



EUROPEAN COMMISSION
Competition DG

CASE COMP/39605-CRT Glass

(Only the English text is authentic)

CARTEL PROCEDURE

Council Regulation (EC) 1/2003 and Commission Regulation (EC) 773/2004

Article 7 Regulation (EC) 1/2003

Date: 19/10/2011

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EUROPEAN COMMISSION

Brussels, 19.10.2011
C(2011) 7436 final

COMMISSION DECISION

of 19.10.2011

**relating to proceedings under Article 101 of the Treaty on the Functioning of the
European Union and Article 53 of the EEA Agreement
(COMP/39605 CRT Glass)**

(Text with EEA relevance)

Only the English text is authentic

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COMMISSION DECISION

of XXX

**relating to proceedings under Article 101 of the Treaty on the Functioning of the
European Union and Article 53 of the EEA Agreement
(COMP/39605 CRT Glass)**

(Text with EEA relevance)

Only the English text is authentic

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union¹,

Having regard to the Agreement on the European Economic Area,

Having regard to Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty², and in particular Article 7 and Article 23(2) thereof,

Having regard to Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the EC Treaty³, as amended by Commission Regulation (EC) No 622/2008 of 30 June 2008 as regards the conduct of settlement procedures in cartel cases⁴, and in particular Article 10a thereof,

Having regard to the Commission decision of 29 June 2010 to initiate proceedings in this case,

¹ OJ C 115, 9.5.2008, p. 47.

² OJ L 1, 4.1.2003, p. 1. With effect from 1 December 2009, Articles 81 and 82 of the EC Treaty have become Articles 101 and 102, respectively, of the Treaty on the Functioning of the European Union ("the Treaty"). The two sets of provisions are, in substance, identical. For the purposes of this Decision, references to Articles 101 and 102 of the Treaty should be understood as references to Articles 81 and 82, respectively, of the EC Treaty where appropriate. The Treaty also introduced certain changes in terminology, such as the replacement of "Community" by "Union" and "common market" by "internal market". Where the meaning remains unchanged, the terminology of the Treaty will be used throughout this Decision.

³ OJ L 123, 27.4.2004, p. 18.

⁴ OJ L 171, 1.7.2008, p. 3.

Having given the undertakings concerned the opportunity to make known their views on the objections raised by the Commission pursuant to Article 27(1) of Regulation (EC) No 1/2003 and Article 11(1) of Regulation (EC) No 773/2004,

After consulting the Advisory Committee on Restrictive Practices and Dominant Positions,

Having regard to the final report of the Hearing Officer in this case⁵,

Whereas:

1. INTRODUCTION

- (1) This Decision relates to a single and continuous infringement of Article 101 of the Treaty and Article 53 of the EEA Agreement in the sector of **glass for Cathode Ray Tubes** ("CRT Glass"). The infringement consisting of price coordination covered the entire **EEA**. Overall, the infringement lasted from 23 February 1999 until 27 December 2004.
- (2) This Decision is addressed to the following companies:
- Asahi Glass Co., Ltd.;
 - Nippon Electric Glass Co., Ltd.;
 - Samsung Corning Precision Materials Co., Ltd. (Samsung Corning Precision Glass Co., Ltd. until May 2010);
 - Schott AG.

2. THE INDUSTRY SUBJECT TO THE PROCEEDINGS

2.1. The product

- (3) The product concerned by the anti-competitive conduct is glass supplied to manufacturers of Cathode Ray Tubes ("CRT Glass") and used for the production of Colour Picture Tubes ("CPTs") and Colour Display Tubes ("CDTs")⁶. CPTs are built into televisions. CDTs are built into computer monitors.

2.2. The undertakings subject to the proceedings

2.2.1. *Asahi Glass Co., Ltd*

- (4) The undertaking concerned is Asahi Glass Co., Ltd. with its registered office at Shin-Marunouchi Building, 1-5-1 Marunouchi, Chiyoda-ku, 100-8405 Tokyo, Japan ("AGC"). AGC is active in the manufacturing and sales of glass and glass-related

⁵ Final report of the Hearing Officer of 18 October 2011.

⁶ These proceedings cover all possible kinds of CRT glass.

products. The company is publicly listed and had a worldwide turnover in 2010 of approximately EUR 11 000 million.

2.2.2. *Nippon Electric Glass Co., Ltd*

- (5) The undertaking concerned is Nippon Electric Glass Co., Ltd. with registered office at 7-1 Seiran 2-chome, Otsu, 520-8639 Shinga, Japan and its relevant subsidiaries ("NEG"). NEG is active in the production and sale of specialty glass products and glassmaking machinery. The company is publicly listed and had a worldwide turnover in 2010 of EUR 2 534 million.

2.2.3. *Samsung Corning Precision Materials Co., Ltd*

- (6) The undertaking concerned is Samsung Corning Precision Materials Co., Ltd. (previously Samsung Corning Precision Glass Co., Ltd), with its registered office at 644-1 Jinpeong-dong, Gumi-se, Gyeongsangbuk-do, South Korea, its legal predecessor Samsung Corning Co., Ltd. ("SSC") and its relevant subsidiaries ("SCP"). SCP is active in the production of glass for CRT and Liquid Crystal Display ("LCD") products. SCP had a worldwide turnover in 2010 of EUR 3 590 million.

2.2.4. *Schott AG*

- (7) The undertaking concerned is Schott AG with its registered office at Hattenbergstr. 10, 55122 Mainz, Germany, its legal predecessor Schott Glas and its relevant subsidiaries ("Schott"). Schott is active in developing and manufacturing specialty materials, components and systems and it had a worldwide turnover in 2010 of EUR 2 845 million. Schott closed its CRT Glass operations in 2006.

3. **PROCEDURE**

- (8) [...], SCP applied for immunity under the Commission Notice on Immunity from fines and reduction of fines in cartel cases⁷ (the "Leniency Notice"). SCP's immunity application was followed by a number of subsequent submissions made between [...] 2008 and [...] 2010, consisting of [...]. On 10 February 2009, SCP was granted conditional immunity from fines pursuant to point 8(a) of the Leniency Notice.
- (9) In March 2009, the Commission carried out unannounced inspections at the premises of Schott. Requests for information were sent by the Commission to the main CRT Glass producers [...].
- (10) [...] NEG applied for immunity or, alternatively, for a reduction of fines under the Leniency Notice. NEG supplemented its application by further submissions consisting [...] between [...] 2009 and [...] 2010.
- (11) [...], Schott submitted a formal application for a reduction of fines under the Leniency Notice.

⁷ OJ C 298, 8.12.2006, p. 17.

- (12) On 29 June 2010, the Commission initiated proceedings pursuant to Article 11(6) of Regulation (EC) No 1/2003 and, by letter of 29 June 2010, formally requested SCP, AGC, NEG and Schott (together the "parties") to express in writing their interest to engage in settlement discussions. After all the parties had confirmed their willingness to engage in settlement discussions, discussions started on 13 July 2010.
- (13) Settlement meetings between the parties and the Commission took place between 13 July 2010 and 1 July 2011. During those meetings, the Commission informed the parties of the objections it envisaged raising against them and disclosed the evidence in the Commission file used to establish these objections. Between 13 July 2010 and 28 July 2010, the parties had access to the relevant file in the Commission premises, [...]. The parties were also given [...] documents in the file and a copy of evidence that had already been shown to them. Upon request, and in so far as it was justified by the parties to clarify their positions regarding a time period or any other aspect of the cartel, the parties were granted access to any additional document [...] in the case file. The parties were also provided with an estimation of the range of fines likely to be imposed by the Commission.
- (14) The parties gave their view on the objections which the Commission envisaged raising against them. The parties' comments were carefully considered by the Commission and, where appropriate, taken into account. At the end of the settlement discussions, all parties considered that there was a sufficient common understanding as regards the potential objections and the estimation of the range of likely fines to continue the settlement process.
- (15) [...], the parties submitted to the Commission their formal request to settle pursuant to Article 10a (2) of Regulation (EC) No 773/2004. In their settlement submissions, AGC, NEG, SCP and Schott acknowledged clearly and in an unequivocal manner their liability for an infringement of Article 101 of the Treaty and Article 53 of the EEA Agreement, describing its object, the main facts, their legal qualification, including their role and the duration of their participation in the infringement, in accordance with the settlement discussions. The addressees of this Decision clearly and unequivocally acknowledged that they were responsible for the behaviour of their subsidiaries which were involved in the cartel (the "relevant subsidiaries"). The parties have also indicated the maximum amount of the fine as stated by the Commission and which they would accept to pay as part of a settlement procedure. In their respective settlement submissions, the parties confirmed that they had access to the evidence supporting the objections and had been granted sufficient opportunity to access other documents in the Commission's file. The parties also [...]the documents that were disclosed to them.
- (16) In their settlement submissions, in accordance with point 20 of the Commission Notice on the conduct of settlement procedures in view of the adoption of Decisions pursuant to Article 7 and Article 23 of Council Regulation (EC) No 1/2003 in cartel cases (the "Settlement Notice")⁸, the parties also confirmed:

⁸ OJ C 167, 02.07.2008, p. 1.

- that they had been sufficiently informed of the objections the Commission envisaged raising against them and having been given sufficient opportunity to make their views known to the Commission,
 - that they did not envisage requesting further access to documents or to be heard again in an oral hearing, unless the Statement of Objections does not reflect their settlement submissions,
 - that they agreed to receive the Statement of Objections and the final decision in a given language, in this case in English.
- (17) The parties also indicated the maximum amount of the fine that they anticipated would be imposed by the Commission and which they would accept to pay as part of a settlement procedure.
- (18) On 29 July 2011, the Commission adopted a Statement of Objections addressed to AGC, NEG, Schott and SCP. All the parties replied to the Statement of Objections by confirming that it corresponded to the contents of their settlement submissions and that they therefore remained committed to following the settlement procedure.
- (19) Having regard to the clear and unequivocal acknowledgments of all the parties to these proceedings described in their settlement submissions and to their clear and unequivocal confirmation that the Statement of Objections reflected their settlement submissions, it is concluded that the addressees of this Decision should be held liable for the infringement as described in Sections 4 to 7.

4. DESCRIPTION OF THE EVENTS

4.1. Overview of the cartel

4.1.1. General description

- (20) AGC, NEG, SCP and Schott engaged in direct and indirect price coordination with a view of restricting price competition within the EEA in the CRT Glass sector. Overall, the cartel lasted from 23 February 1999 until 27 December 2004.
- (21) First, the cartel members directly coordinated prices for CRT Glass at bilateral and trilateral cartel meetings⁹. Throughout the duration of the cartel, they used a variety of means, including coordination of CRT Glass prices for specific customers and, occasionally, setting target prices for certain types of CRT Glass¹⁰.
- (22) Second, the cartel members indirectly coordinated prices, by establishing a high degree of transparency at the bilateral and trilateral meetings with respect to the past, present and future situation of their respective market positions in terms of price evolution, demand of major customers, their respective supply shares for major customers, ongoing output and capacity developments.¹¹ At least from March 2003

⁹ See for example [...].

¹⁰ See for example [...].

¹¹ See for example [...].

onwards, AGC, NEG and SCP also endeavoured to coordinate the output of CRT Glass.¹²

- (23) Furthermore, all cartel members supplemented their price coordination activities by exchanging, through their marketing staff, on an *ad hoc* basis, confidential and sensitive market information, such as EEA sales, stock levels, customer developments, raw material costs and estimates of the demand and sales¹³.
- (24) The cartel functioned on the basis of bilateral or trilateral meetings which were organised when a cartel member requested to discuss an issue with one or more competitors.¹⁴ AGC did not attend trilateral meetings that took place in Europe. The trilateral meetings attended by Schott took place only in Europe. The meetings were complemented by further telephone and email contacts¹⁵.
- (25) The cartel members sometimes had their marketing departments check other cartel members' compliance with the cartel arrangements (through information obtained from CRT Glass customers)¹⁶. Occasionally, this triggered complaints about non-compliance with cartel arrangements, which led to discussions among cartel members about compliance with cartel arrangements¹⁷.
- (26) Throughout the duration of the cartel, the cartel's activities developed over time and with varying intensity. Changes in the intensity of the conduct were triggered by market developments. For instance, the relocation of the production facilities of major CRT Glass customers to regions with lower production costs as of 2001 had an impact on the cartel's activities and the organisation of cartel meetings.
- (27) The activity of the cartel was less intense in the period mid-July 2001 to December 2002. It is considered that this period constituted a period of limited activity of the cartel. From December 2002 onwards, the cartel's activities intensified again. AGC, NEG and SCP then also occasionally coordinated price increase notices and designated a cartel member as the lead negotiator¹⁸ for a major customer (with the understanding on the part of other cartel members to follow the prices of the lead negotiator).

4.1.2. *Specific features in relation to the conduct of AGC*

- (28) From 2 March 1999 to 14 July 2001, AGC was involved only to a limited extent in the cartel's activities. It only participated in some bilateral cartel meetings during that period and did not take part in trilateral cartel meetings attended by NEG, SCP and Schott¹⁹. AGC's cartel contacts were in that period also more sporadic than those of other participants. Therefore, it is considered that AGC contributed during this period

¹² See for example [...].

¹³ See for example [...].

¹⁴ See for example [...].

¹⁵ See for example [...].

¹⁶ See for example [...].

¹⁷ See for example [...].

¹⁸ See for example [...].

¹⁹ See for example [...].

only to a lesser extent to maintaining the cartel and was not involved in all of its aspects²⁰.

4.1.3. *Specific features in relation to the conduct of Schott*

- (29) Schott was mainly involved in price coordination in the initial period of the cartel, that is from 23 February 1999 to 17 July 2001²¹. From 4 December 2002 to 10 May 2004 Schott had a rather limited participation in the cartel²², which was at that time led by the technologically more advanced CRT Glass producers AGC, NEG and SCP²³. Schott did not take part in trilateral cartel meetings attended by AGC, NEG and SCP²⁴. Schott's cartel contacts were also much more sporadic compared to those of other cartel members²⁵. Therefore, it is considered that Schott contributed during this period only to a lesser extent to maintaining the cartel and was not involved in all of its aspects²⁶.

4.2. **Geographic scope of the cartel**

- (30) The cartel covered the entire EEA²⁷. The cartel members present at the cartel meetings discussed their prices and supplies to specific customers located in the EEA and exchanged sensitive commercial information concerning the CRT Glass market as regards the EEA (EEA sales, capacities, stock levels and major customers). Cartel meetings and other anti-competitive contacts were arranged to coordinate, or led to the coordination of, pricing to major EEA-customers.

4.3. **Duration**

- (31) There is evidence that the pattern of continuous cartel contacts started on 23 February 1999²⁸. Hence this date is considered as the starting date of the CRT Glass cartel for the cartel members that were present at the trilateral meeting held on that date, namely NEG, SCP and Schott. AGC participated in the cartel as of 2 March 1999²⁹.
- (32) Although the cartel members had numerous anti-competitive contacts between 1999 and 2004, these contacts had a varying intensity throughout the duration of the cartel. In particular, from 18 July 2001 to 3 December 2002 there were significantly fewer instances of anti-competitive contacts, which were moreover in most instances limited to exchanges of less sensitive commercial information³⁰. Therefore, this period is considered as a period of limited cartel activity. On the basis of the evidence available, the period of limited cartel activity lasted for NEG and Schott

²⁰ See in this respect for example [...].

²¹ See for example [...].

²² See for example [...].

²³ See for example [...].

²⁴ See for example [...].

²⁵ See for example [...].

²⁶ See for example [...].

²⁷ See for example [...].

²⁸ See for example [...].

²⁹ See for example [...].

³⁰ See for example [...].

from 18 July 2001 to 3 December 2002, for SCP from 15 July 2001 to 3 December 2002 and for AGC from 15 July 2001 to 7 March 2003.

- (33) On the basis of the evidence available, it is considered that the cartel ended for NEG and SCP on 27 December 2004³¹. Schott's participation in the cartel ended on 10 May 2004³² and AGC's involvement in the cartel ended on 4 October 2004³³.

5. APPLICATION OF ARTICLE 101(1) OF THE TREATY AND ARTICLE 53(1) OF THE EEA AGREEMENT

- (34) Having regard to the body of evidence referred to in recital (13), the facts as described in Section 4 and the parties' clear and unequivocal acknowledgement of the facts and the legal qualification thereof contained in their settlement submissions, and their replies to the Statement of Objections, the legal assessment is set out as follows.

5.1. Agreements and concerted practices

(a) Principles

- (35) Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement prohibit anti-competitive *agreements between undertakings, decisions by associations of undertakings and concerted practices*³⁴.
- (36) An *agreement* may be said to exist when the undertakings adhere to a common plan which limits or is likely to limit their individual commercial conduct by determining the lines of their mutual action or abstention from action in the market. Although Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement draw a distinction between the concept of "*concerted practices*" and that of "*agreements between undertakings*", the object is to bring within the prohibition of those Articles a form of co-ordination between undertakings by which, without having reached the stage where an agreement properly so-called has been concluded, they knowingly substitute practical co-operation between them for the risks of competition³⁵. Thus, conduct may fall under Article 101 of the Treaty and Article 53 of the EEA Agreement as a *concerted practice* even where the parties have not explicitly subscribed to a common plan defining their action in the market but knowingly adopt or adhere to collusive devices which facilitate the co-ordination of their commercial behaviour³⁶.

³¹ See for example [...].

³² See for example [...].

³³ See for example [...].

³⁴ The case-law of the Court of Justice and the General Court in relation to the interpretation of Article 101 of the Treaty applies equally to Article 53 of the EEA Agreement. See recitals (4) and (15) as well as Article 6 of the EEA Agreement and Article 3(2) of the Agreement between the EFTA States on the establishment of a Surveillance Authority and a Court of Justice.

³⁵ Case 48/69 *Imperial Chemical Industries v Commission* [1972] ECR 619, paragraph 64.

³⁶ See Case T-7/89 *Hercules v Commission* [1991] ECR II-1711, paragraph 256. See also Case 48/69 *Imperial Chemical Industries v Commission* [1972] ECR 619, at paragraph 64, and Joined Cases 40-48/73, 50/73, 54-56/73, 111/73 and 113-114/73 *Suiker Unie and Others v Commission* [1975] ECR 1663, at paragraphs 173-174.

- (37) In the case of a complex infringement of long duration, it is not necessary for the Commission to characterise the conduct as exclusively one or other of these forms of illegal behaviour. The concepts of *agreement* and *concerted practice* are fluid and may overlap. It would be artificial analytically to sub-divide what is clearly a continuing common enterprise having one and the same overall objective into several different forms of infringement. A cartel may therefore be an agreement and a concerted practice at the same time³⁷.

(b) Application to this case

- (38) As emerges from the facts described in Section 4, the parties were involved in horizontal anti-competitive arrangements which formed part of an overall scheme pursuing a single anti-competitive object and single anti-competitive aim of restricting price competition. Within this overall scheme, the parties aimed at influencing prices through direct and indirect price coordination. Such behaviour, by its very nature, restricts competition within the meaning of Article 101 (1) of the Treaty and Article 53(1) of the EEA Agreement.
- (39) The conduct of the parties can be qualified as a complex infringement, consisting of various actions which can either be classified as an agreement and/or concerted practice, within which the competitors knowingly substituted practical cooperation between them for the risks of competition. The parties entered into a scheme of anti-competitive contacts which limited their individual commercial conduct by determining the lines of their mutual action or abstention from action in the market. Their behaviour had therefore all the characteristics of an agreement and/or concerted practice within the meaning of Article 101(1) of the Treaty and Article 53 of the EEA Agreement.
- (40) The anti-competitive conduct covered by this Decision, which covered the EEA, therefore qualifies as an agreement and/or concerted practice between undertakings within the meaning of Article 101 of the Treaty and Article 53 of the EEA Agreement.

5.2. Single and continuous infringement

(a) Principles

- (41) A complex cartel may properly be viewed as a single and continuous infringement for the timeframe in which it existed. The General Court has pointed out that the concept of 'single agreement' or 'single infringement' presupposes a complex of practices adopted by various undertakings in pursuit of a single anti-competitive economic aim³⁸. The cartel may well be varied from time to time, or its mechanisms adapted or strengthened to take account of new developments. It would be artificial to split up such continuous conduct, characterised by a single purpose, by treating it as consisting of several separate infringements, when what was involved was a single infringement which progressively would manifest itself in both agreements and concerted practices.

³⁷ See Case T-7/89 *Hercules v Commission* [1991] ECR II-1711, paragraph 264.

³⁸ Joined Cases T-25/95 and others *Cimenteries CBR and Others v Commission*, [2000] ECR II-491, paragraph 369.

- (42) The mere fact that each participant in a cartel may play the role which is appropriate to its own specific circumstances does not exclude its responsibility for the infringement as a whole, including acts committed by other participants but which share the same unlawful purpose and the same anti-competitive object or effect. An undertaking which takes part in the common unlawful enterprise by actions which contribute to the realisation of the shared objective is equally responsible, for the whole period of its adherence to the common scheme, for the acts of the other participants pursuant to the same infringement. This is certainly the case where it is established that the undertaking in question was aware of the unlawful behaviour of the other participants or could have reasonably foreseen or been aware of them and was prepared to take the risk³⁹.

(b) Application to this case

- (43) In this case, the conduct in question constitutes a single and continuous infringement of Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement on the CRT Glass market which covered the entire EEA from 23 February 1999 to 27 December 2004.
- (44) The various anti-competitive practices described in Section 4 were in pursuit of a single anti-competitive object and single economic aim, namely that of distorting competition on prices on the CRT Glass market. To that end, the cartel members engaged in direct and indirect price coordination. Moreover, the cartel members engaged on a regular and repeated basis in an exchange of other sensitive commercial information relating to key price-setting parameters, such as EEA sales, production capacities, stock levels and demand.
- (45) The single and continuous infringement covered both CPT glass used for televisions and CDT glass used in computer monitors. The cartel members discussed both kinds of CRT Glass at bilateral and trilateral meetings. All cartel members were active in the production and sale of both kinds of CRT Glass products⁴⁰.
- (46) It follows from the evidence available that the conduct described in Section 4 was an ongoing process and not an isolated or sporadic occurrence. The different elements of the infringement were in pursuit of a single anti-competitive object, which remained the same both before and after the period of limited activity between July 2001 and December 2002 (March 2003 for AGC), namely to resort to price coordination with competitors to keep the CRT Glass prices above the natural market trend. The existence of a single and continuous infringement is supported by the fact that the cartel followed, while adapting to a changing volatile market, the same pattern throughout the years, and that there was a continuity of method before and after that period of limited activity.
- (47) All these elements taken together demonstrate that the addressees of this Decision participated in a single and continuous infringement of Article 101 of the Treaty and Article 53 of the EEA Agreement.

³⁹ See Case C-49/92 P *Commission v Anic Partecipazioni*, [1999] ECR I-4125, paragraph 83.

⁴⁰ Schott was not active in the production of panels for CDTs.

5.3. Restriction of competition

(a) Principles

- (48) Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement expressly prohibit as incompatible with the internal market such agreements and concerted practices which have as their object or effect the restriction of competition by directly or indirectly fixing prices or any other trading conditions.
- (49) It is settled case-law that, for the purpose of the application of Article 101 of the Treaty and Article 53 of the EEA Agreement, there is no need to take into account the actual effects of an agreement when it has as its object the prevention, restriction or distortion of competition within the common market. Consequently, it is not necessary to show actual anti-competitive effects where the anti-competitive object of the conduct in question is proved⁴¹. The same applies to concerted practices⁴².

(b) Application to this case

- (50) The parties coordinated their behaviour to remove uncertainty between themselves in relation to pricing and ultimately to restrict competition in the CRT Glass market. The conduct at stake, done with an anti-competitive spirit, was a sufficient basis for the parties to concert on their market behaviour and thus to substitute practical cooperation between them for competition and the risks entailed.
- (51) Therefore, the **object** of the behaviour of the parties was to restrict competition within the meaning of Article 101 of the Treaty and Article 53 of the EEA Agreement.

5.4. Effect upon trade between Member States and between EEA Contracting Parties

(a) Principles

- (52) Article 101 of the Treaty is aimed at agreements and concerted practices which might harm the attainment of a single market between the Member States, whether by partitioning national markets or by affecting the structure of competition within the internal market. Similarly, Article 53 of the EEA Agreement is directed at agreements that undermine the achievement of a homogeneous EEA.
- (53) The application of Article 101 of the Treaty and Article 53 of the EEA Agreement to a cartel is not, however, limited to that part of the cartel members' sales that actually involve the transfer of goods from one Member State to another. Nor is it necessary, in order for these provisions to apply, to show that the individual conduct of each participant, as opposed to the cartel as a whole, affected trade between Member States or between Contracting Parties to the EEA Agreement.

(b) Application to this case

⁴¹ See, for example, Case T-62/98 *Volkswagen AG v Commission* [2000] ECR II-2707, paragraph 178 and case-law cited therein.

⁴² See Case C-199/92 P *Hüls v Commission*, [1999] ECR I-4287, paragraphs 158-166.

(54) The CRT Glass market was characterised by a substantial volume of trade between and into the Member States and there was also a considerable volume of trade between the Member States and between other Contracting Parties to the EEA Agreement. On the basis of the sales data provided by the parties and their customers, there is ample evidence of sales made in the EEA. The direct and indirect pricing coordination by the cartel members covered the EEA area.

(55) The infringement by the parties was therefore capable of having an appreciable effect upon trade between Member States and between the Contracting Parties to the EEA Agreement.

5.5. Non-applicability of Article 101(3) of the Treaty and Article 53(3) of the EEA Agreement

(56) On the basis of the facts before the Commission, there are **no indications** that the conditions for exemption provided for in Article 101(3) of the Treaty and Article 53(3) of the EEA Agreement could be fulfilled with regard to this cartel.

6. ADDRESSEES

(57) Having regard to the body of evidence referred to in recital (13), the facts described in Section 4, the parties' clear and unequivocal acknowledgements of the facts and the legal qualification thereof contained in their settlement submissions, as well as their replies to the Statement of Objections, this Decision should be addressed to the following legal entities and undertakings.

6.1. AGC

(58) Asahi Glass Co., Ltd. clearly and unequivocally acknowledged its liability for the single and continuous infringement, which is therefore imputed to it.

6.2. NEG

(59) Nippon Electric Glass Co., Ltd. clearly and unequivocally acknowledged that it is liable for the single and continuous infringement for its own behaviour and the behaviour of its relevant subsidiaries, of which it held directly or indirectly 100% of the shares. The liability for the single and continuous infringement is therefore imputed to Nippon Electric Glass Co., Ltd.

6.3. SCP

(60) Samsung Corning Precision Materials Co., Ltd. clearly and unequivocally acknowledged its liability for the single and continuous infringement for its own behaviour, the behaviour of its legal predecessor SSC and the behaviour of the relevant subsidiaries, over which SSC exercised decisive influence so that those subsidiaries did not determine independently their own conduct on the market. The liability for the single and continuous infringement is therefore imputed to Samsung Corning Precision Materials Co., Ltd.

6.4. Schott

- (61) Schott AG clearly and unequivocally acknowledged its liability for the single and continuous infringement for its own behaviour, the behaviour of its legal predecessor Schott Glas and the behaviour of the relevant subsidiaries, over which it exercised decisive influence so that those subsidiaries did not determine independently their own conduct on the market. The liability for the single and continuous infringement is therefore imputed to Schott AG.

7. DURATION OF THE INFRINGEMENT

- (62) As set out in Section 4.3, NEG, SCP and Schott started their participation in the cartel on 23 February 1999, while AGC participated in the cartel as of 2 March 1999. Schott's participation in the cartel ended on 10 May 2004 and AGC's involvement in the cartel ended on 4 October 2004. The cartel ended for NEG and SCP on 27 December 2004.

8. REMEDIES

8.1. Article 7 of Regulation (EC) No 1/2003

- (63) Where the Commission finds that there is an infringement of Article 101 of the Treaty and Article 53 of the EEA Agreement, it may by decision require the undertakings concerned to bring such infringement to an end in accordance with Article 7 of Regulation (EC) No 1/2003.
- (64) While it appears that the infringement may be considered to have ended in 2004, it is necessary to ensure that the infringement has been effectively terminated and is not re-commenced in the future. It is therefore necessary to require the addressees of this Decision to bring the infringement to an end -if they have not already done so- and henceforth to refrain from any agreement and/or concerted practice which might have the same or a similar object or effect.

8.2. Article 23(2) of Regulation (EC) No 1/2003

- (65) Under Article 23(2) of Regulation (EC) No 1/2003, the Commission may by decision impose fines on undertakings and associations of undertakings where, either intentionally or negligently, they infringe Article 101 of the Treaty and/or Article 53 of the EEA Agreement⁴³. For each undertaking participating in the infringement, the fine must not exceed 10% of its total turnover in the preceding business year.
- (66) In this case, on the basis of the facts described in Section 4, it appears that the infringement was committed intentionally. The infringement consisted of price

⁴³ According to Article 5 of Council Regulation (EC) No 2894/94 of 28 November 1994 concerning arrangements for implementing the Agreement on the European Economic Area, "the Community rules giving effect to the principles set out in Articles 85 and 86 [now Articles 101 and 102 of the Treaty] of the EC Treaty [...] shall apply *mutatis mutandis*" (OJ L 305, 30.11.1994, p.6.).

coordination with respect to CRT Glass. With respect to that type of obvious infringement, the parties cannot claim that they did not act intentionally⁴⁴.

- (67) Pursuant to Article 23(3) of Regulation (EC) No 1/2003, the Commission must, in fixing the amount of the fine, have regard to the gravity and duration of the infringement. In doing so, the Commission sets the fines at a level sufficient to ensure deterrence. Moreover, the role played by each undertaking party to the infringement is assessed on an individual basis. The fine imposed must reflect any aggravating and attenuating circumstances pertaining to each undertaking.
- (68) In setting the fines to be imposed, the Commission refers to the principles laid down in its Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation (EC) No 1/2003⁴⁵ (the “Guidelines on fines”). Finally, the Commission applies, as appropriate, the provisions of the Leniency Notice and the Settlement Notice.

8.3. Basic amount of the fine

- (69) In accordance with the Guidelines on fines, a basic amount of a fine is to be determined for each undertaking, which may be increased or reduced if there are found to be either aggravating or mitigating circumstances.

8.3.1. Calculation of the value of sales

- (70) The basic amount of the fine to be imposed on the undertakings concerned is to be set by reference to the value of their sales⁴⁶, that is, the value of the undertakings' sales of goods or services to which the infringement directly or indirectly related in the relevant geographic area within the EEA. In this case the relevant value of sales is each party's sales of CRT Glass in the EEA.
- (71) The Commission normally takes into account the sales made by the undertakings during the last full business year of their participation in the infringement⁴⁷. If the last year is not sufficiently representative, the Commission may take into account another year and/or other years for the determination of the value of sales. In this case, there is no reason to depart from the normal practice to take the undertakings' sales in the last full business year of the participation in the infringement. On the basis of the information provided by the parties, sales made in 2003 are used to calculate the basic amount. As NEG's and Schott's financial year is not identical to the calendar year, for NEG and Schott the last full business year during which the infringement took place is respectively the financial year April 2003 – March 2004 and October 2002 – September 2003. Each party has confirmed the relevant value of sales for the calculation of the fines in their settlement submission.
- (72) Accordingly, the value of sales for each party is as set out in Table 1:

⁴⁴ See, for example, Case T-143/89 *Ferriere Nord v Commission* [1995] ECR II-917, paragraph 42; Case C-219/95 P *Ferriere Nord v Commission*, [1997] ECR I-4411, paragraph 50; Case T-11/05 *Wieland-Werke v Commission*, judgement of 19 May 2010, paragraph 140 (not yet reported).

⁴⁵ OJ C 210, 1.09.2006, p. 2.

⁴⁶ Point 12 of the Guidelines on fines.

⁴⁷ Point 13 of the Guidelines on fines.

Table 1: The value of sales

| Undertaking | Value of sales in EUR |
|-------------|---------------------------|
| SCP | 40 000 000 – 90 000 000 |
| NEG | 100 000 000 – 150 000 000 |
| Schott | 70 000 000 – 110 000 000 |
| AGC | 50 000 000 – 100 000 000 |

8.3.2. Determination of the basic amount of the fine

- (73) The basic amounts of the fine to be imposed on each party result from the addition of a variable amount and an additional amount. The variable amount results from a percentage of up to 30% of the value of the undertaking's relevant sales, depending on the degree of gravity of the infringement and multiplied by the number of years of the undertaking's participation in the infringement. The additional amount is calculated as a percentage between 15% and 25% of the value of the undertaking's relevant sales, irrespective of duration⁴⁸.

8.3.2.1. Gravity

- (74) The gravity of the infringement determines the percentage of the value of sales taken into account in setting the fine. In assessing the gravity of the infringement, the Commission may have regard to a number of factors, such as the nature of the infringement, the combined market share of all the undertakings concerned, the geographic scope of the infringement and/or whether or not the infringement has been implemented.⁴⁹ The relevant elements in this case are assessed as follows.

(a) Nature

- (75) The addressees of this Decision participated in a single and continuous infringement of Article 101 of the Treaty and Article 53 of the EEA Agreement the aim of which was to coordinate prices, as described in Section 4.
- (76) That type of anti-competitive behaviour is by its very nature a very serious violation of Article 101 of the Treaty and Article 53 of the EEA Agreement.

(b) Geographic scope

- (77) The infringement covered the entire EEA.

(c) Conclusion on gravity

- (78) Given the specific circumstances of this case, taking into account the nature and the geographic scope of the infringement, the proportion of the value of sales to be taken into account should be 16%.

⁴⁸ Points 19-26 of the Guidelines on fines.

⁴⁹ Points 21 and 22 of the Guidelines on fines.

8.3.2.2. Duration

- (79) According to point 24 of the Guidelines on fines, the amount determined on the basis of the value of sales is multiplied by the number of years of participation in the infringement in order to take fully into account the duration of the participation of each undertaking in the infringement individually⁵⁰.
- (80) For the application of point 24 of the Guidelines on fines, the starting and ending dates for the participation in the infringement by each addressee are as follows:
- (a) SCP participated in the infringement from 23 February 1999 to 27 December 2004;
 - (b) NEG participated in the infringement from 23 February 1999 to 27 December 2004;
 - (c) Schott participated in the infringement from 23 February 1999 to 10 May 2004;
 - (d) AGC participated in the infringement from 2 March 1999 to 4 October 2004.
- (81) As specified above in Section 4.3, the cartel went through the period of limited activity which should not be taken into account for purposes of calculating the fines. This period of limited cartel activity was as follows:
- (a) SCP from 15 July 2001 to 3 December 2002;
 - (b) NEG from 18 July 2001 to 3 December 2002;
 - (c) Schott from 18 July 2001 to 3 December 2002;
 - (d) AGC from 15 July 2001 to 7 March 2003.
- (82) The duration to be taken into account for the purposes of calculating the fine per addressee, rounded down to the month, and the resulting multipliers for duration are presented in Table 2.

Table 2. Duration

| Entity | Duration | Multipliers |
|--------|-------------------|-------------|
| SCP | 4 years 5 months | 4,41 |
| NEG | 4 years 5 months | 4,41 |
| Schott | 3 years 10 months | 3,83 |
| AGC | 3 years 11 months | 3,91 |

⁵⁰ Point 24 of the Guidelines on fines.

8.3.3. *Determination of the additional amount*

- (83) Point 25 of the Guidelines on fines provides that, irrespective of the duration of the undertaking's participation in the infringement, the basic amount will include a sum of between 15% and 25% of the value of sales, on the basis of the factors listed in Section 8.3.2.1 with respect to the variable amount, in order to deter undertakings from even entering into such illegal practices⁵¹.
- (84) Taking into account the factors indicated in Section 8.3.2.1. relating to the nature and the geographic scope of the infringement, the percentage to be applied for the purposes of calculating this additional amount is 16%.

8.3.4. *Calculations and conclusions on basic amounts*

- (85) Based on the criteria explained in recitals (74) to (84), the basic amount of the fine for each party is presented in Table 3.

Table 3. Basic amounts of the fine

| Undertaking | Basic Amount in EUR |
|--------------------|--------------------------------|
| SCP | 30 000 000 – 70 000 000 |
| NEG | 70 000 000 – 130 000 000 |
| Schott | 50 000 000 – 90 000 000 |
| AGC | 40 000 000 – 80 000 000 |

8.4. **Adjustments to the basic amount of the fine**

8.4.1. *Aggravating circumstances*

- (86) The basic amount of the fine may be increased where there are aggravating circumstances. Point 28 of the Guidelines on fines sets out a non-exhaustive list of such circumstances.
- (87) There are no aggravating circumstances in this case.

8.4.2. *Mitigating circumstances*

- (88) The basic amount of the fine may be reduced where there are mitigating circumstances. Point 29 of the Guidelines sets out a non-exhaustive list of such circumstances. Given the specific features in relation to the conduct of AGC and

⁵¹ Point 25 of the Guidelines on fines.

Schott, as described in Section 4.1 above, a reduction of the basic amount of the fine imposed on these two parties is justified due to mitigating circumstances.

(a) AGC

- (89) As described above in Section 4.1.2, AGC was involved only to a limited extent in the cartel in its early period (from 2 March 1999 to 14 July 2001). Therefore, the fine to be imposed on AGC is reduced by 15%.

(b) Schott

- (90) As described above in Section 4.1.3, Schott was involved in the cartel only to a limited extent in its later period (from 4 December 2002 to 10 May 2004). Therefore, the fine to be imposed on Schott is reduced by 15%.
- (91) Schott does not qualify for a reduction of the fine under the Leniency Notice since it did not submit evidence which at the time of its leniency application represented significant added value with respect to the evidence already in the Commission's possession. However, at an early stage of the procedure and before submitting its leniency application, Schott granted on a voluntary basis access to evidence and relevant information beyond what it was legally obliged to do. The contemporaneous evidence submitted by Schott on a voluntary basis strengthened the Commission's ability to prove the case. The fine to be imposed on Schott is therefore reduced by 18% in view of Schott's effective cooperation outside the scope of the Leniency Notice and beyond its legal obligation to do so.

8.4.3. *Specific increase for deterrence*

- (92) Particular attention should be paid to the need to ensure that fines have a sufficiently deterrent effect; to that end, the fine to be imposed on undertakings which have a particularly large turnover beyond the sales of goods or services to which the infringement relates may be increased⁵².
- (93) In this case, there is no need to increase the fine for achieving a sufficiently deterrent effect.

8.5. Application of the 10% turnover limit

- (94) Article 23(2) of Regulation (EC) No 1/2003 provides that the fine imposed on each undertaking must not exceed 10% of its total turnover in the preceding business year. In this particular case, the adjusted basic amounts do not exceed 10% of the total turnover of any of the undertakings. Therefore, it is not necessary to adjust the amounts in the light of the parties' turnover in 2010.

⁵²

Point 30 of the Guidelines on fines.

8.6. Application of the Leniency Notice

8.6.1. Immunity from fines

- (95) SCP submitted an immunity application [...] under the Leniency Notice. SCP was granted conditional immunity from fines on 10 February 2009. SCP's cooperation fulfilled the requirements under the Leniency Notice. SCP is, therefore, granted immunity from fines in this case.

8.6.2. Reduction of fines

- (96) NEG applied for a reduction of fines based on the Leniency Notice [...]. NEG has provided with its leniency application important new evidence as well as corroborating information, thereby substantially strengthening the Commission's ability to prove the case and adding significant value to the Commission's investigation. In this case, NEG is the first (and only) undertaking to meet the requirements of points 24 and 25 of the Leniency Notice. Consequently, a reduction of the fine of 50% is granted to NEG.
- (97) Schott does not qualify for a reduction of the fine under the Leniency Notice since it did not submit evidence which at the time of its leniency application represented significant added value with respect to the evidence already in the Commission's possession.

8.7. Application of the Settlement Notice

- (98) As foreseen in point 32 of the Settlement Notice, the reward for settlement results in a reduction of 10% of the amount of the fine to be imposed on a party after the 10% turnover cap has been applied having regard to the Guidelines on fines. Pursuant to point 33 of the Settlement Notice, when settled cases involve leniency applicants, the reduction of the fine granted to them for settlement will be added to their leniency reward.
- (99) As a result of the application of the Settlement Notice, the amount of the fine to be imposed on NEG, Schott and AGC is reduced by 10%.

8.8. Conclusion: final amount of individual fines to be imposed in this Decision

- (100) The fines to be imposed pursuant to Article 23(2) of Regulation (EC) No 1/2003 are set out in Table 4.

Table 4. Fines

| Undertaking | Fines (in EUR) |
|--------------------|-----------------------|
| SCP | 0 |
| NEG | 43 200 000 |
| Schott | 40 401 000 |
| AGC | 45 135 000 |

9. CONCLUSION

HAS ADOPTED THIS DECISION:

Article 1

The following undertakings infringed Article 101 of the Treaty and Article 53 of the EEA Agreement by participating, during the periods indicated below, in anti-competitive practices with a view to restricting price competition within the EEA in the CRT Glass market:

- (a) Samsung Corning Precision Materials Co., Ltd. (Samsung Corning Precision Glass Co., Ltd. until May 2010) from 23 February 1999 to 27 December 2004;
- (b) Nippon Electric Glass Co., Ltd. from 23 February 1999 to 27 December 2004;
- (c) Schott AG from 23 February 1999 to 10 May 2004;
- (d) Asahi Glass Co., Ltd. from 2 March 1999 to 4 October 2004.

Article 2

For the infringement referred to in Article 1, the following fines are imposed:

- (a) On Samsung Corning Precision Materials Co., Ltd.: EUR 0;
- (b) On Nippon Electric Glass Co., Ltd.: EUR 43 200 000;
- (c) On Schott AG: EUR 40 401 000;
- (d) On Asahi Glass Co., Ltd.: EUR 45 135 000.

The fines shall be paid in EURO within three months of the date of notification of this Decision to the following account held in the name of the European Commission:

BANQUE ET CAISSE D'EPARGNE DE L'ETAT

1-2, Place de Metz

L-1930 Luxembourg

IBAN: LU02 0019 3155 9887 1000

BIC: BCEELULL

Ref: European Commission – BUFI/COMP/39605

After the expiry of that period, interest shall automatically be payable at the interest rate applied by the European Central Bank to its main refinancing operations on the first day of the month in which this Decision is adopted, plus 3.5 percentage points.

Where an undertaking referred to in Article 1 lodges an appeal, that undertaking shall cover the fine by the due date by either providing an acceptable bank guarantee or making a provisional payment of the fine in accordance with Article 85a(1) of Commission Regulation (EC, Euratom) No 2342/2002⁵³.

Article 3

The undertakings listed in Article 1 shall immediately bring to an end the infringement referred to in that Article insofar as they have not already done so.

They shall refrain from repeating any act or conduct described in Article 1, and from any act or conduct having the same or similar object or effect.

Article 4

This Decision is addressed to:

Samsung Corning Precision Materials Co., Ltd., 644-1 Jinpeong-dong, Gumi-se, Gyeongsangbuk-do, South Korea

Nippon Electric Glass Co., Ltd., 7-1 Seiran 2-chome, Otsu, 520-8639 Shinga, Japan

Schott AG, Hattenbergstr. 10, 55122 Mainz, Germany

Asahi Glass Co., Ltd., Shin-Marunouchi Building, 1-5-1, Marunouchi, Chiyoda-ku, Tokyo, 00-8405, Japan

This Decision shall be enforceable pursuant to Article 299 of the Treaty and Article 110 of the EEA Agreement.

⁵³ OJ L 357, 31.12.2002, p. 1.

Done at Brussels,

,

For the Commission

Vice-President

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