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U.S. BUSINESS NEWS

Price-Fixing Investigations Sweep Chemical Industry

Corporate Whistle-Blowers Win Prosecutors' Amnesty, Help Widen Scope of Probes

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A two-year-old price-fixing probe that began in an obscure corner of the chemical industry has snowballed into a series of international investigations involving industry giants such as **Dow Chemical** Co., **DuPont** Co. and **Bayer** AG.

The widening web of cases arose from aggressive use by prosecutors of amnesty grants for whistle-blowers, which has rivals competing to be first to report wrongdoing and avoid criminal penalties. U.S. and European investigators currently are looking into alleged conspiracies to fix prices in a half-dozen chemicals used in plastics, rubber and synthetic materials in the U.S., Canada, Europe and Japan. The commodities are used in industries from automobiles to furniture and flooring.

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See the five largest fines that stem from recent antitrust investigators.

At least four grand-jury investigations stemming from the investigations currently are under way in San Francisco. Among the latest markets under scrutiny are a widely used plastic, urethane, and a synthetic rubber known as neoprene, lawyers close to the case said.

In pursuing the alleged conspiracies, U.S. and European prosecutors are showing that granting amnesty from criminal charges to the first company to blow the whistle on a conspiracy can be a potent weapon against cartels. Companies granted amnesty can escape huge fines and sometimes avoid jail time for executives.

So far, the inquiry has resulted in one guilty plea and a $50 million fine for UniRoyal and its parent, **Crompton** Corp., of Middlebury, Conn., in the case that initially spurred the investigations. In a plea agreement announced in April, Crompton acknowledged conspiring with others to artificially boost prices of chemicals used to make rubber, a $1 billion annual market, between 1995 and 2001. It had been fingered for illegal conduct by a rival that had gone to the Justice Department.

Those initial charges, though, are now viewed as "just the tip of the iceberg" as U.S. and European investigators turn their attention to other companies and new markets, a defense lawyer close to the investigations said last week. Crompton brought other allegations of price-fixing to the attention of U.S. and European investigators, gaining criminal immunity in those markets, lawyers close to these cases said. Other companies followed suit, racing to be first to report more alleged price-fixing in exchange for lenient treatment or amnesty.

Consequently, the original rubber-chemicals investigation that began two years ago has led to new federal investigations in the markets for widely used plastics, plastic additives and synthetic rubbers, with broad industrial uses and combined sales of billions of dollars a year. Civil suits alleging overcharges are pending in U.S. courts in San Francisco, Pittsburgh, New York and Hartford, Conn., naming most major chemical makers.

Crompton and Bayer have applied for amnesty and are cooperating with investigators. Dow and DuPont have disclosed that they are also cooperating with federal officials, and have filed settlement papers in the neoprene case. Other companies that have been named in some civil lawsuits, including **Exxon Mobil** Corp., apparently aren't a focus of the U.S. inquiry, lawyers close to the case said.

Justice Department officials wouldn't give details of their continuing chemical-industry investigations. But Hewitt Pate, the antitrust chief, said in an interview that the Crompton plea "is the first of more to come," due in large part to the amnesty program. "It encourages violators to turn on each other," he said.

Such ripple effects have been seen in other industries as well. In an amnesty deal in January, a company based in Norway that was targeted for possible price-fixing in adhesive labels told U.S. and European prosecutors of an alleged conspiracy in the larger market for magazine paper. A half-dozen global paper makers were raided simultaneously last month by U.S. and European antitrust enforcers as part of a continuing investigation.

Prosecutors have embraced amnesty as an antitrust tool over the last decade, and since 1997 it has resulted in scores of convictions and more than $2 billion in fines, according to the Justice Department. Last month, Congress passed legislation making amnesty even more attractive. The bill boosts fines and jail time for corporate price-fixing, but it spares companies the threat of triple damages in civil suits if they have won amnesty from the government in related criminal cases. The Justice Department said it also has made the amnesty program more effective by adding so-called amnesty-plus incentives for companies that bring new conspiracies to light -- and penalty-plus, raising fines for those that do not.

Increasingly, the race for amnesty among members of unraveling cartels is becoming a global phenomenon. In a recent speech in Brussels, the Justice Department's Mr. Pate praised the European Union's own expanded amnesty program, which he said "has led to a surge in parallel amnesty applications to both the [U.S. and EU] and resulted in scores of convictions, hundreds of millions of dollars in fines, and ... the dismantling of numerous international cartels that preyed on business and consumers in Europe, the U.S., and around the world."

The largest single cartel case so far was the 1999 prosecution of a global vitamin cartel. After criminal price-fixing charges were filed, companies paid nearly $1 billion in federal fines and $1 billion in European fines.

Inevitably, government charges are accompanied by civil lawsuits filed by victimized companies often seeking huge damage awards, which can be tripled under U.S. antitrust law. Even companies that have been granted amnesty from federal criminal prosecution might be sued by private parties. In the vitamin cartel case, for instance, companies ended up paying an additional $2 billion to settle civil suits.

In the chemical industry, a number of civil suits already have been filed by lawyers seeking class-action status on behalf of big corporate buyers of industrial compounds, even before the government files criminal charges, which aren't likely before late this year. The latest was filed last month in U.S. District Court in Washington, alleging that executives of a Dow-DuPont joint venture met secretly with global rivals to fix prices and carve up sales of neoprene, which is widely used in electronics and automobiles.

In the neoprene investigation, Bayer already had won the race for amnesty from the Justice Department, shielding the company from criminal charges and fines. But in the parallel civil suit, Dow and DuPont beat Bayer to the punch, reaching agreement with lawyers for the companies that were overcharged. They are providing evidence against others.

By being first to cooperate in the civil case, Dow and DuPont are likely to avoid paying triple damages, unlike other conspirators who may be drawn in. In recent securities filings, the two disclosed the joint venture would take a $150 million charge to cover civil settlements and anticipated criminal fines. Under terms of an agreement, DuPont took the charge in its first quarter.

Now pending before a federal judge in Washington, the Dow-DuPont settlement would pay purchasers of neoprene $36 million, representing alleged overcharges between 1999 and 2003. Other members of the alleged conspiracy could face tripled damages of more than $100 million.

"Once one party got amnesty, these other cases began falling like dominoes," said a defense lawyer close to the federal investigations. Indeed, because of the powerful incentive of amnesty, alleged conspirators are quickly turning

on each other once price-fixing is exposed, plaintiffs' lawyers say.

"There's no honor among thieves," said Michael Hausfeld, a Washington lawyer whose firm is leading several of the private class-action lawsuits on behalf of companies that say they were overcharged for neoprene and other chemicals.

Prosecutors said the best information on how a conspiracy functions comes from former members who are seeking amnesty. In the investigation of price fixing in the market for the synthetic rubber known as EPDM, a $1.6 billion annual market, agents have been given details on individual meetings, e-mails and internal documents charting how the alleged conspirators kept manufacturing plants closed and coordinated price increases in what they called the "$ zone," meaning the U.S. and Canada.

Officials also were given evidence that conspirators kept plants at two-thirds capacity even as they pushed through price increases based on tight supply, people close to the investigation said.

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Ten years ago, the largest corporate fine ever imposed for a single Sherman Act count was $5 million. Fines of $10 million or more have since been imposed against 40 corporate defendants and one individual, in part thanks to aggressive use of amnesty for whistle-blowers. Below are five large fines that stemmed from recent antitrust investigations

COMPANY	DATE	INDUSTRY	FINE
F. Hoffman-La Roche	May 1999	Vitamin	$500 million
BASF	May 1999	Vitamin	$225
SGL Carbon	May 1999	Graphite electrodes	$135
Mitsubishi	May 2001	Graphite electrodes	$134
UCAR International	April 1998	Graphite electrodes	$110

Source: Justice Department

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