Press and Information Division

PRESS RELEASE N1 58/03

9 July 2003

Judgments of the Court of First Instance in Joined Cases T-220/00, T-223/00, T-224/00 and T-230/00

Cheil Jedang Corporation and Others v *Commission of the European Communities*

A CARTEL ON THE LYSINE MARKET GIVES THE COURT OF FIRST INSTANCE AN OPPORTUNITY TO CLARIFY THE CRITERIA FOR FIXING THE AMOUNT OF FINES

The Court makes a reduction of EUR 7 316 760 in the fines imposed by the European Commission

Lysine is the principal amino acid used for nutritional purposes in animal feedstuffs. Synthetic lysine is used as an additive in feedstuffs which contain insufficient natural lysine, for example cereals, which enables nutritionists to formulate protein-based diets which meet the dietary requirements of animals.

In 1995, following a secret investigation by the Federal Bureau of Investigation, searches were carried out in the United States at the premises of several companies operating in the lysine market. Following those investigations, Archer Daniels Midland, Kyowa Hakko Kogyo, Sewon, Cheil Jedang and Ajinomoto were charged by the American authorities with having formed a cartel to fix lysine prices and to allocate sales of lysine between June 1992 and June 1995.

In July 1996 Ajinomoto offered to cooperate with the Commission in proving the existence of a cartel in the lysine market and its effects in the European Economic Area (EEA). The Commission sent to the undertakings requests for information concerning their conduct on the amino acids market and the meetings of the cartel.

By decision of 7 June 2000 the Commission found that **there had been a series of agreements on prices, sales volumes and the exchange of individual information on sales volumes of synthetic lysine, covering the whole of the EEA**, from July 1990 to June 1995.

In that decision, the Commission applied the method set out in the **Guidelines for calculating fines imposed pursuant to Article 15(2) of Council Regulation No 17**.

The Commission found, first, that the undertakings had all committed a **very serious infringement**. However, it applied **differential treatment** to them, taking the view, on the basis of their total turnover during the last year of the period of the infringement, that there was a considerable disparity of size between the undertakings. **After considering the gravity of the infringement, the Commission then took into account its duration and thus determined the basic amount of the fine** for each of the undertakings. That amount was increased and/or reduced to take account of **aggravating or mitigating circumstances**, such as a role as ringleader or, conversely, a passive role played by an undertaking in the cartel.

In its decision, the Commission imposed total fines of around EUR 110 million on the companies participating in the cartel.

In their actions before the Court of First Instance, Archer Daniels Midland, Kyowa Hakko Kogyo, Daesang-Sewon and Cheil Jedang complained of the procedure adopted in fixing the fine. In particular, two of them objected to the fact that they had already been fined in the United States for their participation in that same world-wide cartel, a fact which the Commission had not taken into account.

The Court of First Instance finds that **the principle of *non bis in idem*, according to which a person who has already been tried may not be prosecuted or fined for the same conduct, cannot be applied** in the present case, because the procedures initiated and fines imposed by the Commission, on the one hand, and by the authorities of a non-Member State, in this case the United States, on the other, do not pursue the same objectives. Furthermore, although fairness requires the Commission to take account, when fixing the amount of a fine, of penalties already imposed on the undertaking in question for infringements of the cartel law of a Member State, the Court considers that there is no such obligation on the Commission where the previous fines were imposed by authorities or courts of a non-Member State.

The Court finds, however, that the Commission did not apply the reductions granted on account of mitigating circumstances in the same way to all the undertakings concerned.

It finds that **the percentage increases or reductions adopted on account of aggravating or mitigating circumstances must be applied to the basic amount of the fine**, determined by reference to the gravity and duration of the infringement, and not to the amount of an increase previously applied in respect of the duration of the infringement or to the figure resulting from the first increase or reduction adopted to reflect an aggravating or a mitigating circumstance. That method of calculating the fines ensures equal treatment between the various undertakings participating in one and the same cartel.

Number of the case	Name of the applicant	Amount of fine imposed by the Commission (Decision 2001/418/EC) (Euros)	Judgment of the Court of First Instance (Euros)
T-220/00	Cheil Jedang Corporation	12 200 000	reduction of the fine to 10 080 000
T-223/00	Kyowa Hakka Kogyo Co. Ltd Kyowa Hakka Europe GmbH	13 200 000	original fine upheld
T-224/00	Archer Daniels Midland Company Archer Daniels Midland Ingredients Ltd	47 300 000	fine reduced to 43 875 000
T-230/00	Daesang Corporation Sewon Europe GmbH	8 900 000	fine reduced to 7 128 240
	Total	81 600 000	74 283 240

Note: An appeal limited to questions of law may be brought before the Court of Justice of the EC against the decision of the Court of First Instance within two months of notification of the judgment.

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Available in French, English and German

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at around 15.00 hours today.

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