

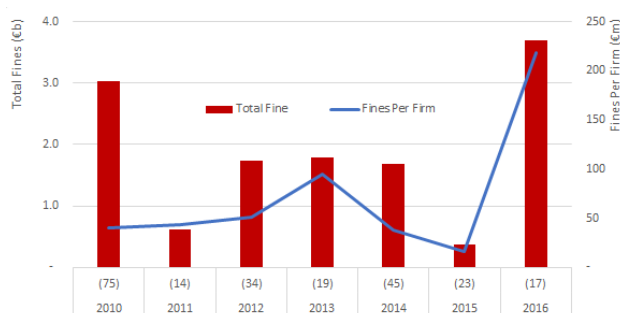
European cartel fines in 2016

The European Commission’s cartel enforcement activities picked up significantly in 2016. Aggregate fines increased ten-fold compared to the previous year (€3.7 billion compared €379 million), and were the highest since 2010. This was largely due to the record-breaking fines levied on several members of the *Trucks* cartel.

Activity of the Commission in 2016

In 2016 the European Commission concluded three full cartel investigations - *Alternators and starters*, *Trucks* and *Rechargeable batteries* involving 12 undertakings. Together they were fined over €3.2 billion, with the Commission commuting over €2.63 billion (46%) in fines under its leniency and settlement procedures before any appeals (see Table 3 below for summary statistics).

In addition, five undertakings in three cartels (*Steel Abrasives*, *Mushrooms* and *EIRB*) which refused to settle with the Commission for their involvement in their respective cartels were fined a total of €497 million. This brought aggregate fines in 2016 to nearly €3.73 billion.



The largest aggregate fine was €2.93 billion imposed on members of the *Truck* cartel which operated for 14 years from January 1997 to January 2011. Four undertakings (Daimler, DAF, Volvo/Renault, Iveco) received some of largest fines ever handed out by the Commission including the largest fine of just over €1 billion imposed on Daimler. Using pre-leniency/settlement fines three undertakings would have been fined over €1 billion – MAN (€1.2 billion which paid nothing as the whistleblower), Daimler (€1.26 billion) and Volvo/Renault (€1.34 billion).

The size of these fines is not entirely surprising given the 14 years’ length of the *Trucks* cartel. If fines are adjusted for the length of the cartel then Saint Gobain (*Car Glass*) and Deutsche Bank (*EIRB*) were fined relatively more on a fine per year basis (see Table 1).

The members of the *Rechargeable batteries* and *Alternators and starters* cartels were fined in aggregate €139 million and €137 million respectively.

Table 1: Ten largest cartel fines

Year	Undertaking	Case	Fine (m)	Years	Fine/Yr (m)
2016	Daimler	Trucks	€1,008,766	14.0	€72,055
2016	DAF	Trucks	€752,679	14.0	€53,763
2008	Saint Gobain	Carglass	€725,679	5.0	€145,136
2012	Philips	TV & Computer Mon' Tubes	€715,000	10.0	€71,500
2012	LG Electronics	TV & Computer Mon' Tubes	€705,296	10.0	€70,530
2016	Volvo/Renault Trucks	Trucks	€670,448	14.0	€47,889
2016	Iveco	Trucks	€494,606	14.0	€35,329
2013	Deutsche Bank	EIRB	€465,861	2.7	€174,698
2001	F. Hoffmann-La Roche	Vitamins	€462,000	5.4	€85,556
2007	Siemens	Gas Insulated switchgear	€396,563	13.5	€29,375

Source: European Commission Cartel Statistics; Case Associates

Comparison across years

The Commission concluded three full cartel decisions in 2016 which was low compared to previous years. An additional three decisions were taken prosecuting undertakings which had refused to settle in their respective cartels bringing the total to seven decisions.

The average duration of cartels prosecuted by the Commission was 5 years which is around the same as those prosecuted last year.

The average fine per undertaking skyrocketed from an all-time low of €10.3 million in 2015 to nearly €219 million. The average fine per cartel year - which adjusts for both the number of firms and the duration of the infringements - was also significantly higher increasing from under €2.3 million to €35 million for the three full decisions, and to €45 million if the three non-settlement decisions are included.

Other notable trends

The European Commission continued to rely on whistleblowers to detect cartels. All three prosecutions were initiated by a full leniency applicant. These whistleblowers collectively avoided fines of €1.4

billion. In addition, the nine partial leniency applicants received discounts of between 10% and 50% which reduced their fines in aggregate by €814 million. In total the leniency programme “saved” cartelists, or cost the Commission, a total of €2.2 billion in commuted fines.

All three full decisions were concluded under the settlement procedure where the parties accepted liability in return for a 10% reduction in their fines. This led to a further decrease in fines of €449 million. Since its introduction in June 2008, and its first use in *DRAM* in May 2010, 22 out of the 47 (43%) decisions have been fully or partially settled.

The settlement procedure appears not to have expedited the Commission’s investigations. It took the Commission an average of around five years to process the three settlement decisions in 2016 which was similar to the time it took to investigate those using the standard procedure.

In the pipeline

The European Commission appears not to have initiated any new investigations in 2016. It closed the *Bioethanol*, *Container Shipping* and *Exhaust Systems* investigations without any enforcement action; and the *Credit Default Swaps* investigation with commitments. The Commission also adopted two amending decisions in the *Heat stabilisers* cartel which lowered the fines.

Based on the Commission’s public statements it appears to have eight active investigations. Table 2 below lists these together with the stage reached as at 1 January 2017 - inspection, proceedings opened (PO), Statement of Objections (SO), together with the investigations that were administratively closed during with no action taken (closed).

Table 2: Ongoing investigations

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

© Case Associates, June 2017

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

A collection of past Casenotes and commentaries on EU cartel enforcement is available on-line at [Cartel Litigation, Damages and Fines 2017](#)

Table 3: European Commission cartel decisions 2016

Cartel Decision	Source*	Fines (€m)	Firms	Duration (years)**	Fine/firm (€m)	Fine/cartel year (€m)***
Full Decisions (settlements)						
Rechargeable Batteries	(OJ,PR)	139.0	4	3.6	34.8	9.6
Trucks	(OJ,PR)	2,926.5	5	14.0	585.3	41.8
Alternators & starters	(S, D)	137.8	3	5.5	45.9	8.4
	Total (average)	3,203.0	12	(7.7)	(269.2)	(35.0)
Non-settlement decisions						
EIRB	(PR, D)	485.5	3	0.4	161.8	388.4
Steel Abrasives	(PR)	6.2	1	4.0	6.2	1.5
Mushrooms	(PR)	5.2	1	1.5	5.2	3.5
	Total (average)	496.8	4	(2.0)	(34.6)	(17.3)
Total (average) 2016		3,703.3	17	(4.8)	(219.2)	(45.0)
Total (average) 2015		379.4	21	(5.1)	(10.3)	(2.3)

Notes: * OJ = Summary Decision published in the Official Journal; D Commission (provisional) Decision; PR Press Release. ** 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.

CASE ASSOCIATES

provide economic and empirical assistance in competition and regulatory proceedings, and litigation and arbitration.

A description of Case’s services together with earlier Casenotes can be found at www.casecon.com.

For further information or to discuss a specific assignment contact:

Dr Cento Veljanovski +44 (0) 20 7376 4418 or cento@casecon.com