PRICE FIXING (SODIUM GLUCONATE): THE CARTEL CASE

Subject:	Price fixing Market sharing Sales restrictions Fines	
Industry:	Sodium gluconate (Implications for other industries)	
Parties:	Archer Daniels Midland Company Inc	(US)
	Akzo Nobel NV	(NL)
	Avebe BA	(NL)
	Fujisawa Pharmaceutical Company Ltd	(Japan)
	Jungbunzlauer AG	(Switzerland)
	Roquette Freres SA	(F)
Source:	Commission Statement IP/01/1355, dated 2 October 2001	

(Note. This is a classic cartel case, with most of the usual features of a case of this sort. An interesting feature is the way in which the Commission granted reductions in fines in accordance with the so-called "Leniency Notice".)

The Commission has fined the six companies named above a total of €57.53 million for fixing the price and sharing the market for sodium gluconate, a chemical mainly used to clean metal and glass, with applications such as bottle washing, utensil cleaning and paint removal. The decision comes after a thorough investigation, which established that the six companies, which together accounted for the quasi-totality of the production world-wide, operated a secret cartel from 1987 until 1995.

The investigation started in 1997. During the infringement period, the market was worth €18 million annually in the European Economic Area; that is, in the fifteen Member States of the European Union together with Norway, Iceland and Liechtenstein. The cartel started in 1987 and continued until June 1995. The companies held regular meetings, where they agreed on individual sales quotas, fixed "minimum" and "target" prices and shared out specific customers. The Commission gathered evidence on over 25 cartel meetings, held in places like Amsterdam, London, Paris, but also in Hakone (Japan), Chicago, Vancouver or Zürich. Compliance with agreed sales quotas was carefully monitored, and the rule was that if a company had over-sold at the end of a given year, its sales quota for the next year would be reduced accordingly.

Part of the evidence on the cartel was provided to the Commission by the companies involved, under European Community rules providing for full or partial immunity from fines for companies cooperating with the Commission in cartel cases. (See the "Leniency Notice".) Fujisawa was given a reduction of

80% of its fine for being the first to supply decisive evidence of the cartel, before the Commission had carried out surprise investigations. It is the first time that the Commission has granted such a large reduction. While the Commission could have granted total immunity to Fujisawa in this respect, it did not do so as Fujisawa started to cooperate only after it had received a request for information from the Commission. Fujisawa's cooperation was therefore not entirely spontaneous.

The Commission characterised the companies' conduct as a serious infringement of the competition rules and adopted a Decision under Article 81 of the EC-Treaty and Article 53 of the EEA-Agreement, imposing the following fines:

Archer Daniels Midland Company Inc:	€ 10.13 million
Akzo Nobel:	€ 9 million
Avebe:	€ 3.6 million
Fujisawa Pharmaceutical Company Ltd:	€ 3.6 million
Jungbunzlauer:	€ 20.4 million
Roquette Frères:	€ 10.8 million

The Commission takes into account the gravity of antitrust violations, their duration and the existence or absence of aggravating or mitigating circumstances, to calculate fines. It also bears in mind the companies' share of the market concerned and their overall size. The calculation of the fines is therefore not made solely by reference to the companies' turnover even though the final figure cannot be higher that 10% of a company's total annual sales. In the sodium gluconate cartel, the infringement was serious; and most of the cartel participants infringed the law for more than five years. In defining the starting amounts for the fines, the Commission took into account the limited size of the sodium gluconate market. Over the entire period of its participation, Jungbunzlauer was the driving force behind the cartel. This is an aggravating circumstance which justified an increase of Jungbunzlauer's basic fine by 50%.

The Commission started to investigate the case in 1997, when it learnt that some of the addressees of the present decision had been charged by the US authorities with international conspiracy in the US and elsewhere. Most of the parties to the cartel pleaded guilty and paid fines in the US and in Canada.

During Spring 1998, shortly after the Commission sent out requests for information, Fujisawa filed an application under the Leniency Notice and provided the Commission with decisive evidence of the cartel. In September 1998, « surprise » investigations were carried out. All involved companies subsequently filed an application under the Leniency Notice. The Commission granted a reduction of 40% to both ADM and Roquette, in view of their cooperation. As for Akzo, Avebe and Jungbunzlauer, they did not provide the Commission with any information beyond what was already in its possession, but they corroborated some of that information before the Commission issued its Statement of Objections. The Commission therefore considered that a reduction of only 20% was appropriate. ■