1. Introduction
On 11 November 2009, the Commission adopted a prohibition decision against suppliers of tin stabilisers and ESBO/esters (two types of heat stabilisers) and one consultancy firm. The Decision found that they had operated two single and continuous cartels on tin stabilisers and on ESBO/esters respectively. The Commission imposed fines of more than EUR 173 million on them for infringing Article 81 of the Treaty and Article 53 of the EEA Agreement. The Decision was addressed to the following undertakings:

- For the tin stabilisers cartel: Akzo Nobel, Elementis, Elf Aquitaine (including Arkema France and CECA), Baerlocher, Chemtura, Reagens and AC-Treuhand.
- For the ESBO/esters cartel: Akzo Nobel, Elementis, Elf Aquitaine (including Arkema France and CECA), GEA Group, Chemson, Aachener Chemische Werke Gesellschaft für glastechnische Produkte und Verfahren mbH, Chemtura, BASF, Faci and AC-Treuhand.

The operation of the two cartels was particularly well organised. The suppliers were careful to cover their tracks by meeting and keeping documents at locations outside the jurisdiction of the European Commission. A consultancy firm based in Switzerland, AC Treuhand, organised the meetings, kept the documents at its premises and monitored the arrangements. Also, AC Treuhand was fined for having participated in the cartels.

2. Products concerned
Heat stabilisers are added to PVC products in order to improve their thermal resistance. The cartels covered two product categories: tin stabilisers and ESBO/esters. Tin stabilisers are used to avoid decomposition caused by heat during the processing of PVC into final products. Their two main applications are in rigid PVC products, such as packaging, credit cards, pipes, fittings, profiles and bottles and plasticised PVC products, such as coatings, flooring and car interiors. ESBO/esters are used for plasticised PVC products (as plasticisers and heat stabilisers). They are commonly used in products such as food packaging materials, medical products, different kinds of film gaskets, sheet materials, tubing, refrigerator sealing strips, artificial leather, plastic wallpaper, electrical wires and cables and floor coverings. At the time of the infringements, the combined markets for tin stabilisers and ESBO/esters in the EEA were worth some EUR 121 million.

3. Procedure
In November 2002, Chemtura applied for immunity under the Commission's 2002 Leniency Notice. The Commission launched surprise inspections in February 2003 in Germany, France, Italy and the United Kingdom. This was the first time that surprise inspections had been carried out by the European Commission and the American, Japanese and Canadian antitrust authorities simultaneously. Subsequently, Arkema France, Baerlocher, Akzo Nobel and BASF applied for leniency under the 2002 Leniency Notice.

During the inspections at Akcros Chemicals (UK), which belonged to the Akzo Nobel group at the time, its representatives claimed that certain documents were covered by legal professional privilege. Following an application by Akzo Nobel and Akcros Chemicals in April 2003 for the annulment of several Commission decisions, the issue of the disputed documents was settled by the Court of First Instance (now General Court) in its judgment of 17 September 2007. The Court dismissed the actions brought by Akzo Nobel and Akcros Chemicals and found that the documents were not covered by legal professional privilege.

The Commission issued a series of requests for information. On 17 March 2009, a Statement of Objections was issued. The Decision was adopted on 11 November 2009.
4. The cartels

The Decision concerns two cartels: one covering tin stabilisers and the other covering ESBO/esters. The tin stabilisers cartel lasted from February 1987 until March 2000. The ESBO/esters cartel lasted from September 1991 until September 2000. The duration of the involvement of each individual undertaking varied. Both cartels covered the territory of the EEA.

The objective of both cartels was to increase and maintain prices in the EEA above normal competitive levels and to sustain this objective through customer and sales volume allocation. The participants engaged in anticompetitive arrangements which consisted of:

(a) fixing prices;
(b) market sharing by fixing quotas;
(c) sharing and allocating customers; and
(d) exchanging commercially sensitive information.

The principal decisions for both cartels were taken at meetings organised by AC Treuhand, which made its premises in Switzerland and its services available to the suppliers involved. For a considerable proportion of the infringement periods, AC Treuhand monitored the implementation of the agreements on sales quotas and on fixed prices. During the meetings, AC Treuhand distributed “red” and “pink” papers containing details of fixed prices and allocation of sales volumes. Those papers were not allowed to be taken outside the meeting room.

The AC Treuhand meetings were held monthly for tin stabilisers and quarterly for ESBO/esters. Specific country meetings were held to implement the agreements reached at the AC Treuhand meetings.

5. Fines

In calculating the fines, the Commission applied the 2006 Guidelines on Fines. The Commission calculated the fines to be imposed on each supplier concerned on the basis of the value of their respective sales.

The basic amount was multiplied by the number of years of participation in the infringement, taking fully into account the duration of the participation of each individual undertaking in the infringement.

There were no mitigating circumstances. Aggravating circumstances were applied for Arkema France for recidivism. A multiplier to the fine was imposed on Elf Aquitaine S.A. as a specific increase for deterrence, pursuant to point 30 of the 2006 Guidelines on fines.

6. Application of the 2002 Leniency Notice

Chemtura was the first undertaking to submit information and evidence, which opened the door for the Commission to carry out targeted inspections. Therefore, Chemtura was granted a reduction of 100% for both tin stabilisers and ESBO/esters. CECA/Arkema France/Elf Aquitaine was granted a reduction of 30% for tin stabilisers and 50% for ESBO/esters. Baerlocher was granted a reduction of 20% for tin stabilisers and BASF was granted a reduction of 15% for tin stabilisers and 25% for ESBO/esters. Akzo’s contribution was not considered as being of “significant added value”. Therefore, the Commission did not grant Akzo any reduction of its fines.

Guidelines on the method of setting fines imposed pursuant to Article 23(2) (a) of Regulation No 1/2003, OJ C 210, 1.9.2006, p. 2.