

SUMMARY OF COMMISSION DECISION**of 11 June 2008****relating to a proceeding under Article 81 of the EC Treaty and Article 53 of the EEA Agreement
(Case COMP/38695 — Sodium Chlorate)***(notified under document number C(2008) 2626)***(Only the English and French texts are authentic)****(Text with EEA relevance)**

(2009/C 137/06)

1. INTRODUCTION

- (1) On 11 June 2008, the Commission adopted a decision relating to a proceeding under Article 81 of the EC Treaty and Article 53 of the EEA Agreement. In accordance with the provisions of Article 30 of Council Regulation (EC) 1/2003, the Commission herewith publishes the names of the parties and the main content of the decision, including any penalties imposed, having regard to the legitimate interest of undertakings in the protection of their business secrets.
- (2) The Decision is addressed to 8 legal entities: EKA Chemicals AB and its parent company Akzo Nobel NV; Arkema France SA and its parent company during the time of the infringement Elf Aquitaine SA; Finnish Chemicals Oy and its parent company during the time of the infringement Erikem Luxembourg SA; and Aragonesas Industrias y Energia SAU and its parent company during the time of the infringement Uralita SA, for an infringement of the provisions of Article 81 of the Treaty and Article 53 of the EEA Agreement.
- (3) A non-confidential version of the decision is available on the Competition Directorate General website at the following address: http://ec.europa.eu/comm/competition/index_en.html

2. PROCEDURE

- (4) This case was opened on the basis of an immunity application lodged by EKA Chemicals AB on 28 March 2003. On 30 September 2003, the Commission granted EKA Chemicals AB conditional immunity from fines in accordance with point 15 of the 2002 Leniency Notice ⁽¹⁾. Subsequently, on 18 October 2004, Arkema France SA applied for immunity from fines or, in the alternative, reduction of fines. On 29 October 2004, Finnish Chemicals Oy applied for reduction of fines under section B of the 2002 Leniency Notice.
- (5) Several written requests for information were addressed to the undertakings involved in the anti-competitive arrangements, as well as to other sodium chlorate producers and the relevant industry association.
- (6) By a letter dated 11 July 2007, the Commission informed Finnish Chemicals Oy in writing of its intention to grant the undertaking a reduction of 30-50 % of the fine, pursuant to the Leniency Notice. Similarly, Arkema France SA was informed in writing of the intention of the Commission to reject its application under the 2002 Leniency Notice.
- (7) The Statement of Objections was adopted on 27 July 2007 and notified to all the parties by 1 August 2007. An Oral Hearing was held on 20 November 2007.
- (8) The Advisory Committee on Restrictive Practices and Dominant Positions issued a favourable opinion on 28 May 2008 and 6 June 2008.

⁽¹⁾ OJ C 45, 19.2.2002, p. 3.

3. SUMMARY OF THE INFRINGEMENT

- (9) The product concerned, Sodium Chlorate (hereinafter 'SC'), is a strong oxidizing agent used mainly for the manufacturing of chlorine dioxide which in turn is used in the pulp and paper industry for the bleaching of chemical pulp. Other applications include drinking water purification, textile bleaching, herbicides and uranium refining. The estimated EEA market value for SC in 1999 was approximately EUR 203 million. The four undertakings involved in the infringement had an estimated market share of about 93 %, i.e. between EUR 185 and 195 million.
- (10) The Decision concludes that EKA Chemicals AB, Finnish Chemicals Oy, Arkema France SA and Aragonesas Industrias y Energia SA operated between 21 September 1994 and 9 February 2000 a cartel with a view to sharing the market for SC by allocating sales volumes and to fixing and/or maintaining its prices in the EEA market. The parties also exchanged information to facilitate and/or monitor the implementation of the illicit arrangements.
- (11) The involved undertakings pursued a strategy of stabilizing the SC market with the ultimate aim to allocate the SC sales volumes among each other, to coordinate the pricing policy towards the customers and thereby to maximize the margins. It is further demonstrated that the competitors attempted to implement the illicit arrangements on the market by means of the renegotiating SC prices with the respective customers.
- (12) The Decision describes in some detail the evidence found of numerous bi-, tri-, and multilateral meetings and/or telephone calls between representatives of EKA Chemicals AB, Finnish Chemicals Oy, Arkema France SA and Aragonesas Industrias y Energia SA, in all of which they discussed sales volumes and/or prices and exchanged sensitive commercial information.

4. REMEDIES

4.1.1. *Basic amount of the fine*

- (13) The basic amount of the fine is determined as a proportion of the value of the sales of the relevant product made by each undertaking in the relevant geographic area during the last full business year of the infringement ('variable amount'), multiplied by the number of years of infringement, plus an additional amount, ('entry fee'), also calculated as a proportion of the value of sales, which is meant to enhance deterrence in respect of horizontal price fixing agreements.
- (14) Having considered different factors, in particular the nature, the combined market share and the geographic scope of the infringement, the Decision applies in this case both the variable amount and the entry fee of 19 %.
- (15) Taking into account the duration of the infringement for the individual legal entities involved, the variable amount is multiplied by 5,5 in the case of EKA Chemicals AB, Akzo Nobel NV and Finnish Chemicals Oy, by 5 in the case of Arkema France SA and Elf Aquitaine SA, by 3,5 in the case of Aragonesas Industrias y Energia SAU and Uralita SA and by 3 in the case Erikem Luxembourg SA.

4.2. **Adjustments to the basic amount**

4.2.1. *Aggravating circumstances: recidivism*

- (16) At the time the infringement took place, Arkema France SA had already been the addressee of three previous Commission decisions concerning cartel activities. The Decision concludes that this justifies an increase of 90 % in the basic amount imposed on Arkema France SA.

4.2.2. *Mitigating circumstances*

- (17) The parties have argued for the application of a series of mitigating circumstances such as a passive or minor role in the cartel, early termination of the infringement, limited involvement in the infringement, effective co-operation outside the Leniency Notice, non-implementation of cartel agreements and coercion. These claims were all rejected in the Decision.

4.2.3. *Specific increase for deterrence*

- (18) Taking into account the need to ensure that fines have a sufficiently deterrent effect, and in consideration of the large size of Elf Aquitaine's turnover beyond the sales of goods or services to which the infringement relates, the Decision increases the fine to be imposed on this undertaking by 70 %.

4.3. **Application of the 10 % turnover limit**

- (19) The 10 % worldwide turnover limit provided for in Article 23(2) of Regulation (EC) No 1/2003 is attained in respect of the fine to be imposed on Finnish Chemicals Oy and on Erikem Luxembourg SA. The respective fines are adjusted accordingly.

4.4. **Application of the 2002 Leniency Notice: reduction of fines**

- (20) EKA Chemicals AB, Arkema France SA and Finnish Chemicals Oy co-operated with the Commission at different stages of the investigation with a view to receiving the favourable treatment set out in the 2002 Leniency Notice, applicable to the present case.

4.4.1. *Immunity*

- (21) EKA Chemicals AB was the first undertaking to inform the Commission about the existence of a cartel in the SC sector affecting the EEA market. EKA Chemicals AB therefore qualified for immunity.

4.4.2. *Reduction of fines*

- (22) Arkema France SA was the second company to approach the Commission. The decision concludes that Arkema France SA did not provide significant added value within the meaning of point 21 of the 2002 Leniency Notice. Therefore the Commission did not grant the company a reduction of the fine.
- (23) Finnish Chemicals which also submitted its application under the 2002 Leniency Notice was rewarded for its cooperation with a 50 % reduction of the fine.

5. **DECISION**

- (24) The following undertakings infringed Article 81 of the Treaty and Article 53 of the EEA Agreement by participating, for the periods indicated, in a complex of agreements and concerted practices with a view to allocating sales volumes, fixing prices, exchanging commercially sensitive information on prices and sales volumes and monitoring the execution of the anti-competitive arrangements for sodium chlorate in the EEA market:

(a) EKA Chemicals AB,

(b) Akzo Nobel NV,

- (c) Finnish Chemicals Oy,
 - (d) Erikem Luxembourg SA,
 - (e) Arkema France SA,
 - (f) Elf Aquitaine SA,
 - (g) Aragonesas Industrias y Energia SAU,
 - (h) Uralita SA.
- (25) For the infringements referred to in Article 1, the following fines are imposed:
- (a) *EKA Chemicals AB and Akzo Nobel NV, jointly and severally*: EUR 0
 - (b) *Finnish Chemicals Oy*: EUR 10 150 000
 - of which jointly and severally with Erikem Luxembourg SA (in liquidation)*: EUR 50 900
 - (c) *Arkema France SA and Elf Aquitaine SA, jointly and severally*: EUR 22 700 000
 - (d) *Arkema France SA*: EUR 20 430 000
 - (e) *Elf Aquitaine SA*: EUR 15 890 000
 - (f) *Aragonesas Industrias y Energia SAU and Uralita SA, jointly and severally*: EUR 9 900 000
- (26) The undertakings listed above are ordered to immediately bring to an end the infringement insofar as they have not already done so and to refrain from repeating any act or conduct described in paragraph (22) and from any act or conduct having the same or similar object or effect.
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