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Antitrust: European Commission fines animal feed phosphates producers €175 647 000 for price-fixing and market-sharing in first "hybrid" cartel settlement case

The European Commission has concluded its first settlement of a cartel case in a hybrid scenario, where both the settlement and ordinary procedures were followed. It has fined producers of animal feed phosphates a total of €175 647 000 for operating a cartel that lasted over three decades and covered a large part of the European Economic Area (EEA) territory. All but one company settled the case with the Commission and therefore received a 10% reduction each of their fine. Animal feed phosphates are chemical compounds used in feed for animals such as cattle, pigs, poultry, fish and pets.

"After the pre-stressing steel case, I am again surprised that the main producers of a vital compound for animal feed abused a substantial part of the European animal feed market for nearly 35 years." said Joaquín Almunia, Commission Vice-President in charge of competition policy, adding: "while companies that cooperate with the Commission, including under the settlement procedure, can count on immunity or a reduction of the fine, there should be no doubt about our determination to unearth and punish cartel members".

Today the Commission imposed a fine totalling €175 647 000 in its first "hybrid" cartel case. It, therefore, adopted two decisions: a streamlined settlement decision for those undertakings which have agreed to settle and admitted their participation in the cartel and, on the other hand, a standard decision for one company which decided not to settle and for which the ordinary procedure was followed.

The Commission was first informed about the cartel in 2003 by Kemira, one of the participants that applied for leniency. Today's decision establishes that the cartel existed from as early as March 1969 until February 2004, although not all producers were involved for the entire period. The cartel members operated a market-sharing and price-fixing cartel covering most of the EU and subsequently also a great part of the EEA territory. To this end, they allocated market shares, feed phosphates sales quotas and customers among themselves, and coordinated prices and sales conditions when necessary. Such coordination is by its very nature one of the most serious violations of Article 101 of the Treaty on the Functioning of the EU.

The cartel arrangements, known as the 'Club', CEPA (Centre d'Etude des Phosphates Alimentaires) or later Super CEPA, proved to be resilient and able to adapt to different industry and market conditions over the years. Throughout the whole period, the undertakings had frequent contacts and met regularly to coordinate through price monitoring and market sharing agreements at both European and country levels.

Settlement proceedings, based on Commission Regulation (EC) No 622/2008 of 30 June 2008, were initiated with all undertakings. After the Commission had informed the parties of the fines ranges, one company, Timab Industries S.A./Compagnie Financière et de Participation Roullier, decided to discontinue the settlement proceedings, becoming the only party in the ordinary procedure. As foreseen in point 32 of the Commission Settlement Notice of 2 July 2008, the fine for all addressees of the settlement decision is reduced by 10%.

The following table lists the total amounts that each group has to pay. Within each group there may be individual companies that are each liable for part or the total amount. In total, there are 13 companies concerned by the Animal Feed investigation:

	Groups	Reduction under the Leniency Notice	Reduction under the Settlement Notice	Final amount of the fine (Euro)
1.	Yara Phosphates Oy (FI) Yara Suomi Oy (FI) Kemira Oyj (FI)	100%		0
2.	Tessengerlo Chemie N.V. (B)	50%	10%	83 752 000
3.	Ercros S.A. and Ercros Industrial S.A. (ES)		10%	14 850 000
4.	Quimitécnica.com – Comércio e Indústria Química S.A (PT) José de Mello SGPS S.A. (PT)	25%	10%	2 795 000*
5.	FMC Foret S.A. (ES) FMC Chemicals Netherlands B.V. (NL) FMC Corporation (USA)		10%	14 400 000
6.	Timab Industries S.A. (FR) Compagnie Financière et de Participation Roullier ('CFPR') (FR)	5%		59 850 000

*Quimitécnica.com – Comércio e Indústria is liable for an amount of €1 750 905

In setting the fines, the Commission has taken into account the sales of the companies involved in the market concerned, the very serious nature of the infringement, the geographic scope of the cartel and its long duration.

Due to the very long duration of the cartel, the fines for some of the companies would have exceeded the legal maximum of 10% of the 2009 turnover. They were, therefore, reduced within that legal ceiling.

The Commission granted immunity to Kemira/Yara and also granted reduction of fines for cooperation under the 2002 Leniency Notice (see [IP/02/247](#) and [MEMO 02/23](#)) to Tessenderlo (50%), Quimitécnica/José de Mello (25%) and Timab Industries S.A./CFPR (5%).

Two of the undertakings have invoked their 'inability to pay' under point 35 of the 2006 Guidelines on fines. These applications have been thoroughly assessed on the basis of financial statements for recent years, projections for the current and coming years, ratios measuring the financial strength, profitability, solvency, liquidity, and relations with outside financial partners and with shareholders. The Commission also examined the social and economic context of each applicant and assessed whether its assets would be likely to lose significant value if it were to be liquidated as a result of the fine. As a result of this assessment, the Commission accepted one of the applications and granted a reduction of 70% of the fine.

Background

The Commission's investigation started with unannounced inspections in February 2004. A bundle of six statements of objections were sent to the companies involved in November 2009.

The cartel settlement procedure is based on Articles 7 and 23 of Regulation 1/2003 (the antitrust modernisation Regulation).

Companies that are first to reveal cartels to the Commission enjoy immunity from fines under the Commission's 2002 Leniency Notice. Companies that cooperate in the investigation can receive significant reductions.

The assessment of fines is based on the Commission's Fines Guidelines, which were last updated in 2006.

For more information on the Commission's action against cartels, see [MEMO/10/348](#)