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A Clutch of Cartels

Those who remember the early days of the European Communities' rules on competition may recall the Commission's practice of offering what used to be known as its "Christmas gifts". These usually took the form of new and welcome block exemption regulations or helpful policy guidelines; and it used to fit in with the Commission's schedule to publish them in the month of December. However, December 2001 marks a change in the way in which the Commission celebrates the season. During the month the Commission adopted no fewer than six Decisions on cartels and imposed fines amounting to many millions of Euros. This issue is therefore largely taken up with a description of the cases involving the Citric Acid Cartel, the Zinc Phosphate Cartel, the Carbonless Paper Cartel, the German Banks Cartel and the Belgian and Luxembourg Brewers Cartels. They make fascinating reading but are a grim warning to corporations willing to risk the consequences of joint price fixing and market sharing.

Leniency in Fines

Mr Monti's speech in Washington, reported in our last issue, dealt with an aspect of the Commission's competition policy figuring prominently in the cartel cases mentioned above. This concerns the draft, published in July 2001, of a new Notice on Leniency. Under it, complete immunity from fines will be granted to the first company to inform the Commission of an undetected cartel. To qualify for immunity, the company will have to provide sufficient information to allow the Commission to launch a surprise inspection (a "dawn-raid"). A company fulfilling the conditions for immunity will promptly receive a letter from the Commission confirming that immunity will be granted to the company if the conditions set out in the Notice are observed. The policy is based on the Commission giving adequate rewards to companies which, following the immunity application or any inspections (or both), provide "added value" evidence to the Commission. Successful applicants for reduction of fines will also be provided with a letter indicating the degree of immunity to which they will in principle be entitled. This letter will be sent no later than the day the Statement of Objections is issued. This will not only increase the legal certainty provided to companies but also enhance the overall transparency and credibility of the system. In devising these reforms, the Commission has paid a lot of attention to the success of the US Corporate Leniency Program of 1993. ■

PRICE FIXING (CITRIC ACID): THE CITRIC ACID CARTEL CASE

Subject: Price fixing
Market sharing
Quotas
Information exchanges

Industry: Citric acid; pharmaceuticals
(Implications for all industries)

Parties: Hoffman-La Roche and four other companies listed in text

Source: Commission Statement IP/01/1743, dated 5 December 2001

(Note. Perhaps the most interesting feature of this otherwise fairly typical cartel case is the circumstantial description of the actual management of the cartel. It is only too easy to imagine the top management conducting its "Masters'" meetings, while the middle management took part in the "Sherpas'" meetings.)

The Commission has fined Hoffmann-La Roche AG (Switzerland), Archer Daniels Midland Co (USA), Jungbunzlauer AG (Switzerland), Haarmann & Reimer Corporation (USA) and Cerestar Bioproducts BV (Netherlands), a total of €135.22m for participating in a price-fixing and market-sharing cartel in citric acid, the world's most widespread acidulent and preservative used mainly in non-alcoholic beverages and in preserved food such as jams, gelatine-based deserts and tinned fruit. The Commission drew attention to the fact that some of the companies had recently been fined for similar conduct: ADM and Jungbunzlauer in the Sodium Gluconate case; and Hoffman-La Roche in the Vitamins case.

After an investigation, which started in 1997, the Commission found that the parties had participated in a worldwide cartel between 1991 and 1995, through which they fixed the price and shared out the market for citric acid. The product is one of the most widely used additives in the food and beverage industry, both as an acidulent and as a preservative. It is found in non-alcoholic beverages as well as in jams, gelatine-based deserts and tinned vegetables and fruit. Citric acid is also used in household detergent products especially as a substitute for phosphates considered harmful for the environment; and it is used both in the composition of dissolving tablets in the pharmaceuticals industry and in the cosmetics industry. During the infringement period, the annual market was worth around €320m in the European Economic Area (the 15 Member States of the European Union, along with Norway, Iceland and Liechtenstein).

The cartel started on 6 March 1991 at the Hotel Plaza in Basle, where the four founding members agreed on the main features of their plan to eliminate competition among them. Cerestar joined the group in May 1992, shortly after it entered the citric acid market. The cartel continued until May 1995 and pursued four main objectives:

- allocating sales quotas for each member and adherence to these quotas;
- fixing target and floor prices for citric acid;
- exchanging specific customer information, and
- eliminating price discounts.

The companies held regular and frequent meetings, which were the hallmark of the cartel's organisation. After 1993, to resolve certain grievances and market difficulties, technical meetings were organised known as "Sherpa" meetings in contrast to the higher level "Masters" meetings. A sophisticated monitoring system was established, whereby each company would report its monthly sales figures to a previously agreed member, who would then ensure the distribution of the confidential information to all the others. To ensure that each member kept to the quotas assigned, a compensation scheme was created, obliging any member to provide compensation to the others when it over-sold its allocated quota.

A further striking feature of the cartel was the concerted action taken by the companies against Chinese manufacturers, who had increased their exports to the European market as a result of the significant rise in prices for citric acid during the time the cartel operated. The cartel tried to regain some of the customers lost to the Chinese suppliers through a concerted and carefully targeted price war.

The following is a list of the individual fines:

F. Hoffmann-La Roche AG:	€63.5m
Archer Daniels Midland Company Inc:	€39.69m
Jungbunzlauer AG (JBL):	€17.64m
Haarmann & Reimer Corp.:	€14.22m
Cerestar Bioproducts BV:	€ 0.17m

The Commission had begun its investigation of the case in 1997, when it became aware that some of the addressees of the present decision had been charged by the US authorities with participating in an international conspiracy. The parties to the cartel pleaded guilty and paid fines in the US or in Canada, or both.

Because they acted as joint leaders of the cartel - an aggravating factor, - the basic fines on ADM and Roche were increased by 35 percent. This figure is below the level applied for a leadership role in previous cartel cases, which is usually 50%, but takes account of the fact that, whilst these two companies clearly had an outstanding role in the infringement, other members of the cartel also carried out activities usually associated with a leadership role (like chairing meetings or centralising data distribution). Cerestar Bioproducts was the first undertaking to provide the Commission with decisive information. But because its application for Leniency was not entirely spontaneous, and since it approached the Commission only after it was fully aware that the citric acid cartel was object of an on-going investigation by the Commission, it was granted a 90 percent reduction of the fine rather than full immunity. All the other participants co-operated in one way or another with the Commission and were granted appropriate reductions. The Commission granted ADM a 50% reduction; JBL and H&R reductions of 40% and 30% of their respective fines; and Hoffman-La Roche a 20% reduction. ■

PRICE FIXING (ZINC PHOSPHATE): THE ZINC PHOSPHATE CARTEL CASE

Subject: Price fixing
Market sharing

Industry: Zinc phosphate
(Implications for all industries)

Parties: Six companies listed in text

Source: Commission Statement IP/01/1797, dated 11 December 2001

(Note. Although in most respects a typical cartel, the distinctive feature of this case is the relatively small size of the companies concerned. As the Commissioner pointed out: "The fines, though small, represent a significant percentage of the global turnover of the companies concerned and should deter them from being tempted to make illegal profits at their customers' expense. Cartels are not confined to large multi-national firms: small and medium-sized firms should be under no illusion that their size will win them any kind of preferential treatment if they take part in cartels.")

The Commission has fined Britannia Alloys & Chemicals Ltd (UK), Heubach GmbH & Co. KG (Germany), James Brown Ltd (UK), Société Nouvelle des Couleurs Zinciques SA (France), Trident Alloys Ltd (UK) and Waardals Kjemiske Fabrikker A/S (Norway) a total of □ 11.95m for participating in a price-fixing and market-sharing cartel in zinc phosphate, an anti-corrosion mineral pigment widely used for the manufacture of industrial paints.

Following an investigation opened in May 1998, when on-the-spot investigations were carried out at the premises of several addressees of today's decision, the Commission found that the companies concerned had participated in a European-wide cartel between 1994 and 1998, through which they fixed the price and shared out the market for zinc phosphate. Zinc phosphate is widely used as an anti-corrosion mineral pigment in protective coating systems. Paint manufacturers use it for the production of anti-corrosive industrial paints for the automotive, aeronautic and marine sectors. During the infringement period, the annual market was worth around €16m in the European Economic Area the 15 EU member states plus Norway, Iceland and Liechtenstein. While the companies concerned are of a modest size, they noticeably accounted for over 90% of the EEA-wide market for zinc phosphate.

The cartel began on 24 March 1994 in London, at the Holiday Inn Heathrow Airport Hotel. There, and following on previous informal contacts, Britannia Alloys, James Brown, Heubach, SNCZ and Waardals decided to maintain the "status quo" on quantities of zinc phosphate supplied in Europe. It was decided to attribute to each member of "the Club" (as they called themselves) a reference market share to be complied with. The market shares were defined in reference to

the 1991-1993 sales figures in France, Germany, UK and Scandinavia. During subsequent cartel meetings, the cartel participants circulated lists of "recommended" minimum prices and shared out specific customers. In order to ensure that market shares were adhered to, a monitoring system was also set-up. From March 1994 until May 1998, "the Club" held regular cartel meetings, sixteen of which have been clearly identified by the Commission. During the inspections carried out in May 1998, numerous hand-written notes and tables of the cartel meetings were collected. While a meeting room had already been booked for the forthcoming cartel meeting at Amsterdam's Schiphol airport on 22 July 1998, the event had to be cancelled due to the Commission's intervention.

The following is a list of the individual fines:

Britannia Alloys & Chemicals Ltd:	€3.37m
Dr Hans Heubach GmbH & Co. KG:	€3.78m
James M. Brown Ltd:	€0.94m
Société Nouvelle des Couleurs Zinciques SA:	€1.53m
Trident Alloys Ltd:	€1.98m
Waardals Kjemiske Fabrikker A/S:	€0.35m

In May 1998 the Commission carried out on-the-spot investigations at the premises of Heubach, SNCZ, Trident and Waardals. The investigation at Waardals, which proved particularly successful, was carried out in Norway on behalf of the Commission by the EFTA Surveillance Authority. Waardals approached the Commission shortly after the surprise investigations were carried out and fully co-operated with the Commission, giving an account of the cartel which included, inter alia, a list of the cartel meetings held between 1994 and 1998. This allowed the Commission to establish a clearer picture of the history and mechanisms of the cartel, and to interpret more accurately the documents in its possession. The explanations provided by Waardals enabled the Commission to address very detailed requests for information to the other cartel participants. On this basis, the Commission granted Waardals a 50% reduction of its fine.

Trident began to co-operate only after it received a request for information from the Commission. The company subsequently provided the Commission with a written statement giving a detailed account of the cartel, as well as a number of documents relevant to the case. On these grounds, Trident was granted a 40% reduction of its fine. Britannia, Heubach and SNCZ did not substantially contest the facts as set out in the Statement of Objections they received in August 2000. For this reason, they were each granted a 10% reduction of their fine. James Brown was also granted a 10% reduction of its fine. ■

With this volume of *Competition Law in the European Communities*, the newsletter completes twenty-five years of publication. Originally planned in the year after the accession of the United Kingdom to the European Communities, it was published first by Monitor Press and later transferred to Fairford Press.

PRICING POLICY (CARBONLESS PAPER): THE CP CARTEL CASE

Subject: Pricing policy
Market sharing
Quotas
Information exchanges
Concerted practices

Industry: Carbonless paper
(Implications for all industries)

Parties: Ten companies listed in text

Source: Commission Statement IP/01/1892, dated 20 December 2001

(Note. This is another hefty fine: it would probably have been higher if the Commission had been able to collect hard evidence showing that concerted practices had lasted longer than the period for which the Commission had to settle, on the recommendation of the Hearing Officer. Fines were imposed on ten companies; an eleventh was granted 100% immunity under the terms of the Leniency Notice, which has been invoked on only one previous occasion for complete immunity from the imposition of a fine. The inducement offered by the Leniency Notice appears to be having an increasing effect.)

The Commission has imposed fines totalling €313.7m on ten companies for taking part in price-fixing and market-sharing agreements in the carbonless paper industry. After a detailed investigation launched in 1996, the Commission discovered that, between 1992 and 1995, the companies took part in a Europe-wide cartel designed essentially to implement concerted price increases.

The product

Carbonless paper - also known as self-copying paper - is intended for the multiple duplication of documents and is made from a paper base to which layers of chemical products are applied. The principle behind carbonless paper involves obtaining a copy by reaction between two complementary layers under pressure of handwriting or the impact of a computer printer or typewriter. Business forms, delivery slips and bank transfer forms are the most widespread application for carbonless paper, accounting for over 90% of total consumption. The customers are printers who buy the paper in reels (80%) and sheets (20%).

During the period of the infringement (1992-95), the market was worth around €850m a year in the European Economic Area. Production capacity of carbonless paper in Western Europe (EEA) was estimated at 1,010,000 tonnes in 1995 (last year of the infringement), of which 890,000 tonnes was produced by members of the Association of European Manufacturers of Carbonless Paper (AEMCP)., AEMCP members account for 85%-90% of carbonless paper sales in the EEA.

The cartel

As a result of its investigations, the Commission discovered that the members of AEMCP and three other European carbonless paper producers or distributors (Carrs, Divipa, Zicuñaga) put into effect an illegal plan aimed at improving the participants' profitability through collective price increases. The main objective of the cartel was to agree on price increases and on the timetable for implementing them.

The cartel members held meetings at two separate levels: general meetings at European level attended by chief executives, commercial directors or equivalent managers in the carbonless paper industry, and national or regional cartel meetings attended by national or regional sales managers, often together with the aforementioned senior managers. The Commission has evidence that five general meetings were held between September 1993 and February 1995 in hotels in Frankfurt and Paris at which the participants agreed on several consecutive price increases for each EEA country.

At the national and regional meetings the participants agreed on price increases and monitored the implementation of previously agreed increases. The Commission has detailed information on 20 national meetings for France, the United Kingdom and Ireland, Spain and Portugal. Several parties to the cartel have also admitted that they attended meetings on Germany, Italy, Denmark, Finland, Norway and Sweden. The Commission has uncovered evidence that, to ensure implementation of the agreed price increases, a sales quota was allocated to the various participants and a market share was fixed for each of them at certain national cartel meetings: for example, in autumn 1993, for the Spanish and French markets.

To help reach agreement on price increases and sales quotas and to monitor compliance with the agreements, the carbonless paper producers exchanged individual, confidential data (detailed information on their prices and sales volumes). Statements by Sappi show that there were contacts of a collusive nature between the European manufacturers right from the foundation of their professional body, AEMCP, in 1981 and in particular from the mid-1980s. More specifically, the information supplied by Sappi shows that cartel meetings were held from 1989 onwards. However, the Commission confined its examination of the case to the period beginning in January 1992, the date from which it is in possession of convergent statements from cartel members and firm evidence of regular collusion between carbonless paper producers.

Towards the end of the period, there are reasons to suspect that at least some aspects of collusion persisted after September 1995. When it sent its statement of objections to the companies concerned, the Commission argued that the infringement had persisted until February or March 1997. However, all the parties, except AWA, Carrs and Sappi, deny that they continued to take part in collusion after 1995. Moreover, the statements made by AWA, Carrs and Sappi diverge considerably with regard to the nature and dates of collusive contacts and

are not sufficiently documented or corroborated by conclusive evidence for the Commission to establish that the conduct examined in this investigation persisted after September 1995. On a recommendation from the Hearing Officer (whose final report is attached to the decision), the Commission therefore confined its investigation to the period up to September 1995, the period for which it has firm evidence of the cartel's existence.

The Commission investigation

The Commission launched an investigation into this case in the autumn of 1996, after Sappi, invoking the leniency notice, informed the Commission of the existence of the agreement. Inspections were carried out at the premises of several producers. Following these inspections and requests for information dated March and December 1999, the French company Mougeot approached the Commission, admitting that it had been a member of the cartel and offering to cooperate under the terms of the leniency notice. In July 2000 the Commission sent a statement of objections to the producers of carbonless paper and/or their parent companies. The companies submitted written observations and most of them were present at a hearing chaired by the Commission's Hearing Officer on 8 and 9 March 2001.

Calculation of the fines

The individual fines imposed are as follows:

Arjo Wiggins Appleton plc:	€184.27m	UK
Papierfabrik August Koehler AG:	€ 33.07m	Germany
Zanders Feinpapiere AG:	€ 29.76m	Germany
Bolloré SA:	€ 22.68m	France
Mitsubishi HiTech Paper Bielefeld GmbH:	€ 21.24m	Germany
Torraspapel SA:	€ 14.17m	Spain
Papeteries Mougeot SA:	€ 3.64m	France
Distribuidora Vizcaina de Papeles SL:	€ 1.75m	Spain
Carrs Paper Ltd:	€ 1.57m	UK
Papelera Guipuzcoana de Zicuñaga SA:	€ 1.54m	Spain

As the main instigator of the cartel and as Europe's largest manufacturer of carbonless paper, Arjo Wiggins received the largest fine.

Sappi (South Africa) was granted total immunity under the rules on leniency laid down by the Commission in 1996 as it was the first company to cooperate in the investigation and supplied decisive evidence of the cartel. This is the second time that the Commission has granted a 100% reduction in a fine (following Aventis SA in the vitamins A and E case).

The fines were set taking account of:

- the large size of the relevant market (€850m in the course of the infringement);
- the share of the carbonless paper market held by the cartel members (AWA alone accounted for some 32% of the European market, while Carrs, Divipa and Zicuñaga each accounted for less than 2%);

- the overall size of some of the companies involved (AWA, Sappi and Bolloré are multinational corporations with turnovers far higher than those of the other companies); it was therefore advisable to set the fines imposed on these large companies at a level that would act as a sufficient deterrent.

The carbonless paper cartel was of average duration (1-5 years).

As AWA was the leader of the cartel, this being an aggravating circumstance, the basic amount of its fine was increased by 50%, which is the Commission's normal practice. In certain cases the fines calculated have been reduced to take into account the cooperation afforded by the companies to the Commission while it was conducting its investigation.

The case of carbonless paper is one of the first in which the Leniency Notice of July 1996 has been applied, as Sappi contacted the Commission in the autumn of 1996. Under the terms of this notice, the Commission granted Sappi full immunity from a fine as the company supplied information on the cartel before the Commission had begun any investigation, cooperated continuously and fully throughout the course of the investigation, ended its involvement in the cartel, did not force any other company to join the cartel and did not act as an instigator of the cartel. The Commission reduced the fine imposed on Mougeot by 50%, on AWA by 35% and on Bolloré by 20% because these companies supplied information that helped to shed further light on the unlawful practice in question before the statement of objections was sent out. The Commission reduced the fines imposed on Carrs, MHTP and Zanders by 10% as these companies did not dispute the facts set out in the statement of objections. ■

The "Wanadoo" Case

The Commission has sent Wanadoo Interactive, a subsidiary of France Télécom, a statement of objections concerning its charges to the general public for ADSL Internet access services. It takes the view that these services are currently being charged below cost, which could represent abuse of a dominant position under Article 82 of the Treaty. ADSL (Asymmetric Digital Subscriber Line) technology offers high-speed access to the Internet. But this technology will, before very long, be carrying an increasingly wide range of content. It is therefore essential, during this growth phase, that no single operator should be allowed to capture the market. Maintaining below-cost prices for these two services makes growth difficult for competitors, who also rely on France Télécom for the supply of the same intermediate services. The aim of a strategy of below-cost pricing (predatory pricing) is to remove competitors or to give the dominant operator enormous market power.

Source: Commission Statement IP/01/1899, dated 21 December 2001.

PRICING POLICY (BANKING): THE GERMAN BANK CARTEL CASE

Subject: Pricing policy

Industry: Banking
(Implications for other industries)

Parties: Five German banks listed in text

Source: Commission Statement IP/01/1796, dated 11 December 2001

(Note. Whether the euro system is a success or not, consumers in the "euro-zone" have the satisfaction of knowing that they will no longer be robbed by the banks and money changes when they cross the borders between the participating states. Banks charged for buying currencies, for selling currencies and often, by way of additional commission, for exchanging currencies at all. They will have lost a great deal of revenue from the cessation of this lucrative trade; and the fact that some of them colluded to substitute a special minimum charge for euro-zone transactions compounded the enormity of the practice. The Commission took firm action in relation to other banks, in Germany and elsewhere, and has rightly imposed sanctions on the rump of banks still failing to allow competitive rates.)

The Commission has decided to fine five German banks a total of €100.8m for fixing the charges for the exchange of euro-zone currencies. In a clear violation of European antitrust rules, the banks in 1997 colluded to charge a minimum of 3% for the exchange of euro-zone banknotes to compensate for the abolition of the buying and selling arrangements at the beginning of 1999 when the euro was launched. According to the Commission, this behaviour "was illegal, caused direct and irreparable damage to consumers and dealt a blow to people's confidence in the European single currency". Other banks in Germany and in other Member States had reduced their charges.

The following banks were found to have infringed Article 81 of the EC Treaty and were fined accordingly:

Commerzbank AG:	€28.0m
Dresdner Bank AG:	€28.0m
Bayerische Hypo- und Vereinsbank AG:	€28.0m
Deutsche Verkehrsbank AG:	€14.0m
Vereins- und Westbank AG:	€-2.8m

The Commission's cartel investigation revealed that, in late 1997, several German and Dutch banks concluded an agreement on a commission of about 3% for the buying and selling of euro-zone banknotes during the three-year period which preceeded the final arrival of euro notes and coins set for January 1, 2002.

On January 1, 1999, the bilateral exchange rates for currencies of the European Union countries which created the euro zone were irrevocably locked, putting an

end to the lucrative selling and buying fees charged by banks and *bureaux de changes* to exchange those euro-zone currencies. The purpose of the agreement concluded by the group of German and Dutch banks was to recover about 90% of the "exchange margin" income after the abolition of the fees. Most banks reduced their charges to the benefit of consumers

The Commission's investigations started shortly after the beginning of 1999 and concerned banks in seven countries which subsequently received Statements of Objections: Belgium, Portugal, Ireland, Finland, Germany, Netherlands and, eventually, Austria. However, between April and the summer of 2001, one by one, starting with SNS of the Netherlands and including German banks other than those concerned by the present decision, the great majority of the banks proposed to reduce charges substantially and drop them in total for account holders as from 1 October 2001. The banks thereby abandoned their collusive behaviour and recovered their freedom to set prices individually. After that the Commission agreed to end proceedings against the banks as it took the view that it would be in the consumer interest for it to secure an immediate and substantial reduction in the charges.

The Commission's unusual attitude was justified by the exceptional circumstances of the present case. Euro notes and coins were to be introduced in January 2002, replacing the national currencies of the participating euro-zone countries and, therefore, putting an automatic end to the cartel behaviour. In the Commission's view, the reduction of charges and the banks' termination of their collusive behaviour not only produced immediate benefits for consumers but would also contribute to a smooth change-over to the euro.

The Commission considered that the cartel entered into by the German banks represented a serious infringement of the rules on competition and justified heavy fines. However, the effect of the cartel was limited to Germany and the Dutch border regions. The difference in the final fines is in direct correlation with the size of the banks concerned. Commerzbank, Dresdner Bank and Hypo- und Vereinsbank are large banks and, therefore, it was necessary to set the fine at a level which ensured that it would have a sufficiently deterrent effect. ■

The Commission has adopted a new Notice on agreements of minor importance which do not appreciably restrict competition under Article 81(1) of the EC Treaty. The new Notice replaces the previous Notice of 1997. The revision of the de minimis rules is part of the Commission's review of the competition rules in general. By defining when agreements between companies are not prohibited by the Treaty, the Notice will reduce the compliance burden for companies, especially smaller companies. At the same time, the Commission will be better able to avoid examining cases which have no interest from a competition policy point of view and will thus be able to concentrate on more problematic agreements. In the next issue of the newsletter there will be a report on the changes made under the terms of the new Notice.

PRICE FIXING (BREWING): THE BREWERS' CARTEL CASES

Subject: Price fixing
Market sharing
Import restrictions
Information exchanges

Industry: Brewing
(Implications for other industries)

Parties: Listed in text below

Source: Commission Statements IP/01/1739-40, dated 5 December 2001

(Note. Several cases are involved in the following report, two from Belgian, one from Luxembourg; some of the parties overlap. The Luxembourg case illustrates the point made by the Commission elsewhere that even small and medium-sized enterprises may be caught by the rules prohibiting anti-competitive cartels. The reports contain an interesting discussion of the way in which "aggravating" and "mitigating" circumstances are taken into account in the assessment of the infringement and hence in the calculation of the fines imposed on the parties.)

Summary of the Belgian cases

The Commission has fined several companies a total of over €91m for participating in two distinct secret cartels on the Belgian beer market between 1993 and 1998. The infringements included market sharing, price fixing and information exchange. They affected the "horeca" sector (hotels, restaurants and cafés) as well as the retail sector (supermarkets and other food shops), including the sale of private label beers. This is the first Commission prohibition decision in a series of cartel cases in the beer sector. It involves major market operators. One of the extraordinary features of this case is the personal involvement of Interbrew's, Alken Maes' and Danone's top managers at the time.

In the course of 1999 the European Commission undertook surprise inspections at the premises of Interbrew, Alken-Maes and the Belgian Brewers Confederation (CBB). These inspections led to an investigation providing the Commission with evidence of two distinct cartels in the Belgian market. The first cartel involved Interbrew (by far the biggest brewer in Belgium, with a market share of around 55%, and the second largest brewer in the world) and Alken-Maes (the second biggest brewer in Belgium, with a market share of around 15%) as well as its parent company at the time, Danone. This cartel covered a wide range of anti-competitive arrangements in the horeca sector (sales for consumption away from home in hotels, restaurants and cafés) as well as the retail sector (for example, sales in supermarkets or smaller food shops for consumption at home). The second cartel concerned specifically the segment of so-called private label beers, that is, beers which supermarkets order from brewers but sell under their own

brand name. Interbrew, Alken-Maes, Haacht and Martens (a brewer whose production consists almost entirely of private label beer) participated in this second cartel.

Total fines were imposed on the companies involved as follows:

Interbrew:	€46,487,000
Danone/Alken-Maes:	€44,628,000
Haacht:	€ 270,000
Martens:	€ 270,000

The cartel involving Interbrew and Danone/Alken-Maes

From early 1993 until the beginning of 1998, the two parties were involved in wide ranging cartel activities on the Belgian beer market. Interbrew used the code name "Université de Lille" or "project Green" for these activities. The cartel activities encompassed a general non-aggression pact and more specifically the limitation of investments and advertising in the horeca sector, the allocation of horeca customers, price-fixing in the retail sector, a new tariff structure to be applied in the horeca sector as well as in the retail sector and finally a detailed monthly information exchange system concerning sales volumes in both sectors. A striking feature of this cartel is that the CEO's themselves and other top management of the companies regularly met to initiate and monitor the above mentioned arrangements. Another feature worth mention is that Danone, which was Alken Maes' parent company during the relevant period of time, was itself actively involved in these arrangements.

The cartel took off with a price fixing agreement for the retail sector and an agreed limitation of commercial investments in the horeca sector. An internal Interbrew note from the spring of 1993 showed that Interbrew's and Danone's top management were already considering to enter into a closer cooperation. However, the Interbrew people thought that Danone had more to gain from this. Moreover, they had anti-trust concerns. In May 1994, contacts between the two companies intensified. This was due to a threat from Danone: if Interbrew did not transfer 500,000 hl (roughly a 5% share of the Belgian market) to Alken-Maes in the Belgian retail sector, it would make life difficult for Interbrew-France. Evidence of this threat stems from declarations made by former Interbrew representatives but also from an internal Heineken document. This document was found during an inspection at Heineken's premises, concerning another cartel investigation.

The threat eventually led to a "gentlemen's agreement" between the parties at the end of 1994. They committed themselves generally to respect each other's market positions. They further agreed on a number of specific points, including price-fixing in the retail sector, market sharing in the horeca (initially the classic outlets, later on also the national accounts), commercial investments and a new tariff structure in both sectors. In addition, throughout this period the parties exchanged monthly information about their sales volumes in both sectors. At the beginning of 1998, the parties noted that they had achieved many of their aims.

The private label cartel

In the course of the investigation into the cartel involving Interbrew and Danone/ Alken-Maes, Interbrew informed the Commission about a series of meetings in the period from October 1997 until July 1998 between itself, Alken-Maes, Haacht and Martens concerning the private label beer market in Belgium. The discussions during these meetings aimed at avoiding a price war and at consolidating the existing allocation of customers. This amounted to a concerted practice within the meaning of Article 81 of the EC Treaty. The parties also agreed to exchange information about their clients in the private label segment. Interbrew and Alken-Maes took the initiative in organising the four meetings; However, Haacht and Martens did not merely play a passive role in the concerted practice: both participated in all meetings and actually exchanged information about sales volumes. Moreover, Martens suggested at one point that the Dutch private label beer producers should be invited to the meetings.

The calculation of the fines

When setting fines, the Commission takes into account the gravity of the infringement, its duration, any aggravating or mitigating circumstances as well as the cooperation of the company. It also takes into account a company's market share in the product market and its overall size. The upper limit of any fine is established at 10% of a company's total annual turnover.

As to the cartel involving Interbrew and Danone/Alken-Maes, the Commission considers that the price fixing and market sharing cartel represents a serious breach of the rules on competition. For such a breach, the normal amount of the fines is at least €20m. Interbrew and Danone are both big, international companies; and cartel was of medium duration (five years). This led the Commission to increase the basic fines for both companies by almost 50%.

For Danone there are two aggravating factors which led to a further increase of the fine by 50%. First, Danone – or, as it was called at the time, Boussois-Souchon-Neuvesel (BSN) - has participated in similar antitrust infringements already twice before (in 1974 and 1984). The fact that these infringements occurred in a different sector (flat glass) is irrelevant. It is the nature of the infringement and the identity of the company that matter. Moreover, the Commission notes that, for the entire period during which BSN, later Danone, committed these infringements, the same person acted as CEO of the company and that some flat glass managers at the time were active in Danone's retail business during the period of the beer cartel. The Commission views the repetition of infringements as a serious aggravating factor.

The second aggravating factor concerns Danone's threat to make Interbrew's life difficult in France if Interbrew did not meet its request to have 500,000 hl of beer transferred to its subsidiary Alken-Maes. As pointed out above, this threat led to an increase of the cartel activity.

As a mitigating circumstance, the Commission recognises that Alken-Maes ended the information exchange with Interbrew. For this a reduction of 10% is granted. Both parties have co-operated to a certain extent during the investigation by supplying information to the Commission. However, Interbrew's cooperation was more material than that of Danone/Alken-Maes. On this basis, Interbrew is granted a reduction of 30% and Danone/Alken-Maes a reduction of 10%.

As to the fines imposed in respect of the private label cartel, the Commission considers that, since the cartel was limited to the small private label beer segment in Belgium (roughly 5% of beer consumption in Belgium), the parties' infringement justified a fine between €1m and €20m. The cartel was of a short duration (nine months). The fact that Interbrew and Alken-Maes took the initiative for these meetings is aggravating for them. This results in an increase of the fine by 30% for both parties.

All parties co-operated with the Commission during the procedure. Interbrew even disclosed the cartel. Although it blew the whistle, it cannot, however, benefit from full immunity under the Commission's so-called Leniency notice because it was one of the instigators of the cartel. For its co-operation, it is granted a reduction of 50%. The other brewers are granted a reduction of 10% for their co-operation.

The Luxembourg Cartel

At the same time as the Belgian case,the Commission fined three Luxembourg brewers (Brasserie Nationale-Bofferding, Brasserie de Wiltz and Brasserie Battin) a total of €448,000 for their participation in a market sharing cartel affecting the Luxembourg horeca sector. A fourth company, Brasserie de Luxembourg, a subsidiary of Interbrew, escaped any fine because it disclosed the cartel to the Commission. The brewers agreed to guarantee each other's exclusive purchasing arrangements with horeca customers and took steps to restrict penetration of the Luxembourg horeca sector by foreign brewers. The cartel lasted from October 1985 to February 2000. It consisted of a written agreement signed in 1985 by which the parties agreed not to supply beer to any horeca customer, including beer wholesalers, which was tied to another party by an exclusive purchasing agreement or "beer tie". This beer tie guarantee extended to beer ties which were invalid or unenforceable in law, as well as to supply arrangements where a brewer simply invested in a drinks outlet but did not sign an exclusive purchasing contract. It therefore served to protect each party's clientele. The beer tie guarantee was reinforced by a consultation mechanism, obliging the parties to check with each other about the presence of a beer tie before supplying new customers, as well as by financial penalties for non-compliance.

The cartel agreement also contained provisions intended to keep foreign brewers out of the Luxembourg horeca sector. First, there was a common defensive mechanism whereby the parties agreed to consult each other in the event that a foreign brewer attempted to negotiate a supply contract with one of their tied outlets. Priority would then be allocated to one of the parties to attempt to keep the outlet as a customer. If that party succeeded in negotiating a new contract

with the outlet, it was obliged to compensate the party which had lost the outlet by transferring an equivalent outlet to him. Other clauses allowed for the exclusion from the cartel of any party which co-operated with a foreign brewer or distributed its beer.

The cartel agreement was signed for an unlimited duration and required the parties to give twelve months written notice to terminate. No party gave notice before Interbrew, the parent company of Brasserie de Luxembourg Mousel-Diekirch, disclosed the cartel to the Commission in February 2000. Interbrew made this disclosure in the context of the Commission's investigation of the Belgian beer cartel case. There was also evidence that parts of the agreement had been implemented until 1998.

The Commission imposed the following fines:

SA Brasserie Nationale-Bofferding:	€400,000
Brasserie de Wiltz:	€ 24,000
Brasserie Battin:	€ 24,000

The cartel was a form of market sharing and included measures to impede trade from other Member States into Luxembourg. Market sharing is among the most serious infringements of the rules on competition. However, the cartel was limited to the relatively small Luxembourg on-trade market and was not implemented in full. The Commission has taken into account the fact that Bofferding, Wiltz and Battin are small or medium-sized companies whose activities are concentrated in Luxembourg and whose total turnover is correspondingly limited. By contrast, Brasserie de Luxembourg is a subsidiary of the Interbrew group, the second largest brewer in the world. The cartel lasted for more than fourteen years, which led the Commission to double the amount imposed.

As a mitigating circumstance, the Commission recognised that there was legal uncertainty about the enforceability of beer ties in Luxembourg at the time when the cartel agreement was signed and that this may have led the parties to doubt whether certain provisions of the cartel constituted an infringement. This merited a 20% reduction in the fines. Brasserie de Luxembourg Mousel-Diekirch was granted total exemption from the significant fine that would otherwise have been imposed because it was the first to inform the Commission about the cartel, it provided decisive evidence and co-operated fully throughout the investigation.

Other cases

The Commission is also investigating suspected cartels on beer markets in other European countries. In this context, inspections have taken place between January 2000 and January 2001 in France, the Netherlands, Italy, Denmark and Portugal. At this moment it is impossible to prejudge the outcome or the timing of these investigations. ■

The Fairford Press website has been temporarily suspended for reconfiguration.

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The Commission has adopted a report evaluating the functioning of Regulation EC/240/96, the block exemption regulation applying to technology transfer agreements. In the Commission's view, it is important to find the right balance between protecting competition and protecting intellectual property rights. The report adopted by the Commission raises issues such as the treatment of software licensing agreements and licensing pools, which have become increasingly important for the development and dissemination of new technologies. In its report the Commission asks for comments on its approach to licensing agreements. After discussion of the report with industry, consumer associations and other interested parties, the Commission may propose, in the second half of the year 2002, new competition rules on licensing agreements. The next issue of the newsletter will contain a summary of the Commission's report.