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International Competition Law: Cartel Case

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Executive Summary

The economic competition in the European view does not have a logical theory of efficiency in allocating resources to the market of justice. The positive law proceeds at incriminating and fining with arbitrarily fixed fine and players on different markets however not offering a definition of what is meant by competition or free market. It delivers a sort of theory however; some people argue that it is not coherent. The present paper discusses the various aspects of the International competition law under the light cartel case of car glad in which EC decided to fine the car glass suppliers Saint-Gobain, Pilkington, AGC and Soliver with 1.4 billion Euros for being responsible for cartelizing and on the basis of the free competition theory.

Key Words: Cartel, car glass, competition law

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1. Introduction

European law, as well as the laws of most other countries, prohibit cartels expressly and punish them harshly, as considered to be the most serious breach competition. At the same time, however, the agencies responsible for the protection of competition are more and more increasing their ability to detect and successfully prosecute those implementing anticompetitive agreements, including the establishment of new work policies to counter collusion, as leniency programs.

The advantage for companies to coordinate their policies in distribution and sales colluding, rather than competing against each other emerges in oligopolistic markets, i.e. markets located in an intermediate level between perfect competition and monopoly, which say in most industrial markets are present in reality. Competition in these markets is determined by a number of limited companies, such that the price and the optimal production level of each firm depends on the choices in terms of price and quantity of rivals. Thus every company, through its decisions, is capable of affecting the profit margins of competitors[1].

From the theoretical point of view, when it comes to collusion in specific market prices higher than equilibrium in the absence of cooperation, undertakings engaged in collusive practices, taking as a configuration reference of the market that would implement a monopolist, are intended to distort competition and thereby increase their market power. All results in the collusive agreements are generally prohibited by the antitrust laws in the world.

The collusive outcome can be achieved through various forms of agreement. Companies may agree on sale prices, on the division of production or markets or other decisions (for example

[1] Veljanovski, C., "European Commission Cartel Prosecutions and Fines 1999-2009", (Case Associates: London), 2009, p. 15.

collusion may cover the costs of advertising or the level of quality the service). The structure of the collusive arrangements can vary, in fact collusion can occur through an organized cartel between companies (in which a central secret makes decisions for all member companies), through communications and exchange of information between rivals or acting in a non-cooperative manner. The first two cases are examples of explicit collusion, while the last, in which the outcome is collusive arrives in the absence of explicit agreements, identifies with the term tacit collusion.

In November 2008, the European Commission imposed fines imposed on saltier companies found guilty of collusion in the award of contracts for the supply, through coordination of policies on prices and supply strategies. Four industrial groups' glass producers in the auto industry were imposed fines for total of almost € 1,384 million, for a cartel that controlled deliveries to all major car manufacturers in the EEA (European Economic Area)[2]. The group Saint Gobain received a fine of more salt (which happens to also be the highest fine ever decided by the EC to a single company in cartel cases) amounted to € 896 million, as relapsed judged by the Commission. The group Pilkington was fined 370 million €, a group Asahi € 113.5 million and the company Soliver of a € 4.396 million[3].

The case of automotive glass came in light a month later with another case which concerned the industry of paraffin waxes in the EEA, in which the Commission inflicted fines in 9 companies, for a total of approximately € 676 million, for taking part in a cartel pricing. The fine saltier, amounting to approximately € 318 million, was imposed on Sasol. This case is particularly interesting because it broke mostly because of the policy clemency adopted by the Commission,

[2] Elhauge and Geradin, "Global Competition Law and Economics", (Hart), 2007, pp.1011-1012.
[3] D. Sokol, "Monopolists without borders: the Institutional Challenge of International Antitrust in a Global Gilded Age", (Berkeley Business Law Journal), Vol. 4.1, 2007, pp. 46

which provides immunity from fines for the company part of an agreement that first reveals the violation (and sentence reduction for companies later). Shell was the first company which informed the EC of the offense and who collaborated with it in order to ascertain the existence of the cartel, allowing them to obtain the exemption from the sanction, a substantial savings.

As previously stated, the collusion when prices are higher than that non-cooperative equilibrium is multiple price collusion involving different levels of profit for companies, until, one gets the balance of monopoly, or cooperative equilibrium with higher prices. From what follows that undertakings to collude must find a coordinate on a single market configuration. The attainment of equilibrium allocation is simpler in the case of explicit collusion as firms communicating with each other can agree on an optimal price together and, if market conditions change due to shocks in demand or costs, chooses new price collusion[4]. The coordination becomes a problem in the case of tacit collusion because, being absent communication between companies, the risk of selecting a configuration of the market which is not jointly optimal and that it can be too expensive to change the real deal. In fact, if a company used the market signaling their desire to coordinate on a higher price, this would be affected by a decrease in its market share during the inevitable period of adjustment, and still, if a company reduced its prices with the aim to coordinate on a price of lower equilibrium, this action could be interpreted as a deviation and unleash an unjustified price war. Thus, the weak point of the agreements of collusion is the instability inherent in these.

If collusion was reached through a contract with legal validity, the fact that occurs a deviation would not be a big problem for companies that have complied the agreement, as these may claim

[4] F. Vissi, "Challenges and Questions around Competition Policy: the Hungarian Experience", (Fordham International Law Journal), 1995, pp. 1230

as established in the contract before the law. However, the illegality of cartels means that the members of these cannot appeal to the courts to enforce their agreements. Therefore, the stability of a collusive practice depends solely on the possibility of early detection of the deviation and by implementing a credible threat of punishment reducing the profits of the deviant to those below obtainable cooperation (to do what rivals will be forced to sell at prices lower or increase the quantity produced). The deviation is not always easily detectable, for example, when firms compete in the price, the discovery of a possible deviation requires that the price each firm to every client is observable since this condition is difficult fulfilled, companies have to rely on indicators, such as the performance of their sales. Besides detecting the deviation, it is necessary that the discovery of this is timely. Otherwise, the threat to adopt aggressive behavior would lose much of its effectiveness; in fact, the company would be able to get a deviant increase in profits for many periods, which could compensate for the reduction of gains resulting in the identification of the deviation[5].

2. The International Competition Law

The competition law includes all laws and regulations to ensure compliance with the principle of freedom of trade and industry in a free market economy. This branch of law is one of the foundations of Community law. It is known as the expression of antitrust law in the Anglo-Saxon world. In the strict sense the competition law means the law essentially anti-competitive practices (cartels and abuse of dominance), merger control and the control of State aid.

In France, the doctrine also linked to Competition1 law, the law of restrictive practices, inserted in Title IV of Book IV of the Commercial Code ("De transparency, restrictive practices and other

[5] M. Dabbah, "The Internationalisation of Antitrust policy", (Cambridge university press), 2003, pp. 224-225, ch.9

prohibited practices" and the law of unfair competition, built mainly on the basis of common law liability. These two branches are sometimes called "little competition law" as opposed to "big competition law" of Community origin.

2.1.Why a competition law?

2.1.1. Theoretical Perspective

The competition is becoming more like a form of organization and not as a natural, spontaneous, normal. Failing to declare the competition, the role of competition law is often force companies to compete, or to suffer. The protection of competitors is not the primary concern of competition law, what concerns, in principle, this is how the macroeconomic and market research including economic efficiency. Economic efficiency is understood as the greatest customer satisfaction by producers due to the scarcity of global resources of the community[6]. In practice, depending on the weighting of competition policy, the rules of competition law and economic law have largely vocation, simultaneously or alternatively: authorize, see stimulate competition between companies to ensure: market access; market transparency; protect existing competition sanctioning unfair competition; practices elusive competition; restrict or prohibit competition in certain cases: authorizing certain entities to evade the application of competition law (but only social prerogatives of public) by granting temporary monopolies to encourage research (intellectual property patents).

2.1.2. Types of offenses and requirements of competition law

The Competition Law provides for a number of offenses and requirements. Which are traditionally distinguished as: monitoring of structures is to control, before their implementation,

[6] OECD, "OECD Country Studies, European Commission – Peer Review of Competition Law & Policy", (OECD: Paris), 2005, p. 63.

corporate mergers, that is to say their concentration. The relevant competition authority is required to analyze the effects on the market of mergers between competing firms. Behavioral surveillance by identifying various anticompetitive practices: Unlawful agreements between undertakings, generic term agreements between undertakings, decisions by associations of undertakings, concerted practices, etc situations of domination and dependence, including abuse of dominant position. Unfair competition between companies is not an indictment of competition law to the extent that it does not sanction the behavior of a company on the market but the failure of a company to compete fairly against another company. It belongs to the law of tort and resolves in damages[7].

2.2.Sanctions on competition law

2.2.1. Penalties

Fines imposed by competition authorities Damages: the victims of anticompetitive practices may also bring an action for civil liability. The nullity of agreements (contracts) or certain provisions thereof, Dismantling U.S. antitrust law[8].

2.2.2. Competition authorities

The application of competition law is ensured by the competition authorities. The functions of these are assumed jointly or alternatively by a judge, the political authorities or independent institutions, some of which may be sectoral regulators. Appeals against these decisions are brought before a judge of the second degree.

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[7] Monti, Mario "European Community Competition Law: European Competition for the 21st Century", (FORDHAM INT'L L.J. 1602), 2001, pp. 1608-09.

[8] Riley, A., "The ECHR Implications of the Draft Competition Regulation", (International and Comparative Law Quarterly), Vol. 51, No. 1, 2002, p. 55.

3. The Cartel Case and the European Commission

A cartel or collusion is a temporary agreement between producers of the same good to regulate the sale, increase or stabilize the price of a product, and thus remove them for the risks of competition. From early 1998 to early 2003, the British Pilkington, Asahi Japanese, Belgian Soliver and Saint Gobain, which alone constitute about 90% of the market for flat glass for the automotive, have also shared customers and exchanged confidential information about their products, in secret meetings in Paris, Frankfurt and Brussels[9].

The previous agreement convicted of glass in the building, concerned only two years (2004 and 2005). Saint-Gobain, Pilkington, Asahi and Guardian U.S., which accounted for 80% of the market, had agreed to set minimum prices and price increases.

Such agreements, while maintaining the autonomy of each of the companies concerned, result in additional profit sharing related to pricing than the price of pure and perfect competition. In fact, these companies say "price-maker" may impose price and product features to their customers. Such a cartel is an informal agreement between independent enterprises to profit. When the market is an oligopoly, the number of participants makes these agreements. However, once the agreement is reached, the absence of binding authority often makes it difficult to maintain. It is in a situation such as "prisoner's dilemma" in which the collective interest of member companies to maintain the agreement could be outweighed by the interest to be waived. The first such regulation is probably the Sherman act U.S. in July 1890. This was also the appearance of the first major industrial concentrations, to prevent practices which may harm competition. Since

[9] Office of Fair Trading (OFT), "Private Actions in Competition Law: Effective Redress for Consumers and Business", (OFT: London), 2007

1911, the Federal Trade Commission investigates complaints entrusted in this direction. The European Commission is in the same logic[10].

Neoclassical economists show that perfect competition is the market situation household as the interests of all participants in transactions (called a Pareto optimum). Any lack of compliance with any of its terms is likely if the situation improves a stakeholder (cartel members) deface that of another (the clients). This is why most western laws against these practices. The hidden nature of these agreements makes yet the government action very difficult. The instruction files is time consuming and expensive, as this example shows. Sanctions are sometimes difficult to enforce.

Within the European single market, competition policy is one of the reserved areas of EU policies. This day (as shown in diagram below) the establishment of a "free and undistorted competition" The European Commission investigates complaints that are made. Feed the fines paid by the Community budget, which reduces the contribution of Member States. The extra profit is unfair and returned. Pinned by the cartel is fined record, to the extent of the harm to customers, as assessed by the commission. It lasted 5 years and especially Saint-Gobain has been repeatedly condemned by the Member States as by the commission, for the same reason. A suspense appeal is possible with the District Court of the Court of Justice of the European Communities in Luxembourg. In some previous cases, the length of proceedings has even resulted in a reduction of the fine actually paid. The money is not yet in the coffers of the Union.

4. Commencement of the infringement

4.1.1998

[10] P. Hansen, “Antitrust in the Global Market: Rethinking Reasonable Expectations”, (Southern California Law Review), 1999, pp. 1601.

Contacts between Saint-Gobain, Pilkington and AGC in 1998 focused on coordinated actions for the following manufacturers: [...] (notes written by Mr. [...] of AGC contain estimates of shares of the three in large deliveries to [...] for the year 1998), [...] (the contacts 18 May, 28 May, 17 June, 23 June, 16 September, 29 September, November, Dec. 8 telephone interview and finally a contact for which only 1998 has been specified) and [...] (spring and October 9)[11].

4.2.1999

In 1999, contacts between Saint-Gobain, Pilkington and AGC have become more frequent. Meetings and contacts were for concerted action on several future supply contracts as well as contracts for existing vehicles. Including two trilateral meetings have taken place at the beginning of 1999 and September 20, 1999, and another contact trilateral January 15 1999. Competitors have also had at least 10 bilateral contracts during year: Saint-Gobain and AGC communicated with each other eight times the 12 February, 22 April, 16 June, 20 and 30 September, 26 October and 2 and 11 November, Saint-Gobain and Pilkington July 15, while AGC and Pilkington met on March 9.

4.3.2000

In 2000 13 meetings were held trilateral Pilkington, Saint-Gobain AGC. In addition, two bilateral meetings between Saint-Gobain and AGC and between Pilkington and AGC took place. More specifically, the trilateral meetings have held on April 12, twice mid-2000, 5, 28 and 31 July, 19 September, October 27, 2000 in the fall, late October / early November, and the first 9 November, and December 13-14. Saint-Gobain and AGC also had a bilateral meeting in July-September. Another bilateral meeting took place between Pilkington and AGC before June 23

[11] Werden, G., "Sanctioning Cartel Activity: Let the Punishment Fit the Crime", (European Competition Journal), Vol. 5, No. 1, 2009, pp. 19, 21 et seq.

regarding contacts, St. Gobain had one with Pilkington and AGC at the end of the year. Saint-Gobain also had seven contacts with AGC on January 13, on 21 July, late August / early September, end of September, in the fall of 2000, between 11 and 25 October and end October / early November. Finally, Pilkington and AGC competitors are contacted six times, namely once before June 23, then the June 23, in mid-2000, 17 July, November and 5 November.

4.4.2001

In 2001, three held at least ten trilateral meetings on 26 January, 26 April, 20 June, 19 July, 7 August, 29 October, in November, 29 November, 6 December and the end of 2001. There was a subsequent bilateral meeting between Saint- Gobain and Pilkington 15 November and a bilateral meeting between AGC and Soliver December 4. Saint-Gobain had two contacts with Pilkington and AGC before 18 January to 14 February and contact AGC before September. Pilkington and AGC are contacted three times, namely in May, and September 10 November 6. Finally, AGC and Soliver had several telephone contacts between November 19 and December 12.

4.5.2002

In 2002, competitors Pilkington, Saint-Gobain and AGC organized trilateral meetings four times, ie on February 5, April 30, to April / May and September 3, and have contacted several occasions. St. AGC Gobain contacted six times by mid-February, March 7, April 30, between 3 September 18 and the end of September and the fall of 2002, and had contact with Soliver May 29.

4.6.2003

In 2003, only bilateral contracts have been proven. Saint-Gobain had at least two contacts with AGC and in early March. AGC and Soliver contacted at least three times, ie January to March and 11 March 2003[12].

5. The Leniency Programs

There is general agreement in considering cartels as one of the most serious restrictions of competition, for damages cause on consumers and the industry itself. In line with its harmful nature, the Competition authorities can sanction with very high fines (and on some systems, with imprisonment) firms that have participated in a cartel. For encourage firms to leave the cartel and brought to the attention of the Authority Competition its existence, several States as well as the European Commission, have developed "Leniency program" or leniency, offering Complete immunity or a significant reduction of sanctions that otherwise would have imposed on a participant in a cartel, in exchange that it provide information on the same, according to certain criteria, before or after the start of an investigation. In this example, the Commission was alerted by an anonymous tip and obtained the cooperation of the Japanese Asahi, which saw its fine reduced by 50%.

5.1. Leniency programs in the fight against cartels

5.1.1. Effective tool for obtaining best evidence

Leniency programs have become an important tool for detecting cartels which can obtain the information required to prove their existence and punish, in this thus infringing companies. In

[12] Werden, G., "Sanctioning Cartel Activity: Let the Punishment Fit the Crime", (European Competition Journal), Vol. 5, No. 1, 2009, pp. 19, 21 et seq.

general, Authorities Competition has different instruments to discover violations of competition rules, such as the development of inspections or market research, requirements information or allegations from third parties (consumers or competitors affected by the conduct unlawful). All of these techniques, however, present a number of difficulties in the investigation cartels (need for the Authority Competition has a prior knowledge of cartel, risk of not accessing the desired tests or incorrect information access, need have a reference in the case of competitive market research, etc.)[13].

Faced with these instruments, programs clemency is presented as a novel technique cartel detection and information gathering. First, allow Authorities Competition access or current contemporary documentary evidence as well as statements made by the companies participating in the cartel, with the special value of these latter by who proceed directly involved in this. This direct knowledge of the cartel allows more efficient allocation of resources Competition authorities, as the proceedings research to be taken after the submission of the leniency application (normally inspections) will allow better targeted and test the existence of the cartel. Finally, minimizing risk of incorrect information in the investigation, as the risk that the applicant should take in the event of failing to cooperate with the Authority total loss would be favorable treatment to would grant under the program.

The analysis of the results obtained in jurisdictions such as the U.S. and the EU show the advantages involving leniency programs, especially after a number of changes that have increased legal certainty for applicants. Thus, in U.S. leniency program for companies 1993 introduced the automatic granting of immunity in the case of applications submitted before the

[13] Wells, W., "Antitrust and the Formation of the Post-War World", (New York: Columbia University Press), 2002.

start of an investigation, provided as they meet certain requirement, generating an increase in applications.

The same has happened at the community level. Faced with the limited use of the leniency program in 1996, the adoption, in 2002, of enshrining a new Communication automaticity of immunity under certain conditions and allowed it would operate once started an investigation, caused a increasing number of applications. Finally, in 2006 the European Commission adopted a new communication that, through greater transparency of information to be made by the leniency applicant, the establishment a marker system and the opportunity to submit oral statements as a means protect leniency applicants against potential claims for damages, has driven filings and in ultimately, the prosecution of cartels[14].

5.1.2. Leniency programs favor destabilize cartels

The operation of a cartel requires its joint members of a number of mechanisms to ensure the survival of the same and prevent defections (off policy if abandonment, profit sharing system, ETCETERA). These mechanisms can be clearly seen weakened by a leniency program well designed to propel the cartel members leave and to make known to the Competition Authorities existence.

Achieving this goal depends on the following factors[15]:

a) Expectations generated by the program clemency

Firstly, essential expectations exemption or reduction of the fine the leniency program generates in potential applicants. In this regard, it is essential to establish clear rules and transparent

[14] P. Hansen, "Antitrust in the Global Market: Rethinking Reasonable Expectations", (Southern California Law Review), 1999, pp. 1601.
[15] Veljanovski, C., "European Commission Cartel Prosecutions and Fines 1999-2009", (Case Associates: London), 2009, p. 15.

temporal priority in access to the exemption and the reduction of the fine on the information to be made by one or other applicant for access to clemency and in the For reduction of the proportion of which can benefit the company.

b) Deterrence of sanctions

Second, destabilizing capacity of a leniency program is directly related to the deterrent effect of the sanctions that may come to impose authority competition, companies not only have to perceive the risk of being discovered but also the risk of facing heavy fines. Various competition authorities have carried out modifications to enhance this deterrent effect. Thus, the European Commission adopted new guidelines in 2006 for the calculation fines that came to replace those adopted 1998. The document gives more transparency to the system used by the Commission respecting, in any case, the limit of 10 100 total turnover made by the company sanctioned according to the provisions of Article 23.2 of Regulation 1/2003. The Guidelines provide for a system based on the determination of the basic amount on which made a number of adjustments (aggravating and mitigating). The basic amount is calculated by applying a percentage of up to 30 100 at the value of sales made by the company. In cartel cases, the percentage normally be located in the end the upper scale[16].

The Guidelines also provide for the basic amount can be increased from 15 per 100 and 25 100 of the value of sales in order to increase the deterrent effect of the sanction. Table 2 reflects the increasing importance acquiring the penalties in the fight Community against cartels, especially highlighting the sanctions imposed in 2008 Car Glass Case, in which the total of fines amounted to 1,383,896,000 Euros, the highest so far by a cartel case. The UK legislator, in line with the

[16] Aubert, C., Rey, P., E Kovacic W. E., "The impact of leniency and whistle-blowing programs on cartels", (International Journal of Industrial Organization), 24 (6), 2006, 1241-1266

trend existing at European level and with the doctrine of the late Court of Competition, has criminalized cartels as a very serious infringement to the rules of competition (Article 62.4.a) LDC), stating that participation in such violation may be punished by a fine of up to 10 100 of the total turnover of the undertaking concerned in the exercise immediately prior to the imposition of fine[17]. Also, the CNC has adopted a communication on fines that, similarly to the Guidelines, part of the determination a basic amount will be increased or decreased depending on the aggravating circumstances or mitigating circumstances. The basic amount is calculated by applying a percentage to turnover affected by the infringement, a percentage that will leave 10 per 100 and that in the case of a cartel, classified as very serious offense, may be increased by ten percentage points.

In addition, as a peculiarity of UK-regime, one must emphasize the possibility of sanctioning not only to companies but also to individuals, possibility existing under the Law 16/1989, but it has been reinforced by a tightening of the fine imposed can reach in the new LDC. Thus, Article 63.2 of the LDC states that may be imposed a fine of up to 60,000 Euros to each of the legal representatives of the offending company or people within the governing bodies that have involved in the illegal agreement or decision. Although to date there has been limited use of this power, it could have a strong deterrent for companies are participating in a cartel and encourage the submission of applications for clemency. Now, sanctions to individuals would undermine the effectiveness of a leniency program not be extended to those responsible for the Company favorable treatment accorded to it. Aware of this risk, the UK legislature has established that the

[17] Hülsmann, Jörg Guido, "Economics Science and Neoclassicism", (The Quarterly Journal of Austrian Economics), vol. 2, No. 4, 1999, 47-49.

exemption or reduction granted to an undertaking also benefit their legal representatives or persons members their bodies, always cooperate with the CNC[18].

6. European Commission: the cartel of automotive glass case

November 2008 was marked by a fine of 1.38 billion Euros imposed by the European Commission with four glass producers: Saint-Gobain, Pilkington, Asahi and Soliver. These glass suppliers to the automotive industry agreed between 1998 and 2003 on the pricing and maintaining their respective market shares. It is the largest fine ever imposed on a deal in Europe, but also because the company French group Saint-Gobain will have to pay him only about two-thirds of the sum of nearly 900 million Euros. The agreements can be defined as a set of agreements and concerted practices by enterprises in order to limit competition in a market. Once again, the European Commission, although after being informed by a "whistleblower anonymous "just condemn how severe the relevant actors glass market and distribution of glass for automobile manufacturers to large world.

The European Commission has imposed fines for a total of 1.383.896.000 € Asahi, Pilkington, Saint-Gobain and Soliver for unlawful agreements market sharing and exchanging information about commercially sensitive deliveries of car glass in the EEA in violation of the provisions of the EC Treaty and EEA Agreement relating to the prohibition of cartels and restrictive business practices (Article 81 the EC Treaty and Article 53 of the EEA Agreement). These are the highest fines that Commission has ever imposed in a case agreement, as a single company (€ 896 million for Saint Gobain) and all members' agreement.

6.1.Background convicted

[18] Choi, J. P., E Gerlach, H., "Global cartels, leniency programs and international antitrust cooperation". (International Journal of Industrial Organization), 30 (6), 2012, 528-540.

Asahi, Pilkington and Saint Gobain are the three main sector operators in Europe. The four companies involved controlled at time, approximately 90% of sales glass used in the EEA for new vehicles as well as original spare parts for motor vehicles, market representing some € 2 billion last full year of the infringement. Between early 1998 and early 2003, these companies have consulted on target prices, sharing market and customer allocation during a series of meetings and other illicit contacts. The Belgian company Soliver also took part in some of these exchanges. Asahi, Pilkington, Saint Gobain and Soliver consulted at regular intervals in order to allocate deliveries of car glass to car manufacturers, ensuring that their market shares remain stable as possible European scale[19].

The evidence collected by the Commission revealed several meetings in airports and hotels in different European cities during which Asahi, Pilkington, Saint Gobain and Soliver discussed the distribution of deliveries of car glass for new models of cars during production, as well as the renegotiation ongoing contracts, and exchanged commercially sensitive information extremely.

6.2.The premium for the information

The European Commission has opened a course investigation in the field of automotive glass to its own, but on the basis of information considered sufficiently reliable transmitted by an anonymous informant, prompting the Commission to carry out unannounced inspections in 2005 several production sites auto glass in Europe.

Following these inspections Community, the Japanese company Asahi Glass Co law and subsidiary AGC Flat Glass Europe have converged European Commission to enjoy immunity in terms of sanctions, under the leniency program set established by the European Commission in

[19] Armentano, Dominick T., "Antitrust and Monopoly", (The Independent Institute: Oakland, California), 1999

2002 Asahi and its subsidiary located in the territory community clearly have cooperated so full with investigators and provided the Commission with sufficient information that allowed him to uncover and support material, the existence of the infringement. The leniency program fully played to the advantage of both companies saw their fines reduced 50%, the European Commission, should species, doing applied the provisions leniency program now well known.

The fines imposed are frighteningly strong and, according to the spokesman of the Saint Gobain, "manifestly excessive and disproportionate". In fact, the fines in this case are determined on the basis of the guidelines Fines for 2006. These lines Guidelines provide that fines reflect the overall economic significance of the offense, and the involvement of different companies involved.

The cartel offense is a very severe rules of the EC Treaty in antitrust. To determine the amount of fines, the Commission took into account the value of sales affected by the infringement, made by each undertaking in question and the combined market share and geographic reach collusive agreements[20].

The Commission increased the fine imposed on Saint Gobain by 60% for recidivism, the company is already being fined for participation in cartel activities in previous decisions of the Commission, namely 1988 in Case "Flat Glass Benelux" (see IP/88/784) and in 1984 in the case of "flat glass Italy. "

For its part, the Saint Gobain group, which was the more severely punished with a fine record of € 896 million was immediately seized the CFI, favoring a security deposit bank rather than

[20] Mises, Ludwig von, “Planning for freedom and twelve other essays and addresses”, (Libertarian Press: Illinois), 1952

immediate payment above the fine, referral to the CFI being no precedent for payment of the fine and recalled by the spokesman of the Commission European competition issues[21].

And it is not finished considering actions compensation for damages caused by the practices anticompetitive, which can now be brought by any party which has been damage in respect of the agreements between the four manufacturers of glass automobile.

As the Commission points during each of its decisions now French Competition Authority has also repeatedly pointed out such a possibility, any economic operator injured by practices may apply to a court, such as the Commercial Court in France, for the purpose of obtaining damages interest from the damage suffered. The jurisprudence of the Court and the Regulation No. 1/2003 confirms in this regard that in cases brought before the courts national, the decision of the Commission is binding proof of the existence and of illegal practices in question[22].

7. Fines for violating the Competition Law

7.1.Purpose of the fines

The Commission's policy with respect to the breaches of competition law is preventive, so publishes guidelines detailed on how to respect the legislation. If companies break the rules, fines may be imposed. The ultimate goal of this prevention is also fine, so it must meet two objectives: to punish and deter. The breach of rules competition is profitable if goes unpunished – by companies that do[23]. If we put the cartels example, an OECD study on a selection of cartels estimated that the increase average price was between 15% and 20%, can reach more than 50%. If a cartel lasts several years, the participating companies benefit from these higher prices all

[21] Mises, Ludwig von, "Human action. A Treatise on Economics", (Fox & Wilkes: San Francisco), 1966
[22] J. Jackson, Sovereignty, the WTO, and Changing Fundamentals of International Law, (Cambridge university press), 2006.
[23] Elhauge and Geradin, "Global Competition Law and Economics", (Hart), 2007, pp.1011-1012.

year duration of the same. The penalty must be taken into account to meet its goal of prevention throughout the sector[24].

The Commission's policy on fines is based on the principle that certain offenses more harm to the economy than others, that offenses affecting sales of high value cause more damage than a level affecting reduced sales, and that infringements lasting longer are more harmful than the offenses short[25].

7.2.Calculating fines

7.2.1. Percentage of sales value considered

The starting point for the calculation of the fine is a percentage of annual sales of the product under the breach made by the company. Sales taken into consideration are, generally, product sales to which the infringement during the last full year in which this has been task. The percentage applied to the value of the Company sales under consideration can be up to 30%, depending on the severity of the infringement, which in turn depends on various factors such as its nature (e.g. abuse dominant position, fixing prices or sharing market), geographical coverage and if the offense is has effectively implemented. For cartels, the applicable percentage tends to be of the order from 15% to 20%[26].

7.2.2. Duration

This percentage of sales value considered is multiplied by the number of years and months that the infringement lasted. This means that the fine is linked to the value of sales considered

[24] T. Stewart, The Fate of Competition Policy in Cancun: Politics or Substance?, (2004),31(1) Legal Issues of Economic Integration 76
[25] Wells, W., "Antitrust and the Formation of the Post-War World", (New York: Columbia University Press), 2002.
[26] D. Sokol, "Monopolists without borders: the Institutional Challenge of International Antitrust in a Global Gilded Age", (Berkeley Business Law Journal), Vol. 4.1, 2007, pp. 46

effected during the period of the infringement, which is usually a good conceptual indicator of injury to the economy to over time. Thus, it is assumed that an infringement which lasted two years has hurt the economy double the infringement lasted only one year[27].

7.2.3. Increases and decreases

The fine may increased (for example, whether the company is repeat) or reduced (for example, if the implication Company has been limited, or if the rules or authorities have favored the offense). In the case of cartels, the fine will increase amount equal to 15% -25% of the value of Sales year, as additional deterrent applied essentially short cartels duration and aimed at deterring companies even attempting to participate in a cartel (known "Deterrent fee")

7.2.4. Overall limit

The penalty is limited to 10% of total annual turnover of the company. This limit of 10% can be based on the volume of business group to which the company if the the same parent company has influenced decisive in the activities of the subsidiary during the infringement period. There is also a period of prescription of five years from the end of the infringement to the beginning of the investigation Commission.

7.2.5. Reductions in implementation of Communication on clemency

The Commission encourages companies involved in a cartel to submit evidence which can help detect cartels and support its position. The first company to provide sufficient evidence existence of a cartel to enable the Commission investigate the case can be fully dispensed the payment of

[27] Rothbard, Murray N. “Man, economy and state with Power and Market”, The Scholar‘s edition, (Auburn, Alabama: The Ludwig von Mises Institute), 2004.

the fine, the companies cooperate subsequently benefit from reductions up to 50% of the fine to be imposed on them in otherwise

7.2.6. Reductions in application of the rules on Trade

In cartel cases the Commission also offers a 10% reduction of the fine if reached a settlement agreement with the company. The transaction procedures reduce costs administrative decisions, including costs process, and allow the Commission to address more these cases quickly, thereby freeing resources that may engage in further research.

7.2.7. Inability to pay

In exceptional circumstances The Commission may reduce the amount of the fine if evidence sufficiently clear and objective evidence that the imposition seriously affect the viability Company financial. The Commission analysis Specific various factors discussed in detail Company aims to be as objective and measurable possible to ensure equal treatment and to maintain the deterrent effect.

7.3.Legal basis for the imposition of fines by the Commission

Articles 101 and 102 of the Treaty Functioning of the EU (TFEU) prohibit several anticompetitive practices. Article 103 empowers the European Council to establish a system including coercive fines. Regulation 1/2003, Based on the Article 103 TFEU empowers the Commission to enforcing the law and impose fines on companies for violations. Feel principles that fines should be based on the severity and duration of the infringement and fixes the maximum amount in 10% of the turnover, as already explained[28].

[28] M. Dabbah, "The Internationalisation of Antitrust policy", (Cambridge university press), 2003, pp. 224-225, ch.9

In all decisions the Commission has explained how determined the fine. Although not required to do so, in 1998 developed general guidelines in order to increase the transparency of its policy on fines and responsibility in best of their actions[29]. Over time it became clear that those guidelines resulted in fines too low for large firms, especially for those participating in cartels that last a long time and involves a large volume product, as well as for firm's recidivists. In 2006 the Commission revised its approach and provided clearer guidance to companies European courts examine all aspects the decisions of the Commission and have full powers to modify the fines imposed. The results obtained by the Commission before the courts are good - in resources remains over 90% of the fines[30].

8. Conclusion

Competition is essential for good health and good markets up businesses and consumers. Legislation and oversight of compliance are keys for this. Thus, the European Commission imposed 10 days ago now the largest fine in its history, an amount of 1,383,896,000 Euros, the cartel of automotive glass manufacturers. The four major manufacturers, Saint Gobain, Asahi, Pilkington and Soliver deceived the automotive industry and millions of car buyers for five years, between 1998 and 2003, abuse in contracts. The companies were fined for illegally sharing glass market and exchange sensitive commercial information on deliveries, according to the European Commission. The highest fine was for Saint Gobain (France) worth 896 million Euros. Pilkington (UK) was passed with 370 million, and Asahi (Japan) and Soliver (Belgium), with 113 and 4.3 million, respectively. The examples provided are just some of the many signs

[29] Veljanovski, C., "European Commission Cartel Prosecutions and Fines 1999-2009", (Case Associates: London), 2009, p. 15.
[30] F. Vissi, "Challenges and Questions around Competition Policy: the Hungarian Experience", (Fordham International Law Journal), 1995, pp. 1230

that have been successfully prosecuted in recent years in Europe and in the rest of the world. The table below shows the companies with their product markets, which have been hit by higher fines ever imposed in cartel cases, the first concerning the territorial scope of the European Union and the second to the United States.

8.1.Recommendation

Presentation of possible solutions might suggest that the choice must occur between a solution inter-institutional and easier to adopt a solution integrated more suited to the regulation of competition, but less realistic. The integrated solution, however, seems to be adopted provided that its implementation work is negotiated and progressive. The inter-institutional approach does not seem desirable because it not ensure a harmonious development of international trade. Same if generalized in a multilateral framework, criticism related to his character unilateral and his conflict with the sovereignty of the member states of the WTO would only increase. If this route is taken, it will be the local authorities in the competition will have the implementation of this right and, inevitably, the collide sovereignty of other States which regulated the behavior produces effects.

The integrated approach, however, the advantage of consistency. GATT and WTO have long had to deal with behavior of states or branches national production resembling restrictive practices. Thus, trade defense measures have both resonance liberalization trade and competition law. In both areas, the GATT and the WTO favored an integrated approach: the obligations of economic operators (States or domestic industries) were defined in codes dumping and anti-subsidy. These not only to orchestrate a cooperation between the authorities, they have given rise to genuine human systemic anti-dumping and anti-subsidy.

Moreover, the integrated approach seems technically feasible, since the rights of the competition WTO members converge on a single model. In the analysis, appears that two major systems of competition regulation are today: the American system and the Community. All other rights competition in the world are based, more or less of one. However, with different technology, these systems tend to adopt the same but practical solutions integrated definition of WTO law, if possible, will be probably not easy. Because of uneven development and the importance spare the sovereignty of WTO members, the development of this right must be mindful of balance.

Firstly balance between sovereignty, ie the freedom of states to intervene in the economy and the stress that necessarily assumes the enactment of competition rules. As such, it is probably a negotiated approach and multilateral must be retained. While philosophy general competition law is the same sectors are excluded from this right often different because of differences in economic resources and cultures. It is therefore necessary to adopt a consensual approach and progressive. Finally, the balance between the different degrees of development, for many Member States of the WTO, adopts provisions relating to competition proving difficult technically. The balance between the different degrees of development therefore requires, on the one hand, the provision of technical assistance to countries developing and, secondly, a gradual, Eg adopting a plurilateral or multilateral then transformed into organizing leaving time sufficiently long to developing countries in order to implement these new requirements. In addition, it is necessary to continue collaboration between the WTO and UNCTAD in this area.

Implementation of a competition law in the WTO is a difficult challenge to up, but probably beneficial for developing countries in general and the Arab countries in particular. Thus, UNCTAD has shown since 1981 that the restrictive practices adopted market international or world have very negative effects on the political development.

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