PRICING POLICY (PLASTERBOARD): THE LAFARGE/BPB CASE

Subject: Pricing policy
Information agreements
Concerted practices
Fines

Industry: Plasterboard
(Some implications for most industries)

Parties: BPB plc (United Kingdom)
Gebrüder Knauf Westdeutsche Gipswerke KG (Germany)
Société Lafarge SA (France)
Gyproc Benelux SA/NV (Belgium)

Source: Commission Statement IP/02/1744, dated 27 November 2002

(Note. The total amount of fines imposed in this case is the second highest ever imposed by the Commission, after the vitamin cartel case. The fine imposed on Lafarge is the third largest ever imposed on a single company in any one case. The case has a certain interest in that it shows the relationship between pricing policy, information agreements designed to monitor the policy and concerted practices supplementing the more formal arrangements between the parties.)

The Commission has imposed fines totalling €478 million on four companies which operated a long-running cartel on the market for plasterboard, a product which is widely used in the building industry and by DIY practitioners. The plasterboard market, which had a turnover of more than €1.2 billion in 1997 (the last full year of the infringement) is the largest in terms of value to have been covered by a Commission cartel decision over the last ten years or so. The cartel affected 80% of consumers in the European Union, namely in France, the United Kingdom, Germany and the Benelux countries. Two of the companies involved, Lafarge and BPB, were committing their second infringement of EU law on restrictive agreements, having already been fined once in 1994. According to the Commission: "The building industry is the pulse of the economy. The substantial amount of the fine reflects the size of the market, the impact of the illicit agreement on the consumer and the repeated infringement of the competition rules by two of the companies. The Commission is focusing its drive to stamp out cartels on the key sectors of the European economy, where its action can directly improve the well-being of consumers, as is the case here"

Following a detailed investigation during which it carried out surprise inspections in 1998, the Commission concluded that, between 1992 and 1998, BPB, Gebrüder Knauf Westdeutsche Gipswerke and Société Lafarge participated in a plasterboard cartel in the United Kingdom, Germany, France and the Benelux countries. Gyproc Benelux joined the cartel in 1996.

Plasterboard is a manufactured product used as a prefabricated construction material or by DIY practitioners and consisting of a sheet of gypsum plaster sandwiched between two sheets of paper or some other material. The companies covered by the decision produce virtually all the plasterboard manufactured in the countries concerned, in some of which the name of the relevant company's product is commonly used to designate the product itself ("gyproc" in Belgium, "placoplâtre" in France), with the names of the companies being very clearly identified as a brand name by consumers (Rigips/BPB or Knauf in Germany, Lafarge in France).

The cartel started at a meeting held in London in early 1992 at which the representatives of BPB and Knauf decided to end what they called the "price war" which was then taking place and expressed the common desire to reduce competition to a level suiting their interests on the German, French, United Kingdom and Benelux markets. In previous years, the price of plasterboard had fallen sharply as a result of fierce competition, which had directly benefited consumers.

Following the London meeting, a secret information-exchange system was set up to monitor market trends and avoid over-aggressive competition. Lafarge and subsequently Gyproc also joined the system, in mid-1992 and June 1996 respectively. The information assembled by the Commission shows that, on the United Kingdom market, BPB, Knauf and Lafarge repeatedly, through high-level contacts, exchanged information on their sales volumes so as to provide mutual reassurance that the price war had ended. Similarly, they repeatedly gave each other advance warning of price increases.

Top representatives of the companies also met in a hotel at Versailles in 1996, on the fringes of a trade association congress, to prevent a new price war in Germany in the mid-1990s, when the four companies were simultaneously increasing their production capacity in Germany and imports from eastern Europe, particularly Poland, were rising. Other meetings followed in Brussels, in 1997, and in The Hague, in 1998, to share out or at least stabilise market shares in Germany.

These high-level meetings were followed up, at a lower level, by repeated concerted action by BPB, Knauf, Lafarge and Gyproc on the application of price rises on the Germany market between 1996 and 1998. This concerted action took the form of discussions on the fringes of trade association meetings, the sending to competitors of letters announcing price increases to customers and even the sending, to the private addresses of the directors of the German subsidiaries, of the instructions given to sales forces. Such conduct constitutes a very serious infringement of the competition rules laid down in Article 81 of the EC Treaty.

The Commission's investigation began in November 1998 with inspections on the premises of several producers. Following the inspections and information requests sent to the companies in 1999 and 2000, BPB and Gyproc Benelux cooperated in the investigation and provided evidence. In April 2001, the Commission sent a Statement of Objections to the four companies and also to Etex SA, a Belgian financing company which was also included in the investigation, but on which

the Commission closed the proceedings. Etex holds 54% of Gyproc Benelux, the other parent company being BPB with 46%. Nevertheless, the Commission has concluded that there is not enough evidence to prove that Etex participated in the infringement or to hold it responsible for Gyproc's conduct.

The Commission consequently decided to impose the following fines (€ million): Lafarge: 249.6; BPB: 138.6; Knauf: 85.8; Gyproc Benelux: 4.32. The amounts of the fines reflect the size of the plasterboard market, which was worth more than €1.2 billion in 1997, the last full year of the infringement, and the length of the period during which the cartel operated - more than six-and-a-half years. In the case of Lafarge, the Commission has also taken account of its overall size, which is much greater than that of the other companies, so as to ensure that the fine has a real deterrent effect. Lafarge is the largest cement company in the world, and its turnover is five times that of BPB or Knauf. Gyproc is much smaller still. As far as BPB and Lafarge are concerned, the Commission also viewed as an aggravating circumstance the fact that the two companies had previously infringed the competition rules. Lafarge was fined in 1994 in the cement cartel, and BPB, through its subsidiary BPB De Eendracht, was one of the companies fined in the cartonboard decision, also in 1994. This means that, at the time when these decisions were notified to them, the two companies were participating in another restrictive agreement in which they persisted.

There were no mitigating circumstances to justify a reduction in the fine imposed on Knauf and Lafarge, since, unlike BPB and Gyproc, they did not cooperate with the Commission in its investigation. Under the leniency policy introduced in 1996 (see below), the Commission can reduce a fine even where there has been repeated infringement of the competition rules, provided the companies cooperate in uncovering the cartel. In calculating fines in cartel cases, the Commission takes account of the gravity of the infringement, its duration and any aggravating or mitigating circumstances. It also takes account of the market share held by the companies and their overall size, so as to ensure that the fine reflects each company's participation in the infringement and its capacity to harm other operators, particularly consumers, and so as to ensure that the fine acts as a deterrent. The fines are not therefore calculated primarily by reference to a company's turnover, although, under the legislation in force, the fine may never exceed 10% of a company's annual turnover.

Once the amount has been determined, the fines may be reduced to take account of the companies' cooperation in the investigation, in line with the Commission's policy regarding the non-imposition or reduction of fines in cartel cases. The Commission has accordingly granted a reduction of 30% in the fine imposed on BPB and a reduction of 40% in the fine imposed on Gyproc because they provided it with additional information on the cartel before the statement of objections was sent. Knauf and Lafarge did not cooperate in the Commission's investigation and the fine imposed on them has not been reduced. Although a new leniency notice was adopted in February 2002, it is the previous provisions that are applicable in this case (the notice published on 18 July 1996). This is because the cooperation took place before February 2002. ■