

Brussels, 11 November 2009

## **Antitrust: Commission fines plastic additives producers €173 million for price fixing and market sharing cartels**

*The European Commission has imposed a total of € 173 864 000 fines on 24 companies from 10 different undertakings – Akzo, Baerlocher, Ciba, Elementis, Elf Aquitaine (Arkema France), GEA, Chemson, Faci, Reagens and AC Treuhand – for violating the EC Treaty's ban on cartels and restrictive business practices (Article 81). Chemtura Corporation participated but was not fined because it revealed the existence of the cartels to the Commission. On the one hand, fines on Arkema France, Baerlocher and Ciba were reduced for cooperating with the Commission investigation. On the other hand, Arkema France's fine was increased by 90% as it had previously taken part in similar cartels. Between 1987 and 2000 the companies fixed prices, shared customers, allocated markets and exchanged sensitive commercial information for tin stabilisers (1987-2000) and ESBO/esters (1991-2000) heat stabilisers in the European Economic Area (EEA). Heat stabilisers are added to PVC products in order to improve their thermal resistance. They also increase the plasticity, rigidity and transparency of final PVC products and protect them from discolouration.*

Competition Commissioner Neelie Kroes said: "These companies must learn the hard way that breaking the law does not pay and that repeat offenders will face stiffer penalties. The companies' elaborate precautions to cover their tracks did not prevent the Commission from revealing the full extent of their determined efforts to rip-off their customers".

The Commission's investigation began with unannounced inspections in February 2003, prompted by an immunity application lodged by Chemtura Corporation under the 2002 Leniency Notice (see [IP/02/247](#) and [MEMO/02/23](#)).

Tin stabilisers are used to avoid decomposition caused by heat during the processing of PVC into final products. They are mainly used in rigid and plasticised PVC. ESBO/esters are used as plasticisers and heat stabilisers for plasticised PVC products. The combined markets for tin stabilisers and ESBO/esters in the EEA were worth some € 121 million at the time of the infringement. These heat stabilisers are used in packaging, food packaging, credit cards, bottles, coatings, flooring, artificial leather, plastic wallpaper and other everyday plastic products.

## The cartels

Between 1987 and 2000, Akzo, Baerlocher, Ciba, Elementis, Elf Aquitaine, Chemtura, Reagens and AC Treuhand (for various periods) participated in an EEA-wide tin stabiliser cartel. Between 1991 and 2000, Akzo, Ciba, Elementis, Elf Aquitaine, GEA, Chemson Chemtura, Faci and AC Treuhand (for various periods) operated an EEA-wide ESBO/ester cartel. For both products, the companies fixed prices, shared customers, allocated markets and exchanged commercially sensitive information.

The principal decisions for both cartels were taken at meetings organised by AC Treuhand, which provided its Zurich premises and services to the companies involved. The meetings took place every month for tin stabilisers and quarterly for ESBO/esters. In addition, details on prices, customer allocation and markets were negotiated and implemented in country meetings held throughout Europe. The participants thereby coordinated their behaviour throughout the EEA.

## Fines

In setting the fines, the Commission took into account the respective affected sales of the companies involved, the very serious nature of the infringement and the fact that the cartel covered the whole EEA. The Commission increased the fines for Arkema France (part of the Elf Aquitaine group at the time of the infringement) by 90% because it had already been fined by the Commission for previous cartels - PVC (27.7.94 - see [IP/94/732](#)), polypropylene (23.4.86) and peroxygen products (23.11.84).

With regard to the tin stabiliser cartel, the Commission also took into account the cooperation of Arkema France, Baerlocher and Ciba and reduced their fines by 30%, 20% and 15% respectively. As regards the ESBO/ester cartel, the Commission also took into account the cooperation of Arkema France and Ciba and reduced their fines by 50% and 25% respectively. Akzo requested leniency but did not meet the requirements for cooperation and so received no reduction in fine.

The fines in this case are based on the 2006 Fines Guidelines (see [IP/06/857](#) and [MEMO/06/256](#)), in force at the time the Statement of Objections was notified.

The fines imposed for the tin stabiliser cartel are as follows:

	Reduction under the Leniency Notice (%)	Reduction under the Leniency Notice (€)	Fine* (€)
Akzo (NL)			21 800 000
Elementis (UK/US)			16 834 000
Elf Aquitaine (Arkema France) (FR)	30	4 368 000	10 046 400
Baerlocher (DE)	20	5 479 600	1 000 000
Chemtura (US)	100	15 900 000	0
Ciba (CH)	15	10 950 000	61 320 000
Reagens (IT)			10 791 000
AC Treuhand (CH)			174 000

(\*) Legal entities within the undertaking may be held jointly and severally liable for the payment of the fine

The fines imposed for the ESBO/ester cartel are as follows:

	Reduction under the Leniency Notice (%)	Reduction under the Leniency Notice (€)	Fine* (€)
Akzo (NL)			18 800 000
Elementis (UK/US)			15 741 000
Elf Aquitaine (Arkema France) (FR)	50	18 980 000	18 600 400
Chemson (AUS) (GEA, ACW (DE))			3 801 600
Chemtura (US)	100	4 700 000	0
Ciba (CH)	25	2 400 000	7 104 000
Faci (IT)			5 940 000
AC Treuhand (CH)			174 000

(\*) Legal entities within the undertaking may be held jointly and severally liable for the payment of the fine

### **Actions for damages**

Any person or firm affected by anti-competitive behaviour as described in this case may bring the matter before the courts of the Member States of the EEA and seek damages. The case law of the European Courts and Council Regulation 1/2003 both confirm that in cases before national courts, a Commission decision is binding proof that the behaviour took place and was illegal. Even though the Commission has fined the companies concerned, damages may be awarded without these being reduced on account of the Commission fine. A White Paper on antitrust damages actions has been published (see [IP/08/515](#) and [MEMO/08/216](#)). More information, including a citizens' summary of the White Paper, is available at:

<http://ec.europa.eu/comm/competition/antitrust/actionsdamages/documents.html>

For more information on the Commission's action against cartels, see [MEMO/09/496](#).