



# 反垄断执法程序： 作出决定与实施制裁

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## 欧盟反垄断程序：主要特征



## 行政程序遵循司法管制

欧盟委员会（欧洲委员会竞争总署）

欧盟法院

各成员国执法部门和法院

详细且大体独立的规章制度

高度透明的程序

当事方广泛的抗辩权

程序保障

听证权

听证官的作用

# 欧盟反垄断程序：规章制度/基本内容

## 主要规定

### 《有关欧盟运行条约（TFEU）第101和102条的实施条例1/2003》

### 《有关竞争执法的程序条例773/2004》

### 《卡特尔案件和解程序条例622/2008》

C 292/6

EN

Official Journal of the European Union

28.9.2012

#### Summary of Commission Decision of 28 March 2012

relating to a proceeding under Article 101 of the Treaty <sup>(1)</sup> 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 <sup>(2)</sup>, 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.

<sup>(1)</sup> 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.

<sup>(2)</sup> OJ L 1, 4.1.2003, p. 1.

## 通告和指南

《有关处理投诉的通告》（2004）

《竞争主管机构网络内部合作的通告》  
（2004）

《委员会与成员国法院之间合作的通告》  
（2004）

《有关查阅文件的通告》（2005）

《有关宽大处理的通告》（2006）

《有关罚款的指南》（2006）

《有关和解的指南》（2008）

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 (1).
- (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. (2)

#### 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

(1) 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.

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

## 操作指引

《有关欧盟运作条约第101和102条的最佳实践通告》（2011）

《经济证据提交和数据收集最佳操作指引》（2011）

## 其他程序保障

《听证官参考规定》（2011）

C 308/6      EN      Official Journal of the European Union      20.10.2011

**Commission notice on best practices for the conduct of proceedings concerning Articles 101 and 102 TFEU**  
(Text with EEA relevance)  
(2011/C 308/06)

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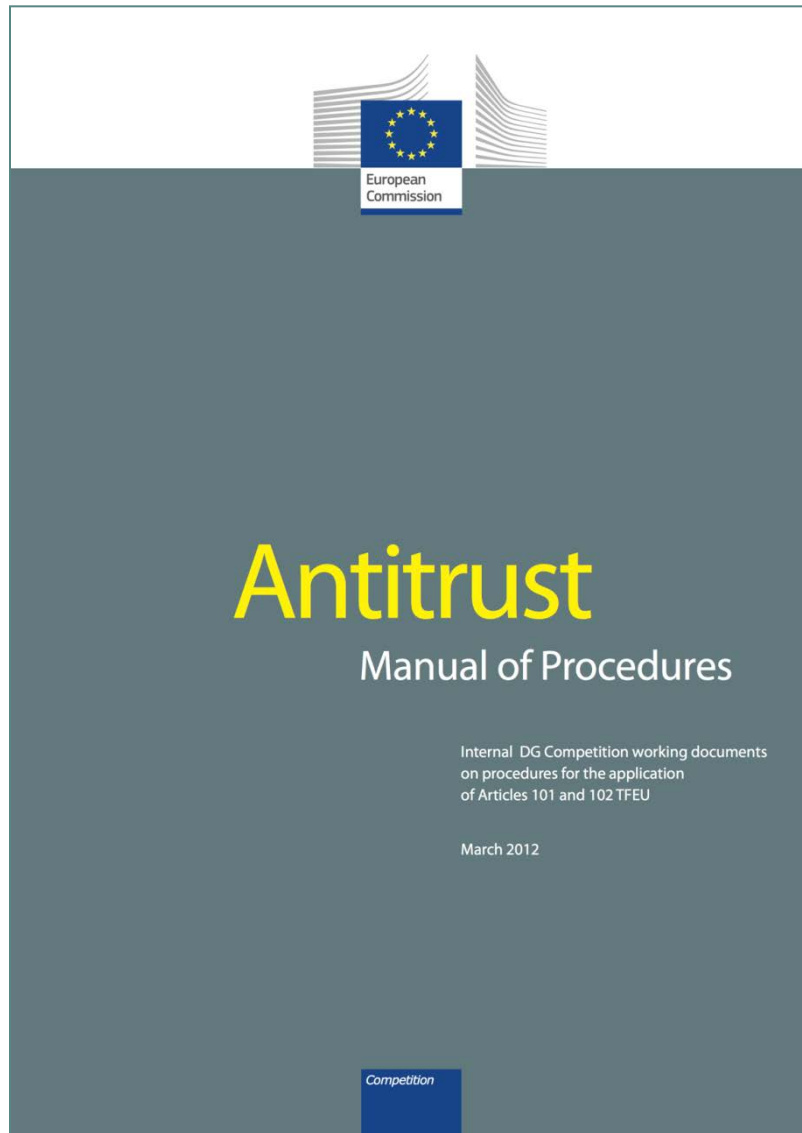




## 欧盟委员会竞争总司的反垄断程序手册

为应用《欧盟运作条约》第101和102条开展调查的人员给出实务指导的内部工作工具

2012年为应用竞争规定中的委员会程序提供更大透明度而公布了主要章节



# 欧盟反垄断程序 综述



European Commission

## 案件/程序的结果

### 停止调查

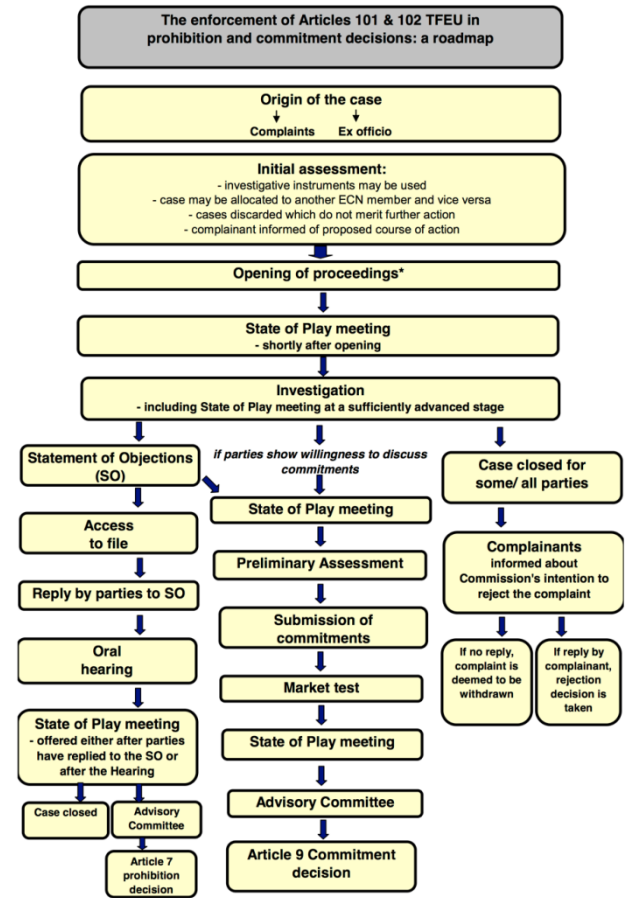
- 终止案例
- 驳回投诉（773/2004条例的第7条）

### 禁止决定

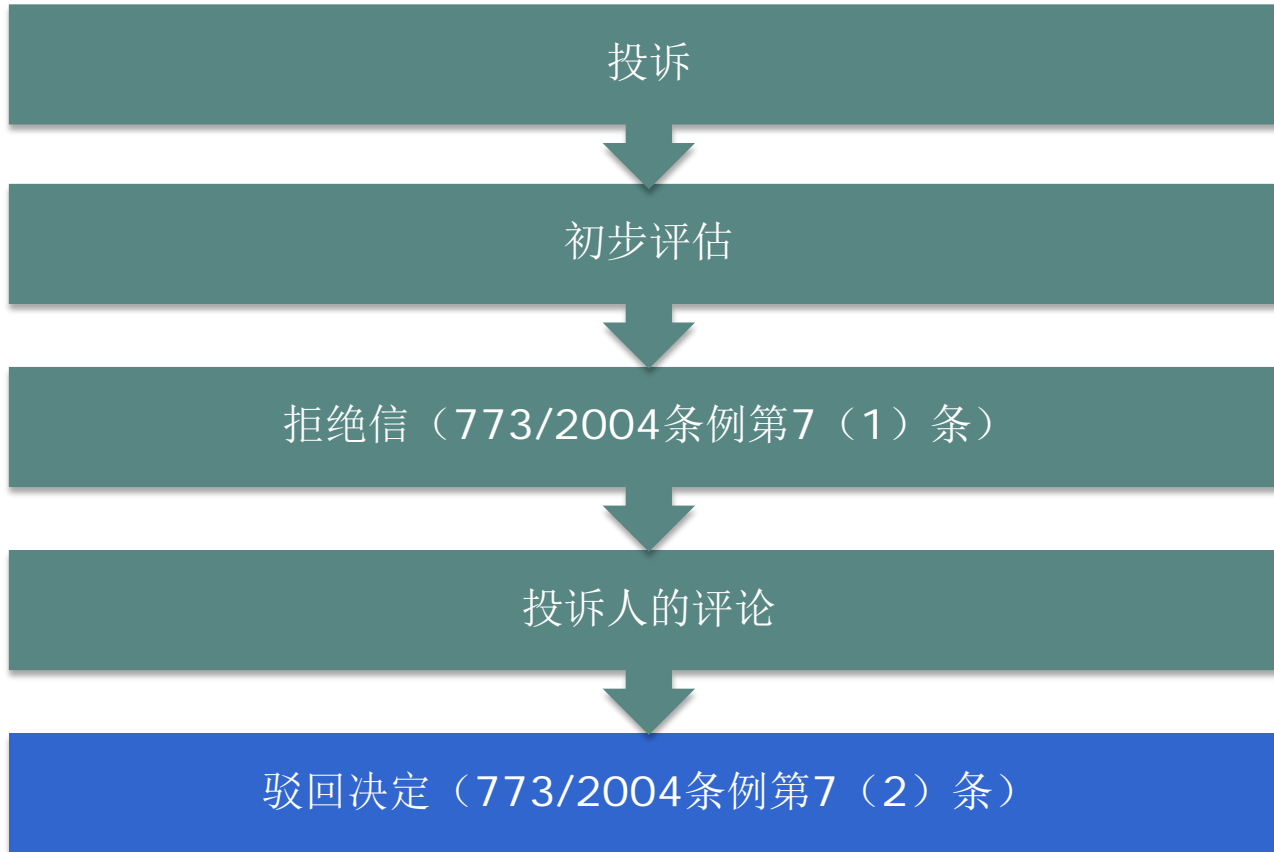
- 1/2003条例的第7条
- 制裁（罚款）
- 卡特尔：和解的可能（622/2008条例）

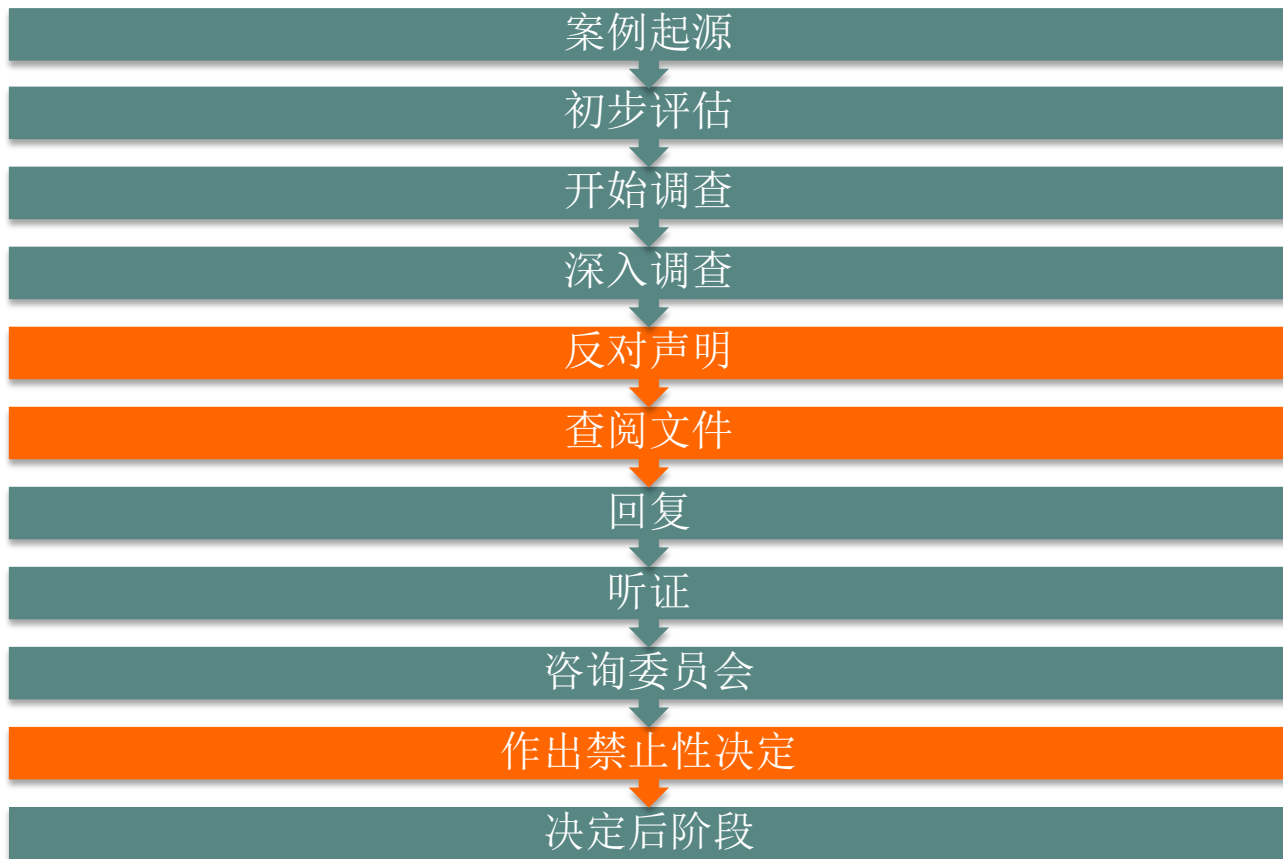
### 承诺决定

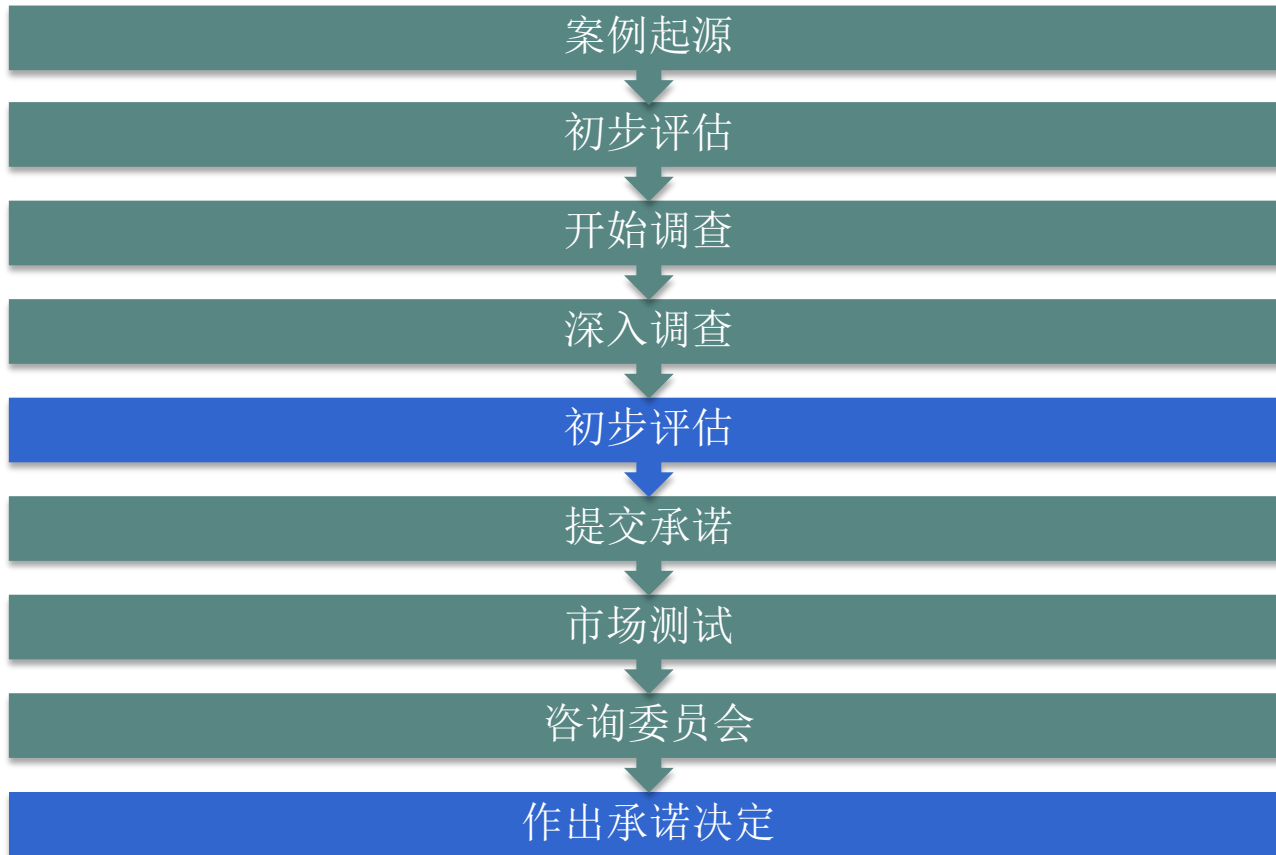
- 1/2003条例第9条
- 未发现违法
- 提出约束性承诺



\* With the exception of cartel proceedings, where the opening of proceedings normally takes place simultaneously with the adoption of the SO







# 反对声明



反对声明是一个基本的程序保障，确保听证权的充分实现。

### 反对声明的目的

通知当事方对其提出的所有反对内容，以便使其可以书面和口头方式行使抗辩权。

有关企业必须提供为自己有效辩护以及反对指控抗辩所需要的所有信息。

### 反对声明是一个初步的程序措施（不是正式决定）

应该基于可能采用的最终决定的性质和结果撰写反对声明。





欧盟委员会必须就其能够发表意见的各方相关的反对意见作出其决定。  
必须就委员会所据以作出其最终决定的所有事实和资料告知有关企业。  
反对声明必须说明对每家企业所提出的投诉事实的法律评估。  
反对声明必须确认作为反对证据的文件资料。  
补充性反对声明/事实陈述书

反对声明必须清晰指出委员会是否打算进行罚款、定期罚款或其他救济措施。  
反对声明必须指出依据其作出罚款处罚的基本事实以及法律事项。

违法时间以及严重程度

属于故意违反还是过失违反

产生加剧/减缓情节的事实

反对声明还将尽量包括与随后的罚款计算所相关的更多事项。

比如：所考虑年份的相关销售数据

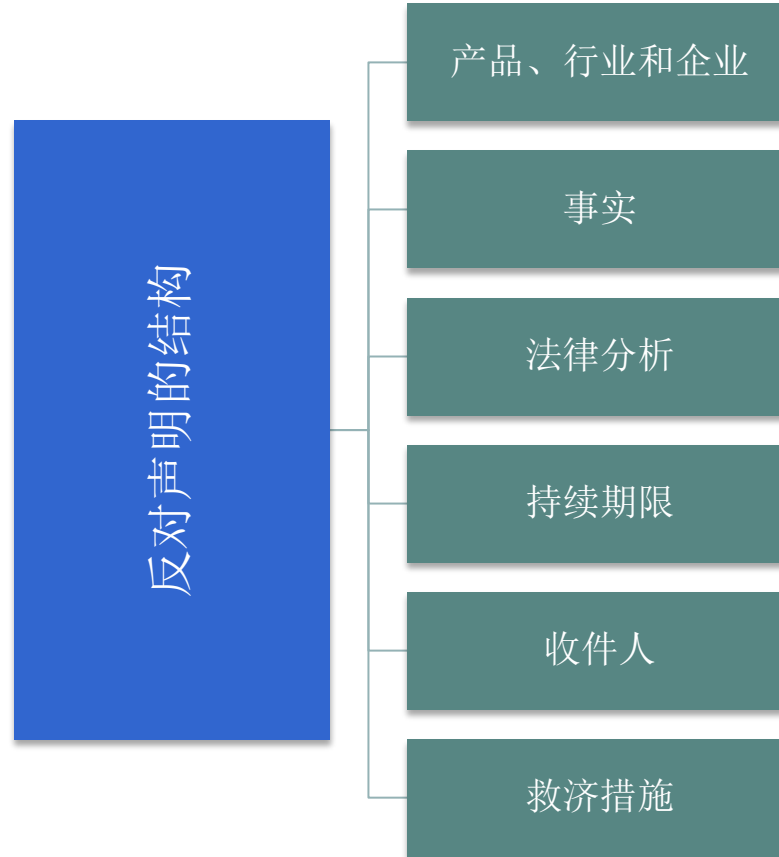
（最佳实践通告：非法律义务）

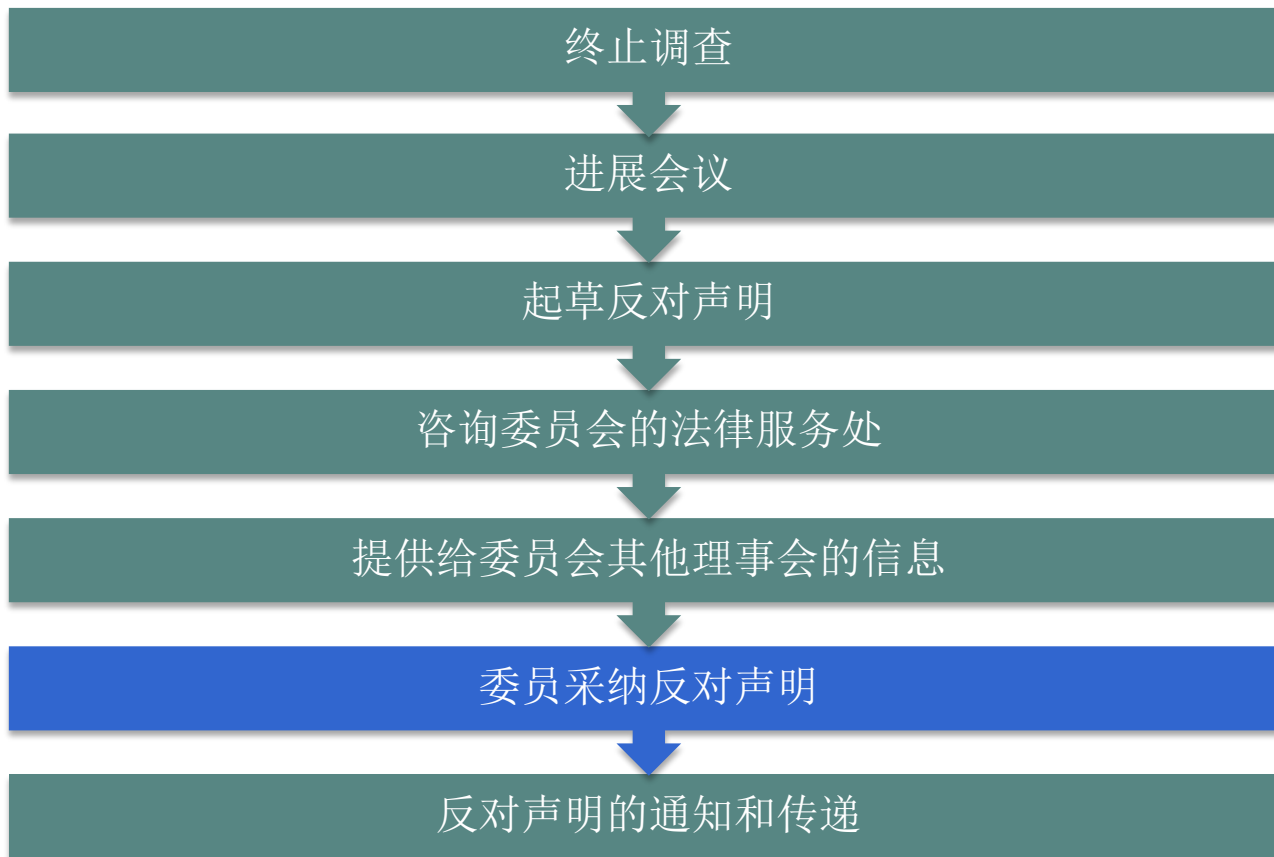
无能力支付

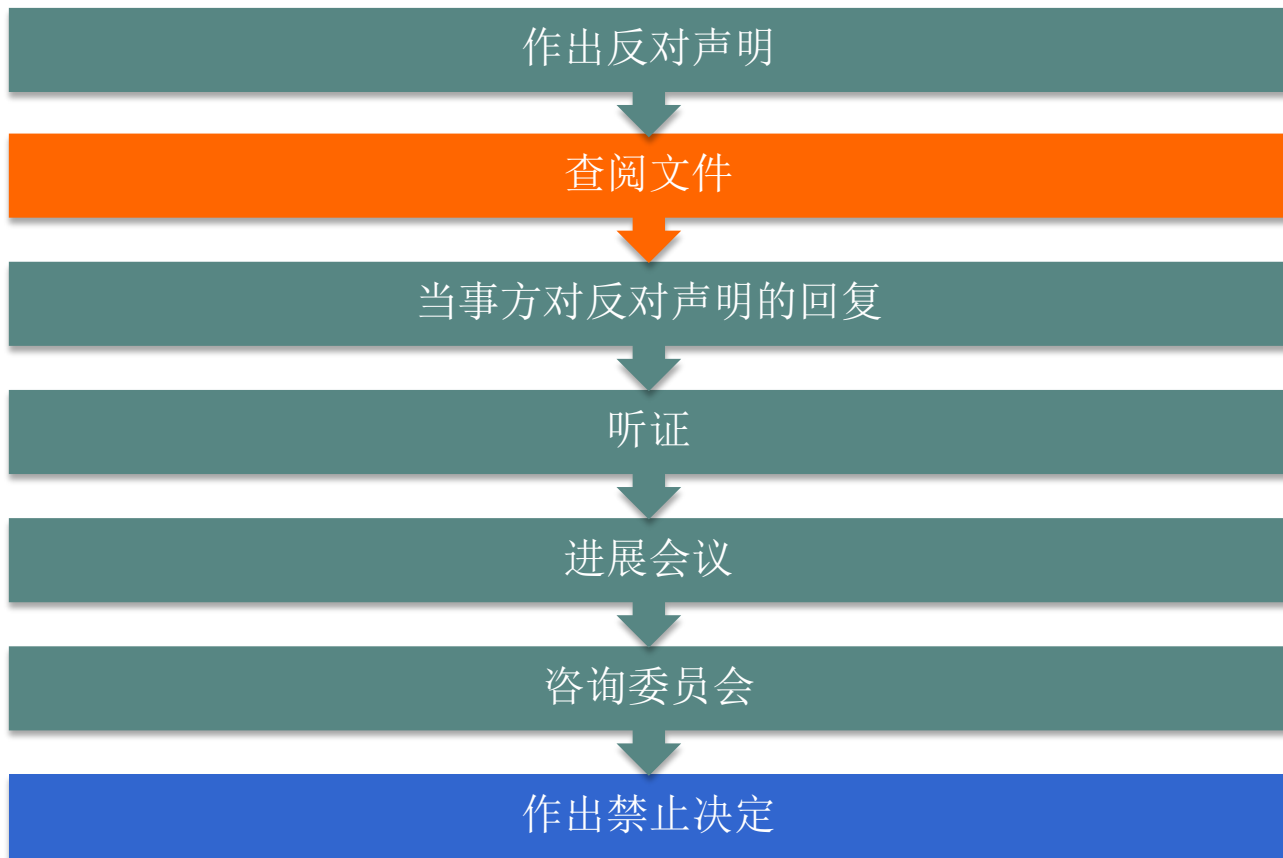
结构性或行为性救济措施



European  
Commission









European  
Commission

查阅文件

对委员会文件的访问权是程序保障之一，适用于应用平等原则和保护抗辩权。

## 主要规定

《1/2003号条例》的第27(2)条  
《773/2004号条例》的第15条  
《有关查阅文件的通告》（2005）

22.12.2005

EN

Official Journal of the European Union

C 325/7

**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<sup>(1)</sup>, Article 15(1) of Commission Regulation (EC) No 773/2004 (the Implementing Regulation)<sup>(2)</sup>, Article 18(1) and (3) of the Council Regulation (EC) No 139/2004 (Merger Regulation)<sup>(3)</sup> and Article 17(1) of Commission Regulation (EC) No 802/2004 (the Merger Implementing Regulation)<sup>(4)</sup>. 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<sup>(5)</sup>.
2. This specific right outlined above is distinct from the general right to access to documents under Regulation (EC) No 1049/2001<sup>(6)</sup>, 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.

<sup>(1)</sup> 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.

<sup>(2)</sup> 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.

<sup>(3)</sup> 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.

<sup>(4)</sup> 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.

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

<sup>(6)</sup> 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.

反对声明的收件人被授权可以访问委员会相关文件夹中的所有资料。

例外：

内部资料

其它企业的商业机密

有关企业营业行为的信息，若披露的话可能对企业造成严重损害

其它机密信息

若披露的话可能对人员或企业造成重大损害

6. As from its publication, this notice replaces the 1997 Commission notice on access to the file<sup>(1)</sup>. 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<sup>(2)</sup>. It also takes into account the recent case law of the Court of Justice and the Court of First Instance of the European Communities<sup>(3)</sup> 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<sup>(4)</sup>, as the case may be, to which the Commission addresses its objections<sup>(5)</sup> (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<sup>(6)</sup>, 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<sup>(7)</sup>.

<sup>(1)</sup> 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.

<sup>(2)</sup> OJ L 162, 19.6.2001, p. 21.

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

<sup>(4)</sup> 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*.

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

<sup>(6)</sup> 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.

<sup>(7)</sup> 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 (Cf. Case T-30/91, *Solvay v. Commission*, [1995] ECR II-1775, paragraphs 81-86, and Case T-36/91 *ICI vs. Commission*, [1995] ECR II-1847, paragraphs 91-96).



## 程序

给予企业提交其机密权利主张

(临时) 接受或拒绝竞争总司的服务

听证官介入

## 实务方面

谈判信息披露 (保密环节)

数据屋

受限访问:

承诺决定

驳回投诉

### 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 <sup>(1)</sup>.

### 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 <sup>(2)</sup>:
- a) In antitrust proceedings
- an addressee of a Commission's statement of objections making known its views on the objections <sup>(3)</sup>;
  - a complainant making known its views on a Commission statement of objections <sup>(4)</sup>;
  - 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 <sup>(5)</sup>;
  - a complainant making known his views on a Commission letter informing him on the Commission's intention to reject the complaint <sup>(6)</sup>.
- 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 <sup>(7)</sup>;
  - 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 <sup>(8)</sup>;
  - 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 <sup>(9)</sup>;
  - any person which supplies information pursuant to Article 11 of the Merger Regulation.

<sup>(1)</sup> Cf. Article 11(b) of the Merger Implementing Regulation.

<sup>(2)</sup> Cf. Article 16(2) of the Implementing Regulation and Article 18(2) of the Merger Implementing Regulation.

<sup>(3)</sup> pursuant to Article 10(2) of the Implementing Regulation.

<sup>(4)</sup> pursuant to Article 6(1) of the Implementing Regulation.

<sup>(5)</sup> pursuant to Article 13(1) and (3) of the Implementing Regulation.

<sup>(6)</sup> pursuant to Article 7(1) of the Implementing Regulation.

<sup>(7)</sup> Article 12 of the Merger Implementing Regulation.

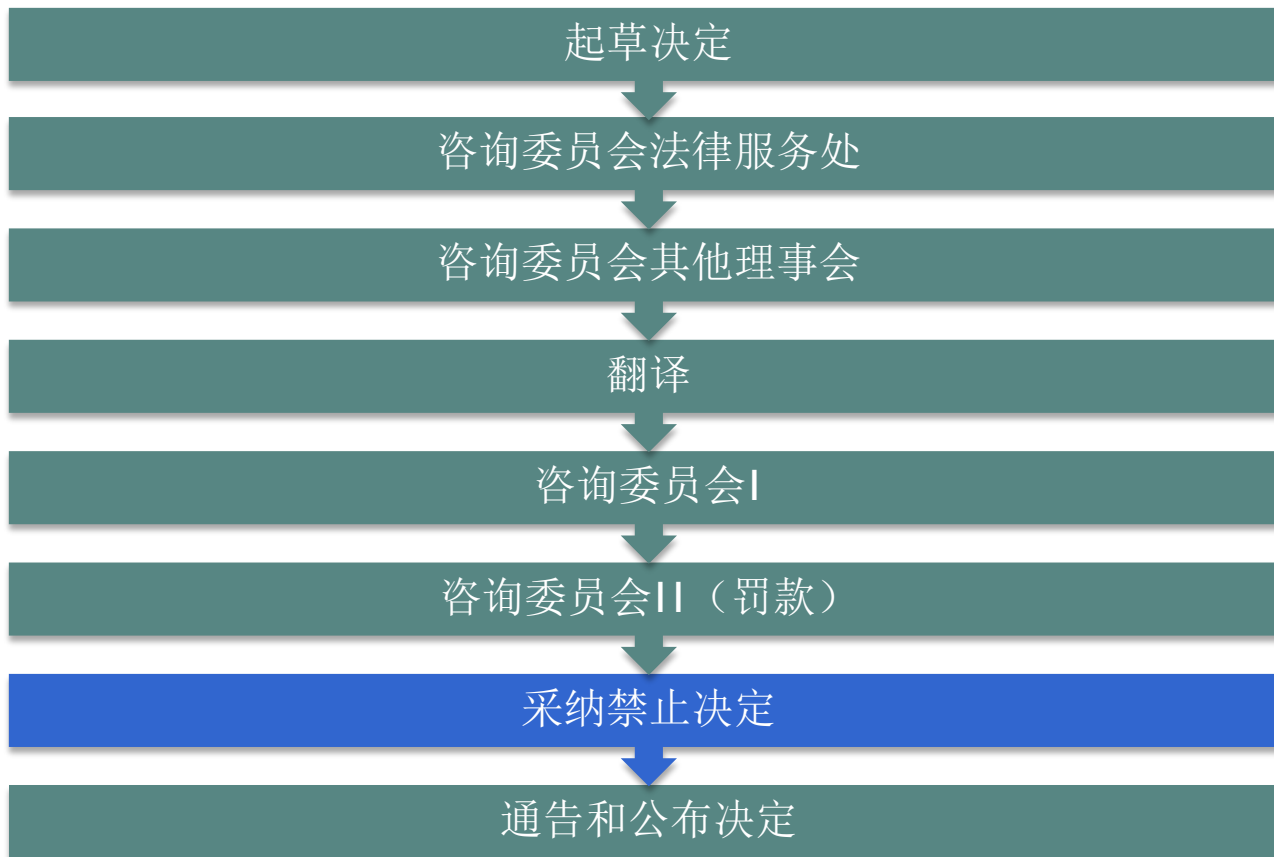
<sup>(8)</sup> Article 13 of the Merger Implementing Regulation.

<sup>(9)</sup> pursuant to Article 16 of the Merger Implementing Regulation.



European  
Commission

# 采纳决定





European  
Commission

# 确定罚款

当行使其处以罚款的权利时，在《1/2003号条例》的第23条规定的限值内，委员会享有大范围的酌情处理权。

对于涉及违法的每家企业和企业联盟行为，罚款将不超过其上一营业年度总营业额的10%。

在确认罚款金额时，应该注意违法行为的程度和时间。

委员会必须确保其行为具有必要的威慑效果。

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);

## 《有关罚款的指南》（2006）

### 确定罚款的方法：

基本数额（销售额的百分比（取决于违法的严重程度）乘以侵权年数）

附加数额

调整数额（有加重和/或减轻情节时，有威慑效果）

最大限度（10%）

减少数额（宽大处理，无支付能力）

### 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<sup>(1)</sup>, 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<sup>(2)</sup> 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<sup>(3)</sup>. 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<sup>(4)</sup>. For this purpose, the Commission must ensure that its action has the necessary deterrent effect<sup>(5)</sup>. 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.

<sup>(1)</sup> 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 4, 4.1.2003, p. 1).

<sup>(2)</sup> 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.

<sup>(3)</sup> 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).

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

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

## 案例COMP/39.125-汽车玻璃 2008年12月11日的决定

主体：18家法人实体，属于4家企业

违法行为：商定合同分配，协调价格政策和供货策略

范围：欧洲经济区

时间：1998年3月到2003年3月

总罚款金额：1,354,896,000欧元

25.7.2009

EN

Official Journal of the European Union

C 173/13

### Summary of Commission Decision of 12 November 2008 <sup>(1)</sup>

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 <sup>(2)</sup>.

##### 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 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.

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

<sup>(1)</sup> 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.

<sup>(2)</sup> See OJ C , ...,2009, p.

## 罚款（2006指南）

### 基本罚款额：

计算基础是侵权期间的年平均销售额（3个时期：形成期，成熟期和减缓期）

应用16%的变量金额

### 时间：

变量金额乘以5（AGC 和 Saint-Gobain），乘以4.5或者1.5（Soliver）

### 威慑效果：

额外增加销售额的16%的罚款



## 罚款（续）

### 加重情节

累犯：在基本罚款金额基础上增加60 % （ Saint-Gobain）

### 营业额10%限定的应用

所获营业额的10 % 上限 （ Soliver）

### 宽大处理（2002公告）

豁免：驳回AGC申请

减少罚款金额： AGC降低50%



罚款	因宽大处理导致的罚款金额减少		总计
Saint Gobain (法国)	0%	0	* 880 000 000
Asahi (日本)	50%	113 500 000	113 500 000
Pilkington (英国)	0%	0	* 357 000 000
Soliver (比利时)	0%	0	4 396 000
			1 354 896 000

金额  
(单位: 欧元)

2013年修订的罚款

# 案例COMP/39.748 — 汽车线束 2013年10月7日决定（和解）

主体：10个法人实体，属于5家企业

侵权行为（≠5）：协调价格和分配供货

范围：欧洲经济区内外

时间（每种侵权行为的时间不同）：  
2000–2009

总罚款金额：141,791,000欧元

**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<sup>(1)</sup>, 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<sup>(2)</sup>; (ii) Yazaki<sup>(3)</sup>; (iii) Furukawa<sup>(4)</sup>; (iv) SYS<sup>(5)</sup> and (v) Leoni<sup>(6)</sup>. 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,

<sup>(1)</sup> OJ L 1, 4.1.2003, p. 1.

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

<sup>(3)</sup> The relevant companies are Yazaki Europe Ltd and Yazaki Corporation.

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

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

<sup>(6)</sup> The relevant companies are Leoni Wiring Systems France SAS and Leoni AG.

## 罚款 (2006指南)

### 基本罚款额：

固定为相关销售额的16%

比如：雷诺 I 侵权行为的销售额根据估计的侵权时间内销售至欧洲经济区内相关雷诺项目的总销售量为基础，乘以所获得标的的价格来确定。

### 时间：

基本罚款额乘以涉及侵权行为的年数。

### 对基本罚款额的调整：

豁免：住友商事 (Sumitomo)

罚款额减少：其他当事方为20%到50%不等。

和解公告的应用对Yazaki, Furukawa, SYS 和 Leoni 处以的罚款额降低10%。



(金额, 单位: 欧元)	Sumitomo	Yazaki	Furukawa	SYS	Leoni	罚款总额
Toyota i侵权	0	95 149 000	2 483 000			97 632 000
Honda 侵权	0	29 812 000	1 532 000			31 344 000
Nissan 侵权	0	380 000				380 000
Renault I 侵权	0			10 123 000		10 123 000
Renault II 侵权	0			934 000	1 378 000	2 312 000
罚款总额	0	125 341 000	4 015 000	11 057 000	1 378 000	141 791 000