Commission fines members of the monochloroacetic acid cartel

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In a decision adopted on 19 January 2005 the Commission found that four groups of undertakings had participated in a cartel in the market for monochloroacetic acid. The cartel ran for 15 years from 1984 until 1999 and covered the whole of the European Economic Area. Fines totalling almost EUR 217 million were imposed on Akzo, Hoechst and Atofina (now know as Arkema) for their involvement in the cartel. Clariant escaped the imposition of a fine altogether in view of its cooperation with the Commission under the 1996 Leniency Notice.

Summary of the infringement

Monochloroacetic acid (MCAA) is a reactive organic acid which is a chemical intermediate used in the manufacture of detergents, adhesives, textile auxiliaries and thickeners used in food, pharmaceuticals and cosmetics. The participants held over 90% of the European Economic Area (EEA) wide market for MCAA which had a value of approximately EUR 125 million in 1998, the last full year of the infringement.

Four groups of undertakings were involved in the cartel:

— Akzo (Akzo Nobel NV, Akzo Nobel Nederland BV, Akzo Nobel Functional Chemicals BV, Akzo Nobel Chemicals BV, Akzo Nobel AB, Eka Chemicals AB, Akzo Nobel Base Chemicals AB);
— Atofina (Atofina SA (now Arkema SA) and its parent company Elf Aquitaine SA);
— Hoechst AG (involved 1984-1997 after which time it sold its MCAA business to Clariant); and

The cartel became more formalised from 1993 with implementation rules being laid down, the development of a mechanism to directly exchange sales statistics and the introduction of a compensation system. AC Treuhand, a Zurich based statistical agency, was also retained at this time to provide aggregated statistical data and general market information. The participants would typically meet the AC Treuhand representative twice a year close to Zurich airport. These legitimate Treuhand meetings served to provide a cover for the participants to meet unofficially, usually the evening before at a different location, to discuss the cartel arrangements. A total of 12 Treuhand meetings took place between May 1994 and January 1999 with cartel meetings taking place along side the Treuhand meetings and with other multilateral and bilateral contacts continuing throughout the period.

The Commission found that the participants had infringed Article 81 EC Treaty and Article 53(1) EEA Treaty by (i) allocating volume quotas, (ii) allocating customers, (iii) agreeing concerted price increases, (iv) agreeing on a compensation mechanism to ensure the implementation of quotas, (v) exchanging sales volumes and prices to ensure implementation, (vi) participating in regular meetings, both multilateral and bilateral, as well as other contacts to set up and to ensure the proper functioning of the cartel.

Calculation of fines and application of the 1996 Leniency Notice

In fixing the amount of fines, the Commission took into account the gravity and duration of the infringement, as well as the existence, as appropriate, of aggravating and attenuating 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 three groups according to their relative importance in the market concerned. Akzo as the largest producer of MCAA in the EEA was placed in the first category. Hoechst and Clariant were placed in the second category with Atofina in the third. Upward adjustment of the fine was made in the case of the Atofina and Akzo groups having regard.
to their large size and overall resources. All participants, except for Clariant, committed an infringement of long duration (exceeding five years) for which the amount of the fine was increased proportionally to the term of their involvement.

As an aggravating circumstance the Commission took into account that both Hoechst and Atofina had been addressees of previous Commission decisions which established an infringement of the same type. In the case of Atofina the aggravating circumstance applied only to Atofina SA and did not extend to its parent company Elf Aquitaine SA as the latter was not in control of the former at the time of the previous infringement.

One attenuating circumstance was identified. In its cooperation with the Commission (see below) Akzo provided information that three of its companies (Eka Chemicals AB, Akzo Nobel Chemicals AB and Akzo Nobel AB) had participated independently in the infringement for a short eight month period prior to becoming part of the Akzo group. The result of the information provided by Akzo is that it would face a higher fine than it would have done without its cooperation. Accordingly, having regard to the particular circumstances of the case and in line with the principle of fairness, the fine imposed on the above three companies was reduced to zero on the basis of a special attenuating circumstance of cooperation outside the Leniency Notice.

On the issue of leniency, as the investigation started prior to the introduction of the 2002 Leniency Notice, the 1996 Notice was applicable in this case.

Clariant was the first undertaking to provide decisive evidence of the cartel which triggered the Commission investigation. Clariant, having fulfilled the required additional conditions, was accordingly granted full immunity under the 1996 Leniency Notice. Atofina was the second undertaking to come forward and, as a result of its close cooperation with the Commission, it was granted a 40% reduction. Akzo was the third undertaking to cooperate with the Commission and it received a reduction of 25%.

Following application of the Leniency Notice the total level of fines imposed was almost EUR 217 million. On an individual basis the fines imposed were as follows: Akzo EUR 84.38 million, Hoechst EUR 74.03 and Atofina EUR 58.5 million.