## 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:

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| 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.