PRICE FIXING (CHEMICALS): THE AVENTIS / MERCK CASE

Subject: Price fixing
Market sharing
Fines

Industry: Chemicals; methylglucamine
(Some implications for other industries)

Parties: Aventis Pharma SA
Rhone-Poulenc Biochemie SA
Merck KgaA

Source: Commission Statement IP/02/1746, dated 27 November 2002

(Note. This was a classic cartel; but, in view of its relatively narrow scope, it merited relatively small fines. For an indication of the size of the fines recently imposed by the Commission in cartel cases, see the next page.)

The Commission has adopted a decision finding that Aventis Pharma and Rhone-Poulenc Biochemie, which belong to the Aventis group, and Merck breached European Community competition rules by colluding to fix prices and market shares for methylglucamine between 1990 and 1999. Methylglucamine is a chemical substance used in x-ray analyses. The three companies together control the entire production worldwide. In its decision the Commission treated Aventis Pharma and Rhone-Poulenc Biochemie as one company and fined them €2.85 million. Merck, on the other hand, benefited from full immunity because it submitted crucial information at a time when the Commission had no knowledge of the cartel. When setting the fine the Commission also took into account the small size of the methylglucamine market, which is the smallest product market for which it has ever adopted a cartel decision.

The Commission's decision found that, between November 1990 and December 1999, the three companies formed a cartel in breach of Article 81(1) of the EC treaty by which they fixed market shares for the product, agreed on price targets and price lists as well as on the sharing of the largest customers. The companies concerned are the only producers of pharmaceutical grade methylglucamine in the world. The market can, therefore, be characterised as a duopoly. The value of the market for methylglucamine in the European Economic Area in 1999 was around €3,1 million.

The investigation started in September 2000 when the Commission was approached by representatives of Merck who revealed the cartel and applied for immunity from fines as foreseen in the Commission's Leniency Notice of 1996. In January 2001, the Commission carried out an inspection at the premises of Aventis Pharma and Rhone-Poulenc Biochemie. The investigation culminated

with the adoption of a Statement of Objections against the three companies in June 2002.

The Commission took the view that the cartel agreement was a serious infringement, but considered that Merck fulfilled the conditions for total immunity from fines since it provided crucial information before the Commission was even aware of the illegal behaviour, which had, in any case, already ended. It also took into account the small size of the methylglucamine market. But it imposed a fine of €2.85 million on the Aventis subsidiaries after granting a 40% reduction to reward them for their co-operation throughout the investigation. ■

List of the 10 largest cartel decisions, in terms of total fines

Year	Case	Total amount per case (€ million)
2001	Vitamins	855.23
2002	Plasterboard	478.32
2001	Carbonless Paper	313.69
1998	TACA	272.94
2001	Graphite Electrodes	218.8
2001	Citric Acid	135.22
2002	Methionine	127
2002	Austrian banks	124.26
1994	Cartonboard*	119.38
2000	Lysine	109.990
*Fines reduced by Court judgments		

The plasterboard decision, described on page 283 of this issue, is the sixth cartel decision since the beginning of the year 2002. The other cases concerned Austrian banks, methionine, industrial gases and Christie's and Sotheby's fine arts auction houses, together with the decision reported on the previous page on methylglucamine. In 2001, the Commission took 10 cartel decisions in which 56 firms were fined a total of €1,836 million.

The Court cases reported in this Newsletter are taken from the website of the Court of Justice of the European Communities. The contents of this website are freely available. Reports on the website are subject to editing and revision.