



Damage claims plotted as EC publishes hydrogen peroxide cartel decision

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The paper industry is scoping out possible damages claims against a bleaching cartel after the European Commission today published the public version of a 2006 decision which resulted in a 388 million euro fine for nine firms including Akzo Nobel, Solvay and Kemira.

By Lewis Crofts

The paper industry is scoping out possible damages claims against a bleaching cartel after the European Commission today released the non-confidential version of the 2006 decision which resulted in a 388 million euro fine for nine firms including Akzo Nobel, Solvay and Kemira.

Representatives from the German paper industry are meeting on Thursday next week to discuss possible steps towards bringing claims against the cartel which fixed prices for detergents and bleaching products (hydrogen peroxide and perborate) between 1994 and 2000.

The German Paper Industry Association (Verband deutscher Papierfabriken - VdP) is meeting in Frankfurt for an information-sharing event to instruct its members on tactics for recouping the costs of damages suffered. The companies will be left to decide themselves whether to bring claims, and if so, how and in which jurisdiction. External counsel are also being invited to the discussions and Belgian-based firm Cartel Damages Claims is already preparing a claim on behalf of several companies.

The document published by the commission today is surprisingly rich in information, exhibiting considerably fewer deletions than expected. For example, while it deletes the names of employees implicated, information about their functions and the dates of their posts held remain. This has led some potential claimants to believe that they can track the individuals down and call them as witnesses.

Furthermore, the decision harbours cause for concern for French firm L'Air Liquide which escaped without a fine in 2006 having left the market more than five years before the start of the investigation.

The commission decision states, however, that "there is ample evidence of Air Liquide's participation in the infringement for the period it took part, and that its role was similar to that of the other parties. For this reason too, it is considered that Air Liquide should be an addressee of the decision, like the other undertakings that participated in the infringement. Finally, there is an interest in enabling the injured parties to bring matters before the national civil courts against all cartel participants."

Predicting possible damage claims, the firm has nonetheless appealed the decision to the Court of First Instance.

The decision also highlights that, in the case of perborate, meetings between the firms were taking place as far back as 1986. The commission's cartel decision, however, covers only the period 1994 to 2000, meaning some potential claimants may be encouraged to look further back.

Meanwhile, Cartel Damages Claims (CDC) has been preparing its own case, gathering market data and recruiting companies. It already has several major firms on board and a few weeks ago sent out a raft of 180 letters to encourage other companies affected by the cartel to join the cause. CDC has also been invited to the VdP meeting.

Although a national organisation, the VdP brings together 102 firms and accounts for 90 percent of German production. Germany is Europe's largest paper producer and many of the industry's leading players have significant production capacity in the country. In addition to the reams of domestic members, the VdP also counts among its ranks German subsidiaries of firms like M-real, Metsa, SCA, Smurfit Kappa, Stora Enso and UPM Kymmene.

Such companies – if affected by the cartel – will have to decide whether to pursue cases on their own, join the CDC's action, or choose another route.

The CDC is pursuing a broad model whereby they buy up the claims of companies suffering at the hands of the cartel for the symbolic amount of 0.01 euro per tonne of chemical purchased. Depending on subsequent calculations, a claim would be lodged for at least 200 euro euros/tonne. CDC would return 75-80 percent of a winning claim in hydrogen peroxide to the parties; perborate claimants would receive 70-75 percent of their claim back.

The companies fined by the commission in May 2006 were Akzo Nobel, Edison, FMC/Foret, Kemira, Snia, Solvay and Total/Elf Aquitaine/Arkema. Solvay, Arkema and Edison had their fines increased for recidivism while Degussa suffered no financial penalty having blown the whistle on the cartel in December 2002. The initial raids were conducted in March 2003.

Most of the companies appealed the commission's decision in July 2006 with the notable exception of Kemira which considered it "not worthwhile appealing" its 33 million euro fine.

A common complaint made on publication of the non-confidential versions of such decisions is the lack of information contained for parties to mount viable damages cases.

The current decision, however, seems to be devoid of mass deletions and has been warmly welcomed by those considering actions. The text reveals around 100 areas where information has been removed but this has often been replaced with helpful summaries. This is in contrast to the non-confidential version of the decision against a bitumen cartel published several months ago which exhibited upwards of 400 deletions.

The German paper industry is the fourth place world-wide behind the US, China and Japan. The sector's national turnover is around 13 billion euros and production lies around the 21 million ton mark. Approximately 46,000 people are employed at the 200 sites.

Hydrogen peroxide is used as a bleaching-agent in paper-making. Perborate is used in detergents and washing powders.

Read the non-confidential version of the commission's cartel decision in full [here](#).

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