

## COMMISSION DECISION

of 20 December 1979

imposing a fine on Fabbrica Lastre di Vetro Pietro Sciarra, Rome, pursuant to Article 15 of Regulation No 17

(Only the Italian text is authentic)

(80/335/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 85 thereof,

Having regard to Council Regulation No 17 of 6 February 1962<sup>(1)</sup>, and in particular Articles 14 and 15 thereof,

Having taken cognizance of the written defence by the undertaking concerned, submitted by letter dated 23 July 1979 pursuant to Article 19 (1) of Regulation No 17 and to Article 19 (1) of Regulation No 99/63/EEC of the Commission<sup>(2)</sup>,

Having regard to the opinion of the Advisory Committee on Restrictive Practices and Monopolies, delivered on 30 November 1979, pursuant to Article 10 of Regulation No 17,

Whereas :

## I

1. On 30 May 1978, the Director-General for Competition gave written authorization for two officials of the Inspection Directorate to carry out an investigation at Fabbrica P. Sciarra in Rome, pursuant to Article 14 of Regulation No 17.

The investigation was carried out on 1 June 1978 at the undertaking's head office in Rome in the presence of two members of its management and a representative of the competent Italian authority.

The essential purpose of the investigation was to obtain information on the manufacture and marketing of glass within the Community and in particular on all correspondence exchanged by Fabbrica P. Sciarra with other glass manufacturers and with Fides Unione Fiduciaria SpA, Milan, a trust company carrying out since 1 January 1975, on behalf of the manufacturers

in question, coordination and/or supervision relating to the manufacture and/or marketing of glass.

2. Having produced their authorizations, the inspectors drew the attention of the undertaking to the provisions of Articles 14 and 15 of Regulation No 17 concerning the Commission's powers of investigation, and in particular to the provisions of Article 15 (1) as set out in the authorizations and under which the Commission may by decision impose fines on undertakings where they submit to an investigation but, intentionally or negligently, produce the required books or other business records in incomplete form.

When they were duly called upon, the undertaking's representatives expressed willingness to submit to the investigation.

3. In the course of the investigation on 1 June 1978 the Commission's inspectors asked Fabbrica P. Sciarra, as recorded in the minutes, to state what its relations were with Fides, the date on which those relations were established, and the purpose and outcome of the visit paid by Mr Roberto Sciarra to Fides' head office in February 1978.

The Commission's inspectors further requested Fabbrica P. Sciarra to produce all correspondence concerning the glass industry exchanged with Fides or with other glass manufacturers.

4. In answer to these questions Fabbrica P. Sciarra stated that its relations with Fides had been restricted to a meeting in February 1978 at the trust company's head office in order to obtain half-yearly and yearly statistics on glass imports into Italy and a study on foreign markets and prices with a view to possible exports.

The precise wording of the Commission's questions and the replies given by Fabbrica P. Sciarra are recorded in the minutes drafted on the spot at the time of the investigation and signed by the undertaking's chairman.

<sup>(1)</sup> OJ No 13, 21. 2. 1962, p. 204/62.

<sup>(2)</sup> OJ No 127, 20. 8. 1963, p. 2268/63.

## II

5. During an investigation carried out on 7 February 1979, pursuant to Article 14 of Regulation No 17, at the head office of Fides, Milan, the Commission's inspectors took copies of the following documents :

- (a) A memorandum of agreement dated 30 March 1976 and applicable until 1978 between Fabbrica Pisana Saint-Gobain, SIV-Società Italiana Vetro SpA, and Fabbrica Lastre di Vetro P. Sciarra SpA.

This consisted essentially of :

- (i) a specialization agreement covering certain types of flat glass, applicable from 1 April 1976 ;
  - (ii) an agreement restricting sales on the Italian market by means of quota-sharing ;
  - (iii) an arrangement whereby Fides was authorized to supervise volumes manufactured and sold, notably by means of checks on the stores accounts and warehouses of the manufacturing firms ;
  - (iv) a system of checks on list prices and prices actually charged by manufacturers.
- (b) A letter dated 8 April 1976 from Fabbrica Lastre di Vetro Pietro Sciarra SpA to Fides. The purpose of this letter was to confirm the authority conferred upon Fides — from 1 April 1976 for the entire duration of the agreement of 30 March 1976 — to collect all the information and papers, and copy all the papers, it needed to perform its function under that agreement. Fides representatives were given access to all the undertaking's offices, factories and warehouses. Confirmation was also given that Fabbrica Lastre di Vetro Pietro Sciarra had agreed that the information collected be passed on to Fabbrica Pisana and SIV-Società Italiana Vetro. Lastly, the letter determines how the expenses incurred in paying Fides were to be shared, 25 % being charged to Fabbrica P. Sciarra, 50 % to Fabbrica Pisana and 25 % to SIV.

- (c) A letter dated 20 April 1976 from Fides to Fabbrica Pietro Sciarra acknowledging receipt of its abovementioned letter dated 8 April 1976.
- (d) A letter dated 25 June 1976 from Fides to Fabbrica Pietro Sciarra. This letter states the names of the persons authorized by Fides to perform the checks.
- (e) A letter dated 22 September 1976 from Fides to Fabbrica Pietro Sciarra addressed (personal and

confidential) to Mr Sciarra. This letter accompanied Fides' invoice No MR 221 of 22 September 1976 for services rendered.

- (f) A letter dated 20 August 1977 from Fides to Fabbrica Pietro Sciarra. This confirmed the oral agreements in force, whereby Fides was to supply sets of data at regular intervals concerning domestic consumption, based on import and export figures and overall domestic production.
- (g) 11 statements sent by Fides to Mr P. Sciarra, chairman of Fabbrica Pietro Sciarra, concerning work carried out by Fides on behalf of Fabbrica P. Sciarra :

statement : x 999.95 Mg/zl of 22 March 1976,  
 statement : x 999.95 Mg/zz of 5 April 1976,  
 statement : 912 Bo/fm of 7 July 1976,  
 statement : 912 Bo/sv of 22 October 1976,  
 statement : 912 Pt/sv of 9 December 1976,  
 statement : 19110 Sh/tr of 15 February 1977,  
 statement : 19110 Bl/tr of 4 April 1977,  
 statement : 29110 Sh/ag of 3 June 1977,  
 statement : x 19110 Os/zl of 17 October 1977,  
 statement : x 19110 Os/lc of 14 November 1977,  
 statement : x 19110 Os/lc of 19 June 1978.

6. All the above documents relate to an agreement between glass manufacturers, including Fabbrica P. Sciarra, entered into on 30 March 1976, the supervision and implementation of which was entrusted to Fides, acting on behalf of the manufacturers.

These documents were accordingly directly concerned by the oral and written requests presented during the investigation on 1 June 1978. Nevertheless, Fabbrica P. Sciarra did not present any of these documents to the Commission's inspectors.

## III

7. By letter dated 23 July 1979 replying to the Commission's statement of objections, Fabbrica P. Sciarra put forward the following arguments :

- (i) the undertaking acknowledged that a specialization agreement between Italian glass manufacturers had been entered into on 30 March 1976 for a period of two years, but claimed that the agreement should be considered permissible on the grounds that it was necessary in view of the crisis in the industry, it was restricted to one category of flat glass and to only part of the domestic market, it was of a temporary nature, and the information exchanged with Fides was purely statistical.

- (ii) Fabbrica P. Sciarra claimed that by the date of the investigation the agreement had already expired and its directors had concentrated exclusively on the most recent development in their relations with Fides, namely the meeting held in February 1978, as they no longer attached any importance to the agreement of 30 March 1976.
- (iii) After the investigation of 1 June 1978 Fabbrica P. Sciarra thought that the enquiry had been completed, as the Commission did not renew its questions concerning the relevant agreements.

#### IV

8. Under Article 14 of Regulation No 17, in carrying out the duties assigned to it by Article 89 of the EEC Treaty, the Commission may undertake all necessary investigations into undertakings. To this end the officials authorized by the Commission are vested with the powers described in Article 14 (1) of the said Regulation *inter alia* to examine the books and other business records, to take copies of, or extracts from, the books and business records, and to enter any premises, land and means of transport of undertakings.

Under Article 14 (2) of the said Regulation, the officials authorized by the Commission for the purpose of these investigations shall exercise their powers upon production of an authorization in writing specifying the subject matter and purpose of the investigation and the penalties provided for in Article 15 (1) (c) of the Regulation in cases where production of the required books or other business records is incomplete.

Under Article 15 (1) of Regulation No 17, the Commission may, by decision, impose on undertakings fines of from 100 to 5000 units of account where, either intentionally or negligently, they produce the required books or other business records in incomplete form during investigations under Article 14.

On 1 June 1978 Fabbrica P. Sciarra agreed to submit to the investigation with all its attendant obligations pursuant to Articles 14 and 15 of Regulation No 17.

The undertaking concerned does not dispute the fact that the Commission's inspectors asked specific questions about its relations with Fides, the exact date when these relations were entered into and their precise objectives, or that the inspectors requested it to produce in full all correspondence exchanged with Fides concerning these relations, together with all correspondence exchanged with other glass manufacturers.

The question whether the agreement of 30 March 1976 was permissible under the provisions of the EEC Treaty on competition was immaterial to the investigation of 1 June 1978 and does not fall to be determined in this Decision. Moreover, Fabbrica P. Sciarra's argument that the agreement of 30 March 1976 had expired by the time of the investigation cannot legitimately be invoked.

9. By letter dated 23 July 1979 Fabbrica P. Sciarra acknowledged that it had given incomplete replies to the inspectors' requests during the investigation of 1 June 1978. However, its assertion that the Commission's inspectors had concentrated their enquiries exclusively on the meeting held at Fides' head office in Milan in February 1978 is incorrect, since the question as recorded in the minutes of the investigation concludes with a request to produce all correspondence exchanged both with other manufacturers and with Fides. Moreover, this last point was simply a reiteration of the series of questions put orally and forcefully during the investigation.

Furthermore, Fabbrica P. Sciarra cannot justifiably claim, at least after 8 June 1978, that it had every reason to believe that the Commission was satisfied with the replies obtained during the investigation of 1 June 1978, since it can reasonably be supposed that the undertaking was informed by its agent Fides without delay of the latter's refusal to submit to an investigation on 8 June 1978 concerning agreements in the glass manufacturing industry.

Fabbrica P. Sciarra had ample opportunity, in the period immediately following Fides' refusal to submit to an investigation, to demonstrate its good faith by informing the Commission that it intended to produce all the documents which had been requested.

10. By presenting documentation which was clearly incomplete to Commission inspectors carrying out an investigation under Article 14 of Regulation No 17, Fabbrica P. Sciarra intentionally infringed Article 15 (1) (c) of Regulation No 17. Moreover, the questions put by the Commission's inspectors and the requests made by them for documents, both orally and in writing during the course of the investigation of 1 June 1978, were so precise that Fabbrica P. Sciarra could have been left in no possible doubt as to the exact nature of the documents sought.

Thus the conditions for the application of Article 15 (1) have been fulfilled.

11. The infringement is clearly serious because the failure to produce the documents requested made more difficult the Commission's task of ensuring compliance with the rules on competition in the Treaty.

A fine must therefore be imposed in proportion to the gravity of the infringement committed by Fabbrica P. Sciarra,

HAS ADOPTED THIS DECISION:

*Article 1*

The production by Fabbrica P. Sciarra, Rome, of incomplete documentation during an investigation carried out on 1 June 1978 by the Commission under Article 14 of Regulation No 17 constitutes an infringement of Article 15 (1) (c) of that Regulation.

*Article 2*

The Commission hereby imposes on Fabbrica P. Sciarra a fine of 5 000 units of account or Lit

5 795 050. Such amount shall be paid, within three months following notification of this Decision to the undertaking concerned, to the account of the Commission of the European Communities: COMIT Roma 971 699/13/25.

*Article 3*

This Decision shall be enforceable as provided in Article 192 of the Treaty.

*Article 4*

This Decision is addressed to Fabbrica Lastre di Vetro Pietro Sciarra SpA, Via dei Volsci 120, Rome, Italy.

Done at Brussels, 20 December 1979.

*For the Commission*

Raymond VOUEL

*Member of the Commission*

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