Commission adopts cartel decision imposing fines in sorbates cartel

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In a decision adopted on 1 October 2003, the European Commission found that Hoechst AG, Chisso Corporation, Daicel Chemical Industries Ltd, Nippon Synthetic Chemical Industry Co Ltd and Ueno Fine Chemicals Industry Ltd operated a cartel in the sorbates market between 1979 and 1996. The companies were fined a total of €138.4 million. Chisso escaped a fine altogether, because it was the first to provide crucial evidence that helped the Commission to prove the existence of the cartel.

Summary of the infringement

The individual fines imposed on the companies are the following: Hoechst AG €99 million, Daicel Chemical Industries Ltd €16.6 million, Ueno Fine Chemical Industries Ltd €12.3 million and Nippon Synthetic Chemical Industry Co Ltd €10.5 million.

Sorbates are one of the most widely used chemical preservatives in Europe to prevent the development of moulds, bacteria and other micro-organisms in foods, for example in mayonnaise and sausages as well as beverages. They are also used for the coating of cheese wrapping paper or in cosmetics.

In the mid nineties the five companies concerned controlled about 85% of the sorbates market in the European Economic Area (EEA). Until it transferred its sorbates business to Nutrinova in 1997, Hoechst was the largest producer of sorbic acid — the main type of sorbates — followed by Daicel. Hoechst is based in Germany and the other four companies all have their headquarters in Japan.

The investigation, which started in the autumn of 1998 when the Commission was approached by representatives of Chisso under the Commission’s 1996 Leniency Notice, clearly established the existence of a cartel in breach of Article 81(1) of the Treaty and Article 53(1) of the EEA Agreement.

The participants in the infringement usually met twice a year to discuss and agree on prices and volume allocations. These meetings alternated between various locations in Europe and Japan. The Japanese producers would hold preparatory meetings in order to agree on prices and volumes to be discussed in the joint meetings.

The United States and Canada have also investigated and punished price fixing and other restraints of trade by certain producers of sorbates. The companies concerned in the different proceedings are not exactly the same. In the US Hoechst, Nippon, Daicel, Ueno and Eastman pleaded guilty to the charges and agreed to pay fines of USD 132 million. In Canada Hoechst, Eastman, Daicel and Ueno were fined CAD 7.39 million.

Calculation of fines and the application of the 1996 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.

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. Hoechst was by far the largest producer of sorbates both in the world-wide market and in the EEA market and it was therefore placed in the first group. Daicel, Chisso Nippon and Ueno were all placed in the second group.

In the case of Hoechst an upward adjustment of the fine was done to take account of its size and its overall resources. The Commission took also into account in setting the fine for Hoechst that it had been an address of previous decisions finding an infringement of the same type (Commission Decisions relating to a proceeding pursuant to Article 81 of the EC Treaty: 94/599/EC (PVC II) of 27 July 1994; 89/191/EEC (PVC I) of 21 December 1988; 86/398/EEC (Polypropylene) of 23 April 1986; 69/243/EEC (Dyestuffs) of 24 July 1969). The fine imposed on Hoechst also reflects its position as co-leader in the cartel together with Daicel. However, the final amount for Hoechst also includes a 50% leniency reduction for co-operating in the investigation.

Chisso was the first undertaking to provide decisive evidence on the cartel and, as it fulfilled also
the other conditions for full immunity pursuant to the 1996 Leniency Notice, it was granted a full immunity from fines.

As mentioned above, in the case of Daicel, the gravity of the infringement was aggravated by its role as a leader of the cartel. The fines imposed on Daicel, Nippon and Ueno also include different levels of reductions according to their level of cooperation. Nippon were given a reduction of 40% as it cooperated with the Commission at an early stage. Daicel and Ueno, which were the last companies to cooperate with the Commission, were given reductions of 25 and 30%. All reductions included 10% for not substantially contesting the facts on which the Commission based its allegations.