Commission fines four undertakings a total of € 344.5 million for participating in an acrylic glass cartel (1)

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On 31st May 2006 the European Commission imposed fines on Arkema (formerly Atofina), ICI, Lucite and Quinn Barlo (formerly Barlo) for their participation in a hard core cartel. These four companies were fined a total of € 344,562,500. Arkema and ICI had their fines increased as they are repeat offenders. A fifth participant of the cartel, Degussa, also a repeat offender, avoided a fine by receiving full immunity under the Commission’s leniency regime for being first to provide information about the cartel.

The product

The addressees of the Decision participated in a single and continuous infringement of Article 81 of the EC Treaty and Article 53 of the EEA Agreement between 23 January 1997 and 12 September 2002 in the methacrylates industry in the EEA involving the following three products:

— Polymethyl-methacrylate (PMMA)-moulding compounds;
— Polymethyl-methacrylate (PMMA)-solid sheet; and
— Polymethyl-methacrylate (PMMA)-sanitary ware.

Acrylic glass — or Polymethyl-methacrylate (PMMA) — is used for a range of applications. PMMA-moulding compounds are mainly used in the car industry for the production of headlamps, tail-lights and glass for dashboards as well as household appliances, optical media (DVDs, lenses) and electronics. PMMA-solid sheet is mainly used for illuminated advertising applications and shop interior displays. PMMA-sanitary ware is mainly used in the production of bath tubs and shower trays. These products are commonly also called acrylic glass and are best known under the trade names Plexiglas, Perspex, Acrylite, Acrylplast and Lucite.

The investigation showed that the cartel covered the whole of the EEA. The 2000 EEA market value for all three PMMA-products was ca. € 665 million for ca. 255,000 tons.

The infringement

In March 2003 the Commission carried out inspections at the premises of several undertakings following an application for immunity from fines by the German undertaking Degussa under the 2002 Notice on immunity from fines and reduction of fines in cartel cases (“Leniency Notice”).

After the inspections several undertakings submitted leniency applications.

The Statement of Objections was addressed to 20 legal entities belonging to 7 undertakings in August 2005 and the Oral Hearing was held in December 2005.

The infringement’s main features included: competitors discussing prices, agreeing, implementing and monitoring price agreements either in the form of price increases or at least stabilisation of the existing prices; discussing the passing on of additional service costs to customers; exchange of commercially important and confidential market and / or company relevant information; participating in regular meetings and having other contacts to agree to the above restrictions and monitor implementation within the EEA.

The Commission set the starting date with the meeting of 23 January 1997, as this is the first anti-competitive meeting for which the Commission has confirmation from more than one of the participants. At this summit meeting representatives of Arkema, Degussa and ICI discussed the disappointing profit situation relating to PMMA-moulding compounds and PMMA-solid sheet and the possibilities for a further coordination of market behaviour by the competitors, and sales managers were to be disciplined to comply more strictly with previous concluded agreements.

Fines

The practices uncovered are a very serious infringement. In fixing the fines, the Commission took account of the size of the EEA market (around

(1) The content of this article does not necessarily reflect the official position of the European Communities. Responsibility for the information and views expressed lies entirely with the authors.
€ 665 million), the duration of the cartel, and the size of the firms involved. The Commission increased the fines by 50% for Arkema and ICI as they are repeat cartel offenders.

In setting the starting amount of the fine for each undertaking, the Commission took into account their combined turnover in the EEA for the three PMMA products in 2000, being the most recent year of the infringement in which most undertakings were active in the cartel. As there was considerable disparity between each undertaking’s turnover in the cartelised industry, the undertakings were divided into three groups. In this manner, the Commission takes into account the effective economic capacity of the undertakings to cause significant damage to competition in the cartelised industry.

Several undertakings claimed some or all of the following attenuating circumstances: early termination of the infringement, a minor/passive role, the absence of an effective implementation of the practices, the implementation of compliance programmes, absence of benefit, crisis in the MMA industry. These claims were all rejected as being unfounded apart from the minor/passive role claimed by Quinn Barlo. The basic amount for Quinn Barlo was therefore reduced by 50%.

**Repeated infringements**

At the time the infringement took place, Degussa, Arkema and ICI had already been subject to previous Commission prohibition decisions for cartel activities (\(^{1}(\))). This justified an increase of 50% in the basic amount of the fine to be imposed on these undertakings.


**Sufficient deterrence**

In order to set the amount of the fine at a level which ensured that it had sufficient deterrent effect the Commission considered it appropriate to apply a multiplication factor to the fines imposed. Accordingly and in line with previous decisions, it was considered appropriate to multiply the fine for Total/Arkema, Degussa and ICI. Individual multiplying factors were also applied according to the duration of the infringement by each legal entity.

**Application of the 2002 Leniency Notice**

Degussa was the first to inform the Commission of the existence of a cartel and was granted conditional immunity from fines in accordance with point 15 of the Leniency Notice on 27 January 2003.

Arkema was the first undertaking to meet the requirements of point 21 of the Leniency Notice, as it provided the Commission with evidence which represented significant added value with respect to the evidence already in the Commission's possession at the time of its submission. Arkema qualified under point 23 (b), first indent, for a reduction of 40% of the fine.

Lucite was the second undertaking to meet the requirements of point 21 of the Leniency Notice, as it provided the Commission with evidence which represented significant added value with respect to the evidence already in the Commission’s possession at the time of its submission. Although the Commission had evidence from its own inspections at Lucite of the infringement lasting until at least 28 February 2001, Lucite’s evidence related to facts previously unknown to the Commission which had a direct bearing on the duration of the suspected cartel, enabling the Commission to extend duration until 12 September 2002 (evidence which Degussa and Arkema subsequently confirmed). Lucite qualified under point 23 (b), second indent, for a reduction of 30 % of the fine.

In accordance with point 23, last paragraph, of the Leniency Notice, the evidence provided by Lucite for the period of the infringement after 28 February 2001 until 12 September 2002 was not taken into account for the purpose of setting Lucite’s fine.

ICI applied for leniency on 18 October 2004. The Commission rejected ICI’s application as the evidence submitted did not represent significant added value within the meaning of the Leniency Notice.

The total of fines imposed in this case constitutes the fourth largest fine ever imposed on a cartel.
In this way, the Commission issued a strong warning against repeat offenders. At the same time, however, by granting full immunity from fines to Degussa, the Commission is offering an incentive to future immunity applicants to come forward and actively cooperate with the Commission’s investigations.

Competition Commissioner Neelie Kroes commented on this case by stating “Cartels are a scourge. I will ensure that cartels will continue to be tracked down, and punished. I am shocked that companies like ICI and Arkema have been fined once again. If their management needs a wake up call, then with these fines, I am happy to provide it.”