

Brussels, 10 December 2003

Commission fines members of organic peroxides cartel

In a decision adopted today, the European Commission has imposed fines totalling nearly €70 million on Atofina, Peroxid Chemie, Laporte (now known as Degussa UK Holdings), Perorsa and AC Treuhand AG for operating a cartel in the market for organic peroxide products, a chemical used in the plastic and rubber industries. This is the longest-lasting cartel ever uncovered by the Commission and the fine would have been much higher had not Akzo, which also participated in the price-fixing agreement, received full immunity for being the first to confess its existence to the Commission. AC Treuhand is not a producer but a Swiss-based consultancy company. Because it played a key role in the cartel from the end of 1993, organising meetings and hiding incriminating evidence, it was also found to have violated EU law.

According to the evidence gathered by the Commission, between January 1971 and the end of 1999 the main producers of organic peroxides in Europe conspired to raise prices and share out markets for organic peroxides, or double oxygen bond organic chemical products for the production of plastic and rubber. The market is worth around €250 million a year in the European Economic Area.

The cartel was founded by Akzo, Luperox (later absorbed by Atochem which, in the meantime, has been renamed Atofina) and Peroxid Chemie.

Peroxidos Organicos (Perorsa) of Spain joined the cartel in 1975 and Laporte (bought by Degussa and renamed as Degussa UK Ltd. in 2001) joined in 1992, after it took full control of Peroxid Chemie.

With a total duration of 29 years, this is the longest-lasting cartel ever uncovered by the Commission.

Swiss consultancy AC Treuhand played a key role in the cartel from 1993 organising meetings, often in Zurich, producing 'pink' and 'red' papers with the agreed market shares which could not be taken outside AC Treuhand's premises and even reimbursing the travel expenses of participants to avoid leaving any traces about the illegal meetings.

The Commission found that the cartel was a very serious violation of Article 81(1) of the European Union Treaty and Article 53 of the EEA Agreement. It imposed the following fines:

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| - Atofina S.A. | €43.47 million |
| - Peroxid Chemie GmbH & Co KG. | €8.83 million |
| - Degussa UK Holdings Ltd. and Peroxid Chemie GmbH & Co KG (jointly and severally) | €16.73 million |

- Peroxidos Organicos S.A (Perorsa) € 0.5 million
- AC Treuhand AG €1,000
- Akzo (Akzo Nobel Polymer Chemicals B.V,
Akzo Nobel N.V, Akzo Nobel Chemicals International B.V)€0

The fines for Atofina, Degussa UK Holdings and Peroxid Chemie were increased significantly to take into account that this is not the first time that they have been caught in cartel agreements.

Atofina was involved in four other cartels before: Peroxygen products (Decision of 23 November 1984) Polypropylene (Decision of 23 April 1986), LdPE (Decision of 21 December 1988), PVC (Decisions of 21 December 1988 and of 27 July 1994). Laporte (now Degussa UK Holdings) and Peroxid Chemie were also part of the peroxygen cartel.

The sanction against AC Treuhand is limited in amount because of the novelty of the approach. But the message is clear: organisers or facilitators of cartels, not just the cartel members, must fear that they will be found and heavy sanctions imposed from now on.

Akzo Nobel Chemicals was the first to approach the Commission in early 2000 with decisive information on the cartel and, therefore, escaped a fine, according to the Commission's 1996 Leniency Notice¹. The Commission enhanced its policy in this respect in February 2002 (2002 Leniency Notice ²) to further destabilise and eradicate cartels.

Atochem (Atofina) also approached the Commission with information but could not receive full immunity because it was not the first to do so. Instead it got a reduction of the fine as did other participants for co-operating in the Commission's investigation.

Background

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 percent of a company's total annual turnover, as set out in the applicable Regulation.

Akzo and Atochem are the largest producers of organic peroxides in the world. In Europe, Akzo's share is around 43 %, Atochem has around 25 %, Laporte has around 20 %. Perorsa has a market share of around 3% but is the market leader in Spain.

¹ http://europa.eu.int/comm/competition/antitrust/legislation/96c207_en.html

² http://europa.eu.int/comm/competition/antitrust/leniency/#cartel_leniency

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