an infringement of medium duration, all other cartel participants committed an infringement of long duration (exceeding five years). The leadership of the infringement was retained as an aggravating circumstance against Jungbunzlauer, justifying an increased of its fine by 50%.

2. The vitamin cartels

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On 21 November 2001, the Commission fined F. Hoffmann-La Roche AG, BASF AG, Aventis SA,

Application of the Leniency Notice

The Commission granted for the first time a reduction of fine pursuant to Section B of the Leniency notice. Fujisawa benefited from a reduction of 80% of the fine it would otherwise have received, on the ground that it was the first to adduce decisive evidence of the cartel's existence, before the Commission had undertaken any investigation ordered by Decision. The Commission did not grant Fujisawa a 100% reduction of its fine, as it could have done under section B of the notice, since Fujisawa approached the Commission only after it had received a request for information. This reluctance to come forward spontaneously prior to any investigatory measure was taken into account.

All other parties were granted reductions of the fine that would otherwise have been imposed pursuant to Section D of the Leniency notice.

Before the Commission adopted its Statement of Objections, ADM, Glucona, Jungbunzlauer and Roquette provided the Commission with information and documents which materially contributed to establishing the existence of the infringement. None of them substantially contested the facts on which the Commission based its Statement of Objections.

Roquette provided documents that record the events and conclusions of the cartel meetings. These documents were, however, given in Roquette's response to a formal request for information from the Commission. Moreover, Roquette and ADM described in their statements the cartel mechanics and the roles of the participants and gave details of some meetings. Together with Fujisawa's statements, the documents and statements provided by Roquette together with ADM's statements constituted the main sources of evidence used by the Commission in the Decision. Consequently, Roquette and ADM were both granted a 40 % reduction of their fine. As for Glucona (i.e. Akzo and Avebe) and Jungbunzlauer, they did not provide in their statements any information above and beyond what was already in the Commission's possession, but they corroborated part of that information. Therefore, the Commission considered that only a reduction of 20 % was appropriate with regard to their cooperation.

Solvay Pharmaceuticals BV, Merck KGaA, Daiichi Pharmaceutical Co Ltd, Eisai Co Ltd and Takeda

Chemical Industries Ltd a total of € 855.23 million for participating in eight distinct secret market-sharing and price-fixing cartels affecting vitamin products (vitamins A, E, B2, B5, C, D3, Beta Carotene and carotinoids). Each cartel had a specific number of participants and duration, although all operated between September 1989 and February 1999. Five other companies, Lonza AG, Kongo Chemical Co Ltd, Sumitomo Chemical Co Ltd, Sumika Fine Chemicals Ltd and Tanabe Saiyaku Co Ltd were not fined because the cartels in which they were involved – Vitamin H or Folic Acid – ended five years or more before the Commission opened its investigation. Under EU law, prescription applies under these circumstances. Prescription also applied to cartels in vitamins B1 and B6.

Following the opening of an investigation in May 1999, the European Commission found that thirteen European and non-European companies participated in cartels aimed at eliminating competition in the vitamin A, E, B1, B2, B5, B6, C, D3, Biotin (H), Folic Acid, Beta Carotene and carotinoids markets. A striking feature of this complex of infringements was the central role played by Hoffmann-La Roche and BASF, the two main vitamin producers, in virtually each and every cartel, whilst other players were involved in only a limited number of vitamin products.

Vitamins are vital elements for human and animal nutrition and are essential for normal growth, development and maintenance of life. They are added to both compound animal feeds and human food products. Vitamins for pharmaceutical purposes are marketed to the public as diet supplements in tablet or capsule form. In the cosmetics industry, vitamins are added to skin- and health-care products. The Commission estimates that the European Economic Area (EEA) market for the products covered in the decision was worth around € 800 million 1998. This includes vitamin E, which in 1998 was worth approximately € 250 million in the EEA and vitamin A, which represented some € 150 million.

The participants in each of the cartels fixed prices for the different vitamin products, allocated sales quotas, agreed on and implemented price increases and issued price announcements in accordance with their agreements. They also set up a machinery to monitor and enforce their agreements and participated in regular meetings to implement their plans.

The *modus operandi* of the different cartels was essentially the same if not identical ('target' and 'minimum' prices; maintenance of the status quo in market shares and compensation arrangements), in particular it included:

- the establishment of formal structure and hierarchy of different levels of management, often with overlapping membership at the most senior levels to ensure the functioning of the cartels;
- the exchange of sales values, volumes of sales and pricing information on a quarterly or monthly basis at regular meetings;
- in the case of the largest cartels, the preparation, agreement and implementation and monitoring of an annual 'budget' followed by the adjustment of actual sales achieved so as to comply with the quotas allocated;

The cartel arrangements generally followed this scheme, pioneered in vitamins A and E, with certain variants in other products. Hoffmann-La Roche acted as the agent and representative of the European producers in the meetings and negotiations held in Japan and the Far East.

The simultaneous existence of the collusive arrangements in the various vitamins was not a spontaneous or haphazard development, but was conceived and directed by the same persons at the most senior levels of the undertakings concerned.

The prime mover and main beneficiary of these schemes was Hoffmann-La Roche, the largest vitamin producer in the world, with some 50% of the overall market. The cartel arrangements covered its full range of vitamin products. The involvement of some of its most senior executives tends to confirm that the arrangements were part of a strategic plan conceived at the highest levels to control the world market in vitamins by illegal means.

BASF, the next largest vitamin producer worldwide, assumed a paramount role in following Hoffmann-La Roche's lead. Both major European producers effectively formed a common front in conceiving and implementing the arrangements with the Japanese producers concerned. Together, for example, they recruited Eisai to their «Club» in vitamin E.

Takeda, as one of the main world producers of bulk vitamins, was fully involved in the cartel arrangements for vitamins B1, B2, B6, C and Folic Acid. Takeda's involvement in the arrangements in each of these vitamin products was instrumental to Hoffmann-La Roche's designs to secure the illegal coordination of the vitamin markets it was active in, including those in the range of vitamin products it shared with Takeda. The other vitamin producers were all active members of the cartel arrangements in the respective vitamin product markets in which they operated.

Calculation of the fines and application of the Leniency Notice

Given the continuity and similarity of method, the Commission considered it appropriate to treat in one and the same procedure the complex of agreements covering the different vitamins. The Commission therefore covered several infringements in a single decision.

When setting fines, the Commission takes into account the gravity of the infringement, its duration, any aggravating or mitigating circumstances as well as the cooperation of a company. It also takes account of a company's market share in the product market concerned and its overall size. The upper limit of any fine is established at 10% of a company's total annual turnover.

The Commission considered that each cartel in this case represents a very serious infringement of EU competition law. Furthermore, most of the cartel participants committed infringements of long duration, i.e. more than five years (see table above).

Hoffmann-La Roche and BASF were the two leaders of each of the cartels for which fines were imposed in this Decision. This was therefore retained as an aggravating factor to be taken into account in the determination of the amount of the fines imposed on these companies, justifying an

increase of **50 %** and **35 %** in their respective basic amounts for each of the cartels they were involved in.

The only attenuating circumstance identified in all of the cartels for which fines were imposed was Rhône-Poulenc's passive role in the vitamin D3 infringement. It did not attend any of the cartel meetings and was not allocated an individual market share. This attenuating circumstance was taken into account in the determination of the amount of the fines imposed on Aventis for its infringement affecting the vitamin D3 market.

Application of the Leniency Notice

The addressees of the Decision co-operated with the Commission within the terms set by the Leniency Notice at different stages of the investigation and in relation to different vitamin products covered by the investigation. The Decision applies the Leniency Notice as follows:

Aventis was the first undertaking to adduce decisive evidence of the existence of an international cartel affecting the EEA in the vitamin A and vitamin E markets before the Commission had any knowledge of its existence. This decisive evidence was provided in the Statements made by *Aventis* on 19 and 25 May 1999. It also met all other conditions as set out in Section B of the Leniency Notice

Participants, product, duration

Vitamin	Participants	Duration (*)	
		From	To
Vitamin A	Roche, BASF, Rhône-Poulenc (Aventis)	September 1989	February 1999
Vitamin E	Roche, BASF, Rhône-Poulenc (Aventis), Eisai	September 1989	February 1999
Vitamin B1 (Thiamine)	Roche, Takeda, BASF	January 1991	June 1994
Vitamin B2 (Riboflavin)	Roche, BASF, Takeda	January 1991	Sept. 1995
Vitamin B5 (Calpan)	Roche, BASF, Daiichi	January 1991	February 1999
Vitamin B6	Roche, Takeda, Daiichi	January 1991	June 1994
Folic Acid (B)	Roche, Takeda, Kongo, Sumika	January 1991	June 1994
Vitamin C	Roche, BASF, Takeda, Merck	January 1991	August 1995
Vitamin D3	Roche, BASF, Solvay Pharm, Rhône-Poulenc (Aventis)	January 1994	June 1998
Vitamin H (Biotin)	Roche, Merck, Lonza, Sumitomo, Tanabe, BASF	October 1991	April 1994
Beta Carotene	Roche, BASF	September 1992	December 1998
Carotinioids	Roche, BASF	May 1993	December 1998

(*) The duration is not necessarily the same for all participants

in relation to its involvement in the cartels in vitamins A and E. On these grounds, *Aventis* was granted a **100 %** reduction of the fine that would have been imposed with regard to its activities in the vitamin A and vitamin E markets.

Roche and *BASF*, through the principal material submitted to the Commission between 2 June 1999 and 30 July 1999, were the first to provide the Commission with decisive evidence of the existence of cartel arrangements affecting the vitamin B2, B5, C, D3, Beta Carotene and carotinoids markets. The evidence submitted by both *Roche* and *BASF* in relation to the cartels in vitamins A and E was very substantial and was provided at an early stage in the Commission's procedure. That is to say, both companies contributed crucial information to establish and/or confirm essential aspects of the infringements committed in each of the vitamin product markets they were involved in.

Nevertheless, *Roche* and *BASF* acted as instigators or played a determining role in the illegal activities affecting the vitamin A, E, B2, B5, C, D3, Beta Carotene and carotinoids product markets. Therefore neither of them met condition (e) of Section B of the Leniency Notice and could not benefit from any reduction under Sections B or C of this Notice even if they were to meet the other conditions set out therein. Both *Hoffmann La Roche* and *BASF*

were granted a **50 %** reduction of the fine that would have been imposed if they had not cooperated for each of the cartels in which they were involved in.

Prior to the Commission's Statement of Objections (SO) *Daiichi*, *Solvay*, *Takeda* and *Eisai* provided the Commission with information and documents, in particular detailed corporate statements, which helped establish important aspects of the infringement committed in the vitamin B5 (*Daiichi*), D3 (*Solvay*), B2 and C (*Takeda*) and C (*Eisai*) markets.

The documents provided by the companies gave details of the organisation and structure of the cartels. However, in the case of *Eisai* these were only forthcoming after three other participants in the vitamin C cartel (*Roche*, *BASF* and *Takeda*) had submitted detailed evidence on the cartel. *Daiichi*, *Solvay* and *Takeda* were granted a **35 %** reduction of the fine that would otherwise have been imposed and a **30 %** reduction of the fine to *Eisai*.

As to *Merck* and *Aventis*, with regard to the vitamin C and vitamin D3 cartels respectively, they only cooperated actively with the Commission once they had received the SO. *Merck* provided information concerning its participation

Fines imposed on participants by product (in millions of euro)

	Vit A	Vit E	Vit B1	Vit B2	Vit B5	Vit B6	Folic Acid	Vit C	Vit D3	Vit H	Beta Carotene	Carotinoids	Total
Roche	85.5	99.75	NA	42	54	NA	NA	65.25	21	NA	48	46.5	462
BASF	46.17	89.78	NA	18.9	34.02			14.68	7.56	NA	43.2	41.85	296.16
Aventis	0	0							5.04				5.04
Lonza										NA			
Solvay Pharm									9.1				9.1
Merck								9.24		NA			9.24
Daiichi					23.4	NA							23.4
Eisai		13.23											13.23
Kongo							NA						
Sumika							NA						
Sumitomo										NA			
Takeda			NA	8.78		NA	NA	28.28					37.06
Tanabe										NA			
TOTAL	131.67	202.76		69.68	111.42			117.45	42.7		91.2	88.35	855.23

N.A.: Non applicable

in the vitamin C cartel in its written reply to the SO. Aventis, on the other hand, simply confirmed that it did not substantially contest the facts on which the Commission had based the SO, including the section dealing with the vitamin D3 cartel. *Merck* was granted a reduction of **15 %** of the fine that would otherwise have been imposed and a reduction of **10 %** of the fine in the case of *Aventis*.

'This is the most damaging series of cartels the Commission has ever investigated due to the sheer range of vitamins covered which are found in a

multitude of products from cereals, biscuits and drinks to animal feed, pharmaceuticals and cosmetics' said Competition Commissioner Mario Monti. *"The companies" collusive behaviour enabled them to charge higher prices than if the full forces of competition had been at play, damaging consumers and allowing the companies to pocket illicit profits. It is particularly unacceptable that this illegal behaviour concerned substances which are vital elements for nutrition and essential for normal growth and maintenance of life'.*

3. The citric acid cartel

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On 5 December 2001, the Commission fined Archer Daniels Midland Co.; Cerestar Bioproducts B.V.; Haarmann & Reimer Corp.; F. Hoffmann-La Roche AG and Jungbunzlauer AG a total of € 135.22 million for fixing the price and sharing the market for citric acid, the world's most widespread acidulent and preservative. The Commission has gathered evidence that from March 1991 to May 1995, the cartel participants fixed market shares for citric acid, agreed on price targets for the product, agreed on price lists for the product, agreed to eliminate discounts on all but the five largest customers and set up a machinery to monitor and enforce their agreements.

Citric acid is used primarily in the food/beverage industry and is the most widely adopted acidulent/preservative world-wide. Citric acid is also used in detergents as well as in pharmaceutical and cosmetic products. The annual market value was approximately € 320 million (EEA) in 1995 (the last year of the infringement).

After a careful investigation which started in 1997, the European Commission 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.

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, namely allocating specific sales quotas for each member; 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 became 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 Commission characterised the companies’ behaviour as a ‘very serious’ infringement of the Community and EEA competition rules, and adopted a Decision under Article 81(1) of the Treaty and Article 53(1) of the EEA-Agreement, imposing heavy fines. The two leaders of the cartel, F. Hoffmann-La Roche AG and ADM were fined € 63.5 million and € 39.69 million respectively. As to the other cartel participants, Jungbunzlauer, Haarmann & Reimer and Cerestar Bioproducts, they were fined € 17.64 million, € 14.22 million and €170,000 respectively.

Calculation of the fines and application of the Leniency Notice

In fixing the amount of the fines, the Commission took into account the gravity and duration of the infringement, as well as the existence, as appropriate, of aggravating and/or mitigating circumstances. The role played by each undertaking was assessed on an individual basis. The Notice on the non-imposition or reduction of fines in cartel cases (‘the Leniency Notice’) was applied.

All the undertakings concerned were found to have committed a very serious infringement. Within this category, the undertakings were divided into three groups according to their relative importance in the market concerned. Further upward adjustments were made in the case of three companies, with regard to their very large size (or the very large size of the group to which they belong according to a 100% ownership), and thus of their overall resources.

The cartel started in March 1991 and ended in May 1995. Under the Guidelines on Fines, ADM, Haarmann & Reimer, Hoffmann-La Roche and Jungbunzlauer committed a medium-term infringement (4 years). Cerestar Bioproducts also committed a medium-term infringement (3 years). The respective basic amounts of the fines were increased accordingly.

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.

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 the object of an on-going investigation by the Commission, it was granted a 90 % 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 % reduction.

Jungbunzlauer and Haarmann & Reimer confirmed the vast majority of the meetings, the identity of the participants, as well as the facts in question. Jungbunzlauer 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 Commis-

sion granted these two companies a reduction of 40 % and 30 % 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 % reduction of its fine.

4. Market-sharing and price-fixing cartels on the Belgian beer market ⁽¹⁾

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On 5 December 2001, the Commission fined Interbrew, Danone, Alken-Maes, Haacht and Martens a total of over € 91 million for participating in cartels on the Belgian beer market between 1993 and 1998. The infringements included market sharing, price fixing and information exchange. They affected the horeca sector (i.e. hotels, restaurants and cafés) as well as the retail sector (i.e. supermarkets and other food shops), including the sale of private label beers.

In the course of 1999 the European Commission undertook surprise inspections at the premises of Interbrew, Alken-Maes and the Belgian brewers confederation (CBB). These inspections led to an investigation which enabled the Commission to find evidence of two distinct cartels in the Belgian market.

The first cartel involved Interbrew (by far the number one brewer in Belgium with a market share of around 55% and the number two brewer in the world) and Alken-Maes (the number two player in Belgium with a market share of around 15%) as well as its then parent company Danone. This cartel covered a wide range of anti-competitive arrangements in the horeca sector (i.e. sales for away-from-home consumption in hotels, restaurants and cafés) as well as the retail sector (e.g. sales in supermarkets or smaller food shops for consumption at home).

The second cartel concerned specifically the segment of so-called private label beers, i.e. beers which supermarkets order from brewers but sell under their own brand name. Interbrew, Alken-Maes, Haacht and Martens (a brewer whose production consists almost entirely of private label beer) participated in this second cartel.

Total fines were imposed on the companies involved as follows: € 46.487.000 ⁽²⁾ for

Interbrew; € 44.628.000 ⁽³⁾ for Danone/Alken-Maes; € 270.000 for Haacht and € 270.000 for Martens.

The cartel between Interbrew and Danone/Alken-Maes

From early 1993 until the beginning of 1998, the two parties were involved in wide ranging cartel activities on the Belgian beer market. Interbrew used the code name 'Université de Lille' or 'project Green' for these activities. The cartel activities encompassed a general non-aggression pact and more specifically the limitation of investments and advertising in the horeca sector, the allocation of horeca customers, price-fixing in the retail sector, a new tariff structure to be applied in the horeca sector as well as in the retail sector and finally a detailed monthly information exchange system concerning sales volumes in both sectors.

A striking feature of this cartel is that the CEO's themselves and other top management of the companies regularly met to initiate and monitor the above mentioned arrangements. Another feature worth mentioning is that Danone, which was Alken Maes' parent company during the relevant period, was itself very actively involved in these arrangements.

The cartel took off with a price fixing agreement for the retail sector and an agreed limitation of commercial investments in the horeca sector. An internal Interbrew note from the spring of 1993 showed that Interbrew's and Danone's top management were already considering entering into a closer cooperation. However, the Interbrew people thought that Danone had more to gain from this. Moreover, they had antitrust concerns.

⁽¹⁾ See also press release of 5 December 2001, IP/01/1739

⁽²⁾ € 45.675.000 for the cartel with Danone/Alken-Maes and € 812.000 for the private label cartel.

⁽³⁾ € 44.043.000 for Danone's and Alken-Maes' participation in the cartel with Interbrew and € 585.000 for Alken-Maes' participation in the private label cartel.

In May 1994, contacts between the two companies intensified. This was due to a threat from Danone: if Interbrew did not transfer 500.000 hl (roughly 5% share of the Belgian market) to Alken-Maes in the Belgian retail sector, it would make life difficult for Interbrew-France. Evidence of this threat stems from declarations made by former Interbrew representatives but also from an internal Heineken document. This document was found during an inspection at Heineken's premises, concerning another cartel investigation.

The threat eventually led to a 'gentlemen's agreement' between the parties at the end of 1994. They committed themselves generally to respect each other's market positions. They further agreed on a number of specific points, including price-fixing in the retail sector, market sharing in the horeca (initially the classic outlets, later on also the national accounts ⁽¹⁾), commercial investments and a new tariff structure in both sectors. In addition, throughout this period the parties exchanged monthly information about their sales volumes in both sectors.

At the beginning of 1998, the parties noted that they had achieved a good deal of their objectives.

Calculation of the fines

The Commission considers that the price fixing and market sharing cartel between Interbrew and Danone/Alken-Maes represents a very serious breach of EU competition law. For such a breach, the likely amount of the fines is at least € 20 million. Although Interbrew and Danone are both big, international companies, Interbrew's starting amount for gravity is higher than Danone's, because its market share on the Belgian beer market is substantially larger than Danone's. Furthermore, it is a cartel of medium duration (five years). This led the Commission to increase the basic fines for both companies by almost 50%.

For Danone there are two aggravating factors which led to a further increase of the fine by 50%.

First, Danone or as it was called at the time Boussois-Souchon-Neuvesel (BSN) – has participated in similar antitrust infringements already twice before (in 1974 and 1984). ⁽²⁾ The circumstance that these infringements occurred in a different sector (flat glass) is irrelevant. It is the nature of the infringement and the identity of the company that matter. Moreover, the Commission notes that for the entire period during which BSN,

later Danone, committed these infringements, the same person acted as CEO of the company and that some flat glass managers at the time were active in Danone's retail business during the period of the beer cartel.

The second aggravating circumstance concerns Danone's threat to make Interbrew's life difficult in France if Interbrew did not meet its request to have 500.000 hl of beer transferred to its subsidiary Alken-Maes. As pointed out above, this threat led to an increase of the cartel activity.

As a mitigating circumstance, the Commission recognises that Alken-Maes ended the information exchange with Interbrew. For this a reduction of 10% is granted.

Application of the Leniency Notice

Both parties co-operated to a certain extent during the investigation by supplying information to the Commission. However, Interbrew's cooperation was more material than that of Danone/Alken-Maes. On this basis, Interbrew was granted a reduction of 30% and Danone/Alken-Maes a reduction of 10%.

The private label cartel

In the course of the on-going investigation regarding the cartel between Interbrew and Danone/Alken-Maes, Interbrew informed the Commission about a series of meetings in the period from October 1997 until July 1998 between itself, Alken-Maes, Haacht and Martens concerning the private label beer market in Belgium.

The discussions during these meetings aimed at avoiding a price war and at consolidating the existing allocation of customers. This amounted to a concerted practice within the meaning of Art. 81 EC Treaty. In addition, the parties agreed to exchange information about their clients in the private label segment.

Interbrew and Alken-Maes took the initiative of organizing the four meetings. However, Haacht and Martens did not merely play a passive role in the concerted practice. Both participated in all meetings and actually exchanged information about sales volumes. Moreover, Martens at one point suggested inviting the Dutch private label beer producers to the meetings.

⁽¹⁾ Typical examples of national accounts are caterers, airports, large cinema complexes.

⁽²⁾ See Commission decisions of 15 May 1974 (O.J. L 160/1) and 23 July 1984 (O.J. L 212/13).

Calculation of the fines

Since the cartel was limited to the small private label beer segment in Belgium (roughly 5% of beer consumption in Belgium), the Commission considers the parties' behaviour only as a serious infringement for which the likely amount of the fine is in principle between 11 million and 20 million. The cartel was of a short duration (nine months).

The fact that Interbrew and Alken-Maes took the initiative for these meetings is an aggravating factor. This results in an increase of the fine by 30% for both parties.

Application of the Leniency Notice

All parties co-operated with the Commission during the procedure. Interbrew even disclosed the cartel. Although it blew the whistle, it could not, however, benefit from full immunity under the Commission's so-called Leniency Notice ⁽¹⁾ because it was one of the instigators of the cartel. For its co-operation, it was granted a reduction of 50%. The other brewers were granted a reduction of 10% for their co-operation.

5. Market sharing cartel on the Luxembourg beer market

Paul BRIDGELAND, Directorate-General Competition, unit F-3

On 5 December 2001, the Commission fined three Luxembourg brewers: Brasserie Nationale-Bofferding, Brasserie de Wiltz and Brasserie Battin a total of € 448 000 for their participation in a market sharing cartel affecting the Luxembourg 'horeca' or 'on-trade' sector (hotels, restaurants and cafés). The brewers agreed to guarantee each other's exclusive purchasing arrangements with horeca customers and to restrict penetration of the sector by foreign brewers. A fourth cartel member, Brasserie de Luxembourg Mousel-Diekirch (a subsidiary of Interbrew), escaped any fine because it disclosed the cartel to the Commission.

Following an investigation which began in February 2000, the Commission found that all four brewers active in Luxembourg had participated in a market sharing cartel in the Luxembourg horeca sector between 1985 and 2000.

The cartel consisted of a written agreement signed in 1985 by which the parties agreed not to supply beer to any horeca outlet (hotels, restaurants, cafés and beer wholesalers) which was tied to another party by an exclusive purchasing contract or 'beer tie'. The beer tie guarantee extended to beer ties which were invalid or unenforceable in law, as well as to supply arrangements where a brewer simply invested in a drinks outlet but did not impose an exclusive purchasing contract. To this extent, the beer tie guarantee was more restrictive than the beer ties themselves. It therefore served to protect each party's clientele. The beer tie guarantee was reinforced by a prior consultation mechanism, which obliged the parties to check with each other about the presence of

a beer tie before they supplied new customers. Financial penalties were provided for non-compliance with the guarantee or the consultation mechanism.

The cartel agreement also contained provisions intended to keep foreign brewers out of the Luxembourg horeca sector. First, there was a joint defensive mechanism whereby the parties agreed to consult each other in the event that a foreign brewer attempted to negotiate a supply contract with one of their tied outlets. Priority would then be allocated to one of the parties to attempt to keep the outlet as a customer. If that party succeeded in negotiating a new contract with the outlet, it was obliged to compensate the party which had lost the outlet by transferring an equivalent outlet to it. Other provisions allowed for the exclusion from the cartel of any party which co-operated with a foreign brewer or distributed its beer.

The cartel agreement was signed for an unlimited duration and required the parties to give twelve months' notice to terminate. No party gave notice before Interbrew, the parent company of Brasserie de Luxembourg Mousel-Diekirch, disclosed the cartel to the Commission in February 2000. Furthermore, parts of the agreement had been implemented until 1998.

Calculation of the fines and application of the Leniency Notice

The Commission imposed a fine of EUR 400 000 on Brasserie Nationale-Bofferding and fines of

⁽¹⁾ OJ C 207 of 18 July 1996

EUR 24 000 each on Brasserie de Wiltz and Brasserie Battin.

The Commission considered the gravity of the infringement to be 'serious'. Although market sharing and attempts to impede trade between Member States are by nature very serious infringements, the cartel was limited to the relatively small Luxembourg horeca sector and it was not implemented in full. Within this category, the undertakings were divided into three groups according to the volume of their sales in the sector concerned.

The infringement was of long duration: more than fourteen years. This led the Commission to double the amount imposed for gravity.

As an attenuating circumstance, the Commission recognised that there was legal uncertainty about

the enforceability of beer ties in Luxembourg at the time the cartel agreement was signed and that this may have led the parties to doubt whether certain aspects of the beer tie guarantee constituted an infringement. This merited a 20% reduction in the fines.

Application of the Leniency Notice

Brasserie de Luxembourg Mousel-Diekirch was granted total exemption from the substantial fine that would otherwise have been imposed because it provided the Commission with decisive evidence of the cartel before the Commission had any knowledge of it and satisfied all the other conditions of Section B of the Leniency Notice.

6. Commission fines five German banks for fixing the charges for the exchange of euro-zone currencies

Gerald BERGER, Directorate-General Competition, unit E-1

On 11 December 2001, the Commission fined Commerzbank, Dresdner Bank, Bayerische Hypo- und Vereinsbank, Deutsche Verkehrsbank and Vereins- und Westbank a total of € 100.8 million for concluding an agreement on a commission of about 3% for the buying and selling of euro-zone banknotes during the three-year transitional period beginning 1 January 1999. The purpose was to recover about 90% of the 'exchange margin' income after the abolition of the 'spread' (i.e. buying and selling rates) on 1 January 1999.

Background of the case

Shortly after the introduction of the European single currency, the euro, on 1 January 1999, the Commission started an investigation into whether banks had collectively fixed charges for the exchange of euro-zone currencies. The Commission thereafter concluded that it had sufficient evidence that banks and national associations in seven Member States namely Germany, Ireland, Portugal, Finland, Belgium, The Netherlands and Austria had colluded in setting bank charges for the exchange of euro-zone banknotes.

However, between April and the summer of 2001, the vast majority of banks, including some German banks other than the addressees of the final Commission decision of 11 December 2001, unilaterally proposed to substantially reduce their

charges for the exchange of euro-zone currencies. The banks thereby abandoned their collusive behaviour and recovered their freedom to set prices individually.

On the basis of these proposals the Commission took the view that it would be in the consumer interest for it to secure an immediate and substantial reduction in the charges before the summer holiday period and that the free-of-charge exchange of euro-zone currencies for account-holders towards the end of the year offered by the banks in question would indeed facilitate the changeover to the euro notes and coins.

The Commission thus ended cartel proceedings against all Belgian, Finnish, Dutch, Irish and Portuguese banks following their acceptable proposals of reducing charges for the exchange of euro-zone currencies. The Austrian case has been integrated into the Lombard case and will be dealt with therein.

The Commission's unusual attitude was justified by the exceptional circumstances of the present case. The introduction of euro notes and coins on 1 January 2002, replacing the national currencies of the participating euro-zone countries, puts an automatic end to the cartel behaviour.

The German cartel

In Germany several banks have come forward with acceptable proposals for reducing their charges for the exchange of euro-zone currencies. The Commission has ended proceedings against these banks. Commerzbank, Dresdner Bank, Bayerische Hypo- und Vereinsbank, Vereins- und Westbank and Deutsche Verkehrsbank, which did not approach the Commission with acceptable proposals with direct benefit for the consumers, were addressees of a decision with fines.

The Commission characterised the companies' behaviour as a serious infringement of the EC competition rules, and adopted a Decision under Article 81(1) of the EC Treaty imposing the following fines:

Commerzbank AG:	€ 28.0 million
Dresdner Bank AG:	€ 28.0 million
Bayerische Hypo- und Vereinsbank AG:	€ 28.0 million
Deutsche Verkehrsbank AG:	€ 14.0 million
Vereins- und Westbank AG:	€ 2.8 million

Calculation of the fines

In fixing the amount of the fines, the Commission took into account the gravity and duration of the infringement.

The Commission considered that the cartel entered into by the German banks represented a very serious infringement of the EC competition rules and justified heavy fines. However, because the effect of the cartel was limited to Germany and the Dutch border regions, the Commission categorised the case as a 'serious infringement' for the purpose of establishing the starting amount of the fines.

Within this category of a serious infringement, the banks were divided into two groups according to their relative importance in the market concerned. Being very big banks it was necessary to make further upward adjustments for Commerzbank, Dresdner Bank and Hypo- und Vereinsbank in order to set their fine at a level which ensured that it had a sufficiently deterrent effect.

The duration of the infringement committed by Commerzbank, Dresdner Bank, Bayerische Hypo- und Vereinsbank, Deutsche Verkehrsbank and Vereins- und Westbank was four years and one month from the date of concluding the agreement until the present time. The starting amounts of the fines determined for gravity were therefore increased by 10% per year, i.e. by 40% in total.

In this case there were no aggravating and mitigating circumstances applicable and as the addressees of the decision have at no stage of the procedure co-operated with the Commission the Leniency Notice was also not applicable.

7. The zinc phosphate market-sharing and price-fixing cartel

François ARBAULT, Maarit LINDROOS, Directorate-General Competition, unit E-1

On 11 December 2001, the Commission fined Britannia Alloys & Chemicals Ltd.; Dr Hans Heubach GmbH & Co. KG; James M. Brown Ltd.; Société Nouvelle des Couleurs Zinciques S.A.; Trident Alloys Ltd. and Waardals Kjemiske Fabrikker A/S a total of € 11.95 million for fixing the price and sharing the market for zinc phosphate, an anti-corrosion mineral pigment widely used for the manufacture of industrial paints.

Following an investigation opened in May 1998, when on-the-spot investigations were carried out at the premises of several addressees of the decision, the European Commission found that British companies Britannia Alloys & Chemicals Ltd, James M. Brown Ltd and Trident Alloys Ltd, Germany's Dr Hans Heubach GmbH & Co. KG, France's Société Nouvelle des Couleurs Zinciques S.A (SNCZ) and Norwegian company Waardals

Kjemiske Fabrikker A/S participated in a European-wide cartel between 1994 and 1998, through which they fixed the price and shared out the market for zinc phosphate.

In March 1997 the zinc phosphate activities of Britannia Alloys took the name of Trident Alloys Ltd following a management buy out. The new company continued its involvement in the illegal practice. Since Britannia Alloys still exists, as a 100-percent subsidiary of M.I.M. Holdings, both it and Trident Alloys are the addressees of this decision.

Zinc phosphate is widely used as an anti-corrosion mineral pigment in protective coating systems. Paint manufacturers use it for the production of anti-corrosive industrial paints for the automotive, aeronautic and marine sectors. During the infringement period, the annual market was worth around € 16 million in the European Economic Area – the

15 EU member states plus Norway, Iceland and Liechtenstein. Whilst the companies concerned are of a modest size, they accounted for over 90% of the EEA-wide market for zinc phosphate.

The cartel began on 24 March 1994 in London, at the Holiday Inn Heathrow Airport Hotel. There, and following on previous informal contacts, Britannia Alloys, James Brown, Heubach, SNCZ and Waardals decided to maintain the 'status quo' on quantities of zinc phosphate supplied in Europe. It was decided to attribute to each member of 'the Club' (as they called themselves) a reference market share to be complied with.

The market shares were defined by reference to the 1991-1993 sales figures in France, Germany, UK and Scandinavia. During subsequent cartel meetings, the cartel participants circulated lists of 'recommended' minimum prices and shared out specific customers. In order to ensure that market shares were adhered to, a monitoring system was also set up.

From March 1994 until May 1998, 'the Club' held regular cartel meetings, sixteen of which have been clearly identified by the Commission.

During the inspections carried out in May 1998, numerous hand-written notes and tables of the cartel meetings were collected. Whilst a meeting room had already been booked for the forthcoming cartel meeting at Amsterdam's Schiphol airport on 22 July 1998, the event had to be cancelled due to the Commission's intervention.

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):

Britannia Alloys & Chemicals Limited: 3.37
 Dr Hans Heubach GmbH & Co. KG: 3.78
 James M. Brown Limited: 0.94
 Société Nouvelle des Couleurs Zinciques S.A.: 1.53
 Trident Alloys Limited: 1.98
 Waardals Kjemiske Fabrikker A/S: 0.35

Calculation of the fines and application of the Leniency Notice

In fixing the amount of the fines, the Commission took into account the gravity and duration of the infringement, as well as the existence, as appropriate, of aggravating and/or mitigating circumstances. The role played by each undertaking was assessed on an individual basis. The Notice on the

non-imposition or reduction of fines in cartel cases ('the Leniency Notice') was applied.

All the undertakings concerned were found to have committed a very serious infringement. Within this category, the undertakings were divided into two groups according to their relative importance in the market concerned. Without prejudice to the very serious nature of the infringement, the Commission had regard to the limited size of the zinc phosphate market when setting the appropriate starting amounts.

The cartel was of medium duration (between one and five years). The Commission did not identify any ringleader, since the creation of the cartel, which followed various preliminary informal contacts, was a joint initiative.

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.

Waardals approached the Commission shortly after the surprise investigations were carried out and fully co-operated with the Commission, giving an account of the cartel which included, *inter alia*, a list of the cartel meetings held between 1994 and 1998.

This allowed the Commission to establish a clearer picture of the history and mechanisms of the cartel, and to more accurately interpret the documents in its possession.

The explanations provided by Waardals enabled the Commission to address very detailed requests for information to the other cartel participants. On this basis, the Commission granted Waardals a 50% reduction of its fine.

Trident began to co-operate only after it received a request for information from the Commission. The company subsequently provided the Commission with a written statement giving a detailed account of the cartel, as well as a number of documents relevant to the case. On these grounds, Trident was granted a 40% reduction of its fine.

Britannia, Heubach and SNCZ did not substantially contest the facts as set out in the Statement of Objections they received in August 2000. For this reason, they were each granted a 10% reduction of their fine.

James Brown was also granted a 10% reduction of its fine.

8. The carbonless paper cartel

Erwan MARTEIL, Sari SUURNÄKKI, Directorate-General Competition, unit E-1

On 20 December 2001, the Commission fined Arjo Wiggins Appleton Limited and Carrs Paper Ltd (United Kingdom), Mitsubishi HiTech Paper Bielefeld GmbH, Papierfabrik August Koehler AG and Zanders Feinpapiere AG (Germany), Bolloré SA and Papeteries Mougeot SA (France), Distribuidora Vizcaina de Papeles S.L, Papelera Guipuzcoana de Zicuñaga SA and Torraspapel SA (Spain) a total of € 313.69 million for having implemented concerted price increases on the carbonless paper market. Sappi Limited (South Africa) was granted total immunity under the rules on leniency laid down by the Commission in 1996 as it was the first company to cooperate in the investigation and supplied decisive evidence of the cartel. This Decision, coming at the end of a year in which the Commission has taken a long line of decisions against cartels, is another example of the Commission's determination to uncover and punish the most damaging of all anti-competitive practices.

Carbonless paper, also known as self-copying paper, is intended for the multiple duplication of documents and is made from a base paper to which layers of chemical products are applied. The principle behind carbonless paper thus involves obtaining a copy by reaction between two complementary layers under pressure of handwriting or the impact of a computer printer or typewriter. Business forms (e.g. delivery slips, bank transfer forms) have always been the single largest application for carbonless papers, accounting for over 90% of total consumption. Other applications for carbonless papers include roll converting. Carbonless paper is sold in reels (80%) and sheets (20%).

The size of the EU carbonless paper market was some ECU 850 million in 1995 (last year of the infringement). In the same year the estimated West European (EEA) production capacity of carbonless paper was 1 010 000 tonnes, of which the members of the Association of European Manufacturers of Carbonless Paper (AEMCP) accounted for 890 000 tonnes (i.e. 88%). The AEMCP members account together for 85-90% of the sales in the EEA.

After a detailed investigation the Commission discovered that the following companies took part between 1992 and 1995 in a Europe-wide cartel designed essentially to implement concerted price

increases: Arjo Wiggins Appleton Limited and Carrs Paper Ltd (United Kingdom), Mitsubishi HiTech Paper Bielefeld GmbH, Papierfabrik August Koehler AG and Zanders Feinpapiere AG (Germany), Bolloré SA and Papeteries Mougeot SA (France), Distribuidora Vizcaina de Papeles S.L (Divipa), Papelera Guipuzcoana de Zicuñaga SA and Torraspapel SA (Spain) and Sappi Limited (South Africa). All these companies were members of the AEMCP except Carrs, Divipa and Zicuñaga.

The main objective of the cartel was to agree on price increases and on the timetable for implementing them. The cartel members held meetings at two separate levels: general meetings at European level attended by chief executives, commercial directors or equivalent managers in the carbonless paper industry, and national or regional cartel meetings attended by national or regional sales managers, often together with the aforementioned senior managers. The Commission gathered evidence on five general meetings and 20 national meetings for France, the United Kingdom and Ireland, Spain and Portugal. Several parties to the cartel also admitted that they attended meetings for Germany, Italy, Denmark, Finland, Norway and Sweden.

The Commission uncovered evidence that, in order to ensure implementation of the agreed price increases, a sales quota was allocated to the various participants and a market share was fixed for each of them at certain national cartel meetings – for example, in autumn 1993 for the Spanish and French markets. To help reach agreement on price increases and sales quotas and to monitor compliance with the agreements, the carbonless paper producers exchanged individual, confidential data (detailed information on their prices and sales volumes).

Statements by Sappi show that there were contacts of a collusive nature between the European manufacturers right from the foundation of their professional body, AEMCP, in 1981 and in particular from the mid-1980s. More specifically, the information supplied by Sappi shows that cartel meetings were held from 1989 onwards. However, the Commission confined its examination of the case to the period beginning in January 1992, the date from which it is in possession of convergent statements from cartel members and firm evidence of

regular collusion between carbonless paper producers.

Towards the end of the period, there are reasons to suspect that at least some aspects of collusion persisted after September 1995. When it sent its statement of objections to the companies concerned, the Commission argued that the infringement had persisted until February or March 1997. However, all the parties, except AWA, Carrs and Sappi, deny that they continued to take part in collusion after 1995. Moreover, the statements made by AWA, Carrs and Sappi diverge considerably with regard to the nature and dates of collusive contacts and are not sufficiently documented or corroborated by conclusive evidence for the Commission to establish that the conduct examined in this investigation persisted after September 1995.

On a recommendation from the Hearing Officer (whose final report is attached to the decision), the Commission therefore confined its investigation to the period up to September 1995, the period for which it has firm evidence of the cartel's existence.

The conduct of the companies concerned constitutes a very serious infringement of the competition rules laid down in Article 81 of the EC Treaty and Article 53 of the EEA Agreement.

The individual fines imposed are as follows (€ million): Arjo Wiggins Appleton Limited: 184.27, Papierfabrik August Koehler AG: 33.07, Zanders Feinpapiere AG: 29.76, Bolloré SA: 22.68, Mitsubishi HiTech Paper Bielefeld GmbH: 21.24, Torraspapel SA: 14.17, Papeteries Mougeot SA: 3.64 Distribuidora Vizcaina de Papeles S.L.: 1.75, Carrs Paper Ltd: 1.57, Papelera Guipuzcoana de Zicuñaga SA: 1.54.

Calculation of fines and application of the Leniency Notice

In fixing the amount of the fines, the Commission took into account the gravity and duration of the infringement, as well as the existence, as appropriate, of aggravating and/or mitigating circumstances. The role played by each undertaking was assessed on an individual basis. The Notice of 18 July 1996 on the non-imposition or reduction of fines in cartel cases ('the Leniency Notice') was applied.

All the undertakings concerned were found to have committed a very serious infringement. Within

this category, the undertakings were divided into five groups according to their relative importance in the market concerned. Further upward adjustments were made in the case of three companies (AWA, Bolloré and Sappi), with regard to their very large size and thus of their overall resources.

All cartel participants committed an infringement of medium duration (one to five years). The leadership of the infringement was retained as an aggravating circumstance against AWA. The basic amount of its fine was therefore increased by 50%, which is the Commission's normal practice. No mitigating circumstance was found applicable in the present case.

Application of the Leniency Notice

Sappi has been granted total immunity pursuant to Section B of the Leniency notice. This is the third time that the Commission has granted a 100% reduction in a fine (following Aventis S.A. in the vitamins A and E case, and Brasserie de Luxembourg Mousel-Diekirch in the Luxembourg brewers case).

Some of the other parties were granted reductions of the fine that would otherwise have been imposed on them pursuant to Section D of the Leniency notice.

The Commission reduced the fine imposed on Mougeot by 50%, on AWA by 35% and on Bolloré by 20% because these companies supplied information that helped to shed further light on the unlawful practice in question before the statement of objections was sent out.

The Commission also reduced the fines imposed on Carrs, MHTP and Zanders by 10% as these companies did not dispute the facts set out in the statement of objections.

Competition Commissioner Mario Monti said:

'This new case comes at the end of a year in which the Commission has taken a long line of decisions against cartels of all kinds. This unprecedented level of activity shows two things: first that these secret practices are – unfortunately – widespread, but also that the Commission has given itself the wherewithal to detect and pursue such offences and impose effective penalties. Today, I hope companies are fully aware of the risks they run when they collude. They should also know that the only way of alleviating the legal and financial consequences they face is to come and talk to us.'