

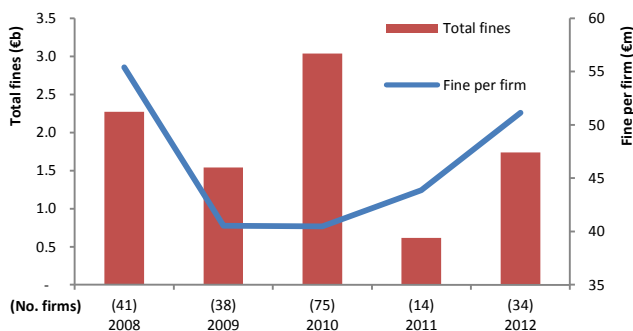
European cartel fines in 2012

In 2012 the European Commission concluded four cartel investigations. It fined 34 firms around €1.7b, nearly three times the very low fines (€0.6b) levied in 2011. It also imposed the highest fine ever of €1.47b. Here we review the Commission's enforcement activity during 2012.

2012 in figures

The European Commission fined firms in four cartels - *TV and Computer Monitor Tubes*, *Water Management Products*, *Freight Forwarding* and *Mountings for Windows*. In addition the European Commission re-adopted the 2007 *Gas Insulated Switchgear* decision after the European General Court's ruling that the original decision breached the parties' equal treatment. While the European Commission has included this in its official statistics, we have not.

On average, the cartels prosecuted in 2012 existed for longer and were larger than those prosecuted in 2011. The average duration was 6.1 years compared to 3.3 years in 2011; the average number of firms per cartel was 8.5 compared to 3.5 in 2011. Including the full leniency applicant, the average fine per firm was €51m, considerably greater than €44m imposed in 2011. However, without the full leniency applicant the average fine was similar (€58m in 2012 vs €61m in 2011) as the cartels prosecuted in 2011 were smaller.



These aggregate statistics do not take into account the combined effects of differences in duration, size and the affected sales. Some of these differences can be accommodated by our measure of “cartel years”, which is the sum of the number of firms multiplied by their years’ participation in the cartel. The average fine per cartel year in 2012 was €8.3m (or €9.4m excluding

full leniency applicant), considerably lower than the €13.3m (or €18.6m) in 2011.

The European Commission's decisions were remarkably varied (see table below). *Monitor Tubes* accounted for 77% of the total annual fines. The €1.47b fine is now the biggest fined ever imposed by the Commission. It implies an average fine of €183m per firm or €18m per cartel year. This contrasts with the much lower fines per cartel year imposed on the other cartels – €2.3m (involving 3 firms operating for 2 years) in *Water Management Products*; €2.4m (14 firms for 5 years) in *Freight Forwarding*, and €1.3m (9 firms over 7.5 years) in *Mountings for Windows*.

The ratio of fines to affected sales provides a further measure of the severity of penalties. Unfortunately affected sales figures are available only for *Water Management Products*. For the two firms prosecuted the ratio of fine per cartel year to annual affected sales was 11%, or 22% if the fine to sales ratio is used. This is considerably lower than we have previously calculated ([Casenote, February 2012](#)) where 69% of firms received final fines of or in excess of 67% of annual affected sales.

Trends

A closer look at the European Commission's cartel decisions reveals other trends.

First has been the continuing delays in the publication of the European Commission's full (non-confidential) decisions. Only one decision, *Water Management Products*, has so far been published; the other three were announced by press release with the non-confidential version awaiting agreement with the parties over the redaction of commercially sensitive information. This has so far resulted in delays of 7 months (*Monitor Tubes*) and 15 months (*Freight Forwarding* and *Mountings for Windows*) in publication.

The European Commission continues to rely on its leniency programme, both as a detection tool and as a means to gather information from cartelists. All four investigations were triggered by a whistleblower who received 100% leniency. Overall, leniency reductions

(including full leniency) were given to 15 of the 34 firms (44%). The aggregate leniency discount can only be calculated for *Monitor Tubes* where it was 13.7%.

In the pipeline

As at mid-July 2013 there were 22 active investigations and one further decision issued (*Wire Harnesses*). During 2012 the Commission issued three Statements of Objection (SOs) in *Retail Food Packaging*, *Optical Disc Drives* and *Shrimps*, with another issued in 2013 (*Power Cables*). In addition, the Commission carried out five dawn raids, and opened two new investigations (IO).

Investigation	Start date	Stage
Blocktrains	Jun 2013	Inspection
Sugar	May 2013	Inspection
Smart Card Chips	Jan 2009	SO
Car Battery Recycling	Sep 2012	Inspection
Retail Food Packaging	Sep 2012	Inspection
Maritime Car Carriers	Sep 2012	Inspection
Wire Harnesses	Feb 2010	Fined €141m
Optical Disc Drives	Jul 2012	SO
Thermal Systems	Jul 2012	Inspection
Plastic Pipe Fittings	Jul 2012	Inspection
Plastic Pipe Systems	Jul 2012	Inspection
Shrimps	Mar 2009	SO
Power Exchanges	Feb 2012	Inspection
French Water Sector	Apr 2010	IO
Bearings	Nov 2011	Inspection
Euro Interest Rate Derivatives	Oct 2011	Inspection
Power Cables	Feb 2009	SO
Occupant Safety Systems	Jun 2011	Inspection
Container Shipping	May 2011	Inspection
Trucks	Jan 2011	Inspection
Cement & Related Products	Nov 2008	IO
Paper Envelope	Sep 2010	Inspection
Polyurethane Foam	Aug 2010	Inspection

The Commission in court

The European Commission has had more success in the courts in 2012. There were only two decisions by the European courts. The ECG upheld the European Commission’s fines for three firms in *Calcium Carbide*. It annulled fines imposed on Mitsubishi and Toshiba in *Gas Insulated Switchgear* because the European Commission incorrectly used annual sales figures from different reference years hence breaching the parties’ equal treatment. The European Commission reimposed fines of €136m reduced from the €209m originally imposed in 2007.

Almunia v. Kroes

Commissioner Almunia continues the ‘war on cartels’ launched by his predecessor Neelie Kroes who stood down as Commissioner in February 2010. The data suggest continuity in enforcement activity and severity of fines despite the lower figures for 2011 – under Kroes the average fine per firm was €42.6m compared to €43.8m during Almunia’s three year tenure. Fines per cartel year were also comparable - €5.2m against Kroes’ €4.6m.

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Cartel	Fines (€m)	Firms	Years	Fine/firm (€m)	Fine/cartel year (€m)
TV and Computer Monitor Tubes	1,470.5	8.0	10.0	183.8	18.4
Water Management Products	13.7	3.0	1.9	4.5	2.4
Freight Forwarding	169.0	14.0	5.0	12.1	2.4
Mountings for Windows	85.9	9.0	7.7	9.6	1.2
Totals	1,739.2	34.0	24.6		
Averages 2012	434.8	8.5	6.1	51.1	8.3
Averages 2011	153.5	3.5	3.3	43.8	13.3
Averages for Almunia (2010-2012)	384.9	8.8	8.4	43.8	5.2
Averages for Kroes (2005-2009)	311.8	7.3	9.2	42.6	4.6

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