Spain: The Comisión Nacional de la Competencia fines ten Companies and Sector Association for Cartel in Flexible Polyurethane Foam

In its Resolution of 28 February 2013, the Comisión Nacional de la Competencia (CNC) Council found that several companies active in the sector of the flexible polyurethane foam (used in the comfort industry, i.e. in upholstery, mattresses, chairs, footwear...) in Spain as well as the Spanish Association of Polyurethane Foam Businesses (Asociación Española de Empresas de Espuma de Poliuretano - ASEPUR) had been taking part in a cartel since January 1992 until at least 2011.

It was established that in the first phase starting in 1992, the companies agreed on prices and shared production by reference to quotas or ‘limits’ that the operators could not exceed. This agreement was designed and controlled by external auditors. The investigation showed that the cartel members tried to give to their practices the appearance of audits carried out in view of reducing the emission of contaminating compounds in the foam production process. From 2000 onwards, as the stability of the agreement was threatened by increased sales by Portuguese companies on the Spanish market, the members of the cartel focused their collusion on price increases. This coordination took place during the meetings organised under the auspices of ASEPUR. It appeared that Portuguese companies, some of which were not members of ASEPUR, also participated in these agreements from 2000 onwards, in particular Flex 2000-Produtos Flexiveis S.A. and Euroespuma.

In its decision, the CNC Council concluded that an infringement of both Article 1 of the Spanish Competition Act and Article 101 TFEU has been committed consisting of concerted practices of fixing prices and sharing the market which constitute a cartel.

It has therefore set the amount of the fines as follows: € 250 000 on ASEPUR in its capacity as a crucial collaborator in the practices; € 1046 000 on Eurospuma-Sociedade Industrial de Espuma Sintéticas S.A.; € 2 661 000 on Flexipol Espumas Sintéticas S.A., for which its parent company is held jointly and severally liable; € 7 575 000 on Flex 2000-Produtos Flexiveis S.A. jointly and severally with its parent company Cordex S.G.P.S.; € 805 000 on Interplasp S.L.; € 1 020 000 on Pagola Poliuretanos S.A.; € 9 358 000 on Recticel Ibérica S.L. jointly and severally with its parent company Recticel (Recticel); € 997 000 on Tepol S.A.; € 1 970 000 on Torres Espic S.L. and € 668 000 on Yecflex S.A.

Pursuant to the Spanish leniency programme, Recticel has been exempted from the payment of the fine that the CNC Council could have imposed on it, following the immunity application submitted on 9 August 2010 for its own benefit and for the benefit of its subsidiaries. In addition, due to the fact that it provided information with a significant added value, a reduction of 40% of the fine is applied to Flex 2000-Produtos Flexiveis S.A., as well as a partial exemption for having provided evidence extending the duration of its participation in the infringement as well as the one of Euroespuma. As a result, the fine imposed on Flex 2000-Produtos Flexiveis S.A. amounts to € 4 521 000. In the case of Flexipol Espumas Sintéticas S.A., which was the third leniency applicant, the information provided in its application for a reduction has been assessed as not providing significant added value and no reduction of the fine has been granted.

The Investigations Division of the CNC had decided, on 13 April 2011, to open formal proceedings in relation to restrictive practices, consisting of the adoption of agreements to share the market of flexible polyurethane foam and the fixing of prices on that market. On 16 February 2011, inspections had been carried out at the head offices of the main companies in the sector in the Spanish territory. It must be pointed out that in the context of the investigation carried out in this case, the Spanish and Portuguese authorities have cooperated in accordance with the provisions of Regulation 1/2003.