



## Antitrust: Commission fines ethylene purchasers € 260 million in cartel settlement

Brussels, 14 July 2020

The European Commission has fined Orbia, Clariant and Celanese a total of € 260 million for breaching EU antitrust rules. Westlake was not fined as it revealed the cartel to the Commission.

The companies took part in a cartel concerning purchases on the ethylene merchant market. They colluded to buy ethylene for the lowest possible price. All four companies acknowledged their involvement in the cartel and agreed to settle the case.

Executive Vice-President of the Commission Margrethe **Vestager**, in charge of competition policy said: *This cartel aimed at manipulating the prices which the companies paid for their ethylene purchases. Ethylene is a flammable chemical that's used to make materials, like PVC, that go into many products we use every day. The four companies in the cartel have colluded and exchanged information on purchasing prices which is illegal. The Commission does not tolerate any form of cartels. EU antitrust rules not only prohibit cartels related to coordination of selling prices, but also cartels related to coordination of purchasing prices. This protects the competitive process for inputs."*

Ethylene purchasers usually buy ethylene under supply agreements. The purchase price of ethylene is very volatile and in order to reduce the risk of price volatility, ethylene supply agreements refer to a pricing formula, which often includes a so-called "Monthly Contract Price" (MCP), an industry price reference resulting from individual negotiations between ethylene buyers and sellers.

The Commission's investigation revealed that from December 2011 to March 2017 during the process of establishing the MCP, four ethylene purchasers coordinated their price negotiation strategy vis-à-vis the ethylene sellers to influence the MCP to their advantage. The companies are Westlake of the US, Orbia of Mexico, Clariant of Switzerland and Celanese of the US. The practices covered the territory of Belgium, France, Germany, and the Netherlands.

Unlike in most cartels where companies conspire to increase their sales prices, the four companies colluded to lower the value of ethylene, to the detriment of ethylene sellers. In particular, the companies coordinated their price negotiation strategies before and during the bilateral MCP 'settlement' negotiations with ethylene sellers to push the MCP down to their advantage. They also exchanged price-related information. These practices are prohibited by the EU competition rules.

### Fines

The fines were set on the basis of the Commission's [2006 Guidelines on fines](#) (see also [MEMO](#)).

As the cartel related to collusion on purchase prices, the Commission used the value of purchases (rather than the value of sales) in the European Union (EU) to set the level of the fines. As those figures were presumably artificially lowered precisely because of the cartel behaviour, this was likely to result in a level of fines below the economic significance of the infringement. Therefore, in order to avoid under-deterrence, the Commission used its discretion under the 2006 Guidelines on fines to increase the amount of the fine for all companies by 10%.

Furthermore, in setting the amount of the fine, the Commission took account of the duration of the infringement, the individual weight of the companies in the infringement, their overall size and the fact that Clariant had previously been sanctioned for a similar infringement.

Under the Commission's [2006 Leniency Notice](#):

- Westlake received full immunity for revealing the cartel, thereby avoiding an aggregate fine of ca. € 190 million.
- Orbia, Clariant and Celanese benefited from reductions of their fines for their cooperation with the Commission investigation. The reductions reflect the timing of their cooperation and the extent to which the evidence they provided helped the Commission to prove the existence of the cartel in which they were involved.

In addition, under the Commission's [2008 Settlement Notice](#), the Commission applied a reduction of 10% to the fines imposed on the companies in view of their acknowledgment of the participation in the cartel and of the liability in this respect.

The breakdown of the fines imposed on each company is as follows:

<b>Purchaser (group)</b>	<b>Reduction under Leniency Notice</b>	<b>Reduction under Settlement Notice</b>	<b>Fine (€)</b>
<b>Westlake</b>	100%	10%	0
<b>Orbia</b>	45%	10%	22 367 000
<b>Clariant</b>	30%	10%	155 769 000
<b>Celanese</b>	20%	10%	82 307 000

## **Background**

Due to the volatility of ethylene prices, the industry often uses in their ethylene supply contracts an ethylene monthly contract price, or "**MCP**" published by the specialised market information providers.

In order to establish an ethylene MCP for the upcoming month, two separate identical bilateral agreements (also called "settlements") between two different pairs of suppliers and buyers have to be reached (2+2 rule). After a pair of a supplier and a buyer has reached an agreement on the price for the following month, they communicate it to the private and independent reporting agencies. After another pair of a buyer and a supplier settles at the identical price, this price becomes the MCP for the following month via a publication by these agencies. The MCP constitutes a part of the ethylene price formula in certain long-term supply agreements in Belgium, France, Germany and the Netherlands.

The objective of the cartelists' conduct was to jointly influence the monthly MCP negotiations with ethylene sellers, to their own advantage. Their aim of the cartelists was to purchase ethylene at the lowest possible price. To do so, the parties were exchanging price-related information during their negotiations with ethylene sellers, which constituted the basis for establishing the MCP as an element of the ethylene price.

This case is the first purchasing horizontal cartel detected in the chemical industry sanctioned under the 2006 Fines Guidelines.

Taking into consideration the impact of the coronavirus outbreak on all sectors, and potential short term liquidity issues of companies, the Commission prolonged the due date for the payment of fines by three months, to six months in total from the date of the notification of the cartel decision to the four companies.

## **Procedural Background**

[Article 101](#) of the Treaty on the Functioning of the European Union (TFEU) prohibits cartels and other restrictive business practices, including collusion on purchasing prices.

The Commission's investigation in this case started in June 2016 with an application under the Commission's [2006 Leniency Notice](#) submitted by Westlake, which was followed by applications for reduction of fines by other parties.

Fines imposed on companies found in breach of EU antitrust rules are paid into the general EU budget. This money is not earmarked for particular expenses, but Member States' contributions to the EU budget for the following year are reduced accordingly. The fines therefore help to finance the EU and reduce the burden for taxpayers.

More information on this case will be available under the case number AT.40410 in the [public case register](#) on the Commission's [competition](#) website, once confidentiality issues have been dealt with. For more information on the Commission's action against cartels, see its [cartels website](#).

### **The settlement procedure**

Today's decision is the 33rd settlement since the introduction of this procedure for cartels in June 2008 (see [press release](#) and [MEMO](#)). In a settlement, parties acknowledge their participation in a cartel and their liability for it. Settlements are based on the [Antitrust Regulation 1/2003](#) and allow the Commission to apply a simplified and shortened procedure. This benefits consumers and taxpayers as it reduces costs. It also benefits antitrust enforcement as it frees up resources to tackle other suspected cartels. Finally, the parties themselves benefit in terms of quicker decisions and a 10% reduction in fines.

### **Action for damages**

Any person or company affected by anti-competitive behaviour as described in this case may bring the matter before the courts of the Member States and seek damages. The case law of the Court and Council Regulation 1/2003 both confirm that in cases before national courts, a Commission decision constitutes binding proof that the behaviour took place and was illegal. Even though the Commission has fined the cartel participants concerned, damages may be awarded without being reduced on account of the Commission fine.

The [Antitrust Damages Directive](#), which Member States had to transpose into their legal systems by 27 December 2016, makes it [easier for victims of anti-competitive practices to obtain damages](#). More information on antitrust damages actions, including a practical guide on how to quantify antitrust harm, is available [here](#).

### **Whistleblower tool**

The Commission has set up by a tool to make it easier for individuals to alert it about anti-competitive behaviour while maintaining their anonymity. The tool protects whistleblowers' anonymity through a specifically-designed encrypted messaging system that allows two way communications. The tool is accessible via this [link](#).

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