Price-Fixing Investigations Sweep Chemical Industry

Prosecutors’ Use of Amnesty For Some Whistle-Blowers Helps Widen Scope of Probes

By JOHN R. WILKIE

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 resulted in numerous new cases, a tortuous process 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.

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 1996 and 2001. It had been fingered for illegal conduct by a rival that had gone to the Justice Department.

These 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 these markets, lawyers close to these cases said. Other companies followed suit, racing to be first to report more alleged price-fixing in exchange for leniency in 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 disclosed that they have applied for amnesty in connection with the investigations. Dow and Dupont have disclosed that they are 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, Please Turn to Page A6, Column 4
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 $560 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 $35 million, representing alleged overcharges between 1999 and 2003. Other members of the alleged conspiracy could face tripled damages of more than $160 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 EPM, 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.