

European cartel fines in 2015

There has been a considerable slowdown in the European Commission’s cartel enforcement activities in 2015. For the second year in a row the number of cartel decisions, firms prosecuted and aggregate fines have fallen; the last to the lowest level this decade and to less than a quarter of the total fines levied in 2014.

Activity of the Commission in 2015

In 2015 the European Commission concluded four cartel investigations – [Parking Heaters](#), [Blocktrains](#), [Optical Disk Drives](#) and [Retail Food Packaging](#) prosecuting 21 undertakings operating eight cartels. The *Retail Food Packaging* decision covered five separate regional cartels – France, Italy, and Central & Eastern, Northwest and Southwest Europe – which operated with different firms and for varying durations.

The cartels were in the manufacturing, electronics, food packaging and freight services. Together they were fined around €380 million, with the Commission commuting over €684 million of the €1.06 billion (64%) in initial fines under its leniency and settlement procedures. In addition ICAP, which refused to settle for its involvement in the *YIRD* cartel, was fined €14.96 million.

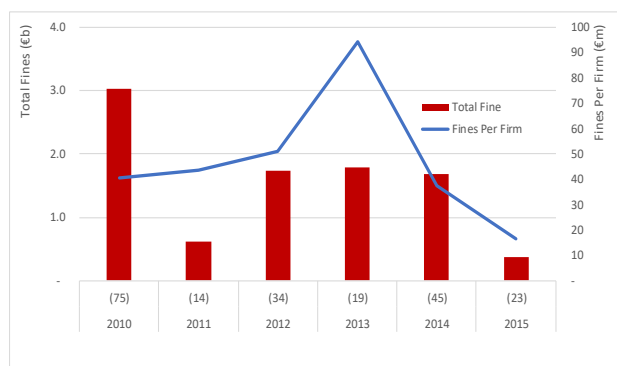
The largest fine was €146 million paid by members of *Optic Disk Drive* cartel which operated for just over four years from 2004 to 2008. This was followed by €115 million in fines imposed on members of the five separate regional cartels covered by the *Retail Food Packaging* decision.

Comparison across the years

The number of cartel decisions fell significantly from 10 to four with the number of undertakings involved proportionately fewer than in 2014 – 21 compared to 45.

On average the European Commission prosecuted cartels of longer duration in 2015. The average duration was six years compared to around four years in 2014.

The aggregate fines were considerably lower than in 2014 – they fell to €379 million compared to €1.69 billion in 2014.



The average fine per firm/undertaking was less than one-third of the 2014 amount - €10.3 million compared to nearly €38 million 2014. The fine per cartel year - which adjusts for both the number of firms and the duration of the infringements - was significantly lower at €2.3 million compared to €9.6 million in 2014.

Other notable trends

The European Commission continued to rely on whistleblowers to detect cartels. All four prosecutions were initiated by a full leniency applicant. These whistleblowers collectively avoided fines of €493 million. In addition, the nine partial leniency applicants received discounts of between 10% and 50% which reduced their fines in aggregate by an additional €191 million. In total the leniency programme “saved” cartelists, or cost the Commission, a total of €660 million in avoided fines.

Two of the four decisions (50%) were concluded under the settlement procedure (*Parking Heaters* and *Blocktrains*), where the parties accepted liability in return for a 10% reduction in their fines. This led to a further decrease in fines of €24 million. Since its introduction in June 2008, and its first use in *DRAM* in May 2010, 19 out of the 44 (43%) decisions were fully or partially settled.

The settlement procedure appears to have expedited the Commission’s investigations. It took the Commission an average two years to process the two decisions by settlement, compared to four years for the two investigations using the standard procedure.

No fine exceeded 10% of a cartelists’s previous year’s annual worldwide turnover (Point 37, 2006 Penalty

Guidelines) while two firms obtained reductions for “inability to pay” (Point 35) in *Retail Food Packaging*.

Another notable development in 2015 was the European General Court’s annulment of €760 million in the fines imposed on most members of the *Air Freight* cartel prosecuted in 2010. This left only one airline (Qantas) with a fine of €8.8 million. The Court rescinded the fines because the European Commission had been wrong to hold the breaches were “a single and continuous infringement”. This reduces the 2010 aggregate fines from slightly over €3 billion to €2.28 billion (still a peak year for fines). The Commission has the opportunity to appeal or to “re-adopt” its decision since the Court did not rule that there was not a cartel.

In the pipeline

In 2015 the European Commission carried out one unannounced inspection (*Bioethanol*), and issued one Statement of Objections (*Capacitors*). The Commission also dropped its “informal” investigations of six (other) members of the *LCD* cartel.

The European Commission has 16 investigations in the pipeline. Table 1 below lists the active investigations together with the stage they had reached as at 1 January 2016 - inspection, proceedings opened (PO), Statement of Objections (SO), together with the investigation that were administratively closed during

the year i.e. where no further action is to be taken (closed).

Table 1: Ongoing investigations

Investigation	Start date	Stage
Capacitors	Nov 2015	SO
Bioethanol	April 2015	Inspection
Exhaust Systems	Mar 2014	Inspection
EIRD	Mar 2013	SO
Oil & Biofuel	May 2013	PO
Car Battery Recycling	Sept 2012	SO
Maritime Car Carriers	Sept 2012	SO/Closed
Thermal Systems	May 2012	Inspection
Plastic Pipe Fittings	July 2012	Inspection
Plastic Pipe Systems	July 2012	Inspection
Occupant Safety Systems	June 2011	Inspection
Container Shipping	May 2011	PO
Credit Default Swaps	Apr 2011	SO
Trucks	Jan 2011	SO
Steel Abrasives	June 2010	SO
French Water Sector	Apr 2010	PO

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Disclaimer: The information above is based on published European Commission decisions and Press Releases which do not necessarily contain full, and/or consistent information on the factors discussed above.

A collection of past Casenotes and commentaries on EU cartel enforcement is available on-line at [Cartel Litigation, Damages and Fines 2015](#)

Table 2: European Commission cartel decisions 2015

Cartel Decision	Source*	Fines (€m)	Firms	Duration (years)**	Fine/firm (€m)	Fine/cartel year (€m)***
Parking Heaters	(S,OJ,D)	68.18	2	10	34.09	3.41
Blocktrains	(S,OJ,D)	49.15	3	7.9	16.38	2.07
Optical Disk Drives	(D)	146.25	8	4.4	18.28	4.15
Retail Food Packaging	(OJ,D)	115.87	8	3.5	11.59	3.31
CEE		1.61	4	2.56	0.40	0.16
France		11.12	5	1.00	2.22	2.22
Italy		60.43	6	4.39	10.07	2.29
NEW		31.39	4	4.85	7.85	1.62
SWE		11.32	5	5.42	2.26	0.42
Total (average) 2015		379.44	21	(5.07)	(10.25)	(2.27)
Total (average) 2014		1,689.50	45	(3.89)	(37.54)	(9.62)

Notes: * (S) = Settlement; OJ = Summary Decision published in the Official Journal; (D) Commission (provisional) Decision. ** The average duration (fourth column) assumes all undertakings in a cartel were involved for the same period. However some firms may have participated for shorter periods not discussed in the Commission’s Press Releases. *** The calculation of fines per cartel year (last column) is a simple average of duration and years for each cartel.

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