On 20 September 2006, the European Commission fined 30 copper fittings producers a total of € 314.7 million for participating in a cartel. The 11 groups to which these 30 companies belong are Aalberts, IMI, Delta, Advanced Fluid Connections, Legris, Frabo, Mueller, Tomkins, Flowflex, Viegner and Sanha Kaimer. Between 1988 and 2004, they fixed prices, discounts and rebates, agreed on mechanisms to coordinate price increases, allocated customers and exchanged commercially important and confidential information. Four of the groups, namely Aalberts, Delta, Advanced Fluid Connections and Legris had their fines increased by 60% because they continued their illegal arrangements after the Commission's initial inspections. Advanced Fluid Connections' fine was increased by a further 50% for providing the Commission with misleading information. Mueller received full immunity from fines under the Commission's leniency programme, as it was the first company to come forward with information about the cartel.

The product

The product concerned is copper fittings, including copper alloy fittings (e.g. gunmetal, brass and other copper-based alloys). A fitting connects tubes used to conduct water, air, gas, etc. in plumbing, heating, sanitation and other installations. There are various types of fittings known as end-feed, solder ring, compression, press and push-fit which were all covered by the cartel arrangements.

The investigation showed that the cartel covered the whole of the EEA. The EEA market value for fittings was ca. € 550 million.

The infringement

In March 2001, the Commission carried out inspections at the premises of several undertakings following an application for leniency under the 1996 Commission Notice on the non-imposition of fines ("Leniency Notice").

After the inspections several undertakings submitted leniency applications.

The Statement of Objections was adopted in September 2005 and was addressed to 30 legal entities belonging to 11 groups and one association. An Oral Hearing was held in January 2006.

The infringement’s main features included: fixing prices, agreeing on price lists, agreeing on discounts and rebates, agreeing on implementation mechanisms for introducing price increases, allocating national markets, allocating customers and exchanging other commercial information.

The investigation showed that the infringement constituted one single, complex and continuous infringement that started in the UK, among the UK manufacturers, in December 1988, continued and grew at European level, with the expansion of the UK producers into continental Europe, from January 1991 until April 2004. The infringement was organised at both national and pan-European level.

Fines

The practices uncovered are a very serious infringement. In fixing the fines, the Commission took account of the size of the EEA market, the duration of the cartel, and the size of the firms involved.

The Commission increased the fines by 60% for Aalberts, Delta, Advanced Fluid Connections and Legris because they continued their cartel arrangements after the Commission's initial inspections. In this regard, there are elements showing that the undertakings concerned not only committed the cartel infringement after the inspections, but also declared their intention to continue their illegal arrangements by agreeing to participate in the collusive meetings in the future.

In addition, another undertaking had its fine increased by a further 50% for providing the Commission with misleading information. In its reply to the Statement of Objections, the company denied that one of its employees had certain contacts with an individual from another company participating in the cartel during a specified period. The Commission, however, had evidence indicating that this undertaking’s employee had numerous communications with the particular individual of the competitor company during the period in question.

(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.
Cooperation outside the scope of the 1996 Leniency Notice

Frabo was the first to disclose the continuation of the cartel after the inspections, and, in particular, it was the first to provide evidence and explanations to prove continuity of the infringement post-inspections and until April 2004. Prior to Frabo’s leniency application, the Commission could not have established the duration and continuity of the infringement from March 2001 until April 2004. On this basis and in line with past practice the Commission considered that Frabo should not be penalised for its cooperation by imposing on it a higher fine than the one that it would have had to pay without its cooperation. Therefore the basic amount of Frabo’s fine was reduced for effective cooperation outside the scope of the 1996 Leniency Notice, by the hypothetical amount of the fine that would have been imposed on Frabo for a three year infringement.

The Commission only found one attenuating circumstance: the minor/passive role claimed by Flowflex. The basic amount for Flowflex was therefore reduced by 10%.

Sufficient deterrence

In order to set the amount of the fine at a level which ensured that it had sufficient deterrent effect and in line with previous practice, the Commission considered it appropriate to apply to one of the undertakings concerned, Tomkins, a multiplication factor to the fines imposed.

Application of the 1996 Leniency Notice

Mueller was the first undertaking to inform the Commission about the existence of a cartel in the fittings sector affecting the EEA market in the 1990s. Mueller’s submissions prior to the Commission’s investigation, enabled the Commission to establish the existence, content and the participants of a number of cartel meetings and other contacts held in particular between 1991 and 2000 as well as to undertake inspections on 22 March 2001 and thereafter. Mueller immediately put an end to its involvement in the infringement before starting its cooperation with the Commission. It continuously provided the Commission with all relevant information and evidence available, and maintained full cooperation throughout the investigation by numerous submissions. Hence, Mueller benefited from total exemption from any fine.

IMI was the second undertaking to submit a leniency application. This application was submitted after the Commission had carried out inspections and had sent to IMI an Article 18 request for information. The evidence, corporate statements and witness interviews provided by IMI cover a period extending from late 1980s to 2001. IMI provided a description of the cartel including a non-exhaustive list of the multilateral meetings and other contacts as well as a number of additional internal evidence drafted at the time the various anti-competitive activities were taking place. It also described the context and provided narratives explaining a number of handwritten notes and other documents found during the inspections at its employees’ offices. These narratives made it possible to connect the evidence submitted to specific cartel events. IMI’s submissions were completed by oral explanations given by IMI’s employees at interviews conducted at the Commission’s premises in Brussels on a number of occasions. On an overall basis, IMI assisted the Commission in many respects and its cooperation was active and complete. Consequently and in accordance with Section D of the 1996 Leniency Notice (10% to 50%), IMI was granted a 50% reduction.

Delta was the third undertaking to submit a leniency application. Delta corroborated IMI’s leniency application. The corporate statements and witness interviews provided by Delta corroborated the facts presented by IMI and Delta. The evidence and corporate statements provided by Frabo corroborated the facts presented by IMI and Delta. The evidence and corporate statements provided by Frabo corroborated the facts presented by IMI and Delta.

Frabo was the fourth undertaking to submit a leniency application. Frabo corroborated the facts presented by IMI and Delta. The evidence and corporate statements provided by Frabo corroborated the facts presented by IMI and Delta.
Compliance with Section D of the 1996 Leniency Notice (10% to 50%), Frabo was granted a 20% reduction.

Advanced Fluid Connections was the fifth undertaking to submit a leniency application. Advanced Fluid Connections approached the Commission and provided direct evidence of the infringement for the period from June 2003 until April 2004 confirming Frabo’s leniency application. However, in its reply to the Statement of Objections, Advanced Fluid Connections only admitted a limited number of facts as to the period after the inspections while contesting the validity of others. In addition, as indicated above, Advanced Fluid Connections misled the Commission. In these circumstances, Advanced Fluid Connections was not granted any reduction of the fine.

Comap was the last undertaking to submit a leniency application, which was part of its reply to the Statement of Objections. Comap’s application was thus submitted four and a half years after the Commission’s inspections and two and a half years after the Commission had first contacted Comap requesting information. Comap’s leniency application was based on the non-contestation of facts for the period between 8 December 1997 and March 2001. Thus, Comap’s non-contestation of facts was limited only to three out of thirteen and a half years of the infringement. In these circumstances, Comap was not granted any reduction of the fine.

Conclusion

The total of fines imposed in this case makes it the fifth largest set of fines ever imposed on a cartel.

In this case, the Commission issued a strong warning against undertakings that disregarded the inspections and even, for some of them, continued the infringement for as much as three years thereafter. The fact that these undertakings participated in the infringement even though they were informed that the Commission had launched an investigation targeted at that very infringement led to an increase of the fine, representing a sanction for the additional unlawful energy expended in continuing the infringement. The Commission also issued a strong warning against undertakings that provide it with misleading information.

At the same time, however, by granting full immunity from fines to Mueller, 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 “We will not tolerate cartels and will take all measures to stamp them out. We will not only punish firms severely for cartel behaviour, but also increase the fines for flagrantly continuing after a Commission dawn raid and for providing wrong or misleading information”.

Conclusion
Commission fines producers and traders of synthetic rubber € 519 million for price fixing and market sharing cartel (1)

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On 29 November 2006 the Commission adopted a Decision and imposed fines totalling € 519 050 000 on five groups of companies for participating in a cartel involving price fixing and market sharing for certain types of synthetic rubber. The addressees of the decision are Bayer, Dow, Eni, Shell, Unipetrol and Trade-Stomil. Eni and Shell had their fines increased as they are repeat offenders. Bayer, 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 fine of Dow was reduced as a consequence of its cooperation under the leniency regime.

The infringement

During the period beginning at least 20 May 1996 and continuing until at least 28 November 2002 the addressees of the Decision agreed on price targets for the products, shared customers by non-aggression agreements and exchanged sensitive commercial information relating to prices, competitors and customers.

In March 2003 the Commission carried out an inspection at the premises of Dow following applications covering BR and ESBR for immunity from fines submitted by Bayer under the 2002 Notice on immunity from fines and reduction of fines in cartel cases (“Leniency Notice”).

After the inspection Dow submitted a leniency application.

On 7 June 2005 the Commission initiated proceedings, and adopted a first Statement of Objections.

After having received new information the Commission adopted a second Statement of Objections on 6 April 2006. An Oral Hearing was held on 22 June 2006.

In the margins of some but not all of the meetings of the European Synthetic Rubber Association (ESRA), typically during dinner, at the bar, on the way to dinner, in the hotel room of one of the participants or at a specifically hired conference room, and hence outside the official ESRA meetings and in the absence of the ESRA Secretary General, the companies concerned concluded price agreements for BR and ESBR. The discussions leading to the price agreements could take the form of actual cartel meetings or a series of side meetings between two or three producers and the discussions started typically with a discussion of prices for key raw materials and often led to a decision to increase or stabilise prices, typically by setting a target price for the next quarter or to agree to a roll-over price, that is to say, that the same price as in the previous quarter would apply for the next. The market sharing agreements typically took the form of “non-aggression agreements” or “status quo agreements” whereby the competitors agreed

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