PRICE-FIXING (ANIMAL FEED): THE DEGUSSA CASE

Subject: Price-fixing
Information agreements
Fines
Immunity

Industry: Animal feed; methionine

Parties: Degussa AG
Nippon Soda Company Ltd
Aventis SA

Source: Commission Statement IP/02/976, dated 2 July 2002

(Note. This is another classic cartel case and another instance of the way in which cases of this sort come to light: that is, as the result of the immunity granted to participating companies willing to provide the Commission with information in accordance with the terms of the Leniency Notice.)

The Commission has fined Degussa AG and Nippon Soda Company Ltd respectively €118 million and €9 million for participating in a price-fixing cartel in methionine together with Aventis SA. Aventis (formerly Rhône-Poulenc) was granted full immunity from fines because it revealed the cartel's existence to the Commission and provided decisive evidence on its operation. Methionine is one of the world's most important amino acids used mainly in animal feed for poultry and pigs. The cartel operated for nearly thirteen years until 1999. "The behaviour of Aventis, Degussa and Nippon Soda has shown a complete disregard for their customers and, ultimately, consumers of chicken and pork meat who paid more for the products concerned than if the companies had engaged in healthy price competition," said Commissioner Mario Monti. "The Commission hopes that, like Aventis, other companies will feel encouraged to come clean and denounce any such illicit behaviour, whose sole purpose is to rip off consumers."

After a careful investigation, which started in 1999, the Commission has found that Aventis SA and its subsidiary Aventis Animal Nutrition SA of France, Degussa AG of Germany and Nippon Soda Company Ltd of Japan, participated in a worldwide cartel between 1986 and 1999, through which they agreed on price targets, implemented price increases and exchanged information on sales volumes and market shares for methionine. During the infringement period, the annual market was worth around €260 million in the European Economic Area (the 15 Member States of the European Union, plus Norway, Iceland and Liechtenstein).

The cartel's aim was to fix target and minimum prices, implement concerted price increases, exchange information on sales figures, as well as to agree on prices to individual customers. The companies held regular meetings both at top level, the

so-called "Summit" meetings, and at a technical level the "Managerial" or "Staff" level meetings. During these meetings, the participants exchanged sales volumes, which would then be compiled and used in the discussions to determine the target prices to be fixed.

The companies' conduct was a very serious infringement of the competition rules, as set out in Article 81 of the EC Treaty, for which Degussa and Nippon Soda were fined accordingly. Aventis received full immunity from fines for being the first to alert the Commission and for providing decisive information about the cartel. Otherwise it would have received a fine similar to the one imposed on Degussa. The difference in the fines reflects the disproportion in the market shares of Degussa, the world's biggest producer of methionine, and Nippon Soda, almost five times smaller in terms of 1998 market shares figures. In calculating the fines, the Commission takes into account the effective capacity by market leaders to cause greater damage than smaller players as well as the need to ensure that the penalties have a sufficiently deterrent effect.

Nippon Soda and Degussa co-operated in one way or another with the Commission and were granted appropriate reductions. Nippon Soda provided detailed information, which together with that obtained from Degussa was used in the Decision. Nippon Soda was able to provide the Commission with documents contemporaneous to the infringement, including inter alia hand-written notes taken during cartel meetings and valuable information to confirm the existence of the cartel prior to 1990. On these grounds, Nippon Soda was granted a 50 percent reduction. Most of the information provided by Degussa was not provided voluntarily and Degussa also contested its participation in the cartel prior to mid-1992 and after 1997 despite the fact that the evidence in the Commission's file clearly demonstrates otherwise. On these grounds, the Commission granted Degussa a reduction of only 25 percent of its respective fine.

The documents found by the Commission leave no doubt about the intent to rig the market. A note submitted by Nippon Soda on a meeting with Degussa and Rhône-Poulenc in June 1993, for example, states that "it was basically agreed that the current target price of DM 6.20/kg would remain unchanged during the third calendar quarter except that the target prices applicable for Portugal and Spain, where the currencies had been devalued again by 6%, and in the UK, where the target price was, we had all agreed previously, to be increased in two phases, would be fixed later".

The investigation started in 1999, after Aventis came to see the Commission admitting its participation in a world-wide cartel to fix prices and allocate quotas in methionine and filing for immunity under the 1996 Leniency Notice. The Commission's policy with respect to immunity in cartel cases was modified in February this year to make it easier to grant full immunity and provide legal certainty that immunity will indeed be granted, thus making the policy more effective. The Commission, however, used the 1996 leniency rules as the investigation into the methionine cartel started in 1999. ■