COMMISSION DECISION

of 19 January 2005

relating to a proceeding under Article 81 of the EC Treaty and Article 53 of the EEA Agreement against Akzo Nobel NV, Akzo Nobel Nederland BV, Akzo Nobel Chemicals BV, Akzo Nobel Functional Chemicals BV, Akzo Nobel Base Chemicals AB, Eka Chemicals AB, and Akzo Nobel AB, jointly and severally, Clariant AG and Clariant GmbH jointly and severally, Elf Aquitaine SA and Arkema SA, jointly and severally, and Hoechst AG

(Case No C.37.773 — MCAA)

(notified under document number C(2004) 4876)

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

(Text with EEA relevance)

(2006/897/EC)

On 19 January 2005, 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) No 1/2003 ([1]), the Commission herewith publishes the names of the parties and the main content of the decision, including any penalties imposed, while having regard to the legitimate interest of undertakings in the protection of their business interests. A non-confidential version of the full text of the decision can be found in the authentic languages of the case and in the Commission's working languages at DG COMP's website at the following address: http://europa.eu.int/comm/competition.

I. SUMMARY OF THE INFRINGEMENT

Introduction

(1) The Decision is addressed to Akzo Nobel NV, Akzo Nobel Nederland BV, Akzo Nobel Chemicals BV, Akzo Nobel Functional Chemicals BV, Akzo Nobel Base Chemicals AB, Eka Chemicals AB, and Akzo Nobel AB (hereinafter 'Akzo'), jointly and severally, Clariant AG and Clariant GmbH (hereinafter 'Clariant') jointly and severally, Elf Aquitaine SA (hereinafter 'Elf Aquitaine') and Arkema SA (hereinafter 'Arkema', formerly known as Atofina SA), jointly and severally, and Hoechst AG (hereinafter 'Hoechst').

(2) Reference in this summary will be made mostly to Atofina SA (or 'Atofina') and not to Arkema, even though it is the addressee of this Decision, as Atofina was the name in use during the administrative procedure.

(3) The addressees participated in a single and continuous infringement of Article 81 of the Treaty establishing the European Community (hereinafter 'the EC Treaty' or 'the Treaty') and, from 1 January 1994, Article 53(1) of the Agreement on the European Economic Area (hereinafter 'EEA Agreement'), covering the whole of the EEA territory.

(4) The Commission initiated an investigation into the EEA-wide MCAA industry after it received a leniency application in December 1999 from Clariant. The investigation revealed that the cartel lasted from at least 1 January 1984 to 7 May 1999.

The market for mcaa

(5) Monochloroacetic acid (or 'MCAA') is a reactive organic acid which is a chemical intermediate used in the manufacture of detergents, adhesives, textile auxiliaries and thickeners used in food, pharmaceuticals and cosmetics.

(6) The geographic market was considered to be the EEA. The value of this market was approximately EUR 121 million in 1998, the last full year of the infringement. During the period of investigation, almost every part of the common market and the EEA was under the influence of the cartel.

Description of the cartel

(7) In terms of the organisation of the cartel, contacts between the major producers of MCAA can be traced back to the late 1970s and early 1980s and at this stage were largely bilateral and related to the exchange of customer and pricing information.

(8) By the early to mid 1980s multilateral meetings began to be organised and arrangements became more solidified with the aim of maintaining their respective market shares. The participants at this stage were Hoechst, Akzo and Atochem SA (subsequently Atofina SA, now known as Arkema). Clariant joined only in 1997 after it purchased Hoechst's MCAA business.

(9) At this time the participants would meet 2-4 times a year on a multilateral basis with meetings organised on a rotating basis in the respective countries of the undertakings involved. Bilateral contacts were maintained and the participants also met during special meetings and social occasions.

([1]) OJ L 1, 4.1.2003, p. 1. Regulation as amended by Regulation (EC) No 411/2004 (OJ L 68, 6.3.2004, p. 1).

(10) The cartel became more formalised in 1993 with the aim of having more transparent statistics, stamping out cheating, having greater control over sales personnel and implementing a compensation system. A formal system of exchange of quarterly sales and price data was also implemented between the participants.

(11) In addition, in an attempt to justify the exchanged market figures a statistical organisation, […] (hereinafter '[…]'), was retained. […] provided aggregated market statistics and the participants met a […] representative twice a year, usually in Zurich, to discuss these and other matters of industry concern.

(12) However, these legitimate meetings served as a cover for the real purpose of the gatherings which was for the parties to get together to discuss the implementation of the cartel arrangements. These illegal meetings usually took place the evening prior to the […] meeting at a separate location. 13 […] meetings were planned between 1994-1999 although the final meeting appears to have been cancelled.

(13) Even though the organisation of the cartel may have shifted in the course of its duration, essential features remained the same. This involved volume and customer allocation in order to maintain market shares. Market shares were additionally safeguarded by a compensation mechanism between the parties in the event of over- or under-selling. There was significant exchange of sales and price information and also evidence of concerted price increases.

II: **FINES**

Basic amount

Gravity

(14) The infringement consisted of allocating customers and volume quotas, agreeing concerted price increases, arranging a compensation mechanism to ensure the implementation of quotas, exchanging sales volumes and prices, and, participating in regular meetings, both multilateral and bilateral, as well as other contacts to ensure the proper functioning of the cartel. These types of conduct are by their very nature very serious violations of Articles 81 EC and 53(1) EEA.

(15) The cartel agreement was implemented by producers, which for the relevant period covered the vast majority of the Common market and the EEA, after 1 January 1994. It must therefore have had an impact on the MCAA market in the Common market and the EEA.

(16) Given the nature of the behaviour under scrutiny, the Commission considered that the addressees of this Decision committed a very serious infringement of Article 81 EC and 53(1) EEA.

Differential treatment

(17) The undertakings were divided into different categories according to their relative importance in the market to account for the specific weight and therefore the real impact of each undertaking on the market.

(18) As the basis for comparing the relative importance of an undertaking in the market concerned, the Commission considered it appropriate to take the EEA-wide product turnover. The comparison was made on the basis of the EEA-wide product turnover in the last full year of the infringement: 1998 for all the undertakings except for Hoechst for whom 1996 was the reference year, as it exited the MCAA market in mid-1997.

(19) Akzo, Clariant, and Atofina were the major producers of MCAA in the EEA in 1998, with respective approximate market shares of 44 %, 34 % and 17 %. Hoechst had a market share of 28 % in 1996 before it exited the MCAA market in mid-1997. The undertakings were therefore split into three categories. First category: Akzo; second category: Hoechst and Clariant; third category: Atofina.

Sufficient deterrence

(20) Within the category of very serious infringements, the scale of likely fines also makes it possible to set the fines at a level which ensures that they have sufficient deterrent effect, taking into account the size of each undertaking. In this respect, the Commission noted that in 2003 the turnover of Atofina/Elf Aquitaine was EUR 84,5 billion, and that of Akzo was EUR 13 billion. Accordingly, the Commission considered it appropriate to multiply the fine for Atofina/Elf Aquitaine with a factor of 2,5 and that of Akzo with a factor of 1,5.

Duration

(21) Akzo and Atofina have committed an infringement of a long duration. They participated in the cartel from January 1984 to May 1999, equating to 15 years and four months, which justified an increase of 150 % of the basic amount of the fine for both undertakings.

(22) Hoechst has also committed an infringement over a long time, by being involved in the illegal arrangements from January 1984 to the end of June 1997, or a period of 13 years and 6 months, which justified an increase of 135 % of the basic amount of the fine.

(23) Clariant's participation is restricted to the period from July 1997, date at which it acquired the MCAA business from Hoechst, to May 1999. It was accordingly involved in the cartel for a period of 1 year and 10 months, which justified an increase of 15 % of the basic amount of the fine.

Aggravating circumstances

Recidivism

(24) At the time the infringement took place, two of the addressees of this Decision had already been subject to previous Commission Decisions in cartel cases. Hoechst was an addressee in the PVC II (94/599/EC; 27 July 1994) and Dyestuffs (69/243/EEC; 24 July 1969) Commission Decisions. Atofina was also an addressee of the PVC II Decision. These aggravating circumstances justified an increase of 50 % in the basic amount of the fine imposed on Hoechst and Atofina.

Attenuating circumstances

Effective cooperation outside of the 1996 Leniency Notice

(25) Akzo made voluntary statements which allowed the Commission to conclude that Eka Nobel AB, Eka Nobel Skoghall AB and Nobel Industrier AB (now respectively Eka Chemicals AB, Akzo Nobel Base Chemicals AB and Akzo Nobel AB) were independently involved in the cartel from 15 June 1993 until they became part of the Akzo group on 25 February 1994. As a result of Akzo's disclosures it faces a higher fine than it would without its cooperation. The Commission therefore considered it appropriate, having regard to the principles of fairness and the particular circumstances of the case, to reduce to zero the fine on the above companies for their independent infringement.

Application of the 1996 Leniency Notice

(26) Three of the addressees (Akzo, Atofina and Clariant) of the present Decision co-operated with the Commission at different stages of the investigation into the infringement for the purpose of receiving the favourable treatment set out in the Commission's 1996 Leniency Notice ([2]).

(27) The Leniency Notice was applied as follows in the Decision:

1. *Non-imposition of a fine or a very substantial reduction of its amount ('Section B': reduction from of 75 % to 100 %)*

(28) Clariant was the first undertaking to submit decisive evidence on the existence of a secret cartel affecting the MCAA industry in the EEA. This information was provided in a statement and evidence submitted by Clariant on 6 December 1999, and, it enabled the Commission to carry out an investigation at the premises of Akzo and Atofina. Clariant also fulfilled the other conditions of Section B: it ended its involvement in the cartel, cooperated fully throughout the investigation and did not act as an instigator of the cartel. The Decision took into account all of these elements when granting a 100 % reduction of the fine that would otherwise have been imposed on Clariant AG and Clariant GmbH had they not cooperated with the Commission.

2. *Substantial reduction in a fine ('Section C': reduction from 50 % to 75 %)*

(29) Neither Akzo or Atofina met the conditions set out in Section C of the Leniency Notice.

3. *Significant reduction of a fine ('Section D': reduction from 10 % to 50 %)*

(30) Both Akzo and Atofina co-operated with the Commission.

(31) Atofina closely cooperated with the Commission and therefore qualified for a significant reduction in the amount of the fine as it was the second undertaking that provided the Commission with information and evidence that materially contributed to the establishment of the existence of the cartel. Additionally, Atofina did not contest the facts relied upon to establish the existence of the cartel. The information and evidence provided by Atofina was detailed and extensively relied upon by the Commission in this Decision. Atofina fulfilled the conditions set out in Section D and its cooperation is reflected in a 40 % reduction of the fine that would otherwise have been imposed.

(32) Akzo qualified for a significant reduction of the amount of the fine as it was the third undertaking that provided the Commission with information and evidence that corroborated the existence of the MCAA cartel. Akzo did not contest the facts that the Commission relied upon. The Commission concluded that Akzo fulfilled the conditions set out in Section D. The information and evidence provided by Akzo was detailed, was relied upon by the Commission and this is reflected in the 25 % reduction of the fine that would otherwise have been imposed.

Decision

(33) The following undertakings infringed Article 81 of the Treaty by allocating volume quotas, allocating customers, agreeing concerted price increases, agreeing on a compensation mechanism, exchanging information on sales volumes and prices, and, participating in regular meetings and other contacts to agree and implement the above restrictions. The following undertakings' behaviour also constituted an infringement of Article 53(1) of the EEA Agreement as from 1 January 1994.

(a) Akzo Nobel Chemicals BV, Akzo Nobel Functional Chemicals BV, Akzo Nobel Nederland BV and Akzo Nobel NV, from 1 January 1984 to 7 May 1999;

([2]) According to point 28 of the 2002 Leniency Notice, from 14 February 2002, the 2002 Notice replaces the 1996 Notice for all cases in which no undertaking has contacted the Commission in order to take advantage of the favourable treatment set out in that notice. As in this case several undertakings applied for leniency with the Commission before 14 February 2002, the 1996 Leniency Notice applies.

(b) Akzo Nobel Base Chemicals AB, Eka Chemicals AB and Akzo Nobel AB, from 15 June 1993 to 7 May 1999;

(c) Hoechst AG, from 1 January 1984 to 31 June 1997;

(d) Elf Aquitaine and Arkema SA (formerly known as Atofina SA), from 1 January 1984 to 7 May 1999;

(e) Clariant AG, Clariant GmbH, from 1 July 1997 to 7 May 1999.

(34) For these infringements, the following fines are imposed:

(a)	Akzo Nobel Chemicals BV, Akzo Nobel Nederland BV, Akzo Nobel NV, Akzo Nobel Functional Chemicals BV, Akzo Nobel Base Chemicals AB, Eka Chemicals AB and Akzo Nobel AB:	EUR 84,38 million;
(b)	Hoechst AG:	EUR 74,03 million;
(c)	Elf Aquitaine SA and Arkema SA (formerly known as Atofina SA) jointly and severally:	EUR 45,00 million;
(d)	Arkema SA (formerly known as Atofina SA):	EUR 13,50 million;
(e)	Clariant AG and Clariant GmbH jointly and severally:	EUR 0 million.

Akzo Nobel Base Chemicals AB, Eka Chemicals AB and Akzo Nobel AB shall be jointly and severally liable for payment of the fine imposed in point (a) of the first paragraph, up to an amount of EUR 50,63 million. The other Akzo companies listed in that point shall be jointly and severally liable for the full amount of the fine.

(35) The undertakings listed in point 1 above shall immediately bring their infringement to an end, insofar as they have not already done so. They shall refrain from repeating any act or conduct as the infringement found in this case, and from any act or conduct having the same or similar object or effect.