

European cartel fines in 2013

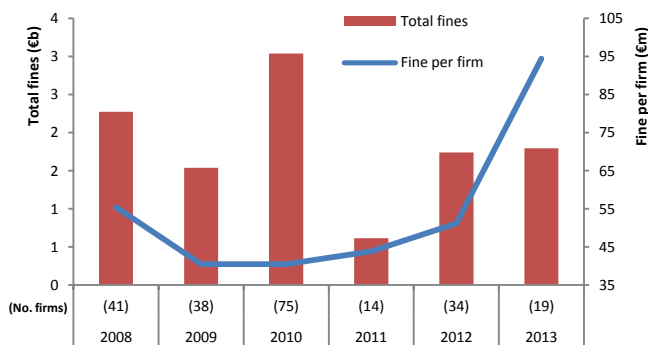
In 2013 the European Commission concluded four cartel investigations, imposing total fines of €1.8b. This was similar to the total fines in 2012. The European Commission also levied its biggest fine ever of €2.5b on UBS, which escaped payment under the Commission’s leniency programme for blowing the whistle on the European interest rate derivatives cartel. This made it also the biggest leniency reward to date.

Activity of the Commission in 2013

The European Commission fined firms in four cartels. These were in the industrial, primary and financial sectors. In [Automotive wire harnesses](#) four firms were fined €141m for running a cartel for up to nine years. Two prosecutions involved the rigging of interest rate derivatives – in [Euro interest rate derivatives \(EIRD\)](#) four firms were fined a total of €1b; and in [Yen interest rate derivatives \(YIRD\)](#) six firms were fined €670m. Four European North Sea shrimps traders involved in [Shrimps](#) were fined a total of €28m.

Comparison across years

Total post-lenient fines in 2013 were in line with those imposed in 2012 – €1.79b against €1.74b (more details on 2012 see our [July 2013 Casenote](#)). However when account is taken of the number of firms, fines were nearly twice as large as those in 2012 – an average fine per firm of €4m compared to €1m in 2012 (see figure below). This was the highest average fine per firm imposed by the European Commission since 2008 where the annual average varied between €1m and €5m. If the full leniency applicant is excluded, the average fine in 2013 was about €120m compared to €8m in 2012.



The two interest rate derivative cartels were responsible for the higher fines per firm. Fines imposed on firms in *EIRD* and *YIRD* constituted 55% and 36% of total post-lenient fines respectively. The financial institutions involved were fined an average of €61m (*EIRD*) and €12m (*YIRD*). These are respectively the third and the seventh largest average post-lenient fines per firm for the 52 European Commission decisions since 2004.

Cartels prosecuted in 2013 had fewer members (4.75 versus 8.5) and were shorter (5.46 compared to 6.15 years) than those in 2012. Notwithstanding this, our measure of fine per cartel year – which adjusts for both the number of firms and the number of cartel years – was significantly higher in 2013 than in 2012 – €17m against €8m per cartel year.

Other notable trends

The European Commission continues to rely on whistleblowers to detect and prosecute cartels. As in 2012, all four cases were initiated by a full leniency applicant. Two whistleblowers avoided very high fines – UBS a massive fine of €2.5b (*YIRD*) making it both the largest fine ever imposed in a cartel proceeding and the largest single leniency discount; and Barclays a fine of €90m (*EIRD*). Put differently, the UBS discount is four times the total fines imposed on banks in the *YIRD* cartel, and dwarfs the total fines for the entire year. Also, all other participants in the *YIRD* and *EIRD* received partial discounts of between 5% and 50% (with Citigroup receiving a 100% discount for one of the three infringing bilateral agreements). In the *Automotive wire harnesses* Sumitomo received full leniency avoiding a fine of nearly €292m with the remaining benefiting from discounts of 20% to 50%. In *Shrimps*, only the full leniency applicant (Klaas Puul) received a discount.

Three of the four decisions (*Automotive wire harnesses*, *EIRD* and *YIRD*) were concluded under the settlement procedure, where the parties accepted liability in return for a further 10% reduction in fines. Four firms did not accept they were guilty in *EIRD* (Crédit Agricole, HSBC and JPMorgan) and *YIRD* (ICAP), and proceedings continue under the standard cartel procedure. Since its introduction in June 2008, 9

out of a total of 28 (32%) decisions have used the settlement procedure.

The European Commission [Press Release](#) on EIRD and YIRD decisions boasts that “[t]hey are one of the swiftest cartel settlements decided by the Commission, showing the full potential of the efficiencies offered by the settlement procedure”. It is correct that YIRD was completed within 10 months from the initial dawn raid, but the EIRD investigations took longer at 26 months. The settlement in *Automotive wire harnesses* took 42 months from the first inspection or 11 months from the formal opening of proceedings. *Shrimps*, the only investigation closed without settlement, took 57 months to final decision. However, while the YIRD decision progressed at breakneck speed, settlements generally have not – of the 28 decisions since June 2008, the 9 settled cases took an average 43 months to conclude; whereas the 19 using the standard procedure took an average of 37 months.

The European Commission’s tardiness in publishing its non-confidential decisions continued in 2013. None of the four full decisions have yet been published, and only one of the four investigations (*Water Management Products*) in 2012 has been published.

In the pipeline

The European Commission has 20 investigations in the pipeline. The Table in the next column lists active investigations together with the stage reached as at January 2014 by Inspection, Statement of Objections (SO) and formally opened investigation (IO).

In 2013 the European Commission carried out two inspections (*Blocktrains* and *Sugar*), issued two Statements of objections (*Smart card chips* and *BR/ESBR recidivism*), and closed one case (*BR/ESBR recidivism*) on administrative grounds. This is slightly less than in 2012, when the Commission issued three Statements of Objection (*Retail Food Packaging*, *Optical Disc Drives*, *Shrimps*); carried out five dawn raids; and opened two new investigations.

Investigation	Start date	Stage
Blocktrains	Jun 2013	Inspection
Sugar	May 2013	Inspection
YIRD	Feb 2013	IO
Car Battery Recycling	Sept 2012	Inspection
Retail Food Packaging	Sept 2012	Inspection
Maritime Car Carriers	Sept 2012	Inspection
Optical Disc Drives	July 2012	SO
Thermal Systems	July 2012	Inspection
Plastic Pipe Fittings	July 2012	Inspection
Plastic Pipe Systems	July 2012	Inspection
Power Exchanges	Feb 2012	Inspection
Bearings	Nov 2011	Inspection
EIRD	Oct 2011	Inspection
Occupant Safety Systems	June 2011	Inspection
Container Shipping	May 2011	Inspection
Trucks	Jan 2011	Inspection
Paper Envelope	Sept 2010	Inspection
Polyurethane Foam	Aug 2010	Inspection
French Water Sector	Apr 2010	IO
Power Cables	Feb 2009	SO
Smart Card Chips	Jan 2009	SO
Cement & Related Products	Nov 2008	IO

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Cartel	Post leniency fine (€m)	Firms	Duration	Fine/firm	Fine/cartel year
Automotive wire harnesses	141.00	5	9.76	28.20	2.89
Euro interest rate derivatives	1,042.75	4	2.67	260.69	97.76
Yen interest rate derivatives	669.72	6	0.83	111.62	133.94
Shrimps	28.00	4	8.59	7.00	0.81
Total (average) 2013	1,794.18	19	(5.46)	(94.43)	(17.29)
Total (average) 2012	1,739.05	34	(6.15)	(51.15)	(8.32)
Total (average) 2011	614.05	14	(3.30)	(43.86)	(13.29)
Total (average) 2010	3,035.96	75	(13.40)	(40.48)	(3.02)
Total (average) 2009	1,540.13	38	(13.96)	(40.53)	(2.90)
Total (average) 2008	2,271.23	41	(7.02)	(55.40)	(7.89)

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