

Summary of Commission Decision
of 11 November 2009
relating to a proceeding under Article 81 of the EC Treaty and Article 53 of the EEA Agreement
(Case COMP/38.589 — Heat Stabilisers)

(notified under document C(2009) 8682)

(Only the English, German and French texts are authentic)

(Text with EEA relevance)

(2010/C 307/05)

On 11 November 2009, the Commission adopted a decision relating to a proceeding under Article 81 of the EC Treaty. In accordance with the provisions of Article 30 of Council Regulation (EC) No 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. A non-confidential version of the decision is available on the Directorate-General for Competition's website at the following address:

<http://ec.europa.eu/competition/antitrust/cases/>

1. INTRODUCTION

- (1) The Decision is addressed to 27 legal entities belonging to 11 undertakings at the time of the infringements, for infringing Article 81 of the EC Treaty and Article 53 of the EEA Agreement. The addressees participated in one or two infringements relating to tin stabilisers and ESBO/esters respectively. The infringements lasted from February 1987 until March 2000 (tin stabilisers) and from September 1991 until September 2000 (ESBO/esters) and covered the EEA territory (as constituted during the time of the infringements).

2. CASE DESCRIPTION

2.1. Procedure

- (2) The case was opened on the basis of an immunity application of Chemtura. The Commission obtained further evidence from inspections that took place in February 2003. Additionally, the Commission received four applications under the Leniency Notice (Arkema France, Baerlocher, Akzo Nobel and BASF). During the inspections at Akcros Chemicals (UK), its representatives claimed that certain documents were covered by legal professional privilege. Following an application for annulment of several Commission decisions by Akzo Nobel and Akcros Chemicals in April 2003, the issue regarding the documents was settled by the Court of First Instance (now General Court) in its judgement on 17 September 2007. The CFI dismissed Akzo Nobel's and Akcros Chemicals' actions. The Commission sent out several requests for information.
- (3) On 17 March 2009, the Statement of Objections was issued and all undertakings were given the possibility to have access to the file and defend themselves against the preliminary view of the Commission in writing and, on 17

and 18 June 2009, during an Oral Hearing. The Advisory Committee on Restrictive Practices and Dominant Positions issued a favourable opinion on 15 October 2009 and 6 November 2009 and the Commission adopted the Decision on 11 November 2009.

2.2. Summary of the infringements

- (4) The Decision concerns two separate single and continuous infringements of Article 81 of the EC Treaty and Article 53 of the EEA Agreement regarding two categories of heat stabilisers: tin stabilisers and ESBO/esters. Tin stabilisers are used to avoid decomposition caused by heat during the processing of PVC into final products. Their two main applications are in rigid and plasticised PVC products. ESBO/esters are used as plasticisers as well as heat stabilisers for plasticised PVC products.
- (5) The objective of both of the anti-competitive arrangements was to increase and maintain prices in the EEA for tin stabilisers and ESBO/esters above normal competitive levels and to sustain this objective through customer and sales volume allocation in these products. The principal decisions for both cartels were taken at meetings organised by AC Treuhand. For the majority of the duration of the cartels, AC Treuhand monitored the implementation of the agreements on sales quotas and on fixed prices.
- (6) The general lines of both cartels in the EEA were developed at the Swiss meetings which were organised monthly for tin stabilisers and quarterly for ESBO/esters. The infringements on price fixing, market sharing and

customer allocation were negotiated and translated into specific action at the country meetings held throughout Europe. Thus the participants ensured that their coordinated behaviour was implemented in all EEA countries.

(7) Until 1996, the heat stabiliser suppliers verified if all the cartel members followed the anti-competitive agreements directly at AC Treuhand. AC Treuhand distributed also 'red' and 'pink' papers with the details on fixed prices and allocation of sales volumes during the secret meetings held at its premises. These papers were not allowed to be taken outside the meeting room.

(8) Each addressee is held liable according to its own involvement in the cartel arrangements, that is either as a direct participant, or, as a parent company, because the behaviour of the subsidiary is imputed to the parent given that the parent exercised decisive influence over the conduct of subsidiaries during the period of the infringement.

2.3. Addressees and duration in the infringements

(9) Tin stabilisers: Akzo Nobel N.V. (24.2.1987-21.3.2000), Akzo Nobel Chemicals GmbH (24.2.1987-28.6.1993), Akros Chemicals Ltd (28.6.1993-21.3.2000), Elementis Holdings Limited (28.9.1988-2.10.1998), Elementis plc (23.2.1998-2.10.1998), Elementis UK Limited (28.9.1988-2.7.1993), Elementis Services Limited (2.7.1993-2.10.1998), Elf Aquitaine SA (16.3.1994-31.3.1996 and 9.9.1997-21.3.2000), Arkema France (16.3.1994-31.3.1996 and 9.9.1997-21.3.2000), CECA SA (16.3.1994-31.3.1996 and 9.9.1997-21.3.2000), MRF Michael Rosenthal GmbH (12.10.1990-21.3.2000), Baerlocher GmbH (24.2.1987-21.3.2000), Baerlocher Italia SpA (22.6.1994-21.3.2000), Baerlocher UK Limited (28.3.1995-17.9.1997), Chemtura Corporation (29.5.1998-21.3.2000), Chemtura Vinyl Additives GmbH (12.12.1997-21.3.2000), BASF Specialty Chemicals Holding GmbH (24.2.1987-29.5.1998), BASF Lampertheim GmbH, (24.2.1987-29.5.1998), Reagens SpA (20.11.1992-21.3.2000), AC-Treuhand AG (1.12.1993-21.3.2000).

(10) ESBO/esters: Akzo Nobel N.V. (11.9.1991-22.3.2000), Akzo Nobel Chemicals B.V. (11.9.1991-28.6.1993), Akros Chemicals Ltd (28.6.1993-22.3.2000), Elementis Holdings Limited (11.9.1991-2.10.1998), Elementis plc (23.2.1998-2.10.1998), Elementis UK Limited (11.9.1991-2.7.1993), Elementis Services Limited (2.7.1993-2.10.1998), Elf Aquitaine SA (11.9.1991-26.9.2000), Arkema France (11.9.1991-26.9.2000), CECA SA (11.9.1991-26.9.2000), GEA Group AG (11.9.1991-17.5.2000), Chemson Polymer-Additive AG (30.9.1995-26.9.2000), Aachener Chemische Werke Gesellschaft für glastechnische Produkte und Verfahren mbH (11.9.1991-17.5.2000), Chemson GmbH (17.5.2000-26.9.2000), Chemtura Corporation

(29.5.1998-26.9.2000), Chemtura Vinyl Additives GmbH (12.12.1997-26.9.2000), BASF Specialty Chemicals Holding GmbH (11.9.1991-29.5.1998), BASF Lampertheim GmbH (11.9.1991-29.5.1998), Faci SpA (6.11.1996-26.9.2000), AC-Treuhand AG (1.12.1993-26.9.2000).

2.4. Remedies

(11) The Decision applies the 2006 Guidelines on fines. With the exception of Chemtura Corporation and Chemtura Vinyl Additives GmbH, the Decision imposes the fine on all companies listed above under points 9 and 10.

2.4.1. Basic amount of the fine

(12) The basic amount is set at 20 % of the undertakings' sales in the tin stabilisers sector. Only the percentage to be applied for Chemtura and Arkema France is set 19 % because the companies did not participate to the rigorous implementation of the cartel carried out until 1996. The basic amount is set at 19 % of the undertakings' sales in ESBO/esters sector. Only the percentage to be applied for Chemtura and Faci is set 18 % because the companies did not participate to the rigorous implementation of the cartel carried out until 1996.

(13) The basic amount is multiplied by the number of years of participation in the infringement taking fully into account the duration of the participation for each undertaking in the infringement individually.

2.4.2. Adjustments to the basic amount

2.4.2.1. Aggravating circumstances

(14) Recidivism is an aggravating circumstance for Arkema France (three previous cartel decisions taken into account).

2.4.2.2. Specific increase for deterrence

(15) The multiplier of 1,7 to the fine is imposed on Elf Aquitaine SA in order to deter this company from even entering into horizontal price-fixing and market-sharing agreements.

2.4.3. Application of the 2002 Leniency Notice: reduction of fines

(16) As regards the application of the 2002 Leniency Notice, Chemtura is granted a reduction of 100 % for tin stabilisers and of 100 % for ESBO/esters, CECA/Arkema France/Elf Aquitaine is granted a reduction of 30 % for tin stabilisers and of 50 % for ESBO/esters, Baerlocher is granted a reduction of 20 % for tin stabilisers, Akzo is granted a reduction of 0 % for tin stabilisers and of 0 % for ESBO/esters and BASF is granted a reduction of 15 % for tin stabilisers and of 25 % for ESBO/esters.

2.4.4. *Inability to pay*

- (17) Three undertakings invoked their inability to pay under point 35 of the 2006 Guidelines on fines. The Commission considered those claims and carefully analysed the financial situation of those undertakings and the specific social and economic context.
- (18) As a result of the Commission's analysis, the fine of one company was reduced significantly given its difficult financial situation.

3. FINES IMPOSED BY THE DECISION

(19) For the infringement in the tin stabiliser sector the following fines are imposed:

1. Elementis plc, Elementis Holdings Limited, Elementis Services Limited, Akzo Nobel N.V. and Akcros Chemicals Ltd are jointly and severally liable for: EUR 875 200
2. Elementis Holdings Limited, Elementis Services Limited, Akzo Nobel N.V. and Akcros Chemicals Ltd are jointly and severally liable for: EUR 2 601 500
3. Elementis Holdings Limited, Elementis Services Limited and Akzo Nobel N.V. are jointly and severally liable for: EUR 4 546 300
4. Akzo Nobel N.V., Akzo Nobel Chemicals GmbH and Akcros Chemicals Ltd are jointly and severally liable for: EUR 1 580 000
5. Akzo Nobel N.V. and Akcros Chemicals Ltd are jointly and severally liable for: EUR 944 300
6. Akzo Nobel N.V. and Akzo Nobel Chemicals GmbH are jointly and severally liable for: EUR 9 820 000
7. Akzo Nobel N.V. is liable for: EUR 1 432 700
8. Elementis plc, Elementis Holdings Limited, Elementis UK Limited and Elementis Services Limited are jointly and severally liable for: EUR 1 580 000
9. Elementis Holdings Limited and Elementis UK Limited are jointly and severally liable for: EUR 7 231 000
10. MRF Michael Rosenthal GmbH, Baerlocher GmbH, Baerlocher Italia SpA and Baerlocher UK Limited are jointly and severally liable for: EUR 1 000 000
11. Elf Aquitaine SA, Arkema France and CECA SA are jointly and severally liable for: EUR 3 864 000
12. Arkema France is liable for: EUR 3 477 600
13. Elf Aquitaine SA is liable for: EUR 2 704 800
14. Chemtura Corporation and Chemtura Vinyl Additives GmbH are jointly and severally liable for: EUR 0
15. BASF Specialty Chemicals Holding GmbH and BASF Lampertheim GmbH are jointly and severally liable for: EUR 61 320 000
16. Reagens SpA is liable for: EUR 10 791 000

17. AC-Treuhand AG is liable for: EUR 174 000
- (20) For the infringement in the ESBO/esters sector the following fines are imposed:
18. Elementis plc, Elementis Holdings Limited, Elementis Services Limited, Akzo Nobel N.V. and Akcros Chemicals Ltd are jointly and severally liable for: EUR 1 115 200
19. Elementis Holdings Limited, Elementis Services Limited, Akzo Nobel N.V. and Akcros Chemicals Ltd are jointly and severally liable for: EUR 2 011 103
20. Elementis Holdings Limited, Elementis Services Limited and Akzo Nobel N.V. are jointly and severally liable for: EUR 7 116 697
21. Akzo Nobel N.V., Akzo Nobel Chemicals B.V. and Akcros Chemicals Ltd are jointly and severally liable for: EUR 2 033 000
22. Akzo Nobel N.V. and Akcros Chemicals Ltd are jointly and severally liable for: EUR 841 697
23. Akzo Nobel N.V. and Akzo Nobel Chemicals B.V. are jointly and severally liable for: EUR 3 467 000
24. Akzo Nobel N.V. is liable for: EUR 2 215 303
25. Elementis plc, Elementis Holdings Limited, Elementis UK Limited, and Elementis Services Limited are jointly and severally liable for: EUR 2 033 000
26. Elementis Holdings Limited and Elementis UK Limited are jointly and severally liable for: EUR 3 412 000
27. Elementis Holdings Limited is liable for: EUR 53 000
28. Elf Aquitaine SA, Arkema France and CECA SA, are jointly and severally liable for: EUR 7 154 000
29. Arkema France is liable for: EUR 6 438 600
30. Elf Aquitaine SA is liable for: EUR 5 007 800
- 31.(a) GEA Group AG, Aachener Chemische Werke Gesellschaft für glastechnische Produkte und Verfahren mbH and Chemson Polymer-Additive AG are jointly and severally liable for: EUR 1 086 129
- 31.(b) GEA Group AG and Chemson Polymer-Additive AG are jointly and severally liable for: EUR 827 842
32. GEA Group AG is liable for: EUR 1 432 229
33. Chemson Polymer-Additive AG and Chemson GmbH are jointly and severally liable for: EUR 137 606
34. Chemson GmbH is liable for: EUR 317 794
35. Chemtura Corporation and Chemtura Vinyl Additives GmbH are jointly and severally liable for: EUR 0
36. BASF Specialty Chemicals Holding GmbH and BASF Lampertheim GmbH are jointly and severally liable for: EUR 7 104 000
37. Faci SpA is liable for: EUR 5 940 000
38. AC-Treuhand AG is liable for: EUR 174 000
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