Recent Cartel Findings In The European Union

Cartels occur where undertakings who would otherwise be competitors, come together to conclude agreements or establish practices to their benefit, and to the detriment of competition. Rather than bear the risks of unhindered competition, some undertakings choose to set terms favourable to all members of the cartel. An example of this is the setting of prices at which or the markets in which the members of the cartel are permitted to sell their products. Were such practices to be permitted, they could easily result in numerous adverse effects in a market, including artificially inflating prices for consumers and leading to a stifling of innovation and technical development as the absence of competition causes businesses to stagnate and lose their appetite to innovate, while there are guaranteed profits.

It is for this reason, that such cartels are prohibited by Competition laws around the world, including Singapore and the European Union. Article 81 of the Treaty establishing the European Community, and the legislation enacted to support it, prohibits agreements or concerted practices between undertakings that have as their object or effect the prevention, restriction or distortion of competition in the market. In Singapore, the relevant provision is section 34 of the Competition Act. This prohibition covers a wide range of activities by which competitors attempt to eliminate competition. Some of these examples can be found in the recent decisions of the European Commission. For example, several of the cases, including the Industrial Thread and the Italian Tobacco decisions concerned market sharing activities, whereby those firms colluding had allocated each other exclusive areas of operation. In addition, virtually all the decisions demonstrate competitors agreeing to set prices favourable to all cartel members, as well as revealing some of the less common, but equally harmful offences, such as rigging bids and exchanging information regarding sales. Some further prohibited actions, not, however, found in recent decisions concern ‘tying’ (whereby parties conspire to require customers to accept additional products which have no commercial connection to their original purchase) and colluding to limit or control the development of new technology in the market.

The recent fines imposed on cartel activities in the European Union, demonstrate the severity of the offences committed (for example, in the Industrial Bags case, the cartel had fixed prices at an artificially high rate for over twenty years), and the determination of the European Commission to eradicate such harmful practices from the single market.
In addition, the fines and penalties demonstrate the operation and effectiveness of the European Commission’s leniency programme. Under the leniency programme (introduced in its present form in 2002), cartel members who inform on prohibited actions to the European Commission receive conditional immunity guaranteeing them a 100% reduction in any fines imposed on the cartel members. The previous programme, introduced in 1996 had been more restrictive and had only permitted immunity if the information provided was decisive and the cartel member had not been an instigator in the cartel’s formation. Singapore has a similar programme. This is contained in the Guidelines on Lenient Treatment For Undertakings Coming Forward With Information On Cartel Activity Cases.

The purpose of such a programme (which had already shown successes in US enforcement) is to encourage cartel members to come forward and report on cartels, free of the risk of the imposition of a fine. As the possibility of total immunity is available only to the first firm who reports on cartel activities, there is an attempt by the European Commission to encourage a ‘race to the door’, whereby cartel members strive to be the first member to report on the others, in order to escape penalties. In addition, firms who cooperate and provide evidence representing ‘significant added value’ to investigations into cartel activities, are rewarded with reductions in fines. The recent European Commission decisions demonstrate the effectiveness of the programme, as many cartels were only exposed (or at least the European Commission was only able to bring about enforcement actions) because of ‘whistle blowing’ by cartel members.

Cartels are viewed as a scourge in the single market, as actions such as price fixing and market sharing have the potential to undo the gains in economic efficiency and productivity of having the free movement of goods, services, workers and capital across the European Union. As cartels represent the most damaging of all anti-competitive offences, it is not surprising that the European Commission takes seriously the enforcement of prohibitions against such groups, and the imposition of high penalties. The recent European Commission decisions on cartels demonstrate this, as well as demonstrating the effectiveness of the European Union Leniency scheme, in exposing and punishing cartels.

The Table below shows some recent European Commission enforcement actions against cartel members. For an economic perspective of the principles associated with how damages are assessed in cartel cases, see the paper by Niles von Hinten-Reed of CRA International at this link:


Rajah & Tann will be very happy to provide you with any further information on or discuss the issues raised in this Update.
### RECENT EUROPEAN COMMISSION DECISIONS REGARDING CARTELS (2005/2006)

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<th>Case Name</th>
<th>Parties Involved</th>
<th>Cartel Activities</th>
<th>Penalties</th>
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| COMP/38.620 - Hydrogen Peroxide | • Akzo Nobel  
• Edison  
• FMC/ Foret  
• Kemira  
• Snia  
• Solvay  
• Degussa  
• Total/ Elf  
• Aquitaine/ Arkema | • Exchanging important confidential information regarding the EEA hydrogen peroxide (HP) market, between 1994 and 2000  
• Fixing and monitoring target prices in the EEA HP market, between 1994 and 2000  
• Allocating market shares in the EEA HP market, between 1994 and 2000 | • Combined fine of 388.128 million Euros imposed  
• Repeat offenders Solvay and Edison had their fines increased by 50%  
• Degussa escaped the fine and was granted full immunity for providing information about the cartel |
| COMP/38.443 - Rubber Chemicals | • Flexsys  
• Bayer  
• Crompton  
• General Quimica (involved in the cartel for a shorter period of time) | • Exchanging information about the price of rubber chemicals in the EEA, from at least 1996 to 2001  
• Agreeing to raise prices for rubber chemicals in the EEA, at least between 1996 and 2001 | • Combined fine of 75.86 million Euros imposed  
• Flexsys exposed the cartel in 2002 and received full immunity (100% reduction in fine) |
| COMP/38.354 - Industrial Bags  | • UPM-Kymmene Oyj  
• Armando Álvarez SA  
• BPI  
• Bernay Film Plastiqu  
• Bischof + Klein FR  
• Bischof + Klein GmbH  
• Bonar Technical Fabr  
• Cofira-Sac SA  
• Combipac BV  
• FL Ssmith & Co A/S  
• FLS Plast A/S  
• Fardem Packaging BV  
• Groupe Gascogne | • Dividing the single market by geographical area  
• Agreeing to fix sales prices in Germany, the Benelux countries, France and Spain, for over 20 years  
• Exchanging information on sales volumes  
• Rigging bidding processes for tenders to supply industrial bags | • BPI brought the cartel to the European Commission’s attention (received full immunity, 100% reduction in fine)  
• Combined fine of 290 million Euros imposed  
• Two other producers received reduction in fines for partial cooperation |
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| COMP/38.281 -   | • Deltafina                                           | • Fixing the price of raw Italian tobacco between 1995 and 2002  
• Establishing suppliers exclusive to each purchaser between 1995 and 2002  
• Rigging the outcomes of public auctions for the sale of tobacco between 1995 and 1998 | • Combined fine of 56 million Euros imposed  
• Mindo and Transcatab received fine reductions of 50% and 30% respectively for their cooperation  
• Deltafina was initially granted conditional immunity, however that was reversed after it revealed its cooperation with the European Commission to other cartel members before the European Commission had chance to conduct surprise inspections |
| Italian Tobacco | • Dimon (now Mindo)                                  |                                                                                                                                                                                                                  |                                                                                                                                                                                                           |
|                 | • Transcatab                                          |                                                                                                                                                                                                                  |                                                                                                                                                                                                           |
|                 | • Romana Tabacchi                                    |                                                                                                                                                                                                                  |                                                                                                                                                                                                           |
| Monochloroacetic Acid | • Akzo Nobel                                       | • Setting volume production quotas in the EEA between 1984 and 1999  
• Agreeing to coordinate price increases between 1984 and 1999  
• Exchanging information on prices and sales | • Combined fine of 216.910 million Euros imposed  
• Clariant exposed the cartel, received immunity (received a 100% fine reduction)  
• Akzo and Atofina also cooperated and |
|                 | • Arkema (Atofina)                                   |                                                                                                                                                                                                                  |                                                                                                                                                                                                           |
|                 | • Hoechst                                             |                                                                                                                                                                                                                  |                                                                                                                                                                                                           |
|                 | • Clariant                                            |                                                                                                                                                                                                                  |                                                                                                                                                                                                           |
### COMP/38.337 - Industrial Thread

- Ackermann Nähgarne GmbH
- Amann und Söhne GmbH
- Barbour Threads Ltd
- Belgian Sewing Thread N.V.
- Bieze Stork B.V.
- Bisto Holding B.V.
- Coats Ltd
- Coats UK Ltd
- Cousin Filterie SA
- Dollfus Mieg et Cie SA
- Donisthorpe & Company Ltd
- Gütermann AG
- Hicking Pentecost plc
- Oxley Threads Ltd
- Perivale Gütermann Ltd
- Zwicky & Co AG

#### Cartel Activities
- Dividing the market for industrial customers of industrial thread in the Benelux and Nordic countries between January 1990 and September 2001
- Dividing the UK market for industrial customers of industrial thread between October 1990 and September 1996
- Dividing the market for automotive customers of industrial thread in the EEA, between May 1998 and May 2000

#### Penalties
- Combined fine of 43.49 million Euros imposed
- Some immunities were granted, although no firm was granted full immunity
- As regards the cartel operating in the UK market between 1990 and 1996, there was insufficient evidence to impose any fines

- received reductions of 25% and 40% respectively