



Antitrust proceedings: making the decision and imposing the sanction

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Outline

1. The EU antitrust procedure: main features
2. The EU antitrust procedure: basic texts
3. The EU antitrust procedure: overview
4. Statement of Objections
5. Access to file
6. Adoption of the Decision
7. Determination of the fine

The EU antitrust procedure: main features



Administrative procedure subject to judicial control

European Commission (DG Competition)

Court of Justice of the EU

But also: National Authorities and Courts

Detailed and largely self-contained regulatory framework

Highly transparent procedure

Parties' extensive rights of defense

Procedural safeguards

Right to be heard

Role of the Hearing Officer

The EU antitrust procedure: regulatory framework / basic texts

Main Regulations

Regulation 1/2003 on the implementation of Articles 101 and 102 TFEU

Regulation 773/2004 on the conduct of competition proceedings (*Implementing Regulation*)

Regulation 622/2008 on Cartel Settlements

**Summary of Commission Decision
of 28 March 2012**

relating to a proceeding under Article 101 of the Treaty ⁽¹⁾ and Article 53 of the EEA Agreement

(Case COMP/39.452 — Mountings for windows and window doors)

(notified under document C(2012) 2069 final)

(Only the German and Italian texts are authentic)

(Text with EEA relevance)

(2012/C 292/05)

On 28 March 2012, the Commission adopted a decision relating to a proceeding under Article 101 of the Treaty and Article 53 of the EEA Agreement. In accordance with the provisions of Article 30 of Council Regulation (EC) No 1/2003 ⁽²⁾, 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.

1. INTRODUCTION

(1) The Decision is addressed to 11 legal entities belonging to 9 undertakings for infringing Article 101 of the Treaty and Article 53 of the EEA Agreement. The parties operated a cartel in which they agreed on common price increases for mountings for windows and window doors. The cartel covered the whole EEA and had an overall duration from November 1999 until July 2007.

2. CASE DESCRIPTION

2.1. Procedure

- (2) The Commission's investigation started with an application for immunity from fines by Roto Frank AG. On 12 June 2007, Roto Frank AG received conditional immunity from fines.
- (3) Inspections took place on 3 and 4 July 2007.
- (4) In the course of the investigation, the Commission received applications under the Leniency Notice from Gretsch-Unitas GmbH, Gretsch-Unitas GmbH Baubeschläge and from Mayer & Co. Beschläge GmbH.
- (5) The statement of objections in this case was issued on 16 June 2010. All parties submitted a reply to the statement of objections and exercised their right to be heard by participating at the oral hearing held on 19 October 2010.
- (6) The Advisory Committee on restrictive practices and dominant positions issued a favourable opinion on 7 and 26 March 2012.

2.2. Addressees and duration of the infringement

- (7) The following undertakings infringed Article 101 of the Treaty and Article 53 of the EEA Agreement, during the periods indicated, in the sector for mountings for windows and window doors in the whole EEA:
- (a) Roto Frank AG, 16 November 1999 until 4 May 2007;
 - (b) Gretsch-Unitas GmbH, Gretsch-Unitas GmbH Baubeschläge, 16 November 1999 until 3 July 2007;
 - (c) Mayer & Co. Beschläge GmbH, 15 December 1999 until 3 July 2007;
 - (d) Siegenia-Aubi KG, NORAA GmbH, 16 November 1999 until 3 July 2007;
 - (e) Aug. Winkhaus GmbH & Co. KG, 16 November 1999 until 3 July 2007;
 - (f) HAUTAU GmbH, 16 November 1999 until 3 July 2007;
 - (g) CARL FUHR GmbH & Co. KG, 17 November 2004 until 3 July 2007;
 - (h) Heinrich Strenger GmbH & Co. KG, 16 November 1999 until 3 July 2007.
- (8) Alban Giacomo SpA infringed Article 101 of the Treaty and Article 53 of the EEA Agreement from 27 May 2004 to 3 July 2007 in the sector of mountings for windows and window doors in Italy.

⁽¹⁾ With effect from 1 December 2009, Articles 81 and 82 of the EC Treaty have become Articles 101 and 102, respectively, of the Treaty on the Functioning of the European Union (the Treaty). The two sets of provisions are, in substance, identical. References to Articles 101 and 102 of the Treaty should be understood as references to Articles 81 and 82, respectively, of the EC Treaty where appropriate.

⁽²⁾ OJ L 1, 4.1.2003, p. 1.

Notices and Guidelines

2004 Notice on Handling of
Complaints

2004 Notice on Cooperation
within the Network of
Competition Authorities

2004 Notice on Cooperation
between National Courts and
the Commission

2005 Notice on Access to File

2006 Leniency Notice

2006 Guidelines on Fines

2008 Settlement Notice

8.12.2006

EN

Official Journal of the European Union

C 298/17

Commission Notice on Immunity from fines and reduction of fines in cartel cases

(Text with EEA relevance)

(2006/C 298/11)

I. INTRODUCTION

- (1) This notice sets out the framework for rewarding cooperation in the Commission investigation by undertakings which are or have been party to secret cartels affecting the Community. Cartels are agreements and/or concerted practices between two or more competitors aimed at coordinating their competitive behaviour on the market and/or influencing the relevant parameters of competition through practices such as the fixing of purchase or selling prices or other trading conditions, the allocation of production or sales quotas, the sharing of markets including bid-rigging, restrictions of imports or exports and/or anti-competitive actions against other competitors. Such practices are among the most serious violations of Article 81 EC (7).
- (2) By artificially limiting the competition that would normally prevail between them, undertakings avoid exactly those pressures that lead them to innovate, both in terms of product development and the introduction of more efficient production methods. Such practices also lead to more expensive raw materials and components for the Community companies that purchase from such producers. They ultimately result in artificial prices and reduced choice for the consumer. In the long term, they lead to a loss of competitiveness and reduced employment opportunities.
- (3) By their very nature, secret cartels are often difficult to detect and investigate without the cooperation of undertakings or individuals implicated in them. Therefore, the Commission considers that it is in the Community interest to reward undertakings involved in this type of illegal practices which are willing to put an end to their participation and co-operate in the Commission's investigation, independently of the rest of the undertakings involved in the cartel. The interests of consumers and citizens in ensuring that secret cartels are detected and punished outweigh the interest in fining those undertakings that enable the Commission to detect and prohibit such practices.
- (4) The Commission considers that the collaboration of an undertaking in the detection of the existence of a cartel has an intrinsic value. A decisive contribution to the opening of an investigation or to the finding of an infringement may justify the granting of immunity from any fine to the undertaking in question, on condition that certain additional requirements are fulfilled.
- (5) Moreover, co-operation by one or more undertakings may justify a reduction of a fine by the Commission. Any reduction of a fine must reflect an undertaking's actual contribution, in terms of quality and timing, to the Commission's establishment of the infringement. Reductions are to be limited to those undertakings that provide the Commission with evidence that adds significant value to that already in the Commission's possession.
- (6) In addition to submitting pre-existing documents, undertakings may provide the Commission with voluntary presentations of their knowledge of a cartel and their role therein prepared specially to be submitted under this leniency programme. These initiatives have proved to be useful for the effective investigation and termination of cartel infringements and they should not be discouraged by discovery orders issued in civil litigation. Potential leniency applicants might be dissuaded from cooperating with the Commission under this Notice if this could impair their position in civil proceedings, as compared to companies who do not cooperate. Such undesirable effect would significantly harm the public interest in ensuring effective public enforcement of Article 81 EC in cartel cases and thus its subsequent or parallel effective private enforcement.
- (7) The supervisory task conferred on the Commission by the Treaty in competition matters does not only include the duty to investigate and punish individual infringements, but also encompasses the duty to pursue a general policy. The protection of corporate statements in the public interest is not a bar to their disclosure to other addressees of the statement of objections in order to safeguard their rights of defence in the procedure before the Commission, to the extent that it is technically possible to combine both interests by rendering corporate statements accessible only at the Commission premises and normally on a single occasion following the formal notification of the objections. Moreover, the Commission will process personal data in the context of this notice in conformity with its obligations under Regulation (EC) No 45/2001. (7)

II. IMMUNITY FROM FINES

A. Requirements to qualify for immunity from fines

- (8) The Commission will grant immunity from any fine which would otherwise have been imposed to an undertaking disclosing its participation in an alleged cartel

(7) Reference in this text to Article 81 EC also covers Article 53 EEA when applied by the Commission according to the rules laid down in Article 56 of the EEA Agreement.

(7) OJ L 8, 12.1.2001, p. 1.

Practical Guidance

2011 Best Practices Notice on
Articles 101 & 102 TFEU

2011 Best Practices for the
Submission of Economic
Evidence and Data

Further procedural
safeguards

2011 Hearing Officer's Terms of
Reference

Commission notice on best practices for the conduct of proceedings concerning Articles 101 and 102 TFEU

(Text with EEA relevance)

(2011/C 308/06)

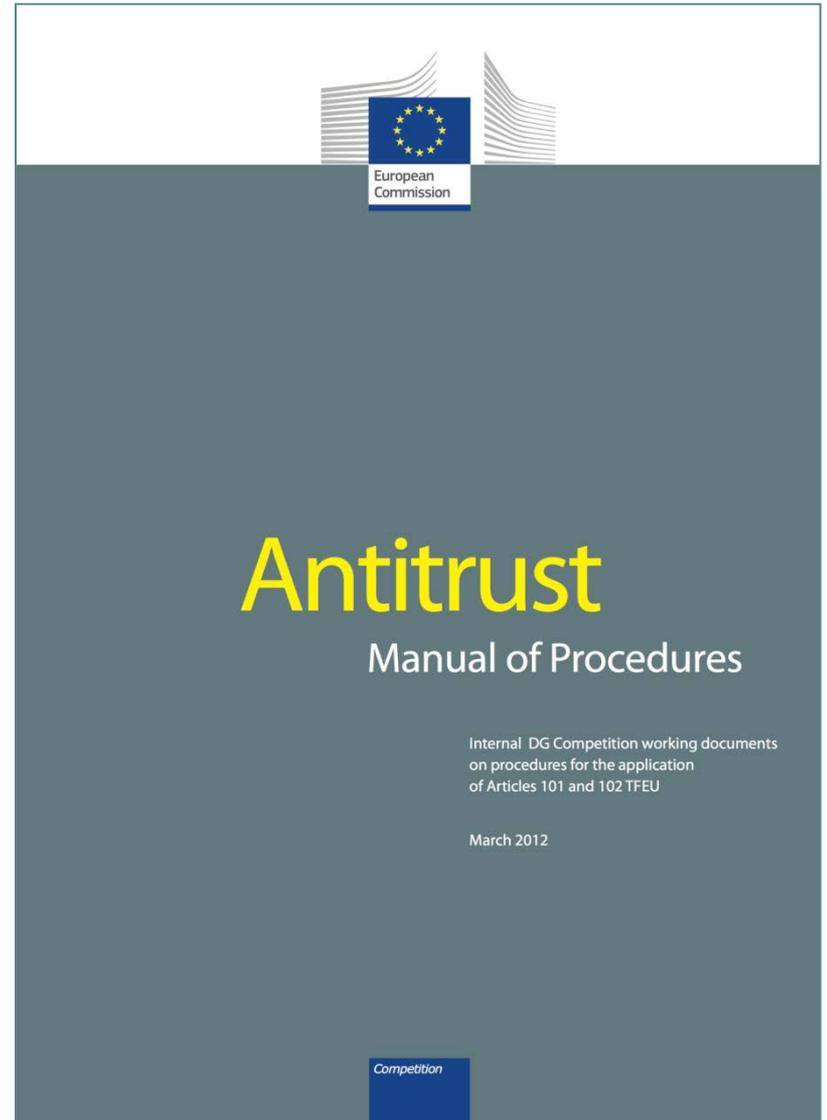
TABLE OF CONTENTS

| | | |
|--------|--|----|
| 1. | SCOPE AND PURPOSE OF THE NOTICE | 8 |
| 2. | THE INVESTIGATIVE PHASE | 9 |
| 2.1. | Origin of cases | 9 |
| 2.2. | Initial assessment and case allocation | 10 |
| 2.3. | Opening of proceedings | 11 |
| 2.4. | Languages | 12 |
| 2.5. | Information requests | 12 |
| 2.5.1. | Scope of request for information | 13 |
| 2.5.2. | Self-incrimination | 13 |
| 2.5.3. | Time limits | 13 |
| 2.5.4. | Confidentiality | 14 |
| 2.5.5. | Meetings and other contacts with the parties and third parties | 14 |
| 2.5.6. | Power to take statements (interviews) | 15 |
| 2.6. | Inspections | 15 |
| 2.7. | Legal professional privilege | 15 |
| 2.8. | Information exchange between competition authorities | 17 |
| 2.9. | State of play meetings | 17 |
| 2.9.1. | Format of the state of play meetings | 18 |
| 2.9.2. | Timing of the state of play meetings | 18 |
| 2.10. | Triangular meetings | 19 |
| 2.11. | Meetings with the Commissioner or the Director-General | 19 |
| 2.12. | Review of key submissions | 19 |
| 2.13. | Possible outcomes of the investigation phase | 20 |
| 3. | PROCEDURES LEADING TO A PROHIBITION DECISION | 20 |

DG Competition's Antitrust Manual of Procedures

Internal working tool intended
to give practical guidance to
staff on how to conduct an
investigation applying Articles
101 and 102 TFEU

Main chapters made public in
2012 in order to provide
greater transparency about the
Commission's procedures in
applying the competition rules



The EU antitrust procedure: overview

Outcome of the case / procedure

Abandonment of the investigation

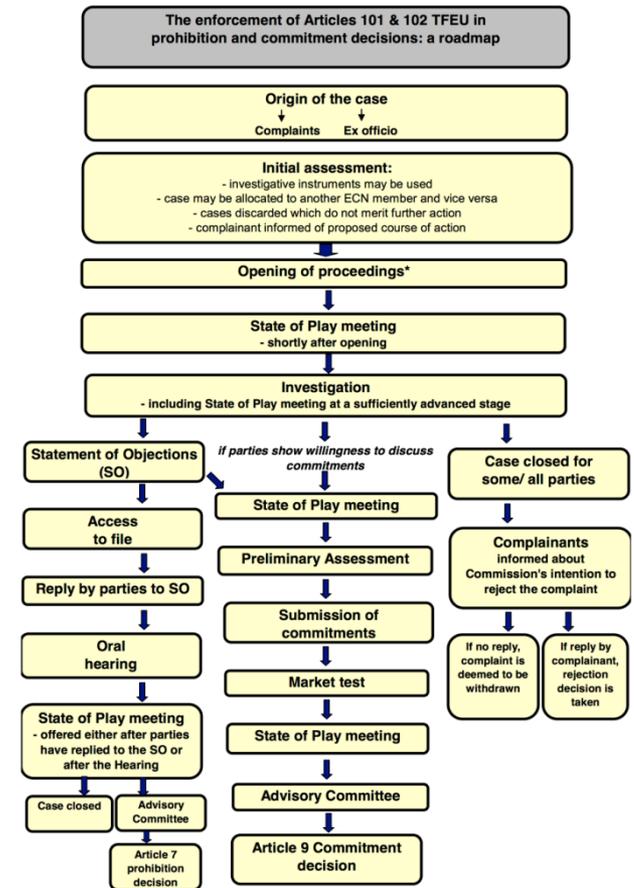
- Closure of the case
- Rejection of the complaint (Article 7 Rec. 773/2004)

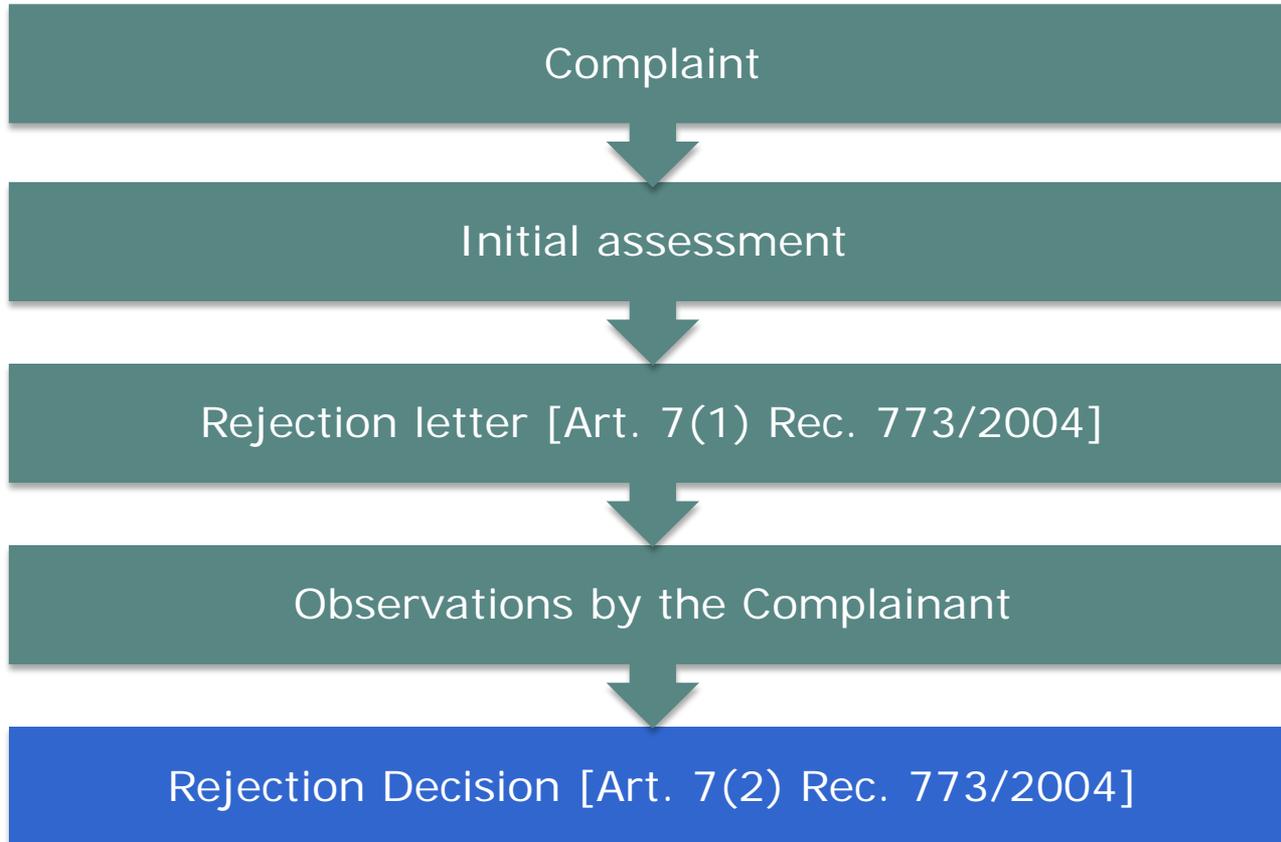
Prohibition Decision

- Article 7 Rec. 1/2003
- Sanction (fine)
- Cartels: possibility of settlement (Rec. 622/2008)

Commitments Decision

- Article 9 Rec. 1/2003
- No finding of infringement
- Commitments made binding











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Statement of Objections



The SO is an essential procedural safeguard ensuring that the right to be heard is fully respected

Purpose of the SO

To inform the Parties of the objections raised against them with a view to enabling them to exercise their rights of defence in writing and orally

Undertakings concerned must be provided with all the information they need to defend themselves effectively and to comment on the allegations made against them

SO is a preparatory procedural measure (not a formal decision)

The SO should be prepared in view of the nature and structure of the final decision that might be adopted



The Commission must base its decisions only on objections on which the parties concerned have been able to comment

The undertakings concerned must be informed of all the facts and documents on which the Commission intends to rely in its final decision

The SO must set out the legal assessment of the facts raised against each undertaking

The SO must identify the documents used as evidence in support of the objections

Supplementary SO / letter of facts



The SO must clearly indicate whether the Commission intends to impose fines, periodic penalty payments or other remedies

The SO must indicate the essential facts and matters of law which may result in the imposition of a fine

- Duration and gravity of the infringement involved

- Infringement committed intentionally or by negligence

- Facts which may give rise to aggravating/attenuating circumstances

The SO will endeavour to include further matters relevant to any subsequent calculation of fines

- E.g.: relevant sales figures/years to be taken into account

- (Best Practices Notice: no legal obligation)

Inability to pay

Structural or behavioural remedies



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Access to the File

Access to the Commission file is one of the procedural guarantees intended to apply the principle of equality of arms and to protect the rights of defence

Main provisions:

Article 27(2) of Regulation 1/2003

Article 15 of Regulation 773/2004

2005 Notice on Access to File

Commission Notice on the rules for access to the Commission file in cases pursuant to Articles 81 and 82 of the EC Treaty, Articles 53, 54 and 57 of the EEA Agreement and Council Regulation (EC) No 139/2004

(2005/C 325/07)

(Text with EEA relevance)

I. INTRODUCTION AND SUBJECT-MATTER OF THE NOTICE

1. Access to the Commission file is one of the procedural guarantees intended to apply the principle of equality of arms and to protect the rights of the defence. Access to the file is provided for in Article 27(1) and (2) of Council Regulation (EC) No 1/2003⁽¹⁾, Article 15(1) of Commission Regulation (EC) No 773/2004 (the Implementing Regulation)⁽²⁾, Article 18(1) and (3) of the Council Regulation (EC) No 139/2004 (Merger Regulation)⁽³⁾ and Article 17(1) of Commission Regulation (EC) No 802/2004 (the Merger Implementing Regulation)⁽⁴⁾. In accordance with these provisions, before taking decisions on the basis of Articles 7, 8, 23 and 24(2) of Regulation (EC) No 1/2003 and Articles 6(3), 7(3), 8(2) to (6), 14 and 15 of the Merger Regulation, the Commission shall give the persons, undertakings or associations of undertakings, as the case may be, an opportunity of making known their views on the objections against them and they shall be entitled to have access to the Commission's file in order to fully respect their rights of defence in the proceedings. The present notice provides the framework for the exercise of the right set out in these provisions. It does not cover the possibility of the provision of documents in the context of other proceedings. This notice is without prejudice to the interpretation of such provisions by the Community Courts. The principles set out in this Notice apply also when the Commission enforces Articles 53, 54 and 57 of the EEA Agreement⁽⁵⁾.
2. This specific right outlined above is distinct from the general right to access to documents under Regulation (EC) No 1049/2001⁽⁶⁾, which is subject to different criteria and exceptions and pursues a different purpose.
3. The term access to the file is used in this notice exclusively to mean the access granted to the persons, undertakings or association of undertakings to whom the Commission has addressed a statement of objections. This notice clarifies who has access to the file for this purpose.
4. The same term, or the term access to documents, is also used in the above-mentioned regulations in respect of complainants or other involved parties. These situations are, however, distinct from that of the addressees of a statement of objections and therefore do not fall under the definition of access to the file for the purposes of this notice. These related situations are dealt with in a separate section of the notice.
5. This notice also explains to which information access is granted, when access takes place and what are the procedures for implementing access to the file.

⁽¹⁾ Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty, OJ L 1, 4.1.2003, p. 1-25.

⁽²⁾ Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the EC Treaty, OJ L 123, 27.4.2004, p. 18-24.

⁽³⁾ Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings, OJ L 24, 29.1.2004, p. 1-22.

⁽⁴⁾ Commission Regulation (EC) No 802/2004 of 21 April 2004 implementing Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings, OJ L 133, 30.4.2004, p. 1-39. Corrected in the OJ L 172, 6.5.2004, p. 9.

⁽⁵⁾ References in this Notice to Articles 81 and 82 therefore apply also to Articles 53 and 54 of the EEA Agreement.

⁽⁶⁾ Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, OJ L 145, 31.5.2001, p. 43. See for instance Case T-2/03, Verein für Konsumenteninformation v. Commission, judgment of 13 April 2005, not yet reported.

The addressees of a Statement of Objection are granted access to all documents on the Commission's file

Exceptions:

Internal documents

Business secrets of other undertakings

Information about an undertaking's business activity the disclosure of which could result in serious harm to the undertaking

Other confidential information...

...the disclosure of which would significantly harm a person or undertaking

6. As from its publication, this notice replaces the 1997 Commission notice on access to the file⁽¹⁾. The new rules take account of the legislation applicable as of 1 May 2004, namely the above referred Regulation (EC) No 1/2003, Merger Regulation, Implementing Regulation and Merger Implementing Regulation, as well as the Commission Decision of 23 May 2001, on the terms of reference of Hearing Officers in certain competition proceedings⁽²⁾. It also takes into account the recent case law of the Court of Justice and the Court of First Instance of the European Communities⁽³⁾ and the practice developed by the Commission since the adoption of the 1997 notice.

II. SCOPE OF ACCESS TO THE FILE

A. Who is entitled to access to the file?

7. Access to the file pursuant to the provisions mentioned in paragraph 1 is intended to enable the effective exercise of the rights of defence against the objections brought forward by the Commission. For this purpose, both in cases under Articles 81 and 82 EC and in cases under the Merger Regulation, access is granted, upon request, to the persons, undertakings or associations of undertakings⁽⁴⁾, as the case may be, to which the Commission addresses its objections⁽⁵⁾ (hereinafter, 'the parties').

B. To which documents is access granted?

1. *The content of the Commission file*

8. The 'Commission file' in a competition investigation (hereinafter also referred to as 'the file') consists of all documents⁽⁶⁾, which have been obtained, produced and/or assembled by the Commission Directorate General for Competition, during the investigation.

9. In the course of investigation under Articles 20, 21 and 22(2) of Regulation (EC) No 1/2003 and Articles 12 and 13 of the Merger Regulation, the Commission may collect a number of documents, some of which may, following a more detailed examination, prove to be unrelated to the subject matter of the case in question. Such documents may be returned to the undertaking from which those have been obtained. Upon return, these documents will no longer constitute part of the file.

2. *Accessible documents*

10. The parties must be able to acquaint themselves with the information in the Commission's file, so that, on the basis of this information, they can effectively express their views on the preliminary conclusions reached by the Commission in its objections. For this purpose they will be granted access to all documents making up the Commission file, as defined in paragraph 8, with the exception of internal documents, business secrets of other undertakings, or other confidential information⁽⁷⁾.

⁽¹⁾ Commission notice on the internal rules of procedure for processing requests for access to the file in cases under Articles 85 and 86 [now 81 and 82] of the EC Treaty, Articles 65 and 66 of the ECSC Treaty and Council Regulation (EEC) No 4064/89; OJ C 23, 23.1.1997, p. 3.

⁽²⁾ OJ L 162, 19.6.2001, p. 21.

⁽³⁾ In particular Joint Cases T-25/95 et al., *Cimenteries CBR SA et al. v Commission*, [2000] ECR II-0491.

⁽⁴⁾ In the remainder of this Notice, the term 'undertaking' includes both undertakings and associations of undertakings. The term 'person' encompasses natural and legal persons. Many entities are legal persons and undertakings at the same time: in this case, they are covered by both terms. The same applies where a natural person is an undertaking within the meaning of Articles 81 and 82. In Merger proceedings, account must also be taken of persons referred to in Article 3(1)(b) of the Merger Regulation, even when they are natural persons. Where entities without legal personality which are also not undertakings become involved in Commission competition proceedings, the Commission applies, where appropriate, the principles set out in this Notice *mutatis mutandis*.

⁽⁵⁾ Cf. Article 15(1) of the Implementing Regulation, Article 18(3) of the Merger Regulation and Article 17(1) of the Merger Implementing Regulation.

⁽⁶⁾ In this notice the term 'document' is used for all forms of information support, irrespective of the storage medium. This covers also any electronic data storage device as may be or become available.

⁽⁷⁾ Cf. Article 27(2) of Regulation (EC) No 1/2003, Articles 15(2) and 16(1) of the Implementing Regulation, and Article 17(3) of the Merger Implementing Regulation. Those exceptions are also mentioned in Case T-7/89, *Hercules Chemicals v Commission*, [1991] ECR II-1711, paragraph 34. The Court has ruled that it does not belong to the Commission alone to decide which documents in the file may be useful for the purposes of the defence (CJ Case T-36/91, *Solvay v. Commission*, [1995] ECR II-1775, paragraphs 81-86, and Case T-36/91 *JCI vs. Commission*, [1995] ECR II-1847, paragraphs 91-96).

Procedure

Undertakings are given the opportunity to submit their confidentiality claims

(Provisional) acceptance or disagreement of DG COMP services

Involvement of the Hearing Officer

Practical aspects

Negotiated disclosure
(confidentiality ring)

Data room

Limited access:

Commitment decisions

Rejection of complaints

B. Provision of documents to other involved parties in merger proceedings

33. In accordance with Article 17(2) of the Merger Implementing Regulation, access to the file in merger proceedings shall also be given, upon request, to other involved parties who have been informed of the objections in so far as this is necessary for the purposes of preparing their comments.
34. Such other involved parties are parties to the proposed concentration other than the notifying parties, such as the seller and the undertaking which is the target of the concentration ⁽¹⁾.

IV. PROCEDURE FOR IMPLEMENTING ACCESS TO THE FILE

A. Preparatory procedure

35. Any person which submits information or comments in one of the situations listed hereunder, or subsequently submits further information to the Commission in the course of the same procedures, has an obligation to clearly identify any material which it considers to be confidential, giving reasons, and provide a separate non-confidential version by the date set by the Commission for making its views known ⁽²⁾:
- a) In antitrust proceedings
- an addressee of a Commission's statement of objections making known its views on the objections ⁽³⁾;
 - a complainant making known its views on a Commission statement of objections ⁽⁴⁾;
 - any other natural or legal person, which applies to be heard and shows a sufficient interest, or which is invited by the Commission to express its views, making known its views in writing or at an oral hearing ⁽⁵⁾;
 - a complainant making known his views on a Commission letter informing him on the Commission's intention to reject the complaint ⁽⁶⁾.
- b) In merger proceedings
- notifying parties or other involved parties making known their views on Commission objections adopted with a view to take a decision with regard to a request for a derogation from suspension of a concentration and which adversely affects one or more of those parties, or on a provisional decision adopted in the matter ⁽⁷⁾;
 - notifying parties to whom the Commission has addressed a statement of objections, other involved parties who have been informed of those objections or parties to whom the Commission has addressed objections with a view to inflict a fine or a periodic penalty payment, submitting their comments on the objections ⁽⁸⁾;
 - third persons who apply to be heard, or any other natural or legal person invited by the Commission to express their views, making known their views in writing or at an oral hearing ⁽⁹⁾;
 - any person which supplies information pursuant to Article 11 of the Merger Regulation.

⁽¹⁾ Cf. Article 11(b) of the Merger Implementing Regulation.

⁽²⁾ Cf. Article 16(2) of the Implementing Regulation and Article 18(2) of the Merger Implementing Regulation.

⁽³⁾ pursuant to Article 10(2) of the Implementing Regulation.

⁽⁴⁾ pursuant to Article 6(1) of the Implementing Regulation.

⁽⁵⁾ pursuant to Article 13(1) and (3) of the Implementing Regulation.

⁽⁶⁾ pursuant to Article 7(1) of the Implementing Regulation.

⁽⁷⁾ Article 12 of the Merger Implementing Regulation.

⁽⁸⁾ Article 13 of the Merger Implementing Regulation.

⁽⁹⁾ pursuant to Article 16 of the Merger Implementing Regulation.

Adoption of the Decision



Determination of the fine

The Commission enjoys a wide margin of discretion when exercising its power to impose fines, within the limits set by Article 23 of Regulation No 1/2003:

For each undertaking and association of undertakings participating in the infringement, the fine shall not exceed 10 % of its total turnover in the preceding business year

In fixing the amount of the fine, regard shall be had both to the gravity and to the duration of the infringement

The Commission must ensure that its action has the necessary deterrent effect

3. A decision adopted pursuant to paragraph 1 cannot be executed without prior authorisation from the national judicial authority of the Member State concerned. The national judicial authority shall control that the Commission decision is authentic and that the coercive measures envisaged are neither arbitrary nor excessive having regard in particular to the seriousness of the suspected infringement, to the importance of the evidence sought, to the involvement of the undertaking concerned and to the reasonable likelihood that business books and records relating to the subject matter of the inspection are kept in the premises for which the authorisation is requested. The national judicial authority may ask the Commission, directly or through the Member State competition authority, for detailed explanations on those elements which are necessary to allow its control of the proportionality of the coercive measures envisaged.

However, the national judicial authority may not call into question the necessity for the inspection nor demand that it be provided with information in the Commission's file. The lawfulness of the Commission decision shall be subject to review only by the Court of Justice.

4. The officials and other accompanying persons authorised by the Commission to conduct an inspection ordered in accordance with paragraph 1 of this Article shall have the powers set out in Article 20(2)(a), (b) and (c). Article 20(5) and (6) shall apply *mutatis mutandis*.

Article 22

Investigations by competition authorities of Member States

1. The competition authority of a Member State may in its own territory carry out any inspection or other fact-finding measure under its national law on behalf and for the account of the competition authority of another Member State in order to establish whether there has been an infringement of Article 81 or Article 82 of the Treaty. Any exchange and use of the information collected shall be carried out in accordance with Article 12.

2. At the request of the Commission, the competition authorities of the Member States shall undertake the inspections which the Commission considers to be necessary under Article 20(1) or which it has ordered by decision pursuant to Article 20(4). The officials of the competition authorities of the Member States who are responsible for conducting these inspections as well as those authorised or appointed by them shall exercise their powers in accordance with their national law.

If so requested by the Commission or by the competition authority of the Member State in whose territory the inspection is to be conducted, officials and other accompanying persons authorised by the Commission may assist the officials of the authority concerned.

CHAPTER VI

PENALTIES

Article 23

Fines

1. The Commission may by decision impose on undertakings and associations of undertakings fines not exceeding 1 % of the total turnover in the preceding business year where, intentionally or negligently:

- (a) they supply incorrect or misleading information in response to a request made pursuant to Article 17 or Article 18(2);
- (b) in response to a request made by decision adopted pursuant to Article 17 or Article 18(3), they supply incorrect, incomplete or misleading information or do not supply information within the required time-limit;
- (c) they produce the required books or other records related to the business in incomplete form during inspections under Article 20 or refuse to submit to inspections ordered by a decision adopted pursuant to Article 20(4);

2006 Guidelines on fines: method for setting of fines:

Basic amount (proportion of the value of sales, depending on the degree of gravity of the infringement, multiplied by the number of years of the infringement)

Additional amount

Adjustments (aggravating and/or mitigating circumstances, deterrence)

Cap limit (10%)

Reductions (leniency, inability to pay)

Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation No 1/2003

(2006/C 210/02)

(Text with EEA relevance)

INTRODUCTION

1. Pursuant to Article 23(2)(a) of Regulation No 1/2003⁽¹⁾, the Commission may, by decision, impose fines on undertakings or associations of undertakings where, either intentionally or negligently, they infringe Article 81 or 82 of the Treaty.
2. In exercising its power to impose such fines, the Commission enjoys a wide margin of discretion⁽²⁾ within the limits set by Regulation No 1/2003. First, the Commission must have regard both to the gravity and to the duration of the infringement. Second, the fine imposed may not exceed the limits specified in Article 23(2), second and third subparagraphs, of Regulation No 1/2003.
3. In order to ensure the transparency and impartiality of its decisions, the Commission published on 14 January 1998 guidelines on the method of setting fines⁽³⁾. After more than eight years of implementation, the Commission has acquired sufficient experience to develop further and refine its policy on fines.
4. The Commission's power to impose fines on undertakings or associations of undertakings which, intentionally or negligently, infringe Article 81 or 82 of the Treaty is one of the means conferred on it in order for it to carry out the task of supervision entrusted to it by the Treaty. That task not only includes the duty to investigate and sanction individual infringements, but it also encompasses the duty to pursue a general policy designed to apply, in competition matters, the principles laid down by the Treaty and to steer the conduct of undertakings in the light of those principles⁽⁴⁾. For this purpose, the Commission must ensure that its action has the necessary deterrent effect⁽⁵⁾. Accordingly, when the Commission discovers that Article 81 or 82 of the Treaty has been infringed, it may be necessary to impose a fine on those who have acted in breach of the law. Fines should have a sufficiently deterrent effect, not only in order to sanction the undertakings concerned (specific deterrence) but also in order to deter other undertakings from engaging in, or continuing, behaviour that is contrary to Articles 81 and 82 of the EC Treaty (general deterrence).

5. In order to achieve these objectives, it is appropriate for the Commission to refer to the value of the sales of goods or services to which the infringement relates as a basis for setting the fine. The duration of the infringement should also play a significant role in the setting of the appropriate amount of the fine. It necessarily has an impact on the potential consequences of the infringement on the market. It is therefore considered important that the fine should also reflect the number of years during which an undertaking participated in the infringement.
6. The combination of the value of sales to which the infringement relates and of the duration of the infringement is regarded as providing an appropriate proxy to reflect the economic importance of the infringement as well as the relative weight of each undertaking in the infringement. Reference to these factors provides a good indication of the order of magnitude of the fine and should not be regarded as the basis for an automatic and arithmetical calculation method.
7. It is also considered appropriate to include in the fine a specific amount irrespective of the duration of the infringement, in order to deter companies from even entering into illegal practices.
8. The sections below set out the principles which will guide the Commission when it sets fines imposed pursuant to Article 23(2)(a) of Regulation No 1/2003.

METHOD FOR THE SETTING OF FINES

9. Without prejudice to point 37 below, the Commission will use the following two-step methodology when setting the fine to be imposed on undertakings or associations of undertakings.
10. First, the Commission will determine a basic amount for each undertaking or association of undertakings (see Section 1 below).
11. Second, it may adjust that basic amount upwards or downwards (see Section 2 below).
1. **Basic amount of the fine**
12. The basic amount will be set by reference to the value of sales and applying the following methodology.

⁽¹⁾ Council Regulation (EC) No 1 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ L 1, 4.1.2003, p. 1).

⁽²⁾ See, for example, Case C-189/02 P, C-202/02 P, C-205/02 P to C-208/02 P and C-213/02 P, *Dansk Rørindustri A/S and others v Commission* [2005] ECR I-5425, paragraph 172.

⁽³⁾ Guidelines on the method of setting fines imposed pursuant to Article 15(2) of Regulation No 17 and Article 65(5) of the ECSC Treaty (OJ C 9, 14.1.1998, p. 3).

⁽⁴⁾ See, for example, *Dansk Rørindustri A/S and others v Commission*, cited above, paragraph 170.

⁽⁵⁾ See Joined Cases 100/80 to 103/80 *Musique Diffusion française and others v Commission* [1983] ECR 1825, paragraph 106.

Case COMP/39.125 — Car glass

Decision of 12.11.2008

Addressees: 18 legal entities
belonging to 4 undertakings

Infringement: concerted allocation
of contracts, coordination of
pricing policies and supply
strategies

Scope: EEA

Duration: March 1998 to March
2003

Total Fines: € 1 354 896 000

25.7.2009

EN

Official Journal of the European Union

C 173/13

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

- 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.
- 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

- 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.
- 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.
- 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.

- 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

- 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 windscreens, sidelights (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.
- 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.
- 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.
- 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

⁽¹⁾ Reference is made to the Commission Decision C(2008) 6815 final of 12 November 2008 as amended by two corrections adopted respectively on 4 December 2008 and 11 February 2009.

⁽²⁾ See OJ C , ...,2009, p.

Fines (2006 Guidelines)

Basic amount of the fine:

Calculated on the basis of an average of the sales during the infringement period, normalised to one year (3 periods: roll-out, full and slow down)

Application of a variable amount of 16 %

Duration:

The variable amount was multiplied by 5 (AGC and Saint-Gobain), 4,5 (Pilkington) or 1,5 (Soliver)

Deterrence

Additional amount of 16 % of the value of sales

Fines (cont'd)

Aggravating circumstances

Recidivism: increase of 60 % in the basic amount of the fine (Saint-Gobain)

Application of the 10 % turnover limit

Ceiling of 10 % of turnover attained in respect of Soliver

Leniency (2002 Notice):

Immunity: rejection of AGC application

Reduction: 50% to AGC

| Fines | Reduction for Leniency | | Total |
|--------------------------|------------------------|-------------|---------------|
| Saint Gobain (France) | 0% | 0 | * 880 000 000 |
| Asahi (Japan) | 50% | 113 500 000 | 113 500 000 |
| Pilkington (UK) | 0% | 0 | * 357 000 000 |
| Soliver (Belgium) | 0% | 0 | 4 396 000 |
| Amounts in € | | | 1 354 896 000 |

* Fines amended
in 2013

Case COMP/39.748 — Automotive wire harnesses Decision of 10.07.2013 (settlement)

Addressees: 10 legal entities
belonging to 5 undertakings

Infringements (≠5): coordination
of prices and allocation of supplies

Scope: EEA and beyond

Duration (different for each
infringement): 2000-2009

Total Fines: € 141 791 000

**Summary of Commission Decision
of 10 July 2013**

**relating to a proceeding under Article 101 of the Treaty on the Functioning of the European Union
and Article 53 of the EEA Agreement**

(Case AT.39748 — Automotive wire harnesses)

(notified under document C(2013) 4222 final)

(Only the English text is authentic)

(2013/C 283/05)

On 10 July 2013, the Commission adopted a decision relating to a proceeding under Article 101 of the Treaty on the Functioning of the European Union and Article 53 of the EEA agreement. In accordance with the provisions of Article 30 of Council Regulation (EC) No 1/2003⁽¹⁾, 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.

1. INTRODUCTION

- (1) The decision concerns five separate infringements concerning the supply of wire harnesses (WH) to Toyota, Honda, Nissan and Renault (2 infringements) and is addressed to the following undertakings: (i) Sumitomo⁽²⁾; (ii) Yazaki⁽³⁾; (iii) Furukawa⁽⁴⁾; (iv) SYS⁽⁵⁾ and (v) Leoni⁽⁶⁾. WH represent an assembly of cables transmitting signals or electric power linking computers to various components built in the vehicle and are designed for specific vehicles and platforms.

2. CASE DESCRIPTION

2.1. Procedure

- (2) Following the immunity application of Sumitomo and the leniency application of Furukawa, the Commission carried out unannounced inspections in February 2010 and thereafter Yazaki and SYS applied for leniency.
- (3) The Commission initiated proceedings on 3 August 2012. On 28 August 2012, Leoni applied for leniency. Settlement discussions took place between 25 September 2012 and 14 May 2013. Subsequently, the cartel members submitted to the Commission their formal request to settle pursuant to Article 10a (2) of Regulation (EC) No 773/2004. On 31 May 2013, the Commission adopted a Statement of Objections and the all parties confirmed that its content reflected their submissions and that they remained committed to follow the settlement procedure. The Advisory Committee on Restrictive Practices and

Dominant Positions issued a favourable opinion on 5 July 2013 and the Commission adopted the Decision on 10 July 2013.

2.2. Addressees and duration of the infringements

- (4) The following undertakings have infringed Article 101 of the Treaty and Article 53 of the EEA Agreement, during the periods indicated below, with respect to the supplies of WH to Toyota:
- Sumitomo and Yazaki from 6 March 2000 until 5 August 2009,
 - Furukawa from 24 September 2002 until 20 October 2005.
- (5) The following undertakings have infringed Article 101 of the Treaty and Article 53 of the EEA Agreement, during the periods indicated below, with respect to the supplies of WH to Honda:
- Sumitomo and Yazaki from 5 March 2001 until 7 September 2009,
 - Furukawa from 5 March 2001 until 31 March 2009.
- (6) Sumitomo and Yazaki have infringed Article 101 of the Treaty and Article 53 of the EEA Agreement with respect to the supplies of WH to Nissan (B Platform) from 14 September 2006 until 16 November 2006.
- (7) Sumitomo and SYS have infringed Article 101 of the Treaty and Article 53 of the EEA Agreement with respect to the supplies of WH to Renault (W95 Platform) from 28 September 2004 until 13 March 2006.
- (8) The following undertakings have infringed Article 101 of the Treaty and Article 53 of the EEA Agreement, during the periods indicated below, with respect to the supplies of WH to Renault (W52/98 Platform):
- Sumitomo from 5 May 2009 until 20 October 2009,

⁽¹⁾ OJ L 1, 4.1.2003, p. 1.

⁽²⁾ The relevant companies are Sumitomo Electric Wiring Systems (Europe) Ltd and Sumitomo Electric Industries Ltd.

⁽³⁾ The relevant companies are Yazaki Europe Ltd and Yazaki Corporation.

⁽⁴⁾ The relevant companies are Furukawa Automotive Systems Inc and Furukawa Electric Co. Ltd.

⁽⁵⁾ The relevant companies are S-Y Systems Technologies France SAS and S-Y Systems Technologies Europe GmbH.

⁽⁶⁾ The relevant companies are Leoni Wiring Systems France SAS and Leoni AG.

Fines (2006 Guidelines)

Basic amount of the fine:

Fixed at 16% of the relevant value of sales

E.g.: the value of sales for the Renault I infringement was set on the basis of the volume of WH sales to the relevant Renault project in the EEA estimated at the time of the infringement multiplied by the price of the winning bids

Duration:

The basic amount was multiplied by the number of years of participation in the infringement

Adjustments to the basic amount:

Immunity: Sumitomo

Reductions: from 20 to 50% to other Parties

Application of the Settlement Notice:

The amount of the fine to be imposed on Yazaki, Furukawa, SYS and Leoni was reduced by 10%



European
Commission

| (Amounts in €) | Sumitomo | Yazaki | Furukawa | SYS | Leoni | Overview of fines |
|------------------------------|----------|--------------------|------------------|-------------------|------------------|----------------------|
| Toyota infringement | 0 | 95 149 000 | 2 483 000 | | | 97 632 000 |
| Honda infringement | 0 | 29 812 000 | 1 532 000 | | | 31 344 000 |
| Nissan infringement | 0 | 380 000 | | | | 380 000 |
| Renault I infringement | 0 | | | 10 123 000 | | 10 123 000 |
| Renault II infringement | 0 | | | 934 000 | 1 378 000 | 2 312 000 |
| Overview of fines | 0 | 125 341 000 | 4 015 000 | 11 057 000 | 1 378 000 | 141 791 000 |