

## European cartel fines in 2017

The European Commission concluded five decisions and readopted two further decisions in 2017 imposing €1.95 billion in fines on 29 firms. The fines were considerably less than the €3.7 billion imposed in 2016. All cartels except one decision were in the automotive sector.

### The Commission's decisions

In 2017 the European Commission concluded five cartel investigations in the automotive sector – *Occupant safety systems*, *Car lighting systems*, *Thermal systems*, *Car battery recycling* - and fined *Scania* which had refused to settle with the other members of the *Trucks* cartel in 2016. In total 16 entities participated in these cartels and were fined a total of €1.16 billion with the Commission commuting €653 million (36%) in fines under its leniency and settlement procedures before any appeals (Table 2).

The largest fine was €880 million imposed on Scania for its participation in the *Truck* cartel which operated for 14 years from January 1997 to January 2011.

The Commission prosecuted 11 cartels as two decisions involved four cartels each – *Occupant safety systems* which covered cartels involving separately seatbelts supplied to Toyota, airbags purchased by Toyota, seatbelts supplied to Suzuki; and seatbelts, airbags and steering wheels supplied to Honda; *Thermal systems* where separate cartels were identified for the supply of heating-ventilation-air cooling (HVAC) units, compressors and e-compressors to different car producers.

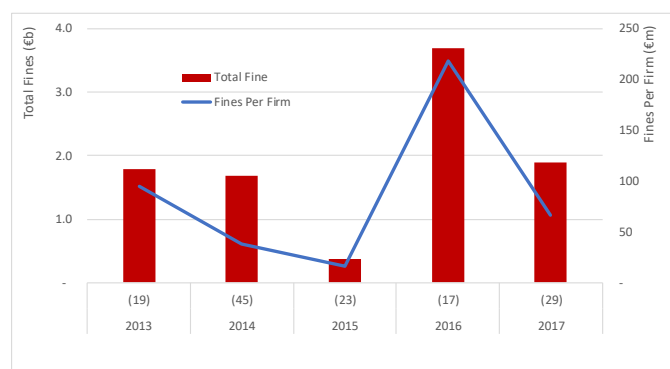
### Re-adoptions

In addition the Commission readopted two decisions which had been annulled by the EU General Court. It reimposed fines of €776 million on the 11 airlines which appealed its 2010 *Air freight* decision granting only a small reduction in Martinair's fine. The Commission also imposed a lesser fine of €4.7 million on Printeos (formerly Tompla) which appealed its fine in the 2014 *Envelopes* decision.

### Buyers' cartel

Unusually the 2017 decisions included a buyers' cartel, with the Commission announcing an inspection of another for the purchase of *Ethylene*. The four

members of *Car battery recycling* cartel agreed to fix the prices they paid for scrap lead-acid automotive batteries in Belgium, France, Germany and the Netherlands. Unlike the typical sellers' cartel, the four recycling companies colluded to reduce the prices they paid to scrap dealers and collectors of car batteries.



Buyers' cartels pose a (minor) difficulty for the Commission's fining regime. Under the 2006 *Guideline on Fines* fines are based on the Value of Sales (VoS). For a sellers' cartel the VoS automatically includes the overcharge and leads to a greater fine all things equal. For a buyers' cartel the equivalent is the value of purchases, but this excludes the collusively orchestrated undercharges. To adjust for this, the Commission used its discretion to increase the fines to all parties by 10% 'to avoid under-deterrence'.

### Focus on Automotive sector

The 2017 decisions reflect the current Commission's focus on the automotive sector. In addition to those listed above, in previous years the Commission has fined suppliers of automotive bearings, wire harnesses, foam in car seats, parking heaters, alternators and starters, and in early 2018 fined suppliers of spark plugs and braking systems.

### Comparison with Previous years

The average duration of the cartels was five years similar that for 2016. However, this was due to Scania's participation in the *Trucks* cartel which ran undetected for 14 years. If Scania and the readopted decisions are excluded the average duration was 3.2 years.

The average fine per undertaking fell dramatically from €219 million in 2016 to €67 million despite the

massive fine imposed on Scania. The average fine per cartel year - which adjusts for both the number of firms and the duration of the infringements - was also significantly lower at €13 million compared to €45 million in 2016. Again, these averages were inflated by the high fines imposed on Scania and in *Air freight* – exclude these and the fine per firm falls to less than €18 million and fine/cartel year to €5.5 million.

**Leniency**

The Commission continued to rely on whistle-blowers. All investigations were initiated by a whistleblower, and all but three firms received a leniency discount varying from between 15% to full immunity. Fines before leniency/settlement discounts were an estimated €3.1 billion. In total the Commission commuted nearly €1.2 billion in fines; equivalent to 38% of the value of pre-leniency fines or 61% of the value of the fines levied.

**Settlements**

Three decisions (*Occupant safety equipment, Car lighting systems, Thermal systems*) were concluded under the settlement procedure. The parties received a 10% reduction of their fines which reduced aggregate fines another €80 million

The settlement procedure did not expedite the Commission’s investigations. It took the Commission an average of six years to reach a settlement similar to

the time it took to conclude the two contested investigations (*Scania* and *Car battery recycling*).

Bizarrely, the Commission took twice as long to reach a settlement than the average duration of the cartels involved; the two non-settlement decisions which took as long as the life of the cartels being investigated.

**In the pipeline**

The Commission undertook two unannounced inspections (‘dawn raids’) in 2017 - *German cars* and *Ethylene*. Ongoing investigations and the stage reached at the end of 2017 are listed in Table 1.

**Table 1: Ongoing investigations**

Investigation	Start date	Stage
German cars	Oct 2017	Inspection
Ethylene	July 2017	Inspection
Capacitors	Nov 2015	Statement of Objections
Breaking systems	n/a	Proceedings opened
Spark plugs	n/a	Proceedings opened
Ethanol benchmarks	June 2013	Proceedings opened
Oil & Biofuel	May 2013	Proceedings opened
Maritime car carriers	Sept 2012	Proceedings opened
Plastic pipe systems	July 2012	Inspection
French water sector	Apr 2010	Proceedings opened

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**Disclaimer:** 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.

**Table 2: European Commission cartel decisions 2017**

Decision	Source*	Fines (€m)	Firms	Duration (years)	Fine/firm (€m)	Fine/cartel year (€m)**
<b>Settlement decisions</b>						
Occupant safety systems	(PR)	34.0	4	4.2	8.5	2.0
Car lighting systems	(D,S,PR)	26.7	2	2.8	8.9	3.2
Thermal systems	(D,PR)	155.6	5	2.8	31.1	11.1
Total (average)		<b>216.3</b>	<b>11</b>	<b>(3.3)</b>	<b>(18.0)</b>	<b>(5.5)</b>
<b>Non-settlement decisions</b>						
Car battery recycling	(D)	67.6	4	2.9	16.9	5.8
Scania	(D)	880.2	1	14.0	880.0	62.9
Total (average)		<b>947.6</b>	<b>5</b>	<b>(8.5)</b>	<b>(189.5)</b>	<b>(22.4)</b>
<b>Total (average) all ex re-adoptions</b>		<b>1,163.9</b>	<b>17</b>	<b>(5.3)</b>	<b>68.5</b>	<b>12.8</b>
<b>Readopted decisions</b>						
Airfreight	(S,PR)	776.5	11	6.2	<b>70.6</b>	<b>11.4</b>
Envelopes	(D,PR)	4.7	1	4.3	<b>4.7</b>	<b>1.1</b>
<b>Total (average) 2017</b>		<b>1,945.1</b>	<b>29</b>	<b>(5.1)</b>	<b>(67.1)</b>	<b>(13.3)</b>
Total (average) 2016		3,703.3	17	(4.8)	(219.2)	(45.0)

Notes: \* S = Summary Decision published in the Official Journal; D = Commission Decision; PR = Press Release . \*\* The calculation of fines per cartel year (last column) is a simple average of duration and years for each cartel.

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