

SUMMARY OF COMMISSION DECISION**of 23 January 2008****relating to a proceeding under Article 81 of the EC Treaty and Article 53 of the EEA Agreement****(Case COMP/38628 — Nitrile Butadiene Rubber)***(notified under document number C(2008) 282)***(Only the English and German texts are authentic)****(Text with EEA relevance)***(2009/C 86/06)***1. INTRODUCTION**

- (1) On 23 January 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. CASE DESCRIPTION**2.1. Procedure**

- (2) This case was opened on the basis of an immunity application. Subsequently, on 31 January, another company, Bayer, applied for immunity from fines or, in the alternative, reduction of fines. On 27 and 28 March 2003, inspections were organised at the premises of Zeon Chemicals Europe Ltd (one of the legal entities within the Zeon group). On 27 August 2003, Zeon applied for reductions of fines under the Leniency Notice.
- (3) Several written requests for information were addressed to the undertakings involved in the anti-competitive arrangements. Request for information were further addressed to various undertakings processing Nitrile Butadiene Rubber (hereinafter 'NBR').
- (4) On 29 March 2007, the Commission informed Bayer in writing of its intention to grant Bayer a reduction of 30-50 % of the fine, pursuant to the Leniency Notice. On the same date, 29 March 2007, Zeon was informed in writing of the intention of the Commission to grant it a reduction of 20-30 % of the fine.
- (5) The Statement of Objections was adopted on 3 May 2007 and notified to all the parties by 4 May 2007. The addressees waived their right to be heard, hence, no Oral Hearing was held.
- (6) The Advisory Committee on Restrictive Practices and Dominant Positions issued a favourable opinion on 30 November 2007 and 18 January 2008.

2.2. Summary of the infringement

- (7) The product concerned, NBR, is a type of synthetic rubber used mainly in the automotive industry for fuel and oil handling hoses, seals, o-rings and water handling applications. Other industrial uses are rolling covers, hydraulic hoses, conveyor belting, and seals for all kinds of plumbing. The estimated EEA market value for NBR in 2001 was approximately € 145 million. The two undertakings involved in the infringement had an estimated market share of about 55 %.

- (8) The Decision concludes that Bayer and Zeon operated between 9 October 2000 and 30 September 2002 a cartel with a view to increasing and/or maintaining prices for NBR in the EEA market, and also exchanged information to facilitate and/or monitor the implementation of the illicit arrangements.
- (9) The involved undertakings organised two successful rounds of price increases, another attempt to raise prices in a coordinated manner failed. It is further demonstrated that the competitors maintained regular contacts aimed at agreeing on the level of prices and maximizing the chances for price increases by reassuring each other that announced price increases would be effectively carried out.
- (10) There were 9 meetings between representatives of Bayer and Zeon, in all of which they discussed and agreed prices and/or exchanged sensitive commercial information. Moreover, several preparatory of follow-up contacts over telephone occurred.
- (11) The Decision further concludes that it was established that the arrangements on price increases, although not always completely successful, were generally implemented and that their implementation was monitored by the participants in this cartel.

2.3. Addressees

- (12) The Decision is addressed to the following legal entities, which belong to the two participating undertakings (Bayer and Zeon):

(a) Bayer AG;

(b) Zeon Corporation;

(c) Zeon Europe GmbH;

(d) Zeon Chemicals Europe Ltd.

- (13) Liability of the ultimate parent company within the Zeon group is established both because of its direct participation in four of the cartel meetings and on the basis of the presumption of the exercise of decisive influence over its wholly-owned subsidiaries, which is reinforced by several additional indicia.

2.4. Remedies

2.4.1. *Basic amount of the fine*

- (14) 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.
- (15) 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 16 %.

- (16) Taking into account that the infringement lasted for almost 2 years, the variable amount is multiplied by 2. However, for the reasons explained in the section on Leniency, the duration was reduced to 0,5 for Zeon.

2.4.2. *Adjustments to the basic amount*

2.4.2.1. *Aggravating circumstances: recidivism*

- (17) At the time the infringement took place, Bayer had already been the addressee of a previous Commission decision concerning cartel activities. The Decision concludes that this justifies an increase of 50 % in the basic amount imposed on Bayer.

2.4.2.2. *Mitigating circumstances*

- (18) No attenuating circumstances have been found nor claimed.

2.4.2.3. *Specific increase for deterrence*

- (19) Taking into account the need to ensure that fines have a sufficiently deterrent effect, and in consideration of the large size of Bayer's turnover beyond the sales of goods or services to which the infringement relates, the Decision increases the fine to be imposed to this undertaking by 10 %.

2.4.3. *Application of the 10 % turnover limit*

- (20) The 10 % worldwide turnover limit provided for in Article 23(2) of Regulation No 1/2003 is not attained in respect of the fine to be imposed on any of the undertakings.

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

- (21) As mentioned in paragraph (2) above, both Bayer and Zeon filed applications for a reduction of fines under the 2002 Leniency Notice.
- (22) The Decision grants a reduction of the fine of 30 % for Bayer and 20 % for Zeon. These percentages of reduction take into account the extent to which the evidence submitted by each company represented added value, as well as the time at which this evidence was submitted. Furthermore, since Zeon was the first to have disclosed the cartel period from October 2000 to May 2002, this period was not taken in consideration in the calculation of the fine for Zeon (see paragraph (16) above).

3. **DECISION**

- (23) The following undertakings have infringed Article 81 of the Treaty and Article 53 of the EEA Agreement by participating in a single and continuous infringement of Article 81 of the Treaty and Article 53 of the EEA Agreement covering the whole of the EEA, by which they agreed and coordinated price increases, reassured each other on their intentions to apply price increases and exchanged information on pricing strategy in the market for Acrylonitrile Butadiene Rubber from 9 October 2000 to 30 September 2002.

(a) Bayer AG;

(b) Zeon Corporation;

(c) Zeon Europe GmbH;

(d) Zeon Chemicals Europe Ltd.

- (24) For the infringements referred to in Article 1, the following fines are imposed:
- (a) Bayer AG: EUR 28 870 000;
 - (b) Zeon Corporation, Zeon Europe GmbH and Zeon Chemicals Europe Ltd., jointly and severally:
EUR 5 360 000.
- (25) 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 (21) and from any act or conduct having the same or similar object or effect.
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