Commission fines participants in the industrial gases cartel

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On 24 July 2002, the Commission fined AGA AB, Air Liquide BV, Air Products Nederland BV, BOC Group plc, Messer Nederland BV, NV Hoek Loos and Westfalen Gassen Nederland NV a total of € 25.72 for participating in a secret cartel in the industrial and medical gases sector in the Netherlands.

The industrial and medical gases concerned in this case include oxygen, nitrogen, carbon dioxide, argon and argon mix supplied in cylinder and liquid form. They are used in several industrial sectors and manufacturing processes. The largest volumes of industrial gases are used for producing, cutting and welding metals and in the chemical industry. In the case of oxygen and carbon dioxide they can also be used for medical purposes, especially in hospitals.

Following an investigation which started in 1997, the Commission established that AGA AB (AGA), Air Liquide BV (Air Liquide), Air Products Nederland BV (Air Products), BOC Group plc (BOC), Messer Nederland BV (Messer), NV Hoek Loos (Hoek Loos) and Westfalen Gassen Nederland NV (Westfalen) participated in a cartel in the Netherlands from 1989 until 1991 and from 1993 until 1997. These companies held regular meetings to discuss and fix price increases and other trading conditions for cylinder and liquid gases supplied to their customers. They agreed not to deal with each other’s customers for a period of 2-5 months every year in order to implement the price increases and to respect minimum prices and other trading conditions when offering gases to new customers. These trading conditions concerned in particular the rent of cylinders, a safety and environment charge for supplies in cylinders, transportation costs and a delivery charge for liquid gases.

Although the Commission collected evidence for both periods mentioned above, it only took into consideration the period after September 1993 for the purposes of calculating the fine, since prescription applied for the first infringement which ended more than five years before the investigation began.

The market for industrial and medical gases in cylinder and liquid form in the Netherlands was worth about € 180 million in 1996. At the material time, Hoek Loos and AGA were the largest under-takings on that market, followed by Air Products and Air Liquide. AGA subsequently sold its operations in the Netherlands to Hoek Loos and Air Products in 2001.

The Commission characterised the companies’ behaviour as a ‘serious’ infringement of the Community competition rules. Even though by its nature the infringement was considered ‘very serious’, the Commission had to consider in its evaluation that the infringement took place in a sector of medium economic importance -in terms of the overall value of the market- and that the geographic scope of the market was limited to the Netherlands.

The Commission adopted a Decision under Article 81(1) of the Treaty, imposing fines. Hoek Loos was fined € 12.6 million, AGA € 4.15 million, Air Liquide € 3.64 million, Air Products € 2.73 million, BOC € 1.17 million, Messer € 1 million and Westfalen € 0.43 million.

Calculation of fines and application of the Leniency Notice

In calculating 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 Leniency Notice was applied.

All companies concerned were found to have committed a serious infringement. Within this category, the undertakings were divided into four groups according to their relative importance on the market concerned. Hoek Loos and AGA were considered to be the leading suppliers of industrial gases in cylinder and liquid form during the period concerned. Air Products and Air Liquide were considered large suppliers whereas Messer and BOC were considered medium size suppliers. Westfalen was considered a small supplier.

All companies concerned were found to have committed an infringement of medium duration (one to five years). The Commission recognised that BOC and Westfalen had played an exclusively passive role in the infringement and had not participated in all aspects of the infringement.
Pursuant to Section D of the Leniency Notice, AGA, Air Products, Hoek Loos and Messer were granted reductions of the fine that would otherwise have been imposed. Before the Commission adopted its Statement of Objections, AGA and Air Products provided the Commission with information which materially contributed to establishing the existence of an infringement. Furthermore, neither of them substantially contested the facts on which the Commission based its Statement of Objections. These companies as a consequence were granted a 25% reduction in their respective fines. Hoek Loos and Messer were also granted a reduction of 10% in their respective fines as they did not substantially contest the facts on which the Commission based its Statement of Objections.