



Press and Information

General Court of the European Union

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Judgment in Joined Cases T-56/09 and T-73/09
Saint-Gobain Glass France SA and Others v Commission, and Compagnie
de Saint-Gobain SA v Commission

The General Court reduces the fine imposed on the Saint-Gobain group for the car glass cartel from €880 million to €715 million

By decision of 12 November 2008, the Commission found that a number of companies, including several subsidiaries of the Saint-Gobain group ('Saint-Gobain') and their parent company ('Compagnie')¹ had infringed EU competition law by participating, during various periods, in a series of anti-competitive agreements and concerted practices in the car glass sector in the European Economic Area (EEA). The agreement consisted in sharing deliveries of car glass between the cartel participants in order to ensure the stability of their market shares. On account of their participation between 10 March 1998 and 11 March 2003, a fine of €880 million was imposed jointly and severally on Saint-Gobain and the Compagnie. Saint-Gobain and Compagnie applied to the Court for annulment of that decision.

In their applications, Saint-Gobain and Compagnie alleged that the Commission, *inter alia*, had increased the amount of the fine imposed on them jointly and severally by 60 %. The Commission considered Saint-Gobain to be guilty of repeated infringement, in so far as that company had already been the subject of previous Commission decisions relating to similar infringements in 1984 and 1988². However, the Court recalls that, for the purpose of applying the aggravating circumstance of repeated infringement, it must be established that the various infringements were committed by the same undertaking. As the 1988 decision concerned a different subsidiary of Compagnie to those in question in the present case and in so far as that decision was not addressed to Compagnie, the Court finds that Saint-Gobain and Compagnie cannot be held liable for an earlier infringement for which they have not been penalised by the Commission and in the establishment of which they were not given an opportunity to present their arguments with a view to disputing that they formed an economic unit with one or other company to which the earlier decision was addressed. In that regard, the Court points out that the passage of a long period of time since the adoption of an earlier decision may make it more difficult, if not impossible, for the parent company to contest the existence of such an economic unit, and also, depending on the circumstances, the elements constituting the infringement. The General Court therefore establishes repeated infringement only in respect of the 1984 decision³.

Saint-Gobain and Compagnie maintain, however, that the fact that more than 10 years have elapsed between the previous findings of an infringement and the repetition of unlawful conduct precludes a finding of repeated infringement. In that regard, the Court recalls that the principle of proportionality requires that the time which has elapsed between the infringement in question and a previous breach of the competition rules be taken into account in assessing an undertaking's tendency to infringe those rules. The Court observes that in the present case, nearly 14 years have elapsed between the 1984 decision and the year in which the infringement penalised started (1998). However, having regard to the identical nature of the cluster of activity concerned by the infringement and the similarity of the cartels in question, the Court finds that, notwithstanding of the

¹ The three subsidiaries concerned are Saint-Gobain Glass France SA, Saint-Gobain Sekurit Deutschland GmbH & Co. KG and Saint-Gobain Sekurit France SAS. The parent company of those subsidiaries is Compagnie de Saint-Gobain SA.

² Commission Decision 84/388/EEC of 23 July 1984 relating to a proceeding under Article [81 EC] (IV/30.988 - Agreements and concerted practices in the flat-glass sector in the Benelux countries) (OJ 1984 L 212, p. 13) and Commission Decision 89/93/EEC of 7 December 1988 relating to a proceeding under Articles [81 EC] and [82 EC] (IV/31. 906, flat glass) (OJ 1989 L 33, p. 44).

³ The decision of 1984 was addressed to the Company, so that the Commission considered that the undertaking formed by Saint-Gobain and the Company had already been penalised for a similar infringement.

period of time elapsed, the Commission was entitled to establish repeated infringement without breaching the principle of proportionality.

Given that, in the contested decision, the increase by 60% in the basic amount of the fine was justified on the basis of the decisions of 1984 and 1988 and that only the decision of 1984 may be relied on for the purposes of establishing repeated infringement, the Court considers lastly that the repeated anti-competitive conduct of Saint-Gobain and Compagnie is less serious than that found by the Commission. The Court therefore decides to reduce the percentage increase to the fine for repeated infringement to 30%, so that the fine imposed jointly and severally on Saint-Gobain and Compagnie is now fixed at €715 million.

NOTE: An appeal, limited to points of law only, may be brought before the Court of Justice against the decision of the General Court within two months of notification of the decision.

NOTE: An action for annulment seeks the annulment of acts of the institutions of the European Union that are contrary to European Union law. The Member States, the European institutions and individuals may, under certain conditions, bring an action for annulment before the Court of Justice or the General Court. If the action is well founded, the act is annulled. The institution concerned must fill any legal vacuum created by the annulment of the act.

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The full texts of the judgments ([T-56/09](#) and [T-73/09](#)) are published on the CURIA website on the day of delivery

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