Summary of Commission Decision
of 12 November 2008 (1)
relating to a proceeding under Article 81 of the Treaty establishing the European Community and Article 53 of the EEA Agreement
(Case COMP/39.125 — Car glass)
(Only the English, French and Dutch texts are authentic)
(2009/C 173/08)

I. INTRODUCTION

1. On 12 November 2008, the Commission adopted a decision relating to a proceeding under Article 81 of the EC Treaty. In accordance with the provisions of Article 30 of Council Regulation (EC) No 1/2003, the Commission herewith publishes the names of the parties and the main content of the decision, including any penalties imposed, having regard to the legitimate interest of undertakings in the protection of their business secrets.

2. A non-confidential version of the decision is available on the Directorate-General for Competition’s website at the following address: http://ec.europa.eu/competition/antitrust/cases/index.html

II. CASE DESCRIPTION

1. Procedure

3. This case started as an ex officio investigation. Inspections were carried out on 22 and 23 February 2005 at the premises of companies belonging to the Glaverbel (Asahi’s subsidiary, recently renamed AGC Flat Glass Europe), Saint-Gobain, Pilkington and Soliver groups. On 15 March 2005, the Commission carried out a second round of inspections at the premises of Saint-Gobain and Pilkington. In between the two rounds of inspections, on 22 February and 9 March 2005, Glaverbel and Asahi respectively applied for immunity from fines or, in the alternative, reduction of fines.

4. Several written requests for information were addressed to the undertakings involved in the anti-competitive arrangements. The Commission rejected Asahi’s and Glaverbel’s request for immunity under point 8 of the Leniency Notice and informed them that it intended to grant them a reduction of 30-50 % of any fines.

5. The Statement of Objections was adopted on 18 April 2007 and notified to the parties. An oral hearing was held on 24 September 2007. All four groups of companies participated in the hearing.

6. The Advisory Committee on Restrictive Practices and Dominant Positions met on 1 July and on 7 November 2008 and issued a favourable opinion (2).

2. Summary of the infringement

7. Automotive glass or carglass is made from float glass, which is the basic flat glass product category. The automotive products consist of different glass parts such as windscreen, sideldight (windows for front and back doors), backlights (rear window), quarter lights (back window next to 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.

8. The decision concerns the supply of carglass for first assembly or replacement to manufacturers of light vehicles, in particular passenger cars and light commercial vehicles, the so-called ‘original equipment’ market (OE-market). Customers were basically all major groups of car manufacturers with European production. There are very few global groups manufacturing carglass, among them AGC, Pilkington and Saint-Gobain, which are also by far the three leading suppliers in Europe. Other suppliers like Soliver have a rather regional footprint.

9. Competitive conditions for the supply of carglass to car manufacturers are homogenous at EEA level. Therefore, the OE carglass market is considered to be EEA-wide. The total sales of carglass in the EEA amounted to more than EUR 2 billion in 2002, that is the last full year of the infringement.

10. The addressees referred to below participated in a single and continuous infringement of Article 81 of the Treaty and Article 53 of the Agreement on the European Economic Area (hereinafter ‘EEA Agreement’). The infringement consisted in concerted allocation of contracts concerning the supply of carglass for all major car manufacturers in the EEA, through coordination of pricing policies and supply strategies aimed at maintaining an overall stability of the parties’ position on the market.


concerned. In this respect, the competitors also monitored the decisions taken during these meetings and contacts and agreed on correcting measures in order to compensate for each other when previously decided allocations of glass pieces proved insufficient in practice to ensure an overall degree of stability in their respective market shares. The period of infringement retained in the decision is from 10 March 1998 to 11 March 2003.

III. ADDRESSEES

11. The decision is addressed to the following legal entities which belong to the four participating undertakings:

(a) Asahi Glass Company Limited; AGC Flat Glass Europe SA/NV; AGC Automotive Europe SA; Glaverbel France SA; Glaverbel Italy S.r.l.; Splintex France Sarl; Splintex UK Limited; AGC Automotive Germany GmbH;

(b) La Compagnie de Saint-Gobain SA; Saint-Gobain Glass France SA; Saint-Gobain Sekurit Deutschland GmbH & Co. KG; Saint-Gobain Sekurit France SA;

(c) Pilkington Group Limited, Pilkington Automotive Ltd, Pilkington Automotive Deutschland GmbH, Pilkington Holding GmbH and Pilkington Italia Spa;

(d) Soliver NV.

12. Liability of the ultimate parent companies is established on the basis of the presumption of the exercise of decisive influence over their wholly-owned subsidiaries, which is reinforced by several additional indicia.

IV. REMEDIES


1. Basic Amount of the fines

14. According to the 2006 Guidelines on Fines, the basic amount of the fine has to be determined as a proportion of the value of sales of the relevant product made by each undertaking in the relevant geographic area during the last full business year of the infringement (‘variable amount’), multiplied by the number of years of the infringement, plus an additional amount, also calculated as a proportion of the value of sales, in order to deter horizontal price fixing agreements (‘entry fee’).

1.1. Calculation of the value of sales

15. Pursuant to the 2006 Guidelines on Fines, in determining the basic amount of the fine to be imposed the Commission normally takes into account the value of each undertaking’s sales of goods to which the infringement directly or indirectly relates in the geographic area concerned within the EEA for the last full business year of the undertaking’s participation in the infringement. However, 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.

16. Although the economic aim of the participants in the infringement was from the beginning to keep their respective market shares at EEA-level stable, the Commission has considered the fact that in the first two and a half years, from March 1998 to the first half of 2000, it has direct evidence of cartel activity for only a part of all European car manufacturers. While this does not mean that other car manufacturers were not the subject of cartel discussions in the first two and a half years as a ‘roll-out phase’ during which the cartelists only progressively developed their collusive behaviour towards all car manufacturers. It is likely that in this trial phase the carglass suppliers rigged the bids only within selected large accounts. Consequently, the Commission takes as relevant sales for the calculation of the fines for the first ramp-up period only sales by carglass suppliers to those car manufacturers for which there is direct evidence that they were subject to cartel arrangements.

17. At the end of the infringement period, i.e. between the break down of the so-called Club discussions of the three major suppliers on 3 September 2002 and the end of the infringement in March 2003, it can be argued that the cartel activity slowed down after the exit of the important player Pilkington. Therefore, the Commission takes into account as relevant only those sales relating to manufacturers for which there is direct evidence that they were subject to cartel contacts in this period which, again, is a very conservative interpretation of the evidence in favour of the undertakings concerned.

18. As for the period from 1 July 2000 to 3 September 2002, however, the OE manufacturers discussed at meetings and/or contacts accounted for 90 % or more of the EEA sales of each carglass supplier. In the light of the number of contacts and of the evidence available referred to in the Decision, it is presumed that the whole market was permeated by the cartel arrangements during this period. Therefore, the entire EEA-sales in the period from 1 July 2000 until 3 September 2002 are taken into account.

19. In sum, the Commission has, in line with the 2006 Guidelines on Fines, applied a more calibrated approach and reduced the weight of the roll-out period between the beginning of the infringement and 30 June 2000 as well as the final stage from September 2002 to 11 March 2003 by only taking account of each carglass supplier’s value of sales to those car manufacturers for which there is direct evidence in the Decision of cartel arrangements. The sales relevant for the calculation of the fines are then determined for each carglass supplier on the basis of the total sales in all three periods weighted as described above, divided through the months of participation in the infringement and multiplied by 12 to build an annual average.

1.2. Determination of the basic amount of the fine

20. According to the Guidelines on Fines, there are several criteria to be taken into account in order to determine the percentage of the relevant sales, i.e. the nature of the infringement (in this case allocation of customers with a view to keep shares of supply as stable as possible), the geographic scope (EEA), the combined market share of the undertakings participating in the infringement (in this case over 60 %) and implementation. The Commission did not take into account implementation when calculating the basic amount of the fine, despite some evidence that the infringement was implemented at times. Having considered these factors, the decision applies in this case a variable amount of 16 %.

21. Taking into account that the infringement lasted for up to 5 years, but not all participants were involved during the entire period, the variable amount was multiplied by 5 in the case of Asahi and Saint-Gobain, by 4,5 in the case of Pilkington and by 1,5 in the case of the Soliver.

22. In order to deter undertakings from entering into horizontal customer allocation agreements such as the one at issue in this case, the basic amount of the fines to be imposed was increased by an additional amount, as indicated in point 25 of the 2006 Guidelines on Fines. For this purpose, an additional amount of 16 % of the value of sales was considered appropriate.

2. Aggravating circumstances

23. 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 in this case (1). The fact that an undertaking has been repeating the same or similar type of anticompetitive conduct shows that the penalties it had been subjected to in the past did not prompt it to change its anticompetitive conduct. That kind of anticompetitive conduct constitutes an aggravating circumstance that can justify an increase of 60 % in the basic amount of the fine to be imposed on this undertaking.

3. Mitigating circumstances

24. There are no mitigating circumstances to be applied in this case.

4. Application of the 10 % turnover limit

25. The 10 % worldwide turnover limit provided for in Article 23(2) of Regulation (EC) No 1/2003 is applied to the fines calculated as appropriate. In this case, the ceiling of 10 % of turnover is attained in respect of the fine to be imposed on Soliver. The fine imposed on Soliver must therefore not exceed EUR 4,396 million.

5. Application of the 2002 Leniency Notice

26. As mentioned under point 3 above, Asahi and its subsidiary Glaverbel applied for immunity and in the alternative for a reduction of fines under the 2002 Leniency Notice.

5.1. Immunity

27. The Commission rejected Glaverbel and Asahi’s application for immunity under points 8(a) and (b) of the Leniency Notice for the following reasons.

28. As inspections had already been carried out before Asahi/ Glaverbel’s application, immunity under point 8(a) was no longer available.

29. Points 8(b) and 10 of the Leniency Notice specify that immunity from fines will only be granted on the cumulative conditions that the Commission did not have, at the time of the application, sufficient evidence to find an infringement of Article 81 of the Treaty in connection with the alleged cartel and that the evidence submitted may, in the Commission’s view, enable it to make such a finding. However, at the time of the leniency application, the Commission already had in its possession contemporaneous evidence copied during the first inspection which enabled the Commission to find an infringement of Article 81 of the Treaty. Immunity under point 8(b) was therefore at the time of the application no longer available for the infringement referred to in this Decision.

5.2. **Significant added value**

30. Asahi/Glaverbel was the first and only undertaking to meet the requirements of point 21 of the Leniency Notice. Considering the value of their contribution to the Commission’s case, the early stage at which they provided this contribution and the extent of their cooperation following their submissions, the Commission has decided to grant Asahi and Glaverbel a reduction of 50% of the fine that would otherwise have been imposed.

V. **DECISION**

31. The addresses of the Decision and the duration of their involvement were as follows:

(a) Asahi Glass Company Limited, AGC Flat Glass Europe SA/NV, AGC Automotive Europe SA, Glaverbel France SA, Glaverbel Italy S.r.l., Splintex France Sarl, Splintex UK Limited and AGC Automotive Germany GmbH, from 18 May 1998 to 11 March 2003;

(b) La Compagnie de Saint-Gobain SA, Saint-Gobain Glass France SA, Saint-Gobain Sekurit Deutschland GmbH & Co. KG and Saint-Gobain Sekurit France SA, from 10 March 1998 to 11 March 2003;

(c) Pilkington Group Limited, Pilkington Automotive Ltd, Pilkington Automotive Deutschland GmbH, Pilkington Holding GmbH and Pilkington Italia Spa, from 10 March 1998 to 3 September 2002;

(d) Soliver NV, from 19 November 2001 to 11 March 2003.

32. For the infringements referred to in the previous recital, the following fines are imposed:

(a) Asahi Glass Company Limited, AGC Flat Glass Europe SA/NV, AGC Automotive Europe SA, Glaverbel France SA, Glaverbel Italy S.r.l., Splintex France Sarl, Splintex UK Limited and AGC Automotive Germany GmbH, jointly and severally: EUR 113 500 000;

(b) La Compagnie de Saint-Gobain SA, Saint-Gobain Glass France SA, Saint-Gobain Sekurit Deutschland GmbH & Co. KG and Saint-Gobain Sekurit France SA, jointly and severally: EUR 896 000 000;

(c) Pilkington Group Limited, Pilkington Automotive Ltd, Pilkington Automotive Deutschland GmbH, Pilkington Holding GmbH and Pilkington Italia Spa, jointly and severally: EUR 370 000 000;

(d) Soliver NV: EUR 4 396 000.

33. The undertakings listed above were ordered to bring to an end the infringements referred to in point 10 above, in so far as they have not already done so, and to refrain from repeating any act or conduct described in point 10 above and from any act or conduct having the same or similar object or effect.