Recent cartel decisions

Josefine HEDERSTRÖM, Lars ALBATH and Chris MAYOCK (1)

In the period September to December 2007, the Commission adopted five cartel decisions and fined a number of undertakings a total of €1 318 million for their participation in cartels. The five decisions are Fasteners (2), Bitumen Spain (3), Professional Videotape (4), Flat Glass (5) and Chloroprene Rubber (6). Three of the cases, Fasteners, Professional Videotape and Flat Glass, were initiated by the Commission ex officio. In the three most recent decisions, Professional Videotape, Flat Glass and Chloroprene Rubber, the Commission applied for the first time its 2006 Guidelines on fines (7). The Commission has sent a signal that severe penalties are likely to be imposed on repeat offenders, cartel leaders and undertakings that obstruct the Commission's investigation.

Cartel proceedings initiated ex officio

The cartel decisions adopted between September and December 2007 clearly demonstrate that the Commission is committed to detecting and taking action against cartels also on an ex officio basis — without being prompted by an immunity applicant. Thus, in both Fasteners and Professional Videotape the Commission started the investigations on its own initiative on the basis of information in its possession. In the Professional Videotape case, surprise inspections took place in May 2001 at the premises of Sony’s, Fuji’s and Maxell’s European subsidiaries. In the Fasteners case inspections were carried out at the premises of several Community producers of hard and soft haberdashery in November 2001.

The Flat Glass case demonstrates the benefits of enhanced cooperation between the Commission and the national competition authorities, as the Commission’s investigation was triggered by information provided by the competition authorities of several Member States. Surprise inspections were carried out in February and March 2005 at the premises of Asahi’s and Guardian’s European subsidiaries, as well as at the premises of Pilkington, Saint-Gobain and the European Association of Flat Glass Producers.

In all three cases, the inspections prompted cartel members to subsequently apply for immunity or reduction of fines under the Commission’s leniency programme.

Core aspects of the cartels

Products

The decisions covered cartels relating to various types of products, including products in everyday use purchased by a large number of consumers.

The Fasteners decision covered four different cartels. These related to various fasteners such as zips, snap buttons and rivets used in the leather and garment industries and also the machines attaching the fasteners.

The Flat Glass cartel covered four categories of unprocessed glass: float glass, low-emissivity glass, laminated glass and unprocessed mirror glass for use in buildings.

Chloroprene Rubber is a synthetic rubber capable of elastic deformation under stress and returning to its previous size without permanent deformation. It is mainly used in the rubber industry for the production of hoses, v-belts and power transmission belts, as adhesive in the shoe and furniture industry and as latex for the production of diving equipment, condoms and the inner soles of shoes.

(1) Directorate-General for Competition, Directorate G (Cartels). The content of this article does not necessarily reflect the official position of the European Commission. Responsibility for the information and views expressed lies entirely with the authors.


The cartel in the *Bitumen Spain* decision covered bitumen used for road construction without further processing (penetration bitumen). Bitumen is a by-product obtained during the distillation of oil and is mainly used for the production of asphalt, where it serves as an adhesive to bind stones together.

The *Professional Videotape* cartel related to a sector in decline: videotapes used by TV stations and independent producers of TV programmes and advertising films.

**Nature of the infringements**

The Commission found the cartel activities in all cases to be very serious infringements of EC Treaty anti-trust rules. There were various arrangements, all of which constituted classic cartel behaviour such as price fixing, coordination of price increases, customer and market allocation, monitoring of implementation and exchange of sensitive commercial information.

**Geographic scope and duration**

The geographic scope of the infringements in the decisions varied. One cartel (*Bitumen Spain*) covered a single Member State, whereas in *Professional Videotape*, *Flat Glass* and *Chloroprene Rubber* the cartels covered the entire EEA. EU-wide infringements were found to have taken place for three of the cartels in the *Fasteners* decision. The fourth *Fasteners* cartel was world-wide.

The duration of the cartels also varied. The shortest cartel was the *Flat Glass* cartel (13 months). The cartel with the longest duration was one of the *Fasteners* cartels: between 1977 and 1998 Prym and Coats agreed to share the haberdashery market between themselves (a cartel lasting 21 years).

**The fines**

The Commission applied the 1998 Guidelines on fines (8) to calculate the fines in the *Fasteners* and *Bitumen Spain* decisions. *Professional Videotape* was the first Commission anti-trust decision where the Commission applied the 2006 Guidelines on fines, followed by the *Flat Glass* and *Chloroprene Rubber* decisions. In all cases reductions of fines were granted under the Leniency Notice to those undertakings which cooperated with the Commission in the establishment of the facts.

Under the new method in the 2006 Guidelines, the fines better reflect the overall economic significance of the infringement as well as the share of each company involved. The fines in the *Flat Glass* case (€487 million) mirror the size of the cartelised sector in that case (7). Although the infringement period was short (13 months), the fines were at the time of the adoption of the decision the fifth highest the Commission had ever imposed for a single infringement.

In applying both the 1998 and the 2006 Guidelines on fines the Commission penalised particularly reprehensible conduct. The Commission increased the fines for cartel leaders, for undertakings that hampered the Commission’s investigation and for repeat offenders.

The decision in *Bitumen Spain* shows that cartel leaders are likely to have the level of their fines increased; the Commission increased the fines by 30% for Repsol and Proas (a subsidiary of Cepsa) for their leading role.

By increasing the fine for Sony by 30% in the *Professional Videotape* case, the Commission is sending a clear message that it does not tolerate companies hampering its investigations and that it will impose severe penalties for obstruction. During the inspection a Sony employee refused to answer oral questions asked by the Commission’s inspector, in breach of Sony’s obligation to answer. Another Sony employee was found to have shredded documents during the inspection.

The fines for ENI and Bayer were increased by 60% and 50% respectively in *Chloroprene Rubber* because they had already been fined several times for cartel activities in previous Commission decisions. Competition Commissioner Neelie Kroes commented: ‘It is particularly disappointing that the rubber industry has still not learned its lessons about avoiding cartels. I find it very difficult to understand how shareholders and board members can tolerate such illegal behaviour.’

---


(7) In the *Flat Glass* case, the total sales (to independent customers) in the EEA of the products concerned amounted to €1 700 million in 2004. The combined share of the cartel members was 80 percent.