Commission fines members of the organic peroxides cartel

Torsten PETERS, Directorate-General Competition, unit E-2

In a decision adopted on 10 December 2003, the European Commission has imposed fines totalling nearly 70 million on Atofina, Peroxid Chemie, Laporte (now known as Degussa UK Holdings), Perorsa and AC Treuhand AG for operating a cartel in the market for organic peroxides. Akzo received full immunity from fines for having revealed the cartel. Organic Peroxides are chemicals used in the plastic and rubber industries.

Summary of the infringement

The cartel began already in January 1971 and lasted until the end of 1999. This makes it the longest-lasting cartel ever uncovered by the Commission. It was based on agreed market shares for each participant, combined with customer allocation and co-ordinated price increases.

In 1971 the conspirators at that time — Akzo, Luperox (later absorbed by Atochem which, in the meantime has been renamed as Atofina), and Peroxid Chemie [which became part of Laporte plc. and later of Degussa AG(1)] set up a formal written agreement which spelled out in detail the definition of the products, quotas and the way, how compensation and mediation mechanisms should apply. The cartel had also a number of side arrangements on specific organic peroxides and for three regions — Spain, France and UK. Peroxidos Organicos (Perorsa) of Spain joined the cartel in 1975 and played in particular an active role in Spain.

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The Commission found that the cartel was supported since 1993 by a Zurich-based company called AC Treuhand, which did not produce organic peroxides. Its role was to organise the cartel, to mediate between the parties, and also to collect and audit statistics in order to enable smooth functioning of the cartel. AC Treuhand and the other parties to the agreement met regularly, often in Zurich. Some documents — in particular the ‘pink’ and ‘read’ papers with the agreed market shares — were also stored by AC Treuhand in Zurich and parties were only allowed to consult these documents, but not to take copies. Other documents were faxed to the private homes of some collaborators. Travel reimbursements were made by AC Treuhand directly from Switzerland to the participants attending the cartel meetings, so that no traces about the illegal meetings could have been found in their offices.

AC Treuhand was found to have violated Article 81(1) of the Treaty and Article 53(1) of the EEA Agreement by organising meetings, mediating conflicts between the parties, proposing market shares and hiding incriminating evidence. AC Treuhand acted as an association of undertakings and/or as an undertaking.

Calculation of fines and application of the 1996 Leniency Notice

The Commission found that the parties concerned had committed a very serious infringement of Article 81(1) of the Treaty and Article 53(1) of the EEA Agreement.

The following table summarizes the fines and the duration of the infringement for each participant:

<table>
<thead>
<tr>
<th>Name</th>
<th>Duration</th>
<th>Fine</th>
</tr>
</thead>
<tbody>
<tr>
<td>Akzo</td>
<td>1971-1999</td>
<td>—</td>
</tr>
<tr>
<td>Atofina</td>
<td>1971-1999</td>
<td>43.47 m</td>
</tr>
<tr>
<td>Peroxid Chemie</td>
<td>1971-1992</td>
<td>8.83 m</td>
</tr>
<tr>
<td>Peroxid Chemie &amp; Degussa UK</td>
<td>1992-1999</td>
<td>16.73 m</td>
</tr>
<tr>
<td>(jointly and severally)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Perosa</td>
<td>1976-1999</td>
<td>0.5 m</td>
</tr>
<tr>
<td>AC Treuhand</td>
<td>1993-1999</td>
<td>1 000</td>
</tr>
</tbody>
</table>

The fines before the application of the Leniency Notice were calculated taking into account the gravity and the duration of the infringement, the need for deterrence (for this reason a further upward adjustment was made in the case of Akzo and Atofina taking into account their large sizes and respective resources) as well as the existence, as appropriate, of aggravating and/or mitigating circumstances.

As an aggravating circumstance the Commission took into account that this is not the first time Atofina, Degussa UK Holdings and Peroxid

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(1) In 1992, Laporte plc. became sole owner of and responsible for Peroxid Chemie. In 2001, after the cartel ended, Laporte plc. was bought by Degussa AG and renamed as Degussa UK Holdings.
Chemie have been caught in cartel agreements. Atofina was involved in four other cartels before: Peroxygen products (Decision of 23 November 1984), Polypropylene (Decision of 23 April 1986), LdPE (Decision of 21 December 1988), PVC (Decisions of 21 December 1988 and of 27 July 1994). Laporte (now Degussa UK Holdings) and Peroxid Chemie were also part of the peroxygen cartel. The fines were increased by 50% for each of these three companies.

The fine for AC Treuhand was considered apart. The Commission acknowledged that addressing a decision to an undertaking and/or an association of undertakings having a cartel organiser and facilitator role is to a certain extent novelty. Therefore, the Commission considered it appropriate to impose only a limited fine of 1 000 on AC Treuhand. But the message is clear: organisers or facilitators of cartels infringe European competition law and heavy sanctions will be imposed from now on.

Akzo was the first to approach the Commission in early 2000 with decisive information on the cartel, and, therefore, received a 100% reduction of the fine in accordance with the Commission's 1996 Leniency Notice.

Atofina also came up with useful information and received a leniency reduction of 50% of its fine. Moreover, as Atofina gave crucial information on the continued existence of the cartel in 1993 and before, it received, as special attenuating factor of cooperation outside the Leniency Notice, a substantial reduction of its fine before leniency.

Peroxid Chemie and its parent company Degussa UK Holdings (formerly Laporte plc.) applied for leniency after receiving from the Commission requests for information according to Article 11 of Regulation 17. While their leniency application contained useful information, it added only little new compared to what was already submitted by Akzo and Atofina before.

A fine of Euro 8.83 million was imposed on Peroxid Chemie for the period 1971 to 1992. This includes the application of the 10% turnover cap mentioned in Article 15(2) of Regulation 17 and a 25% reduction for leniency. A second fine of 16.73 million Euro (after 25% leniency reduction) was imposed on Peroxid Chemie and Degussa UK Holdings jointly and severally for the period 1992 to 1999. Degussa UK Holdings hence was held responsible as from 1992, when it gained full control and ownership over Peroxid Chemie.

The 10% turnover limit mentioned in Article 15(2) of Regulation 17 was also applied to Perorsa. Perorsa was the last company to submit evidence in the context of a leniency application and received a reduction of 15%.