PRICE FIXING (SORBATES): THE SORBATES CARTEL CASE

Subject: Price fixing
Quotas
Fines

Industry: Sorbates; chemical preservatives
(Implications for most industries)

Parties: Hoechst AG
Chisso Corporation
Daicel Chemical Industries Ltd
The Nippon Synthetic Chemical Industry Co Ltd
Ueno Fine Chemicals Industry Ltd

Source: Commission Statement IP/03/1330, dated 2 October 2003

(Note. Here is another in the succession of cartels discovered in recent years, due mainly in this case, as in several others, to the readiness of a member of the cartel to take advantage of the Leniency Notice and be the first to reveal the existence of the infringing arrangements.)

In a decision adopted on 2 October 2003, the Commission concluded that [the five companies listed above] operated a cartel in the sorbates market between 1979 and 1996. Sorbates are one of the most widely used chemical preservatives in Europe to prevent the development of moulds, bacteria and other micro-organisms in foods; for example, in mayonnaise and sausages as well as beverages. They are also used for the coating of cheese wrapping paper or in cosmetics. The Competition Commissioner, Mario Monti, said: "Because of this conspiracy, European consumers paid more for many everyday products than if the companies had competed against each other. I am determined that participation in a cartel should not pay. The only way for companies to avoid high fines is to come clean and stop participating in cartels whose only purpose is to extort from unknowing consumers, intermediate or final, illicit profits".

The Commission's decision follows an investigation, which showed beyond any doubt that, between the end of December 1978 and 31 October 1996 (30 November 1995 for Nippon), Hoechst, Chisso, Daicel, Nippon and Ueno operated a cartel by which they agreed prices and allocated volume quotas for each other. In 1995 the five companies controlled about 85% of the sorbates market in the European Economic Area (EEA). Until it transferred its sorbates business to Nutrinova in 1997, Hoechst was the largest producer of sorbic acid, the main type of sorbates, followed by Daicel. Hoechst is based in Germany. The other four companies all have their headquarters in Japan.

Sorbates are anti-microbial agents capable of retarding or preventing the growth of micro-organisms, such as yeast, bacteria and moulds. primarily in foods and

beverages. They are also used as stabilisers in pharmaceutical products and cosmetics. There are three types of sorbates: sorbic acid, used in margarine, mayonnaise, beverages and bakery products, among other things; potassium sorbate used in products with a high water content; and calcium sorbate used for the coating of cheese wrapping paper in France and Italy.

The investigation began in the autumn of 1998 when the Commission was approached by representatives of Chisso under the Commission's Leniency policy, which enables companies to obtain full immunity, if they are the first to provide information on a cartel, or a reduction from fines. The evidence gathered by the Commission clearly established the existence of a cartel in breach of Article 81(1) of the EC Treaty and Article 53 of the EEA Agreement.

The participants in the infringement usually met twice a year to discuss prices for each country and volume allocations. These meetings alternated between various locations in Europe and Japan. The Japanese producers would hold preparatory meetings to agree on prices and volumes to be discussed at the joint meetings, most of which took place in Tokyo.

Calculation of the fines

The Commission takes the view that the cartel agreement was a very serious violation of EC competition law. When calculating fines in cartel cases the Commission takes account of the gravity of the infringement, its duration and the existence of any aggravating or mitigating circumstances. It also takes account of a company's share of the market concerned and its overall size. The fine can never go beyond 10% of a company's total annual turnover, as set out in the applicable Regulation.

Chisso fulfilled the conditions for full immunity and, therefore, did not receive a fine. Hoechst was given the highest fine because of its overall size as well as its share of the relevant market and the fact that it had committed a similar violation in the past. The fine also reflects its position as co-leader in the cartel together with Daicel. However, the final amount for Hoechst also includes a 50% reduction for co-operating in the investigation. The fines imposed on the Japanese producers also include different levels of reductions according to the degree of cooperation provided to the Commission.

The following is a list of the individual fines (in € million).

Hoechst AG:	99.0
Daicel Chemical Industries, Ltd:	16.6
Ueno Fine Chemicals Industry, Ltd:	12.3
The Nippon Synthetic Chemical Industry Co, Ltd:	10.5

The United States and Canada have also investigated, and imposed penalties in respect of price fixing and other restraints of trade by certain producers of sorbates, though the companies concerned in the different proceedings are not exactly the same. ■