Commission adopts cartel decision imposing fines in food flavour enhancers (nucleotide) cartel

Sam PIETERS, Directorate-General Competition, unit E-1

The European Commission fined on 17 December 2002 Ajinomoto Company Inc.(Japan), Cheil Jedang Corporation (South Korea) and Daesang Corporation (South Korea) respectively €15.54 million, €2.74 million and €2.28 million for participating in a price-fixing and customer allocation cartel in nucleotides together with Takeda Chemical Industries Ltd (Japan). Takeda was granted full immunity from fines because it submitted decisive evidence at a time when the Commission had no knowledge of the cartel. The Commission also took into account the small size of the nucleotides market when setting the fine.

Nucleotide or nucleic acid is made from glucose and is used in the food industry to add flavours to foods. The cartel operated for around 9 years until 1998. During the infringement, the value of the EEA market for nucleotides amounted to around €8 million.

The investigation started in 1999 when the Commission was approached by representatives of Takeda who revealed the cartel, providing decisive information about its operation. The Commission found that between 1988 and 1998, the four undertakings participated in a cartel in breach of article 81(1) of the EC Treaty and 53(1) of the EEA Agreement by which they aimed to fix ‘target’ prices, implement concerted price increases, allocate customers, as well as exchange information on sales figures.

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 1996 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. All participants committed an infringement of long duration (exceeding five years). The Commission took into account the small size of the EEA market value.

Application of the Leniency Notice

As the investigation into the nucleotides cartel started in 1999, the 1996 Leniency Notice was applied in this case.

Although the Commission considered the cartel agreement to constitute a very serious infringement, it considered that Takeda fulfilled the conditions for total immunity from fines, given that it was the first to come forward, submitting decisive evidence on the existence of the cartel. Daesang, Ajinomoto and Cheil co-operated in one way or another with the Commission and were granted appropriate reductions. The Commission took into account the fact that — although it was not the first — Daesang approached the Commission on its own initiative before receiving any request for information by the Commission.

The difference in the fines reflects the fact that Ajinomoto, the world’s biggest producer of nucleotides, was in average nearly twice the size of competitors in terms of 1997 market shares figures. In calculating the fines, the Commission takes into account the effective capacity by market leaders to cause greater damage than smaller players as well as the need to ensure that the penalties have a sufficiently deterrent effect.