

Antitrust: Commission fines sodium chlorate paper bleach producers € 79 million for market sharing and price fixing cartel

The European Commission has imposed fines, totalling € 79 070 000, on four groups of companies for allocating sales volumes and fixing prices for sodium chlorate, an oxidizing agent used mainly for bleaching in the pulp and paper industry, in violation of the ban on cartels and restrictive business practices in the EC Treaty (Article 81) and the EEA Agreement (Article 53). The companies concerned are EKA Chemicals, Akzo Nobel, Finnish Chemicals, Erikem Luxembourg, Arkema France, Elf Aquitaine, Aragonesas Industrias y Energia and Uralita. Between late 1994 and 2000, these companies fixed prices and allocated markets through a series of meetings and other illicit contacts. Akzo Nobel and its subsidiary EKA Chemicals received full immunity from fines under the Commission's 2002 Leniency Programme (see [IP/02/247](#) and [MEMO/02/23](#)), as they were first to provide information about the cartel. Finnish Chemicals' fine is reduced by 50% because it co-operated with the investigation. The fine imposed on Arkema France was increased by 90%, as the company is a repeat offender (condemned for three previous cartels before this one).

Competition Commissioner Neelie Kroes said: "These companies have to learn the hard way that the Commission will impose high fines when they rip off their customers, and ultimately consumers, by forming a cartel. Arkema's shareholders and management should be asking some pertinent questions, as the company's fine has been increased by 90% because it had participated in three cartels before this one. Companies fines' will keep increasing for repeat offences."

Sodium chlorate is mainly used to produce chlorine dioxide, which is used in the pulp and paper industry for the bleaching of chemical pulp.

The Commission's investigation was triggered by an application for immunity lodged by EKA Chemicals in March 2003. Finnish Chemicals also made an application under the 2002 Leniency Notice.

The cartel

From late 1994 to early 2000 the sodium chlorate producers operated a cartel in which they allocated sales volumes and fixed prices. The companies held regular meetings to discuss prices and volumes, to exchange sensitive commercial information and to follow up the implementation of their illegal agreements.

Fines

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

The practices the Commission's investigation uncovered in this case constitute very serious infringements of EC Treaty antitrust rules. In setting the fines, the Commission took into account the respective affected sales of the companies involved as well as the combined market share, the geographical scope and the actual implementation of the cartel agreements. The Commission increased the fines for Arkema France by 90% because it had already been fined for cartel activities in three Commission decisions prior to this cartel, all in the plastics sector – Peroxygen products in 1984, Polypropylene in 1986 and more recently PVC in 1994 (see [IP/94/732](#)).

This is the first time under the 2006 Fines Guidelines that the Commission has increased the fine for a company because of its previous involvement in three cartels. In a recent case, the fine for a company (ENI) was increased by 60% as it had previously been fined twice for similar behaviour (see [IP/07/1855](#)).

Akzo Nobel and its subsidiary EKA Chemicals received full immunity from fines as they were first to provide information to the Commission about the cartel.

Finnish Chemicals was rewarded a 50% reduction of its fine under the Commission's leniency programme because of their good cooperation with the Commission during the investigation.

The fines imposed and the leniency reductions granted by the Commission in this case are as follows:

Name and location of undertaking	Fine* (€)	Reduction under the Leniency Notice (%)	Reduction under the Leniency Notice (€)
EKA Chemicals(Sweden)/Akzo Nobel (The Netherlands)	0	100	116 000 000
Finnish Chemicals(Finland)/Erikem (Luxembourg)	10 150 000	50	10 150 000
Arkema France and Elf Aquitaine (France)	59 020 000		
Aragonesas/Uralita (Spain)	9 900 000		
TOTAL	79 070 000		

(*) Legal entities within the undertaking may be held jointly and severally liable for the whole or part of the fine imposed.

Action 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 and seek damages. The case law of the Court 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/08/383](#).