PRICE-FIXING (LYSINE): THE ADM CASE

Subject: Price-fixing
Fines
Supply restrictions
Information agreements

Industry: Lysine
(Some implications for most industries)

Parties: Archer Daniels Midland Co (USA) (ADM)
Ajinomoto Co (Japan)
Cheil (Korea)
Kyowa Hakko (Japan)
Sewon (Korea)

Source: Commission Statement IP/00/589, dated 7 June 2000

(Note. What distinguishes this case from many other classic cartel cases is the influence on the parties of the so-called Leniency Notice. By adopting a clear and well-publicised policy of making substantial reductions in the fines imposed on corporations participating in a cartel, the Commission undermines the solidarity of the cartel and tempts individual members of the cartel to provide information about the cartel's activities. The policy certainly paid off in this case.)

On 7 June, the Commission fined Archer Daniels Midland, Ajinomoto and three other companies a total of almost 110m for operating a global price-fixing cartel for lysine. The decision highlights the Commission's determination to fight cartels, the most damaging of all anti-competitive practices.

Lysine is the most important amino acid used in animal foodstuffs for nutritional purposes. Amino acids are building blocks of protein. They can be of vegetal or animal origin (such as soybeanmeal or fishmeal). They can also be manufactured. The five cartel participants manufacture and sell synthetic amino acids. The availability of synthetic amino acids enables nutritionists to compose protein diets which improve animal foodstuff requirements.

The Commission's extensive investigation found that Archer Daniels Midland Co (USA), Ajinomoto Co (Japan), Cheil (Korea), Kyowa Hakko (Japan) and Sewon (Korea) fixed lysine prices worldwide, including in the European Economic Area. They also fixed sales quotas for that market and operated an information exchange in order to underpin these quotas from at least July 1990 to June 1995.

The Commission considers that the cartel represents a serious infringement of the EC competition rules and justifies heavy fines. The leading players in the cartel, Archer Daniels Midland and Ajinomoto have been fined € 47.3m and € 28.3 million respectively. The other three cartel participants, Cheil, Kyowa and Sewon have incurred fines of € 12.2m, € 13.2m and € 8.9m respectively.

This case started in July 1996, shortly before several cartel participants were charged by the US antitrust authorities with engaging in illegal conspiracy. In July 1996, Ajinomoto decided to inform the Commission about the existence of the cartel covering a period from Archer Daniels Midland's entry into the EEA lysine market (June 1992) up to June 1995.

Ajinomoto's decision came immediately after the Commission had adopted its Leniency Notice on the non-imposition or reduction of fines in cartel cases (O.J. C.207 of 18 July 1996). This Notice sets out the conditions under which companies co-operating with the Commission during its investigation into a cartel may be exempted from fines or granted reductions in the fines which would otherwise have been imposed upon them. Three other cartel participants started to cooperate with the Commission at a later stage.

Pursuant to the Leniency Notice, the Commission has granted four co-operating companies significant reductions in the fines. Ajinomoto was the first to come in and give decisive evidence of the cartel. However, it was also a ring-leader in the cartel and failed to inform the Commission of an earlier cartel involving the then three Asian producers Ajinomoto, Kyowa and Sewon (a cartel dating back to July 1990). The Notice provides for a maximum reduction in the fine of 50% in such a case. The Commission took the view that it could grant this maximum reduction to Ajinomoto. The Commission also granted a 50% reduction to Sewon. This company informed the Commission about the earlier cartel while also producing further evidence of the later cartel. Cheil and Kyowa provided the Commission with evidence confirming the existence of the infringements. They receive smaller reductions of 30% each.

Archer Daniels Midland did not co-operate with the Commission during the nvestigation. However, it did not contest the facts set out in the Commission's Statement of Objections. For this, the company received a 10% reduction in the fine. ■

Illegal State aid to German CD producer

The Commission has decided to close with a final negative decision the formal investigation procedure in respect of State aid measures amounting to DM 427m awarded to CDA Compact Disc Albrechts GmbH, Thuringia (Germany) and its predecessor companies. As these measures are incompatible with the Treaty, the aid has to be recovered from the beneficiaries. Following the Commission's request for information, on the basis of press reports in 1994, the German authorities notified aid in favour of a plant for manufacturing CDs in Thuringia. Until today, the German government has failed to submit a clear and precise description of the financial resources provided by the State in connection with the setting up and restructuring of the company. The Commission found that at least DM 260.57m of the aid granted for the purposes of setting up the CD plant and for consolidating the firm's situation was used elsewhere in the Group and was thus misused. (Source: Commission Statement IP/00/645, dated 21 June 2000.)