

Commission imposes the highest-ever cartel fine (more than EUR 1.3 billion) on four car glass manufacturers

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On 12 November 2008 the Commission adopted a decision and imposed fines totalling EUR 1 383 million on four manufacturers of car glass. The addressees of the decision were the Japanese firm Asahi Glass Company (AGC), the French group Saint-Gobain, UK-based Pilkington and Soliver from Belgium. These four companies participated in a single and continuous infringement of Article 81 of the EC Treaty and Article 53 of the EEA Agreement between early 1998 and early 2003. The Commission started the cartel investigation on its own initiative (*“ex-officio”*) following a tip-off from an anonymous source.

The product

Automotive glass or car glass is made from float glass, which is the basic flat glass⁽³⁾ product category. The automotive products consist of different glass parts such as windscreens, sidelights (windows for front and back doors), backlights (rear window), quarter lights (back window next to the rear door window), and sunroofs. The glass parts can moreover be tinted in different colour grades as opposed to clear glass. “Privacy” glass, or “dark tail” glass, is a specific category of tinted glass which reduces light and heat transmission inside the car and was also concerned by the illegal agreements and/or concerted practices covered by the decision. The market value of car glass delivered to car manufacturers in the EEA was in excess of EUR 2 billion in 2007.

The infringement

The anti-competitive practices essentially consisted in allocating supply contracts with a view to keeping their respective market positions as stable as possible. The three leading European car glass producers AGC, Saint-Gobain and Pilkington shared customers by allocating contracts for the supply of car glass parts/glass pieces for new and existing car models for which production was either planned or ongoing as well as for original equipment replacement parts/glass pieces.

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⁽²⁾ 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.

⁽³⁾ Flat glass was the subject of another cartel decision adopted by the Commission in November 2007 (see Competition Policy Newsletter 2008/1, p. 49), involving Saint-Gobain, AGC, Pilkington and Guardian.

Soliver’s participation in this collusive scheme could be established as from November 2001.

In order to allocate the contracts, the car glass suppliers exchanged price and other sensitive information and coordinated their pricing and supply policies, which allowed them to take concerted decisions regarding their responses to requests for quotations (RFQs) issued by car manufacturers and also to influence, to a large extent, the choice of supplier or, in the case of multiple sourcing, suppliers for any given contract or any given car sets or car glass pieces. The suppliers’ coordinated actions were designed to maintain overall stability of their respective market positions for the purposes of the allocation of car glass pieces to be supplied to car manufacturers. The suppliers therefore closely monitored their market shares individually and jointly in relation to actual supply as well as future supply for various vehicle models not only per vehicle account but also globally. Where necessary, correcting measures were sought by the competitors in an attempt to ensure that on balance the overall supply situation at European level was in line with the envisaged allocation. The cartel covered the whole EEA territory.

Fines

In accordance with the 2006 Guidelines on fines, in assessing the gravity of the infringement the Commission took account of all relevant circumstances, in particular the gravity and duration of the infringement, which are the two criteria explicitly referred to in Regulation (EC) No 1/2003, as well as the value of each undertaking’s sales of goods to which the infringement directly or indirectly related in the geographic area concerned within the EEA.

Relevant sales

On the basis of the principles laid down in the Guidelines, the basic amount is normally determined as a proportion of the value of the sales of the relevant product made by each undertaking in the relevant geographic area during the last full business year of the infringement. In view of the particularities of this case, the basic amount was calculated on the basis of an average of the sales during the infringement period, normalised to one year, rather than on the basis of the last full business year of each undertaking’s participation in the infringement.

In particular, the Commission has, in line with the 2006 Guidelines on fines, applied a more calibrated approach and considered the fact that in the first two and a half years, from March 1998 to the middle of 2000, it had direct evidence of cartel activity for only some of the car manufacturers with production capacity in the EEA. While this does not mean that other car manufacturers were not the subject of cartel discussions in the first two and a half years, the Commission, in view of the particularities of this case, has taken account of those two and a half years as a “roll-out phase” during which the cartelists only progressively developed their collusive behaviour towards all car manufacturers. Consequently, the Commission reduced the weight of the roll-out period between the beginning of the infringement in 1998 and 30 June 2000.

Similarly, the Commission reduced the weight of the final stage of the cartel from September 2002, when the important player Pilkington exited the cartel, to March 2003 by only taking account of each car glass supplier's value of sales to those car manufacturers for which there is direct evidence in the Decision of cartel arrangements.

Final amount

In determining the fine, the Commission considered the fact that at the time the infringement took place, Saint-Gobain had already been the addressee of two previous Commission decisions concerning cartel activities which are relevant as aggravating circumstances. This justified an increase of 60% in the

basic amount of the fine to be imposed on Saint-Gobain, resulting in a total fine for Saint-Gobain of EUR 896 million.

With regard to Soliver, the ceiling of 10% of turnover pursuant to Article 23(2) of Regulation No 1/2003 was attained. Its fine was therefore limited to EUR 4.396 million.

AGC and its European subsidiary AGC Flat Glass Europe (formerly Glaverbel) filed an application under the 2002 Leniency Notice. AGC cooperated fully with the Commission and provided evidence, which represented significant added value, to help expose the infringement. The Commission, therefore, granted AGC a 50% reduction of the fine, to EUR 113.5 million.

The resulting fines of EUR 1 383 million are the highest cartel fines the Commission has ever imposed, both for an individual company (EUR 896 million on Saint-Gobain) and for a cartel as a whole. The final amount of the fine reaffirms the Commission's determination to take robust action against cartel arrangements which severely affect consumers and businesses. The unprecedented level of the fines imposed in this case gives a clear signal to all firms of the risks that they face if they enter into price-fixing and/or market-sharing agreements. Such arrangements not only harm consumers but, in this case, had an impact on the entire car manufacturing sector, an industry which has been particularly hard-hit by the current financial crisis.