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## European Commission Cartel Prosecutions and Fines, 1998-2009

### An updated statistical analysis of fines under the 1998 Penalty Guidelines

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**Abstract:** This report updates and summarises the administrative fines imposed by the European Commission on price-fixers over the period 1998 to January 2009. Based on an analysis of 42 fully reported decisions imposing fines on 56 cartels involving 306 firms, the report examines how fines were calculated in practice under the *1998 Penalty Guidelines*, leniency notices, and the courts on appeal.

**Keywords:** price-fixing, cartel, fines, leniency

**JEL Code:** L4

**Date:** updated 3 March 2009

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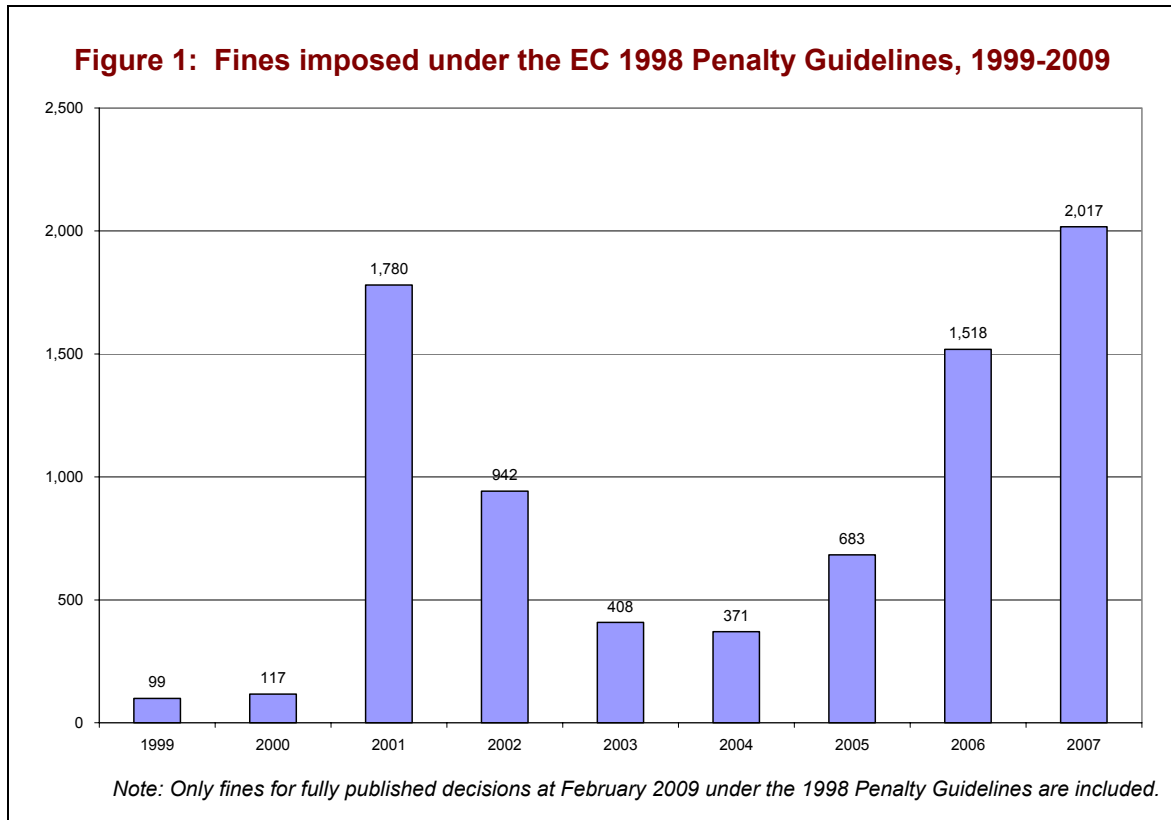
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## I. INTRODUCTION

This report updates my earlier studies<sup>1</sup> of the fully reported prosecutions and fines as at March 2009 imposed on cartels by European Commission under the European Commission's *1998 Penalty Guidelines*<sup>2</sup>



During this period the Commission published 42 fully reported decisions imposing fines under the *1998 Penalty Guidelines* on 56 cartels<sup>3</sup> involving 306 firms (see Annex for full list of cartels). The aggregate level of fines as set out in these reported decisions (before appeal) have been significant (Figure 1 above). It should be noted that the fines imposed in these years are much higher for more recent years because either

<sup>1</sup> This paper updates C. Veljanovski, *European Commission Cartel Prosecutions and Fines, 1998-2007 – A Statistical Analysis*, September 2007. C. Veljanovski, 'Cartel Fines in Europe – Law, Practice and Deterrence', 30 *World Competition*, 65-86 (2007) available online at <http://ssrn.com/abstract=920786> ;

<sup>2</sup> EC Commission Guidelines on the method of setting fines imposed pursuant to Article 15(2) of regulation No 17 and Article 65(5) of the ESC Treaty, 98/C 9/03 (*1998 Penalty Guidelines*). The sample excludes decisions using earlier fining procedures, those under the 2006 Penalty Notice, and penalties under the 1998 Penalty Notice where the decision has not been published.

<sup>3</sup> The analysis below excludes 5 cartels - 4 vitamins' cartels were time-barred (*Vitamins B1, B6, B and H*); and in one (*Industrial thread UK*) the Commission could not find sufficient evidence to prove the participation of firms (Coats UK, Donisthorpe, Oxley Threads, Barbour Thread and Perivale Gutermann) in a continuous cartel in the UK market.

they do not fall under the 1998 Penalty Guidelines or the Commission has not yet published the full decision.<sup>4</sup>

The European Commission imposed:

- about €12.4 billion in fines before leniency;
- €7.9 billion in fines after leniency (but before appeal);
- an average fine €222.2 million per cartel reduced to €141.6 million after leniency;
- an average fine €35.9 million per participating cartelist reduced to €26.0 million after leniency;
- the largest fine imposed on a firm was €396.6 million (Siemens AG in *Gas Insulated Switchgear*);<sup>5</sup> and
- the smallest a nominal fine of €1,000

The European Court of First Instance (CFI):

- has or is deciding appeals on fines totalling €7.9 billion or 99% of all fines imposed by the Commission; and
- has to date reduced the Commission's fines in 20 successful appeals by €476.2 million from €2,521.5 million to €2,045.3 million i.e. an average of 18.9% reduction in the fine imposed by the Commission.

Other aspects of prosecuted cartels were:

- on average a cartel had 5.5 participating firms and operated for 7.4 years<sup>6</sup>;
- the longest cartel operated for 29 years<sup>7</sup> with 6 members (*Organic Peroxides*);

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<sup>4</sup> The Commission now publishes *Updated Cartel Statistics* on its fines after leniency from 2002 to date <http://ec.europa.eu/comm/competition/cartels/statistics/statistics.pdf>. In some years the fines in the *Updated Cartel Statistics* are higher than those in Case's database. The differences arise for two reasons. First the Commission's includes all fines imposed in the respective year whereas our sample is confined to cartels for which the Commission has published a full decision (therefore the following cartels have been excluded from the analysis in the text - *Copper Fittings* and *Bitumen Spain*, as well as *Fasteners* and *International Removal Services* because it is not clear from the press releases whether they fall under the 1998 Guidelines). Second, the Commission has included two re-adopted decisions (*Alloy Surcharge* (€3.168 million) and *Steel Beams* (€10 million)) decided before the *1998 Penalty Guidelines* came into effect.

<sup>5</sup> The Commission's statistics posted for fines to January 2009 lists the €479.6 million paid by ThyssenKrupp in *Elevators and Escalators* cartels as the largest fine on a single firm. However, *Elevators and Escalators* covers four separate and independent cartels in Belgium, Germany, Luxembourg and the Netherlands; all of which were fined independently. The largest individual fine of €374.2 million imposed on Thyssen Krupp (Germany) was lower than the €396.6 million imposed on Siemens AG in *Gas Insulated Switchgear*.

<sup>6</sup> This average excludes *FETTCSA* and *French Brewers* where no duration was reported.

- the largest cartel had 16 firms and operated for 3 months (*FETTCSA*); and
- cartels were concentrated in the chemicals, industrial inputs, and food sectors (Table 1 below). The chemical industry had by far the largest number of cartels – 22 or 39% of all prosecuted cartels.

**Table 1: Cartels by industry**

Industry	Cartels	%	Commission Decisions
Chemicals	22	39%	<i>Lysine, Vitamins A, E, B2, B5, C and D3, Beta Carotene, Carotinoids, Citric Acid, Zinc Phosphate, Methionine, Dutch Industrial &amp; Medical Gases, Food Flavour Enhancers, Sorbates, Organic Peroxides, Chloine Chloride, Rubber Chemicals, MCCA Chemicals, Hydrogen Peroxide, Methacrylates, Synthetic Rubber</i>
Industrial inputs	16	29%	<i>Seamless Steel Tubes, Carbonless Paper, Copper Plumbing Tubes, Concrete Reinforcing Bars, Graphite Electrodes, Isostatic Specialty Graphite, Extruded Specialty Graphite, Plasterboard, Industrial Copper Tubes, Carbon &amp; Graphite Products, Industrial Threads (Benelux &amp; Nordic), Automotive Thread, Dutch Bitumen Suppliers, Dutch Bitumen Purchasers, Gas Insulated Switchgear, Industrial bags</i>
Food	8	14%	<i>Belgian Brewers, Private Label (Belgian Brewers), Luxembourg Brewers, French Brewers, French Beef, Spanish Raw Tobacco, French Raw Tobacco, Dutch Beer</i>
Elevators & Escalators	4	7%	<i>Elevators &amp; Escalators in Belgium, Germany, the Netherlands and Luxembourg</i>
Banks	2	4%	<i>German Banks, Austrian Banks</i>
Transport	2	4%	<i>FETTCSA, SAS/Maersk</i>
Needles & Haberdashery	1	2%	<i>Needles &amp; Haberdashery</i>
Fine Arts Auctions	1	2%	<i>Fine Arts Auctions</i>

## II. THE FINING PROCESS

The *1998 Penalty Guidelines* (Steps 1-4) governed the Commission's structure of fines for antitrust violations to prosecutions initiated before September 2006.<sup>8</sup> Together with

<sup>7</sup> In *Organic Peroxides* the Commission fixed the duration at 29 years for Akzo, Atochem and PC which it then reduced by imposing a 245% uplift for Akzo and Atochem, and 207.5% for PC arguing that during the 1970s a less stringent approach was applied on cartels and therefore warranted uplifts of 5% instead of 10% for years between 1971 and 1979.

<sup>8</sup> More technically where a Statement of Objections was issued prior to September 2006. Thereafter a new penalty system came into operation under the EC Commission, *Guidelines on the method of setting fines imposed pursuant to Article 23(2) of Regulation No 1/2003*.

the 1996 *Leniency Notice*<sup>9</sup> and 2002 *Leniency Notice*<sup>10</sup> (Step 5), and appeals to the courts (Step 6) the fining process involved six sequential steps:

**Step 1 – Basic Amount (x + y):** The basic amount consists of three elements – the gravity of the offence (x); deterrence uplift which is part of x; and the duration of the offence (y).

- **Gravity of offence (x):** Three classes of infringements together with starting tariffs are used - minor (€1000 and €1 million), serious (€1-€20 million); and very serious (above €20 million) offences.
- **Deterrence uplift** (part of x): The basic amount can be increased to ensure ‘sufficient deterrent’ which ‘take account of the effective economic capacity of offenders to cause significant damage to other operators, in particular consumers, and to set the fine at a level which ensures that it has a sufficiently deterrent effect.
- **Duration (y):** the basic amount is not increased for short term infringements (less than one year); for medium-term infringements (one to five years) it is increased by up to 50%, and an additional 10% for each year thereafter.

**Step 2 – Aggravating & Attenuating Factors:** The ‘basic amount’ is then increased and reduced in line with a set of ‘aggravating circumstances’ and ‘attenuating circumstances’ respectively. Aggravating circumstances include recidivism, leading role, retaliatory measures against other undertakings, refusal to co-operate with or attempts to obstruct the European Commission in carrying out its investigations, and “other”. Attenuating circumstances include passive role, non-implementation of the offending agreement, termination of the infringement as soon as the European Commission intervenes, existence of reasonable doubt on the part of the undertaking as to whether restrictive conduct does indeed constitute an infringement, effective co-operation outside the scope of the leniency notice, and “other”.

**Step 3 - Aggregate Adjustments:** The fine can adjust up or down the amount of the fine to take account ‘of certain objective factors such as a specific economic context, any economic or financial benefits derived by the offenders, the specific characteristics of the undertaking in questions and their real ability to pay in a specific social context’.

**Step 4 - 10% cap:** The final fine must not exceed the statutory ceiling of 10% of the previous year’s world-wide turnover of the undertaking.

**Step 5 Leniency:** Under the 1998 *Leniency Notice* fines can be reduced by between 10% to 100% for firms which cooperate with the Commission’s investigations. Under the 2002 *Leniency Notice* complete immunity can be given for ‘whistleblower’ provided it was not the ‘ringleader’ of the cartel, and reductions in fines of between 20% to 50% for parties who provide ‘value added’ evidence defined as evidence ‘which strengthens ... the Commission’s ability to prove the facts in question’.

**Step 6: Appeal:** Cartelist can appeal the decision to the European courts. Most firms appeal the fines imposed by the EU Commission.

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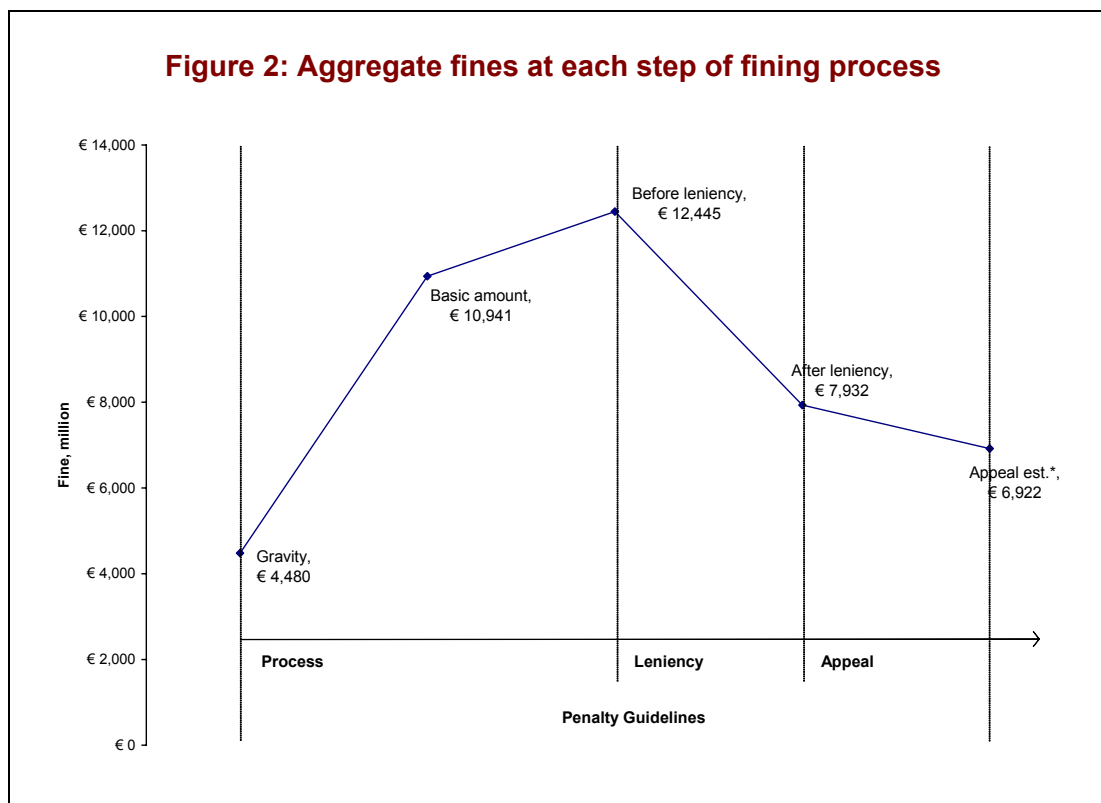
<sup>9</sup> *EC Notice on the non-imposition or reduction of fines in cartel cases*, 96/C207/04.

<sup>10</sup> *Commission Notice on immunity from fines and reduction of fines in cartel cases*, 2002/C45/03.

### III. COMMISSION'S FINING PRACTICE

Figure 2 shows how the aggregate fine builds up over these steps. This shows that:

- once the gravity of the offence is set, the fine increases most as a result of the application of the sufficient deterrence uplift and duration;
- there is a net increase when aggravating, attenuating, and other adjustments are taken into account;
- the leniency programme reduced aggregate fines by about 36% from over €12.4 billion to about €7.9 billion; and
- based on the experience with appeals the courts will when all appeals are decided reduce fines by further 12.7% to an estimated €6.9 billion.



#### Gravity of Offence

- The gravity of the offence was referred to in 41 decisions.<sup>11</sup>
- The majority of offences were treated as 'serious' (39%) or 'very serious' (58%).

<sup>11</sup> Not discussed in *FETTCSA* and *French Brewers*.

- For ‘very serious’ offences the average fine was €62.5 million or about three times greater than the minimum €20 million set out in the *1998 Penalty Guidelines*.<sup>12</sup>
- The Commission classed as ‘very serious’ offences by 69 firms (in 24 cartels) but imposed initial fines of less than the required €20 million minimum fine.<sup>13</sup>

**Table 2: Fines by gravity of offence (exc. full leniency)**

Gravity	Tariff	Firms	Basic Amount €m	Fine €m	Fine after <i>Leniency</i> €m
minor	€1000 to €1m	10	0.5	0.5	0.4
serious	€1m to €20m	102	16.1	16.2	11.7
very serious	above €20m	142	53.0	62.5	47.8

### Sufficient Deterrence

- Fines were increased on grounds of ‘sufficient deterrence’ in 29 decisions affecting 163 firms.
- It was not mentioned in 13 decisions.<sup>14</sup>

<sup>12</sup> Table 2 lists 254 firms, 52 firms less than the full sample. The omitted 52 firms consist of 26 which received full immunity, 18 (2 in *French Brewers*; 16 in *FETTCSA*) where the gravity of the offence was not discussed, 7 which received symbolic fines (4 in *Spanish Raw Tobacco*, 2 in *Italian Raw Tobacco*; 1 in *Organic Peroxides*), and 1 firm (*Hydrogen Peroxide*) where the Commission was time barred.

<sup>13</sup> *Vitamin A* (Aventis, BASF), *Vitamin E* (Aventis, Eisai); *Vitamin B2* (Takeda); *Vitamin B5* (BASF), *Vitamin C* (BASF and Merck); *Vitamin D3* (BASF, Aventis, Solvay, Roche); *Carbon & Graphite Products* (Hoffman, Conradty); *Industrial Copper Tubes* (Outokumpu, Wieland Werke); *MCCA Chemicals* (Atofina); *Industrial thread Benelux & Nordic* (Coats, Aman und Sohne, Gutermann, Barbour Thread, Belgian Sewing Thread, Bieze Stork, Zwicky); *Automotive thread in the EEA* (Cousin/Amann, Coats, Oxley and Barbour); *Methacrylates* (Quinn Barlo); *Rubber Chemicals* (Crompton Europe & Crompton Manufacturing jointly liable for €13.6 million; General Quimica SA J&SL with Repsol Quimica SA and Repsol YDF SA €3.38 million); *Dutch Bitumen Suppliers* (BP, Esha, Klockner Bitumen, Kuwait Petroleum, Nynas, Shell, Total, Wintershall); *Dutch Bitumen Purchasers* (Ballast Nedam, Dura Vermeer, Heijmans, Hollandsche Beton Group, Koninklijke BAM, Koninklijk Volker Wessels Stevin); *Hydrogen Peroxide* (Snia/Caffaro); *Dutch Beer* (Bavaria); *Gas Insulated Switchgear* (Fuji, Hitachi and Schneider); *Elevators and Escalators BE* (Thyssen Krupp); *Elevators and Escalators DE* (Schindler); *Elevators and Escalators LUX* (Kone, Schindler, Thyssen Krupp, General Technis-Otis); *Elevators and Escalators NL* (Mitsubishi, Thyssen Krupp); *Synthetic Rubber* (Unipetrol, Trade-Stomil); *Industrial bags* (Bernay, Bischof+Klein France, Bonar, Cofira-Sac, Stempher, RKW, Sachsa, Trioplast, UPM-Kymmene Oyj).

- Where applied the deterrence multiplier varied between 1.1 and 5.

**Table 3: Summary of fines under penalty and leniency notices**

Cartel/Date	no. firms	Gravity (G) € m	Duration (T) years	Basic (B) € m	Fine € m	
					Penalty Notice	Leniency Notice
1999						
Seamless Steel Tubes	8	80.0	5.0	119.0	107.1	99.0
2000						
Lysine	5	75.0	4.0	142.5	163.2	110.0
FETTCSA	16			11.9	6.9	6.9
2001						
Vitamin A	3	66.0	9.0	250.8	331.7	131.7
Vitamin E	4	91.0	9.0	324.8	438.0	202.8
Vitamin B2	3	50.0	4.0	97.5	135.3	69.7
Vitamin B5	3	54.0	8.0	158.4	212.0	111.4
Vitamin C	4	75.0	4.5	163.1	214.8	117.5
Vitamin D3	4	28.0	4.0	64.4	76.7	42.7
Beta carotene	2	40.0	6.0	128.0	182.4	91.2
Carotinoids	2	40.0	5.5	124.0	176.7	88.4
Carbonless Paper	11	179.9	3.5	358.0	452.7	313.7
Graphite Electrodes	8	152.0	5.5	267.7	338.4	218.9
Citric Acid	5	101.5	4.0	274.1	315.2	135.2
German Banks	5	42.0	4.0	100.8	100.8	100.8
Belgian Brewers	2	70.0	4.5	101.5	114.1	89.7
Private Label (Belgian Brewers)	4	1.1	0.8	2.4	2.9	1.9
Lux Brewers	4	0.8	10.0	4.1	2.8	0.4
SAS/Maersk Air	2	49.0	2.5	61.3	61.3	52.5
Zinc Phosphate	6	15.8	4.0	20.7	14.7	12.0
2002						
Plasterboard	4	192.0	6.5	393.8	540.6	478.0
Methionine	3	78.0	12.5	333.0	333.0	127.0
Austrian Banks	8	102.8	3.5	138.0	138.0	124.3
Concrete Reinforcing Bars	8	27.5	10.5	84.5	86.0	85.0
Isostatic Speciality Graphite	8	59.2	4.5	85.1	84.5	51.8
Extruded Speciality Graphite	2	30.0	3.5	40.5	33.8	8.8
Dutch Indus & Medical Gases	7	28.1	4.0	38.9	29.5	25.7
Food Flavour Enhancers	4	13.2	9.5	40.7	40.7	20.6
Fine Arts Auction	2	50.4	6.5	83.2	75.6	20.4
2003						
French Beef	6	32.0	0.2	32.0	16.7	16.7
Sorbates	5	46.6	17.5	182.6	276.0	141.5
Organic Peroxides	6	71.8	29.0	409.6	363.1	69.5
Carbon & Graphite products	6	124.0	11.0	255.1	238.6	101.4
Industrial Copper Tubes	3	58.1	12.5	121.9	113.9	78.7

<sup>14</sup> Seamless Steel Tubes, FETTCSA, Zinc Phosphates, Austrian Banks, Speciality Graphites, Industrial & Medical Gases, Fine Art Auction, SAS/Maersk Air, French Beef, Carbon & Graphite Products, French Brewers, Needles & Haberdashery, and Industrial Threads.

**Table 3: cont.**

2004						
Choline Chloride	3	35.2	5.5	79.1	88.5	66.3
Copper Plumbing Tubes	12	200.9	12.5	369.0	362.5	222.3
French Brewers	2			2.0	2.5	2.5
Spanish raw tobacco	9	19.5	5.0	33.8	23.9	20.0
Needles & Harberdashery	3	45.0	5.0	67.5	67.5	60.0
2005						
Italian raw tobacco	6	55.4	6.0	112.5	72.0	56.0
Rubber Chemicals	4	81.0	6.0	169.0	147.0	75.9
MCCA Chemicals	4	84.0	15.0	261.0	302.9	216.9
Industrial Threads (Benelux & Nordic)	7	39.9	11.5	84.6	56.5	36.0
Automative thread (EEA)	4	8.9	1.5	10.0	10.0	7.5
Industrial bags	14	213.8	20.0	597.2	363.8	290.7
2006						
Hydrogen peroxide	9	181.9	6.5	444.3	587.1	388.1
Methacrylates	5	210.0	5.5	593.3	765.8	344.6
Dutch Bitumen Suppliers	8	74.0	8.0	180.9	229.4	191.5
Dutch Bitumen Purchasers	6	36.5	8.0	65.0	75.2	75.2
Synthetic Rubber	6	197.5	6.5	555.6	766.3	519.1
2007						
Gas Insulated Switchgear	10	227.1	15.5	740.3	965.9	750.6
Dutch Beer	4	132.0	3.5	360.5	360.5	273.8
Elevators & Escalators (BE)	4	123.5	7.5	278.1	304.6	185.6
Elevators & Escalators (DE)	4	227.0	8.0	617.7	736.3	617.1
Elevators & Escalators (NL)	5	137.5	5.5	261.6	273.9	140.2
Elevators & Escalators (LUX)	4	25.0	8.0	62.1	66.0	49.4
Totals	306	4,480.4	399.5	10,958.9	12,445.9	7,934.9
Average per cartel	5.8	84.5	8.3	206.8	234.8	149.7
Average per cartelist	n/a	15.6		35.9	40.8	26.0

### Aggravating & Attenuating Adjustments

- The basic amount was:
  - increased for 20% of firms for aggravating circumstances only;
  - reduced for 21% of firms for attenuating circumstances only;
  - for 4% of firms both factors were taken into account; and
  - 55% of firms had no adjustments for either;
- The average increase to the basic amount fine for aggravating circumstances was 48.3%; and
- The average reduction to the basic amount for attenuating circumstances was 19.9%.

## Aggregate Adjustments

- **ability to pay** was taken into account for three cartels - SGL's fine (*Specialty Graphite*) was reduced by 33% due to financial constraints and previous fines; payment by instalments was allowed for Sewon in *Lysine*, and on appeal the CFI granted suspension of payments in *French Beef* to allow three firms (FNCBV, FNICGV and FNSEA) time to raise the money necessary to pay the fines.
- **Ability to pay rejected** in *FETTCSA*, *Belgian Brewers*, *Graphite Electrodes* and *Austrian Banks*.
- **'symbolic' fine of €1,000** was applied in three decisions: *Organic Peroxides* (the AC Treuhand – the privatisation agency of the German Federal Government - advised the cartelists to conceal the agreement from the competition authorities, even mediated and participated in quota-fixing meetings, and on at least one occasion proposed quotas); *Italian Raw Tobacco* (because the legislation created incentives for APTI and UNITAB to agree minimum prices) and *Spanish Raw Tobacco* (because ASJA, UPA, COAG and CCAR were trade associations and cooperatives).

## 10% Cap

- Individual fines were capped for 24 firms in 11 cartels because they exceeded 10% worldwide turnover in the preceding year cap (Table 4).<sup>15</sup>
- The average reduction for these firms was 59.0% with a range between 14.8% (Esha in *Dutch Bitumen Suppliers*) and 98.2% (Cofira-Sac in *Industrial Bags*).

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<sup>15</sup> Table 4 excludes caps to fines where firms were jointly and severally liable. Specifically, in *Italian Raw Tobacco*, Mindo and Alliance One were jointly and severally liable for €20 million before the 10% cap was imposed on Mindo; after the cap Alliance One was liable for €20 million of which it was jointly and severally liable for €3.39 million with Mindo. Similarly, in *Hydrogen Peroxide*, Edison and Solvay Solexis were jointly and severally liable for €58.1 million before the 10% cap was imposed on Solvay Solexis; after which Edison was liable for €58.1 million of which it was jointly and severally liable €25.6 million with Solvay Solexis. In *Industrial Bags*, Kendrion was liable for €34 million of the €60 million fine imposed on Fardem. Fardem's fine was capped to € 2.2 million, but the fine on Kendrion remained €34 million. Moreover, turnover caps which applied to parent companies (e.g. Nordfolien for Nordenia in *Industrial Bags*) are not included.

**Table 4: Cartels/firms where fines capped**

Cartel / Firm	Fine		
	Fine €m	Capped Fine €m	Reduction (%)
<b>Zinc Phosphate</b>			
SNCZ	4.2	1.7	59.5
Waardaals	4.2	0.7	83.3
<b>Dutch Industrial &amp; Medical Gases</b>			
AGA	14.0	5.5	60.4
Messer	1.7	1.1	33.3
<b>Fine Arts Auction</b>			
Sotheby's	41.6	34.1	18.0
<b>Carbon &amp; Graphite Products</b>			
Hoffman	9.0	4.0	55.1
Conradty	12.6	1.1	91.6
<b>Organic Peroxides</b>			
PC	40.4	11.8	70.8
Perosa	5.6	0.6	89.5
<b>Spanish Raw Tobacco</b>			
Cetarsa	7.2	4.8	33.3
<b>Industrial Thread (Benelux &amp; Nordic)</b>			
Aman und Sohne	30.1	15.4	48.8
Belgian Sewing Thread	8.8	1.2	86.2
Bieze Stork	4.0	0.6	85.7
<b>Rubber Chemicals</b>			
Flexys	60.8	42.5	30.1
<b>Dutch Bitumen Suppliers</b>			
Esha	13.5	11.5	14.8
Klockner Bitumen	13.5	10.0	25.9
<b>Synthetic Rubber</b>			
Stomil	5.5	3.8	30.9
<b>Industrial Bags</b>			
Bischof + Klein	115.5	38.9	66.3
Bischof + Klein France	15.7	5.3	66.3
Stempher	13.7	2.4	82.6
Bernay Film Plastique	7.2	0.9	86.9
Cofira-Sac	25.5	0.5	98.2
BPI/ Combipac	103.3	53.0	48.7
Nordenia	78.0	39.1	49.9

#### IV. LENIENCY PROGRAMME

Under the Commission's leniency programme:

- fines were reduced for one or more firms in 51 of the 56 (91%) cartels and for 182 firms (60%);
- total fines were reduced by €4.5 billion or 36.3%;

- 26 ‘whistle blowers’ received full immunity avoiding the payment of nearly €2.0 billion in fines;<sup>16</sup>
- fines were reduced by €2.6 billion to other offenders who ‘co-operated’ with the Commission during its investigations;
- for ‘minor’, ‘serious’ and ‘very serious’ offences fines were reduced by 57%, 31%, and 37% on average respectively; and
- no leniency reductions were given in five cartels.<sup>17</sup>

## V. APPEALS

- Fines were appealed in 52 out of the 56 cartels (or 93%) by one or more firms.
- Fines totalling €7.9 billion or 99% of all fines over the period were contested in the courts.
- Successful appeals involved fines of nearly €2.5 billion which were reduced to €2.0 billion or by 18.9% in aggregate.
- 20 of the 32 (63%) decided appeals resulted in a reduction in the Commission’s fine.
- Of the 32 decided appeals:
  - 17 had fines reduced between 2% (*Belgian Brewers*)<sup>18</sup> and 63% (*Beta Carotene*);

<sup>16</sup> These were Brassiere de Luxembourg (*Luxembourg Brewers*); Chisso (*Sorbates*); Entaco (*Needles & Haberdashery*); Grafftech International (*Extruded Speciality Graphite*); Grafftech International (*Isotatic Speciality Graphite*); Sappi (*Carbonless Paper*); Takeda (*Food Flavour Enhancers*); Aventis (*Vitamin A*); Aventis (*Vitamin E*); Akzo (*Organic Peroxides*); Christie’s (*Fine Arts Auction*); Mueller-group (*Copper Plumbing Tubes*); Aventis (*Methionine*); Morgan (*Carbon & Graphite Products*); Clariant (*MCCA Chemicals*); Flexys (*Rubber Chemicals*); BP (*Dutch Bitumen Suppliers*); InBev (*Dutch Beer*); Degussa (*Methacrylates*); Degussa (*Hydrogen peroxide*); ABB (*Gas Insulated Switchgear*); Combipac (*Industrial Bags*); Bayer (*Synthetic Rubber*); Kone (*Elevators and Escalators BE*); Kone (*Elevators and Escalators LUX*); and Otis (*Elevators and Escalators NL*).

<sup>17</sup> *German Bank Charges, French Beef, FETTCSA, French Brewers and Dutch Bitumen Purchasers*.

<sup>18</sup> *Specialty Graphite* the CFI did not adjust the €1.1 million fine imposed on Intech for *Isostatic Speciality Graphite* but reduced the portion for which EDM AG was jointly and severally liable to €0.4 million, and reduced SGL’s fine by 49%.

**Table 5: Decided appeals and fines**

Cartel	Firm	Fine €m		
		ECC	CFI	Reduction
<b>Seamless Steel Tubes</b>	<b>Total</b>	<b>99.0</b>	<b>86.2</b>	<b>13%</b>
	Mannesmannröhren Werke	13.5	12.6	7%
	Vallourec	8.1	8.1	0%
	British Steel (Corus)	12.6	11.7	7%
	Dalmine	10.8	10.1	7%
	Sumitomo Steel	13.5	10.9	19%
	Nippon Steel	13.5	10.9	19%
	Kawasaki Steel	13.5	10.9	19%
	NKK	13.5	10.9	19%
<b>FETTCSA</b>	<b>Total</b>	<b>6.9</b>		<b>100%</b>
	Maersk	0.8	-	100%
	NYK	0.6	-	100%
	MOL	0.6	-	100%
	P&O	0.6	-	100%
	K Line	0.6	-	100%
	Nedlloyd	0.6	-	100%
	Hanjin	0.6	-	100%
	Hapag-Lloyd	0.4	-	100%
	Evergreen	0.4	-	100%
	NOL	0.4	-	100%
	DSR-Senator	0.4	-	100%
	Yangming	0.4	-	100%
	CHO Yang	0.1	-	100%
	MISC	0.1	-	100%
OOCL	0.1	-	100%	
CGM	0.1	-	100%	
<b>Amino Acids</b>	<b>Total</b>	<b>109.9</b>	<b>102.6</b>	<b>7%</b>
	ADM	47.3	43.9	7%
	Ajinomoto	28.3	28.3	0%
	Kyowa	13.2	13.2	0%
	Cheil Jedand Corp	12.2	10.1	17%
	Sewon	8.9	7.1	20%
<b>Vitamin B5</b>	<b>Total</b>	<b>111.4</b>	<b>106.0</b>	<b>5%</b>
	BASF	34.0	34.0	0%
	Roche	54.0	54.0	0%
	Daiichi	23.4	18.0	23%
<b>Vitamin C</b>	<b>Total</b>	<b>117.5</b>	<b>113.6</b>	<b>3%</b>
	BASF	14.7	10.9	26%
	Roche	65.3	65.3	0%
	Takeda	28.3	28.3	0%
<b>Vitamin D3</b>	<b>Total</b>	<b>42.7</b>	<b>40.7</b>	<b>5%</b>
	BASF	7.6	5.6	26%
	Roche	21.0	21.0	0%
	Aventis	5.0	5.0	0%
<b>Beta Carotene</b>	<b>Total</b>	<b>91.2</b>	<b>64.0</b>	<b>30%</b>
	BASF	43.2	16.0	63%
	Roche	48.0	48.0	0%
	<b>Carotinoids</b>	<b>Total</b>	<b>88.4</b>	<b>62.0</b>
BASF		41.9	15.5	63%
Roche		46.5	46.5	0%
<b>Carbonless Paper</b>	<b>Total</b>	<b>313.9</b>	<b>270.9</b>	<b>14%</b>
	AWA	184.3	141.8	23%
	Bollore	22.7	22.7	0%
	Carrs	1.8	1.8	0%
	Divipa	1.8	1.8	0%
	MHTP	21.2	21.2	0%
	Zicunaga	1.5	1.3	15%
	Mougeot	3.6	3.6	0%
	Koehler	33.1	33.1	0%
	Torraspapel	14.2	14.2	0%
	Zanders	29.8	29.8	0%
<b>Graphite Electrodes</b>	<b>Total</b>	<b>218.9</b>	<b>171.0</b>	<b>22%</b>
	SGL	80.3	75.7	6%
	UCAR	50.4	42.1	17%
	VAW	11.6	11.6	0%
	SDK	17.4	10.4	40%
	Tokai	24.5	12.3	50%
	Nippon	12.2	6.3	49%
	SEC	12.2	6.1	50%
C/G	10.3	6.5	37%	

**Table 5 cont.**

<b>German Bank Charges</b>	<b>Total</b>	<b>100.8</b>		<b>100%</b>
Commerzbank		28.0	-	100%
Dresdner Bank		28.0	-	100%
Bayerische Hypo- und Vereinsbank		28.0	-	100%
Deutsche VerkehrsBank		14.0	-	100%
Vereins- und Westbank		2.8	-	100%
<b>Belgian Brewers</b>	<b>Total</b>	<b>89.7</b>	<b>88.1</b>	<b>2%</b>
Interbrew		45.7	45.7	0%
Danone		44.0	42.4	4%
<b>Methionine</b>	<b>Total</b>	<b>127.1</b>	<b>100.1</b>	<b>21%</b>
Aventis		-	-	-
Degussa		118.1	91.1	23%
Nippon Soda		9.0	9.0	0%
<b>Isostatic Speciality Graphite</b>	<b>Total</b>	<b>51.8</b>	<b>42.5</b>	<b>18%</b>
SGL		18.9	9.6	49%
Toyo Tanso		10.8	10.8	0%
LCL		7.0	7.0	0%
Tokai		7.0	7.0	0%
Ibiden		3.6	3.6	0%
NSC/NSCC		3.6	3.6	0%
GrafTech International		-	-	0%
Intech		1.0	1.0	0%
<b>Austrian Banks</b>	<b>Total</b>	<b>124.3</b>	<b>120.5</b>	<b>3%</b>
Erste (including GiroCredit and Erst before the merger)		37.7	37.7	0%
RZB		30.4	30.4	0%
BA (including CA)		30.4	30.4	0%
BAWAG		7.6	7.6	0%
OVAG		7.6	7.6	0%
PSK (including PSK-B)		7.6	3.8	50%
NO Hypo		1.5	1.5	0%
RWB/RLB		1.5	1.5	0%
<b>Plasterboard</b>	<b>Total</b>	<b>478.3</b>	<b>458.5</b>	<b>4%</b>
BPB		138.6	118.8	14%
Knauf Westdeutsche				
Gipswerke		85.8	85.8	0%
Lafarge		249.6	249.6	0%
Gyproc		4.3	4.3	0%
<b>Concrete Reinforcing Bars</b>	<b>Total</b>	<b>85.0</b>	<b>-</b>	<b>100%</b>
Riva Acciaio		26.9	-	100%
Lucchini & Siderpotenza		16.1	-	100%
Feralpi Siderurgica		10.3	-	100%
Valsabbia Investimenti & Ferriera Valsabbia		10.3	-	100%
Alfa Acciai		7.2	-	100%
Leali & Acciaierie e Ferriere				
Leali Luigi in liquidazione		7.2	-	100%
IRO Industrie Riunite Odolesi		3.6	-	100%
Ferriere Nord		3.6	-	100%
<b>Sorbates</b>	<b>Total</b>	<b>138.4</b>	<b>113.7</b>	<b>18%</b>
Hoechst		99.0	74.3	25%
Chisso		-	-	-
Daicel		16.6	16.6	0%
Nippon		10.5	10.5	0%
Ueno		12.3	12.3	0%
<b>Choline Chloride</b>	<b>Total</b>	<b>66.3</b>	<b>57.9</b>	<b>13%</b>
UBC		10.38	1.9	82%
Akzo Nobel		20.99	21.0	0%
BASF		34.97	35.0	0%
<b>Needles &amp; haberdashery</b>	<b>Total</b>	<b>60.0</b>	<b>47.0</b>	<b>22%</b>
Coats		30.0	20.0	33%
Prym		30.0	27.0	10%
Entaco		-	-	-
		2,521.5	2,045.3	18.9%

- 3 were annulled for legal reasons - the entire €100 million in *German Banks* due to the failure of the Commission to get its paperwork to the Court on time; *FETTCSA* because the Commission was time-barred; and *Concrete Reinforcing Bars* due to lack of competence of the Commission.
- 9 were dismissed;<sup>19</sup> and
- 3 did not have fines adjusted (*Vitamins A, E and B2*).
- 20 appeals are pending.<sup>20</sup>

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<sup>19</sup> *Citric Acid, Private Label (Belgian Brewers), Luxembourg Brewers, SAS/Maersk Air, Dutch Industrial Medical Gases, French Beef, Zinc Phosphate, Carbon and Graphite Products and Rubber Chemicals.*

<sup>20</sup> *Organic Peroxides, Industrial Copper Tubes, Copper Plumbing Tubes, Spanish Raw Tobacco, Italian Raw Tobacco, MCCA Chemicals, Industrial Treads (Benelux & Nordic), Automotive Threads (EEA), Hydrogen Peroxide, Dutch Bitumen Suppliers, Dutch Bitumen Purchasers, Methacrylates, Gas Insulated Switchgear, Dutch Beer, Elevators and Escalators (BE, DE, NL and LUX), Industrial Bags, and Synthetic Rubber.*

## ANNEX

### Commission cartel decisions, 1999-2009

Cartel	Case No.	Decision	Duration	
			Start	end
<b>Main Sample</b>				
Seamless Steel Tubes	IV/E-1/35.860-B	Dec-99	1990	1995
Lysine	COMP/36.545/F3	Jun-00	Sep-90	Jun-95
FETTCSA	IV/34.018	May-00	Jul-92	Sep-92
Vitamin A	COMP/E-1/37.512	Nov-01	Sep-89	Feb-99
Vitamin E	COMP/E-1/37.512	Nov-01	Sep-89	Feb-99
Vitamin B2	COMP/E-1/37.512	Nov-01	Jan-91	Sep-95
Vitamin B5	COMP/E-1/37.512	Nov-01	Jan-91	Feb-99
Vitamin C	COMP/E-1/37.512	Nov-01	Jan-91	Aug-95
Vitamin D3	COMP/E-1/37.512	Nov-01	Jan-94	Jun-98
Beta Carotene	COMP/E-1/37.512	Nov-01	Sep-92	Dec-98
Carotinoids	COMP/E-1/37.512	Nov-01	May-93	Dec-98
Carbonless Paper	COMP/E-1/36.212	Dec-01	Jan-92	Sep-95
Graphite Electrodes	COMP/E-1/36.490	Jul-01	May-92	Mar-98
Citric Acid	COMP/E-1/36.604	Dec-01	Mar-91	May-95
German Banks	COMP/E-1/37.919 (ex 37.391)	Dec-01	Oct-97	Dec-01
Belgian Brewers	IV/37.614/F3 PO	Dec-01	Jan-93	Jan-98
Private Label (Belgian Brewers)	IV/37.614/F3	Dec-01	Oct-97	Jul-98
Luxembourg Brewers	COMP/37.800/F3	Dec-01	Oct-85	Jun-00
SAS/Maersk	COMP.D.2 37.444/COMP.D.2.37.386	Jul-01	Sep-98	Feb-01
Zinc Phosphate	COMP/E-1/37.027	Dec-01	Mar-94	May-98
Plasterboard	COMP/E-1/37.152	Nov-02	31-Mar-92	25-Nov-98
Methionine	C.37.519	Jul-02	Feb-86	Feb-99
Austrian Banks	COMP/36.571/D-1	Jun-02	Jan-95	Jun-98
Concrete Reinforcing Bars	COMP/37.956	Dec-02	Dec-89	Jul-00
Isostatic Speciality Graphite	COMP/E-2/37.667	Dec-02	Jul-93	Feb-98
Extruded Speciality Graphite	COMP/E-2/37.667	Dec-02	24-Nov-93	29-Nov-96
Dutch Indus. & Medical Gases	COMP/E-3/36.700	Jul-02	Sep-93	Dec-97
Food Flavour Enhancers (Nucleotides)	COMP/C.37.671	Dec-02	Nov-88	Jun-98
Fine Arts Auction	COMP/E-2/37.784	Oct-02	Apr-93	Feb-00
French Beef	COMP/C.38.279/F3	Apr-03	Oct-01	Jan-02
Sorbates	COMP/E-1/37.370	Oct-03	Dec-78	Oct-96
Carbon & Graphite Products	COMP/E-2/38.359	Dec-03	Oct-88	Dec-99
Organic Peroxides	COMP/E-2/37.857	Dec-03	01-Jan-71	31-Dec-99
Industrial Copper Tubes	COMP/E-1/38.240	Dec-03	03-May-88	22-Mar-01
Choline Chloride	COMP/E-2/37.533	Dec-04	13-Oct-92	30-Sep-98
Copper Plumbing Tubes	COMP/E-1/38.069	Sep-04	Jun-88	Mar-01
French Brewers	COMP/C.37.750/B2	Sep-04	Not stated	
Spanish Raw Tobacco	COMP/C.38.238/B.2	Oct-04	Mar-96	Aug-01
Needles & Haberdashery	F-1/38.338	Oct-04	Sep-94	Dec-99
MCCA Chemicals	COMP/E-1.37.773	Jan-05	Jan-84	May-99
Industrial Threads (Benelux & Nordic)	COMP/C.38.337	Sep-05	Jan-90	Sep-01
Automotive thread (EEA)	COMP/C.38.337	Sep-05	May/Jun-98	May-00
Italian Raw Tobacco	COMP/C.38.281/B.2	Oct-05	Sep-95	Feb-02
Industrial bags	COMP/38.354	Nov-05	Jan-82	Jun-02
Rubber Chemicals	COMP/38.443	Dec-05	1996	2001
Hydrogen Peroxide	COMP/F/C.38.620	May-06	31-Jan-94	31-Dec-00
Methacrylates	COMP/F/38.645	May-06	23-Jan-97	12-Sep-02
Dutch Bitumen Suppliers	COMP/F/38.456	Sep-06	01-Apr-94	15-Apr-02
Dutch Bitumen Purchasers	COMP/F/38.456	Sep-06	01-Apr-94	15-Apr-02
Synthetic Rubber	COMP/F/38.634	Nov-06	20-May-96	28-Nov-02
Gas Insulated Switchgear	COMP/F/38.899	Jan-07	15-Apr-88	11-May-04
Elevators and Escalators BE	COMP/E-1/38.823	Feb-07	09-May-96	29-Jan-02
Elevators and Escalators DE	COMP/E-1/38.823	Feb-07	01-Aug-95	05-Dec-03
Elevators and Escalators LUX	COMP/E-1/38.823	Feb-07	07-Dec-95	09-Mar-04
Elevators and Escalators NL	COMP/E-1/38.823	Feb-07	16-Apr-98	05-Mar-04
Dutch Beer	COMP/B-2/37.766	Apr-07	27-Feb-04	03-Nov-99
<b>Press Releases or Summary Decisions only</b>				
Methylglucanine	COMP/37.978	Nov-02	Nov-90	Dec-99
Copper Fittings	COMP/38.121	Sep-07	Dec-88	Apr-04
Bitumen Spain	COMP/38.710	Oct-07	Not stated	
Hard haberdashery: Fastener	COMP/39.168	Sep-07	Not stated	
International Removal Services	COMP/38.543	Mar-08	Oct-84	Sep-03