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. ■