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## **The Court of Justice reduces the fine imposed on Guardian for its role in the flat-glass cartel from €148 million to €103.6 million**

In 2007, the Commission found that the undertakings Guardian, Asahi Glass, Pilkington and Saint-Gobain had unlawfully fixed prices in the flat-glass sector in the European Economic Area.<sup>1</sup> The Commission imposed a fine of €148 million on Guardian. In 2012, the General Court upheld that decision.<sup>2</sup> Guardian brought an appeal before the Court of Justice seeking to have the judgment of the General Court set aside and the fine reduced. It argued that the General Court failed to have regard to the principle of equal treatment in refusing to accept that, when the fine was calculated, sales between entities belonging to the same undertaking (internal sales) must be taken into account on the same basis as sales to independent third parties (external sales).

In today's judgment, **the Court of Justice sets aside the judgment of the General Court in part and reduces the fine imposed on Guardian from €148 million to €103.6 million.**

The Court of Justice notes that, in order to determine the amount of the fine to be imposed on an undertaking, the proportion of the overall turnover deriving from the sale of products in respect of which the infringement was committed is able to reflect the economic importance of the infringement and the relative weight of that undertaking in it. As regards those sales, **a distinction must therefore not be drawn between external and internal sales. Excluding a company's internal sales would effectively favour vertically integrated companies<sup>3</sup> by reducing their relative weight in the infringement to the detriment of the other companies, on the basis of a criterion which has no connection with the objective pursued** (namely that of reflecting the economic importance of the infringement and the relative weight of each of the undertakings that took part in it).

**The Court notes that the exclusion of the internal sales led to the relative weight of Saint-Gobain (a vertically integrated company) in the infringement in particular being reduced and that of Guardian (a non-vertically integrated company) being increased commensurately.** The Court therefore decides to reduce the amount of the fine imposed on Guardian by 30% and to set that fine at €103.6 million.

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**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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<sup>1</sup> Commission Decision C(2007) 5791 final of 28 November 2007 relating to a proceeding under Article 81 [EC] and Article 53 of the EEA Agreement (Case COMP/39165 — Flat glass).

<sup>2</sup> Case [T-82/08](#) - *Guardian Industries and Guardian Europe v Commission*.

<sup>3</sup> A vertically integrated company is a company which brings together the various production and distribution stages for the same type of goods.

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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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