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European cartel fines in 2019

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SUMMARY

- The European Commission completed three investigations comprising five cartel infringements.
- Aggregate fines of €1,469 million were imposed after leniency and settlement discounts.
- Without leniency and settlement discounts the fines would have been around €3.4 billion i.e. 130% larger. The reductions were larger than the fines paid by the cartelists.
- The Commission undertook two ‘dawn raids’, commenced one proceeding, issued one Statement of Objections, and readopted one decision after 12 years of court appeals.
- Fines were greater than in previous years.

* Email: cento@casecon.com. **Disclaimer:** The analysis in this paper is based published European Commission decisions and/or Press Releases at the time of writing which do not necessarily contain full and/or consistent information on the factors discussed.

This is Case Associate’s Annual Review of the European Commission’s fines of cartels.

Commission’s fines during 2019

In 2019 the European Commission concluded three settlements – [Occupant safety equipment \(II\)](#)¹, [FOREX](#)² and [Canned vegetables](#),³ the first two consisting of two separate infringements (cartels) each.

Together 11 undertakings were fined over €1,469 million, with the Commission commuting €1,926 million (or 57%) in fines under its leniency and settlement procedures before any appeals (Table 1 and Table A list the fines by infringement and addressees respectively).

In the absence of leniency and settlement discounts the fines would have been around €3.4 billion or 130% higher than they were.

Table 1: European Commission cartel decisions in 2019

Cartel Decision	Fines (€m)	Firms	Duration (years)	Fine/firm* (€m)	Fine/cartel year (€m)
Settlements					
Occupant safety systems II	368.3				
Infringement I - VW	280.0	3	4.2	93.3	22.2
Infringement II - BMW	88.2	3	2.7	29.4	10.9
FOREX	1,068.9				
Infringement I - Three way banana	811.2	5	2.8	162.2	57.9
Infringement II - Essex Express	257.7	4	1.7	64.4	37.9
Canned Vegetables	31.6	3	13.7	10.5	0.8
Total (average) 2019	1,468.8***	11*	(5.0)	(151.2)	(26.7)
Total (average) 2018	800.1	24	(8.8)	(33.4)	(1.9)

Notes: * Number of individual firms. ** Have calculated these in terms of undertaking/infringement units so in cases where undertaking fined twice for separate infringement this counts as two ‘firms’. *** This differs from the total of €1,484.9 given in the Commission’s ‘Cartel Statistics’ which includes the €16.1 million imposed by the re-adopted of the *Reinforced steel bars* decision.

Source: Author based on European Commission Press Releases and Non-Confidential Decision.

On 16 May 2019 the Commission announced fines of €1.07 billion imposed on five undertakings (Barclays, RBS, Citigroup, JPMorgan, MUFG). The five banks took part in two cartels with the exotic names of ‘three way banana split’ and ‘Essex express’, in the spot forex market for 11 currencies - Euro, British Pound, Japanese Yen, Swiss Franc, US, Canadian, New Zealand and Australian Dollars, and Danish, Swedish and Norwegian crowns. The investigation showed that traders exchanged information on trading plans and occasionally coordinated their trading strategies. The

¹ CASE AT.40481 – *Occupant Safety Systems (II) supplied to the Volkswagen Group and the BMW Group*, Commission Decision C(2019) 1656 final of 5 March 2019.

² European Commission – Press Release: *Antitrust: Commission fines Barclays, RBS, Citigroup, JPMorgan and MUFG €1.07 billion for participating in foreign exchange spot trading cartel*, IP/19/2568 16 May 2019.

³ European Commission – Press Release: *Antitrust: Commission fines Coroos and Groupe CECAB €31.6 million for participating in canned vegetables cartel*, IP/19/5911, 27 September 2019.

Commission's investigation commenced in September 2013 and is continuing for other past infringements.

The Commission fined six car part suppliers a total of €368 million for two separate infringements in the *Occupants safety equipment II* adding to its previous infringement decision published in 2017. The products involved were seatbelts, airbags and/or steering wheels supplied as components for passenger cars produced by the VW Group and BMW Group.

In late November the Commission fined three undertakings a total of €31.6 million for participating for over 13 years in a cartel supplying canned vegetables to retailers and food service companies. They set prices, agreed market shares and volumes quotas, allocated customers and markets, coordinate their tendering and exchanged information.

The aggregate fines per decision or infringement are a misleading guide to the severity of the punishment as the number of undertakings involved and duration of their infringements differ. For example, the aggregate fines for a cartel with six undertakings operating for six years does not indicate the severity of the fines imposed on individual member of the cartel when compared with a cartel operating for 15 years with nine undertakings. To adjust for the number involved in and the duration of a cartel the fine-per-cartel-year has been calculated, which is the total fine divided by total of number of years the firms collectively participated in the cartel. The last column of Table 1 gives the fine per cartel year which varies from €58 million for firms participating the 'Three way banana split' cartel to a low of less than €1 million for a firm participating in *Canned vegetables*. The average fine per cartel year was nearly €27 million.

The Commission also re-adopted the [Reinforcing steel bars](#) decision fining five producers (AlfaAcciai, Feralpi Holding, Ferriere Nord, Partecipazioni Industriali (Riva Fire) and Valsabbia Investimenti/Ferriera Valsabbia) €16.1 million for the companies' participation in a price-fixing cartel between December 1989 and July 2000. The Commission exceptionally reduced fines by 50% for all five companies due to protracted nature of the appeal proceedings which commenced in 2002 (around 16 years) which was not due to the companies involved.

Leniency and Settlements

All infringements were detected by a full leniency applicant. These whistle blowers collectively avoided fines of around €705 million.

In addition, the partial leniency applicants received discounts of between 10% and 60% which reduced their fines collectively by €958 million.

In total the leniency programme "saved" cartelists, or "cost" the Commission, €1,926 million in commuted fines in order to expedite the Commission's investigations and to gain successful prosecutions.

These reductions in the nominal fines calculated under the [2006 Penalty Notice](#)⁴ were greater than the fines imposed by the Commission.

All three settlements led to further 10% or €263 million reduction in fines.

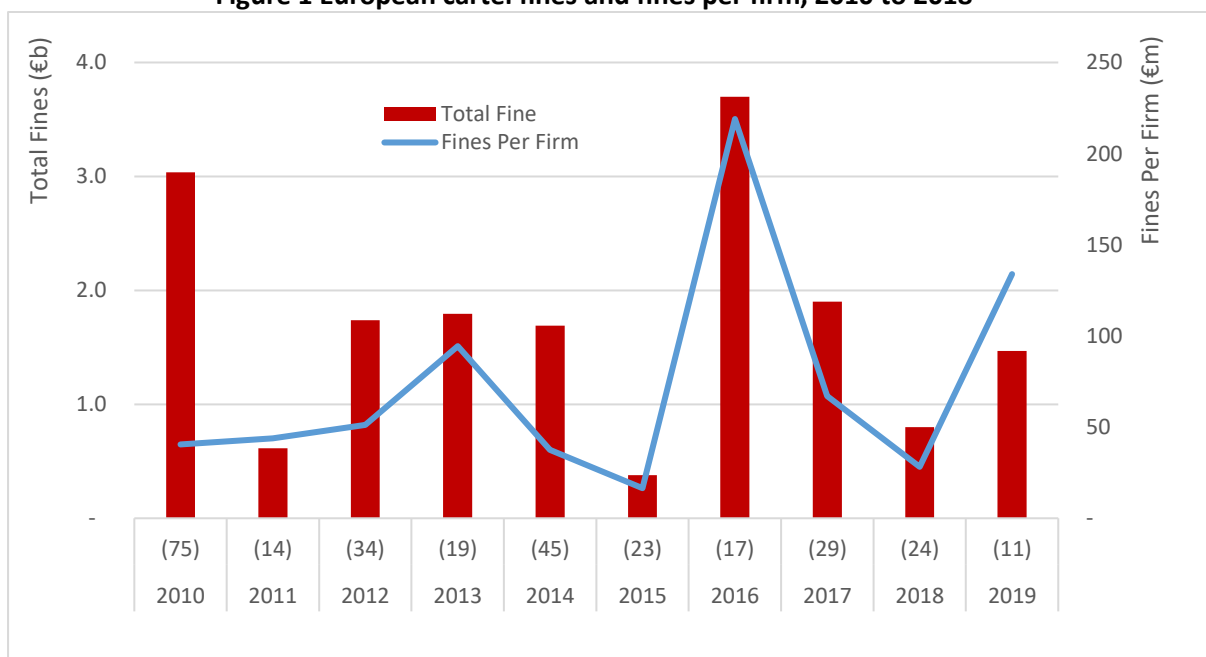
Comparisons with previous year

The number of Commission decisions was similar to the previous year with three decisions fining five cartels.

The cartels in 2019 had on average duration of 8.4 years which was similar to the average duration of 8.7 years in 2018. However the duration of five cartels varied significantly with *Canned vegetables* persisting for over 13 years while the FOREX cartels ran was in some cases little more than one year.

A comparison of total annual fines and the average fine per undertaking since 2010 are shown in Figure 1. Total fines were considerably greater than those imposed in 2018 – €1,469 million compared to €800 million. The annual aggregate fines for 2019 were the second largest over the last decade.

Figure 1 European cartel fines and fines per firm, 2010 to 2018



Note: Figures in brackets are number of firms fined.

The average fine per undertaking increased to €133 million from €28.2 million in 2018 (Figure 1), largely the result of the high fines imposed on members of the FOREX cartels.

The average fine-per-cartel-year rose significantly from €1.9 million in 2018 to €27 million.

⁴ Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation No 1/2003 (2006/C 210/02)

In the pipeline

The Commission undertook two ‘dawn raids’ in 2019 ([Farmed Atlantic salmon](#), [Alliance Casino & Intermarche](#)), commenced proceedings against the [Car clean emissions technology](#) cartel and issued a Statement of Objections to those alleged to have participated in the [European government bonds](#) cartel. Table 2 lists these and the stages reached by previous publicly announced on-going investigations.

Table 2: Ongoing investigations as at 1 June 2019

Investigation	Date	Stage
Alliance Casino & Intermarche	Nov 2019	Inspection
Car emissions	April 2019	Statement of Objections
Farmed Atlantic salmon	Feb 2019	Inspection
European government bonds	Jan 2019	Statement of Objections
USD SSA bond trading	Dec 2018	Statement of Objections
Sports media rights	Oct 2018	Inspection
Styrene monomer purchasers	June 2018	Inspection
Metal packaging	May 2018	Inspection
Ethylene purchasing	July 2017	Inspection
Ethanol benchmarks	Dec 2015	Proceedings opened

The Commission’s Statement of Objections in the *Car clean emissions technology*⁵ investigation of BMW, Daimler and VW alleges that they colluded by agreeing to limit the development and roll-out of emissions cleaning technology for new diesel and petrol cars over the period 2006 to 2014. The Commission’s *Press Release* states that the ‘harm’ as ‘restricting competition in innovation’ ‘and in doing so, denied consumers the opportunity to buy less polluting cars’.⁶ This is not a classic price-fixing cartel with the Commission bringing the action under Article 101(1)(b) i.e. an illegal ‘agreement’ ‘to limit or control production, markets or technical development’.

The Commission published two full non-confidential decisions ([Maritime car carriers](#); [TV and computer monitor tubes](#)) one dating back to 2012, and one summary decision ([Euro Interest Rate Derivatives](#)) (Table 3).

Table 3: Publication of full non-confidential and summary decisions in 2018

Case No	Cartel	Decision date	Publication date	Delay - years
AT.40009	Maritime Car Carriers	21/02/2018	19/07/2019	1.4
AT. 39437	TV and computer monitor tubes	05/12/2012	25/11/2019	7.0
AT.39914	Euro Interest Rate Derivatives	07/12/2016	04/04/2019	2.3

⁵ Case AT.40178 *Car emissions* (in progress).

⁶ European Commission, ‘Antitrust: Commission sends Statement of Objections to BMW, Daimler and VW for restricting competition on emission technology’, Brussels, 5 April 2019, Press Release IP/19/2008.

Annex: Table A: Breakdown of fines and duration by cartel and addressee 2019

Case/Case No.	Firm	Fine (€ '000)	Start date	End date
	<i>Infringement I- VW</i>			
Occupants safety AT.40481	Takata	0	Jan-07	Mar-11
	TRW	158,824	Jan-07	Mar-11
	Autoliv	121,211	Jan-07	Mar-11
	<i>Infringement II – BMW</i>			
	Takata	0	Feb-08	Feb-11
	TRW	30,067	Jun-08	Feb-11
	Autoliv	58,175	Feb-08	Sep-10
FOREX AT. 40135	<i>Infringement I – ‘Three Way Banana Split’</i>			
	UBS	0	Oct-11	Jan-13
	Barclays	116,107	Dec-07	Aug-12
	RBS	155,499	Dec-07	Apr-10
	Citigroup	310,776	Dec-07	Jan-13
	JP Morgan	228,815	Jul-10	Jan-13
	<i>Infringement I – ‘Essex Express’</i>			
	UBS	0	Dec-09	Jul-12
	Barclays	94,217	Dec-09	Jul-12
	RBS	93,715	Sep-10	Nov-11
	Bank of Tokyo Mitsubishi (now MUFG)	69,750	Sep-10	Sep-11
Canned vegetables AT.40127	Bonduelle	0	Jan-00	Jun-13
	Coroos	13,647	Jan-00	Oct-13
	Groupe CECAB	18,000	Jan-00	Oct-13

Commission data sources:

The European Commission’s recent cartel activities are announced on DG COMP’s news page available online at http://ec.europa.eu/competition/cartels/what_is_new/news.html

The European Commission regularly updates its ‘Cartel Statistics’ page which gives annual and historical statistics. Available online at <http://ec.europa.eu/competition/cartels/statistics/statistics.pdf>

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