PRICE-FIXING (INDUSTRIAL GASES): THE DUTCH GAS CASE

Subject: Price-fixing
Fines

Industry: Industrial Gases
(Implications for most industries)

Parties: Members of the Dutch cartel, listed in the report below

Source: Commission Statement IP/02/1139, dated 24 July 2002

(Note. This is another classic cartel case. Judging by the dates of the infringement, it is clear that the circumstances were neither new nor continuing. A distinction may therefore be reasonably drawn between "old" cases, in which the infringements have ended, and recent cases involving current practices.)

The Commission has fined seven producers of industrial and medical gases a total of €25.72 million for participating in a secret cartel in the Netherlands between September 1993 and December 1997. The illicit arrangement concerned the supply of several gases such as oxygen, nitrogen, carbon dioxide and argon for which the cartel members colluded to keep prices high. This is the third cartel decision taken by the Commission this year and further highlights its determination to crack down on price-fixing agreements which harm customers, industrial consumers and, as is the case for medical gases, also taxpayers.

In December 1997 and in the course of 1998 the Commission carried out inspections at the Dutch premises of NV Hoek Loos, AGA AB, Air Liquide BV, Air Products Nederland BV, BOC Group Plc, Messer Nederland BV and Westfalen Gassen Nederland BV after it became aware of the possibility of illicit behaviour by these companies in the Netherlands. The investigation revealed a price fixing cartel in the Dutch market for industrial and medical gases, which due to imports and exports of these products to and from Member States had an effect on intra-community trade.

The products include oxygen, nitrogen, carbon dioxide, argon, argon mixtures and acetylene supplied in cylinder and liquid (bulk) form and are used in several industries and manufacturing processes. The largest volumes of industrial gases are used for producing, cutting and welding metals and in the chemical industry. In the case of oxygen, nitrogen, carbon dioxide and various mixtures of gases for example they can also be used for medical purposes, especially in hospitals, namely for breathing, anaesthetics, laboratory works and numerous other applications.

The Commission has evidence showing that, between 1989 and 1991, and subsequently from 1993 until 1997, the leading suppliers of industrial gases in the Netherlands held regular meetings to discuss and fix price increases and other

trading conditions for cylinder gases and sometimes supplied in bulk to their customers. They agreed not to deal with each other's existing customers for a period of 2-5 months every year in order to implement these price increases and to respect minimum prices and other trading conditions when offering gases in cylinders and in bulk to new customers. These trading conditions concerned in particular the rent of cylinders and transportation costs charged to customers. The leading suppliers also agreed to introduce a delivery charge for supplies of bulk and a charge for safety and environment on supplies of cylinders.

Although the Commission collected evidence on both periods, it took into consideration only the period after September 1993 for the purpose of calculating the fines, since prescription applies for the first infringement, which ended more than five years before the investigation began. Hoek Loos, AGA, Air Liquide, Air Products and Messer took part in the cartel arrangements between September 1993 and December 1997 whereas Westfalen participated in the cartel arrangements only from March 1994 until December 1995 and BOC from June 1994 until December 1995. The fines were distributed as follows:

NV Hoek Loos:	€12.6 million
AGA AB:	€ 4.15 million
Air Liquide BV:	€ 3.64 million
Air Products Nederland BV:	€ 2.73 million
BOC Group Plc:	€ 1.17 million
Messer Nederland BV:	€ 1 million
Westfalen Gassen Nederland BV:	€ 0.43 million

When calculating fines in antitrust violations, the Commission takes into account the gravity of the infringement, its duration and any aggravating or mitigating circumstances as well as any possible co-operation on the part of the companies in the investigation. It also looks at a company's share of the market concerned and at its overall size. The upper limit of any fine is established at 10% of a company's total annual turnover.

The starting amounts of the fines imposed on Hoek Loos and AGA (that is, before any reductions under the Commission's leniency rules) took into account the fact that the two were the leading suppliers of industrial gases in the Netherlands during the period concerned. Air Products Nederlands and Air Liquide BV were considered to be large suppliers whereas Messer Nederland and BOC were medium-sized suppliers. Westfalen was considered to be a small supplier. The Commission recognised that BOC and Westfalen had played an exclusively passive role in the infringement and had not participated in all aspects of the infringement. This led to a 15% reduction in their respective fines. In application of the leniency rules, AGA and Air Products were granted a 25% reduction for providing additional evidence on the cartel as well as comprehensive explanations on the documents found during the inspections and for not contesting the facts after receiving the Commission's statement of objections in July 2001. Hoek Loos and Messer were also granted a reduction of 10% as they did not contest the facts outlined in the statement of objections. The companies have three months to pay the fines. ■