PRICING POLICY (CARBONLESS PAPER): THE CP CARTEL CASE

Subject: Pricing policy
Market sharing
Quotas
Information exchanges
Concerted practices

Industry: Carbonless paper
(Implications for all industries)

Parties: Ten companies listed in text

Source: Commission Statement IP/01/1892, dated 20 December 2001

(Note. This is another hefty fine: it would probably have been higher if the Commission had been able to collect hard evidence showing that concerted practices had lasted longer than the period for which the Commission had to settle, on the recommendation of the Hearing Officer. Fines were imposed on ten companies; an eleventh was granted 100% immunity under the terms of the Leniency Notice, which has been invoked on only one previous occasion for complete immunity from the imposition of a fine. The inducement offered by the Leniency Notice appears to be having an increasing effect.)

The Commission has imposed fines totalling €313.7m on ten companies for taking part in price-fixing and market-sharing agreements in the carbonless paper industry. After a detailed investigation launched in 1996, the Commission discovered that, between 1992 and 1995, the companies took part in a Europe-wide cartel designed essentially to implement concerted price increases.

The product

Carbonless paper - also known as self-copying paper - is intended for the multiple duplication of documents and is made from a paper base to which layers of chemical products are applied. The principle behind carbonless paper involves obtaining a copy by reaction between two complementary layers under pressure of handwriting or the impact of a computer printer or typewriter. Business forms, delivery slips and bank transfer forms are the most widespread application for carbonless paper, accounting for over 90% of total consumption. The customers are printers who buy the paper in reels (80%) and sheets (20%).

During the period of the infringement (1992-95), the market was worth around €850m a year in the European Economic Area. Production capacity of carbonless paper in Western Europe (EEA) was estimated at 1,010,000 tonnes in 1995 (last year of the infringement), of which 890,000 tonnes was produced by members of the Association of European Manufacturers of Carbonless Paper (AEMCP)., AEMCP members account for 85%-90% of carbonless paper sales in the EEA.

The cartel

As a result of its investigations, the Commission discovered that the members of AEMCP and three other European carbonless paper producers or distributors (Carrs, Divipa, Zicuñaga) put into effect an illegal plan aimed at improving the participants' profitability through collective price increases. The main objective of the cartel was to agree on price increases and on the timetable for implementing them.

The cartel members held meetings at two separate levels: general meetings at European level attended by chief executives, commercial directors or equivalent managers in the carbonless paper industry, and national or regional cartel meetings attended by national or regional sales managers, often together with the aforementioned senior managers. The Commission has evidence that five general meetings were held between September 1993 and February 1995 in hotels in Frankfurt and Paris at which the participants agreed on several consecutive price increases for each EEA country.

At the national and regional meetings the participants agreed on price increases and monitored the implementation of previously agreed increases. The Commission has detailed information on 20 national meetings for France, the United Kingdom and Ireland, Spain and Portugal. Several parties to the cartel have also admitted that they attended meetings on Germany, Italy, Denmark, Finland, Norway and Sweden. The Commission has uncovered evidence that, to ensure implementation of the agreed price increases, a sales quota was allocated to the various participants and a market share was fixed for each of them at certain national cartel meetings: for example, in autumn 1993, for the Spanish and French markets.

To help reach agreement on price increases and sales quotas and to monitor compliance with the agreements, the carbonless paper producers exchanged individual, confidential data (detailed information on their prices and sales volumes). Statements by Sappi show that there were contacts of a collusive nature between the European manufacturers right from the foundation of their professional body, AEMCP, in 1981 and in particular from the mid-1980s. More specifically, the information supplied by Sappi shows that cartel meetings were held from 1989 onwards. However, the Commission confined its examination of the case to the period beginning in January 1992, the date from which it is in possession of convergent statements from cartel members and firm evidence of regular collusion between carbonless paper producers.

Towards the end of the period, there are reasons to suspect that at least some aspects of collusion persisted after September 1995. When it sent its statement of objections to the companies concerned, the Commission argued that the infringement had persisted until February or March 1997. However, all the parties, except AWA, Carrs and Sappi, deny that they continued to take part in collusion after 1995. Moreover, the statements made by AWA, Carrs and Sappi diverge considerably with regard to the nature and dates of collusive contacts and

are not sufficiently documented or corroborated by conclusive evidence for the Commission to establish that the conduct examined in this investigation persisted after September 1995. On a recommendation from the Hearing Officer (whose final report is attached to the decision), the Commission therefore confined its investigation to the period up to September 1995, the period for which it has firm evidence of the cartel's existence.

The Commission investigation

The Commission launched an investigation into this case in the autumn of 1996, after Sappi, invoking the leniency notice, informed the Commission of the existence of the agreement. Inspections were carried out at the premises of several producers. Following these inspections and requests for information dated March and December 1999, the French company Mougeot approached the Commission, admitting that it had been a member of the cartel and offering to cooperate under the terms of the leniency notice. In July 2000 the Commission sent a statement of objections to the producers of carbonless paper and/or their parent companies. The companies submitted written observations and most of them were present at a hearing chaired by the Commission's Hearing Officer on 8 and 9 March 2001.

Calculation of the fines

The individual fines imposed are as follows:

Arjo Wiggins Appleton plc:	€184.27m	UK
Papierfabrik August Koehler AG:	€ 33.07m	Germany
Zanders Feinpapiere AG:	€ 29.76m	Germany
Bolloré SA:	€ 22.68m	France
Mitsubishi HiTech Paper Bielefeld GmbH:	€ 21.24m	Germany
Torraspapel SA:	€ 14.17m	Spain
Papeteries Mougeot SA:	€ 3.64m	France
Distribuidora Vizcaina de Papeles SL:	€ 1.75m	Spain
Carrs Paper Ltd:	€ 1.57m	UK
Papelera Guipuzcoana de Zicuñaga SA:	€ 1.54m	Spain

As the main instigator of the cartel and as Europe's largest manufacturer of carbonless paper, Arjo Wiggins received the largest fine.

Sappi (South Africa) was granted total immunity under the rules on leniency laid down by the Commission in 1996 as it was the first company to cooperate in the investigation and supplied decisive evidence of the cartel. This is the second time that the Commission has granted a 100% reduction in a fine (following Aventis SA in the vitamins A and E case).

The fines were set taking account of:

- the large size of the relevant market (€850m in the course of the infringement);
- the share of the carbonless paper market held by the cartel members (AWA alone accounted for some 32% of the European market, while Carrs, Divipa and Zicuñaga each accounted for less than 2%);

- the overall size of some of the companies involved (AWA, Sappi and Bolloré are multinational corporations with turnovers far higher than those of the other companies); it was therefore advisable to set the fines imposed on these large companies at a level that would act as a sufficient deterrent.

The carbonless paper cartel was of average duration (1-5 years).

As AWA was the leader of the cartel, this being an aggravating circumstance, the basic amount of its fine was increased by 50%, which is the Commission's normal practice. In certain cases the fines calculated have been reduced to take into account the cooperation afforded by the companies to the Commission while it was conducting its investigation.

The case of carbonless paper is one of the first in which the Leniency Notice of July 1996 has been applied, as Sappi contacted the Commission in the autumn of 1996. Under the terms of this notice, the Commission granted Sappi full immunity from a fine as the company supplied information on the cartel before the Commission had begun any investigation, cooperated continuously and fully throughout the course of the investigation, ended its involvement in the cartel, did not force any other company to join the cartel and did not act as an instigator of the cartel. The Commission reduced the fine imposed on Mougeot by 50%, on AWA by 35% and on Bolloré by 20% because these companies supplied information that helped to shed further light on the unlawful practice in question before the statement of objections was sent out. The Commission reduced the fines imposed on Carrs, MHTP and Zanders by 10% as these companies did not dispute the facts set out in the statement of objections. ■

The "Wanadoo" Case

The Commission has sent Wanadoo Interactive, a subsidiary of France Télécom, a statement of objections concerning its charges to the general public for ADSL Internet access services. It takes the view that these services are currently being charged below cost, which could represent abuse of a dominant position under Article 82 of the Treaty. ADSL (Asymmetric Digital Subscriber Line) technology offers high-speed access to the Internet. But this technology will, before very long, be carrying an increasingly wide range of content. It is therefore essential, during this growth phase, that no single operator should be allowed to capture the market. Maintaining below-cost prices for these two services makes growth difficult for competitors, who also rely on France Télécom for the supply of the same intermediate services. The aim of a strategy of below-cost pricing (predatory pricing) is to remove competitors or to give the dominant operator enormous market power.

Source: Commission Statement IP/01/1899, dated 21 December 2001.