



Press and Information

Court of Justice of the European Union
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Judgment in Case C-101/15 P
Pilkington Group and Others v Commission

The Court of Justice confirms the fine of €357 million imposed by the Commission on Pilkington Group for its participation in the ‘car glass’ cartel

Pilkington Group consists, inter alia, of the companies Pilkington Automotive, Pilkington Automotive Deutschland, Pilkington Holding and Pilkington Italia. Together they form one of the largest manufacturers of glass and glazing products in the world, particularly in the automotive sector.

By decision of 12 November 2008, the Commission established that a number of companies, including Pilkington, had infringed EU competition law by participating in a set of agreements and concerted practices in the automotive glass sector. The infringement consisted in an allocation of the supply of car glass, designed to maintain an overall stability of the parties’ positions in the market concerned. In view of its participation between 10 March 1998 and 3 September 2002, the Commission initially imposed a fine of €370 million on Pilkington.¹ On 28 February 2013, the Commission reduced the fine to €357 million, in order to correct two errors made in the initial calculation.

Pilkington then asked the General Court to annul the decision and to substantially reduce the amount of the fine. By judgment of 17 December 2014,² the General Court dismissed Pilkington’s action and confirmed the Commission’s decision and the amount of the fine. In particular, the General Court found that the Commission had correctly calculated the fine, even though it was, at the time, one of the largest ever imposed on a party involved in a cartel. As it was unhappy with the judgment delivered by the General Court, Pilkington brought an appeal before the Court of Justice seeking to have that judgment set aside.

In today’s judgment, the Court of Justice dismisses Pilkington’s appeal and thus confirms the judgment of the General Court and the fine imposed by the Commission.

In line with the General Court, the Court of Justice finds, first of all, that the Commission was entitled, for the purpose of calculating the fine, to take into account the sales made during the infringement period on the basis of contracts concluded prior to that period. The overall plan of the cartel was to allocate all supplies of automotive glass between the cartel participants, with respect to both existing supply contracts and new contracts. It follows that the sales made pursuant to contracts that pre-dated the infringement period and had not been renegotiated during that period had to be regarded as coming within the scope of the cartel and could be taken into account for purposes of determining the fine.

Pilkington claims also that the Commission, for the purpose of converting its turnover, which is denominated in pounds sterling, should not have used the exchange rate applicable in the business year preceding the adoption of the decision at issue but should rather have used the

¹ Commission Decision C(2008) 6815 final of 12 November 2008 relating to a proceeding pursuant to Article 81 [EC] and Article 53 of the EEA Agreement (COMP/39.125 — Car glass), as amended by Commission Decision C(2009) 863 final of 11 February 2009 and also by Commission Decision C(2013) 1119 final of 28 February 2013.

² Judgment of the General Court of 17 December 2014, *Pilkington Group and Others v Commission* ([T-72/09](#), see [PR No 177/14](#)).

exchange rate applicable on the day on which that decision was adopted (12 November 2008). Thus, according to Pilkington, the maximum amount that the Commission was entitled to impose on it was €317 547 860, that is to say, €39 452 140 less than the fine that was ultimately imposed. In this respect, the Court of Justice finds, as did the General Court, that the choice made by the EU legislature to take the turnover figures for the last full business year preceding the adoption of the decision as the reference value that is most likely to reflect the financial capacity of an undertaking at the time when it is identified as responsible for the infringement, also justifies the use of the exchange rate applicable during that period to convert the reference value, where the denomination of the reference value is expressed in a currency other than the euro. Such a method tends to neutralise the effect of monetary fluctuations on the level of the statutory ceiling of the fine, whereas a method of conversion based on a daily exchange rate is bound to be uncertain and unpredictable.

With regard to the argument that the fine imposed on Pilkington is proportionally higher than that imposed on other cartel participants by reason of the fact that its activity is less diversified, the Court of Justice finds that it is not contrary to the principles of proportionality and equal treatment that an undertaking, the activities of which are more focused than others on the sale of goods or services connected directly or indirectly to the infringement, may receive a fine which represents a proportion of its overall turnover that is greater than that imposed on the other undertakings. Moreover, the Commission may not confer an advantage on the least diversified undertakings on the basis of criteria that are irrelevant in the light of the gravity and the duration of the infringement, and, therefore, there cannot, by the application of different methods of calculation, be any discrimination between the undertakings which participated in an agreement or a concerted practice contrary to EU law.

NOTE: An appeal, on a point or points of law only, may be brought before the Court of Justice against a judgment or order of the General Court. In principle, the appeal does not have suspensive effect. If the appeal is admissible and well founded, the Court of Justice sets aside the judgment of the General Court. Where the state of the proceedings so permits, the Court of Justice may itself give final judgment in the case. Otherwise, it refers the case back to the General Court, which is bound by the decision given by the Court of Justice on the appeal.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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