

COMMISSION DECISION**of 17 December 1980****relating to a proceeding under Article 85 of the EEC Treaty
(IV/29.869 — Italian cast glass)****(Only the Italian text is authentic)****(80/1334/EEC)**

THE COMMISSION OF THE EUROPEAN
COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 85 thereof,

Having regard to Council Regulation No 17 of 6 February 1962 ⁽¹⁾, and in particular Articles 1 and 3 thereof,

Having regard to the proceedings initiated by the Commission on its own initiative on 11 December 1979 against Fabbrica Pisana SpA, Pisa, Società Italiana Vetro SpA, San Salvo (Chieti), Fabbrica Lastre di Vetro Sciarra SpA, Rome, and F-Unione Fiduciaria SpA, Milan, in respect of agreements concluded by them concerning the cast glass market in Italy,

Having heard the undertakings concerned in accordance with Article 19 (1) of Regulation No 17 and Commission Regulation No 99/63/EEC ⁽²⁾,

Having regard to the opinion of the Advisory Committee on Restrictive Practices and Dominant Positions delivered pursuant to Article 10 of Regulation No 17 on 17 October 1980,

Whereas:

I. THE FACTS

The main facts of the case are the following:

A. The undertakings

1. Fabbrica Pisana SpA (hereinafter referred to as 'Fabbrica Pisana'), the head office of which is in Pisa and the share capital of which amounts to Lit 11 934 500 000, is a wholly-owned subsidiary of Saint-Gobain Industries, a member of the Saint-Gobain/Pont-à-Mousson group. This group, which is one of the largest industrial groups in the world, comprises 134 companies established in 17 different countries. It is divided into six industrial and commercial divisions, and each division comes under a holding company which is wholly controlled by Saint-Gobain/Pont-à-Mousson. Apart from

Fabbrica Pisana, the group owns the following companies in Italy, all of which are in various ways connected with the glass market: Vetreria Milanese Lucchini-Perego, Vetreria Italiana Balzaretti-Modigliani, Vetreria Luigi Fontana and Vetreria Riunite Bordonni-Miva.

The Saint Gobain/Pont-à-Mousson group employs some 110 000 persons, 69 000 of whom work in the 'buildings' division, which includes the glass-producing factories.

Saint-Gobain Industries, which heads the 'buildings' division, controls 25 subsidiaries, some of which, including Fabbrica Pisana in Italy, manufacture cast glass.

Fabbrica Pisana has factories at Caserta, Pisa, Savigliano and Turin producing the following types of glass:

1. float glass, clear and coloured (blue, amber, bronze, green and grey);
2. cast glass, clear and coloured U-section profiled glass;
3. processed glass products for the building industry (Biver).

Since 1975, Fabbrica Pisana has concentrated most of its investment on the production of float glass and, as regards cast glass, has since 1976 not produced any 'horticultural' glass. It employs about 3 000 persons.

2. Società Italiana Vetro SpA (hereinafter referred to as 'SIV'), the head office of which is in Rome and the share capital of which amounts to Lit 28 000 000 000, is a State-controlled company. It was set up in May 1962 by Ente Finanziamento Industria Meccanica, Rome (hereinafter referred to as 'EFIM') and Società Finanziamenti Idrocarburi SpA, Milan (hereinafter referred to as 'S'). At present, S and Società Mineraria Carbonifera Sarda (hereinafter referred to as 'MCS'), a subsidiary of the EFIM group, each hold 50 % of the capital of SIV.

Up to May 1974, SIV had facilities for the production of window glass (drawn sheet glass) only. Its capacity was gradually reduced to 38 000 tonnes per year and production was stopped altogether in September

⁽¹⁾ OJ No 13, 21. 2. 1962, p. 204.

⁽²⁾ OJ No 127, 20. 8. 1963, p. 2268/63.

1975. Starting in May 1974, a float glass production line with a capacity of 120 000 tonnes per year was put into operation, together with a cast glass production line.

SIV, whose plant is at San Salvo near Vasto (Chieti) and which employs 3 500 persons, now produces float glass, cast glass and processed glass (safety and insulating glass).

As regards cast glass in particular, production never reached its optimum level and, during 1976/77, the factory was operating at 50 % of its capacity. Recently, capacity utilization was improved following integration of the cast glass factory with the float glass production lines of SIV and Flovetto ⁽¹⁾.

SIV relies heavily on export markets: in 1976, the proportion of its output sold on the Italian market amounted to only 56 % of total output. SIV's sales organization in Europe comprises an eastern area subsidiary (SIV-Deutschland in Frankfurt) and a western area subsidiary (SIV-France in Paris).

3. Fabbrica Lastre di Vetro Sciarra SpA (hereinafter referred to as 'Fabbrica Sciarra'), the capital of which amounts to Lit 350 000 000 and the head office of which is in Rome, is a family undertaking which became an SpA in 1959. The shares have remained the property of the heirs of the founder of the undertaking, who are the owners of 'Specchi Cristalli Vetro Pietro Sciarra SpA', Rome, which is engaged mainly in the processing of glass.

Fabbrica Sciarra, which normally employs fewer than 100 persons, produces only cast glass, mainly patterned glass ('stampato') 4 mm thick and wired glass ('retinato') 6 mm thick. The glass manufactured by Fabbrica Sciarra is used mainly in the building industry; in 1976, it stopped producing horticultural glass, which had been a speciality in the company's production of clear patterned cast glass.

4. F-Unione Fiduciaria SpA (hereinafter referred to as 'F'), Milan, which provides management and

⁽¹⁾ A joint subsidiary of SIV and Fabbrica Pisana (each owning 50 %).

accountancy services and also specializes in supervisory and statistical research activities, was entrusted by Fabbrica Pisana, SIV and Fabbrica Sciarra with the task of supervising the proper implementation of the agreement at issue in this proceeding.

B. The product and the situation of the market

1. Cast glass, which is one of the three kinds of flat glass (the others being 'drawn glass' and 'plate glass'), is used in:

- the building industry (doors, divides, roofing, tiling),
- horticulture (greenhouses),
- industry (household electrical equipment),
- furniture (tables, chairs, chandeliers).

The following varieties of cast glass require to be distinguished:

- (a) 'patterned' glass, which has designs printed on the surface;
- (b) 'wired' glass, which is reinforced by metal;
- (c) 'U-section profiled' glass;
- (d) 'horticultural' glass, which is the glass normally used in greenhouses and which is a by-product of 'patterned' or 'profiled' glass;
- (e) 'cullet', i.e. fragments of cast glass of all qualities which are recovered and used to feed float glass production lines.

The various types of cast glass are manufactured in different thicknesses and may be either clear or coloured; in use, they are very largely intersubstitutable.

2. The following table gives statistics concerning the Italian market in cast glass from 1974 to 1978 (the year in which the agreements which are the subject of this proceeding expired).

(Tonnes)

Year	Out-put ⁽¹⁾	Imports ⁽²⁾				Exports ⁽²⁾				Apparent consumption
		EEC	% AC	Extra EEC	% AC	EEC	% out-put	Extra EEC	% out-put	
1974	127 982	23 819	15.4	6 391	4.1	2 561	2.0	1 895	1.4	153 736
1975	77 668	20 752	20.9	5 680	5.7	2 806	3.6	2 200	2.8	99 094
1976	77 724	22 115	20.2	12 403	11.3	2 108	2.7	3 058	3.2	108 968
1977	70 910	25 783	26.1	10 262	10.3	2 453	3.4	5 757	8.1	93 750
1978	77 983	37 571	32.8	9 040	7.9	3 632	4.6	6 741	8.6	114 221

Sources: ⁽¹⁾ Istituto Italiano di Statistica.

⁽²⁾ SOEC NIMEXE.

3. The foregoing figures reveal that four fifths of Italian imports of cast glass came from other EEC countries (although only about two thirds did so in 1976 and 1977), and that during the two years covered by the agreement which is the subject of this proceeding, total imports did not increase, while those from non-member countries more than doubled.

As to exports, which are considerably less than imports (equal to only 20 to 25 % of the latter), although those to other EEC countries remained more or less unchanged during the years covered by the agreement, those to non-member countries, in contrast, increased considerably: those for 1977/78 were about double those for 1976, which in turn were about one third higher than those for 1975).

4. In 1978, the market shares of the undertakings concerned were approximately: Fabbrica Pisana 28 %, SIV 13 %, Fabbrica Sciarra 11 %. The remainder of the market was accounted for by Vernante-Pennitalia (11 %) and by imports.

5. Exports of cast glass make up a substantial proportion of the output of the companies concerned. Thus, in recent years, Fabbrica Sciarra has exported on average 18 % of its output and SIV between one third and one quarter, of which more than half went to Community countries. Fabbrica Pisana also exported substantial quantities of cast glass to Community countries.

6. Cast glass manufacturers' customers are for the most part processing industries and wholesalers. Among the wholesalers some, though these are relatively few in number, merely resell the glass as bought, whilst others have facilities for cutting and other operations.

C. The agreements

1. The agreements which are the subject of this proceeding, were not notified to the Commission by the companies concerned, and the Commission's staff experienced a number of difficulties in obtaining information about them. For instance on 8 June 1978, the management of F refused to allow the investigations requested by the Commission, and it was only following the Commission Decision of 31 January 1979 ⁽¹⁾ that they accepted such

investigations, having previously requested and obtained authorization from the three manufacturers.

The agreements concerned cover three aspects:

- quantitative sharing out of the types of cast glass,
- communication of all data relating to the manufacturing and marketing of the relevant products, and
- supervision of the proper implementation of the agreement by the parties.

2. A 'memorandum on the supervision of the quantities of "patterned" and "wired" glass manufactured and sold' expresses in formal terms an agreement concluded on 30 March 1976 by Fabbrica Pisana, SIV and Fabbrica Sciarra.

This memorandum fixed a quota for sales on the Italian market for each of the three companies concerned, and also the kinds of cast glass which each undertaking could sell on that market within its quota. The following quantities and kinds were fixed for 1976, and never subsequently altered:

A. for Fabbrica Pisana:

- quota: 30 100 tonnes per year,
- products: patterned and wired glass (clear and coloured), profiled glass (except 'cc' designs 8 to 10 mm);

B. for SIV:

- quota: 14 260 tonnes per year,
- products: clear patterned and wired glass;

C. for Fabbrica Sciarra:

- quota: 14 260 tonnes per year,
- products: clear patterned and wired glass (except 'cc' designs 150 cm in width).

In addition, it provided that the monthly supplies of any company which exceeded its monthly average should be offset every quarter by increased supplies by the other companies in proportion to their shortfall in supplies in relation to their own monthly averages.

The parties wanted to perceive the memorandum in question as a specialization agreement, since SIV and Fabbrica Sciarra abandoned the manufacture of profiled glass and coloured wired glass in favour of Fabbrica Pisana; Fabbrica Sciarra abandoned the manufacture of 150 cm-wide double patterned ('cc') glass, and Fabbrica Pisana that of 8 to 10 mm-thick profiled glass. In addition, all three companies abandoned the manufacture of horticultural glass.

⁽¹⁾ OJ No L 57, 8. 3. 1979, p. 33.

3. The following three documents were attached to the text of the abovementioned memorandum:

- (a) a declaration by SIV, in which that company declared that the cyclical crisis which had affected the Italian market in 1975 justified the agreement, and stated that its participation was linked with the continuation of the exceptional circumstances which brought it about,
- (b) a table of products and of processing coefficients,
- (c) a description of the procedures for supervising the implementation of the memorandum.

4. The last-named document required the companies to draw up and forward to Fides on the dates specified the information which had been agreed, namely:

- (a) on 20 April 1976:
 - a summary table of the stocks in hand as at 31 March 1976 of the products listed in point 4 of the memorandum,
 - the technical structure of price lists as at 2 April 1976 by category of product;
- (b) before the 10th day of each month, starting on 10 May 1976:
 - a detailed statement of transactions for each product during the previous month (including shipments for export and transfers between manufacturers), specifying the particulars appearing on the dispatch and invoice documents and distinguishing clearly between sales in Italy, exports and transfers between manufacturers ('prospetto 1'),
 - a detailed statement, for each product, of goods supplied on consignment to customers or third parties during the previous month, giving precise details of the supplies and the entry in the register of goods on consignment ('prospetto 2'),
 - a monthly and cumulative summary statement of the abovementioned supplies, indicating quantities and value ('prospetto 3'),
 - a summary statement of stock movements as a means of checking what happened during the previous month in respect of each product and in respect of the total of the products ('prospetto 4').

5. Fides was required, on the basis of the same document, to carry out the following functions:

- (a) to draw up a monthly and cumulative summary of shipments of each category of product ('prospetto RS'). This table, containing information on average prices for each product and each undertaking, was to be sent to the

undertakings within five working days of receipt of the information described above.

No other information was to be communicated to the undertakings without their express authorization;

- (b) to carry out in each undertaking a verification of the information provided, including:

- verification of the quantities dispatched (dispatch and invoice documents) and of their consistency with the store accounts and with the general accounts,
- verification of the quantities delivered on consignment to customers or third parties, on the basis of the dispatch documents, store accounts and register of goods on consignment.

The verification was to cover at least 10% of the quantities dispatched covered by the agreement.

If it deemed appropriate, Fides could request additional information, including:

- verification of the consistency of stock movements and of the figures in the industrial accounts,
- random checks on the store accounts on the basis of the loading and unloading documents, and comparison with the figures in the general accounts,
- random checks on the physical quantities compared with the accounting quantities indicated or appearing in the store accounts.

The results of these checks and verifications were to be the subject of meetings of representatives of all parties concerned.

6. The memorandum of 30 March 1976 and the documents attached thereto were supplemented by the contracts which the manufacturers concluded with Fides. Those contracts were the result, firstly, of identical letters of authority sent by the manufacturers (letter dated 31 March 1976 from SIV and two letters each dated 8 April 1976 from Fabbrica Pisana and Fabbrica Sciarra) and, secondly, of the letters in reply sent by Fides on 20 April 1976.

The purpose of the first three letters, which were in absolutely identical terms, was to confirm the authority conferred upon Fides from 1 April 1976 for the entire duration of the agreement of 30 March 1976 to collect all the information and papers (and copy all the papers) it needed to perform its functions under the abovementioned memorandum.

The letters also authorized access to all the offices, factories and warehouses of the undertakings and confirmed that they had each agreed to the communication to their partners of the information collected from each of them by Fides.

Lastly, the letters determined how the expenses incurred by Fides were to be shared: 50% by Fabbrica Pisana, 25% by SIV and 25% by Sciarra.

The three letters sent by Fides to the undertakings on 21 June 1976 stated the names of the persons authorized by Fides to perform the checks.

7. The verification visits made to Fides premises enabled it to be established that the various provisions of the agreements were indeed put into effect:

- (a) in particular, numerous documents in the Commissions's possession show that Fides carried out its obligations as required, notably:
 - dispatch statements relating to information that had been collected by Fides from the undertakings and sent to the undertakings between March 1976 and November 1977;
 - dispatch memos relating to invoices sent by Fides to the manufacturers regarding the professional services connected with the relevant agreements; these memos also refer to the division of the expenses amongst the companies;
- (b) as regards the checks carried out by Fides, numerous documents prove that the agreements provided for the memorandum were strictly implemented:
 - inspection notes file for April to May 1976, including:
 - the general report on the checks carried out by Fides,
 - sales to customers,
 - stocks held on consignment,
 - prices and terms of sale,
 - output figures;
 - Fides' inspection notes file for November 1976 to July 1977, including communications from Fabbrica Pisana and Fabbrica Sciarra on:
 - details of supplies to customers,
 - details of deliveries on consignment,
 - a summary of monthly and cumulative supplies,
 - a summary of store documents;
 - Fides' inspection notes file for 1978, including:
 - the price checks carried out by Fides from 29 May to 2 June 1978 on SIV and Fabbrica Pisana,
 - the list prices for cast glass,
 - the detailed list (Fabbrica Pisana, SIV and Fabbrica Sciarra) of sales, broken down by customer, for April 1978,

- the 'prospetto 4' documents concerning the statements for stock conformity,
- the lists of quantities sold in Italy and for export in February and March 1978, on a monthly basis and as a running total, and details of such supplies,
- the periodic summaries supplied by Fides ('prospetto RS') from 1 April 1976 to 30 September 1977,
- the prices charged by Fabbrica Pisana and the list of its customers (processors and glaziers) indicating individual discounts from 0 to 10%.

II. ASSESSMENT

A. Applicability of Article 85 (1)

Article 85 (1) of the Treaty establishing the European Economic Community prohibits as incompatible with the common market all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the common market.

1. The memorandum of 30 March 1976, together with the documents attached thereto, concluded by the glass manufacturers Fabbrica Pisana, SIV and Fabbrica Sciarra in order to control the production and sale of cast glass, constitute agreements between undertakings within the meaning of Article 85 (1). The commitments entered into, by Exchanges of letters completed on 20 April 1976, by these manufacturers with Fides regarding supervision of the implementation of the obligations entered into by the manufacturers themselves also constitute an agreement within the meaning of Article 85 (1). Although concluded separately, the agreements are not independent of each other, as they have the same object, involve the same companies and provide for the same means of implementation in practice they therefore form a single agreement.

2. The companies which concluded the agreements referred to above, namely Fabbrica Pisana, SIV and Fabbrica Sciarra, are undertakings within the meaning of Article 85 (1). Fides is also an undertaking within the meaning of that Article, since it is a company which carries on an economic activity complementary to those of the companies which signed the memorandum of 30 March 1976 in the pursuit of objectives connected with the production

and sale of cast glass and which, in so doing, effectively took part in a practice which restricted competition within the meaning of Article 85 (1).

3. The agreements in question are liable to affect trade between Member States. **The activities of each of the manufacturers concerned are not restricted to the Italian market, but also extend to the markets of the Community countries.** In particular, Fabbrica Pisana and SIV are undertakings which are very active in export markets; during the period covered by the agreements, the quantitative and qualitative limits on their sales in the Italian market must necessarily have affected their capacities to export to other markets, particularly those in the EEC. Consequently, trade flows have been altered by the fact that each undertaking was no longer able to determine independently its own production and sales policy as regards both the Italian and export markets.

It has been established that imports of cast glass into Italy during the period covered by the agreements increased considerably; however, this increase was almost entirely confined to imports from non-member countries, while those from EEC countries remained practically unchanged. In view of the fact that nearly 80% of imports of cast glass into Italy formerly came from other EEC countries, and only just over 20% from outside, this sudden increase in imports from non-member countries at the time of the agreement, together with the stability of those from other EEC countries, can be explained only by the fact that Fabbrica Pisana belongs to the St Gobain/Pont-à-Mousson group. Indeed, given that a very large proportion of the EEC's production of cast glass comes from that group's factories, that the group is also connected through technology agreements with other major European producers of cast glass, and that the agreements concluded between that undertaking, SIV and Fabbrica Sciarra were intended to preserve the market share each had already acquired, the consequence was that they considerably reduced the tendency for imports from EEC countries (in which Fabbrica Pisana, through the St Gobain/Pont-à-Mousson group, has fellow subsidiaries) to increase; otherwise, that tendency could have prejudiced the objectives which not only Fabbrica Pisana but also SIV and Fabbrica Sciarra sought to attain through their agreements.

Consequently, the agreements which are the subject of this proceeding led consumers to seek other sources of supply outside the EEC. In any event, even though both imports and exports increased, that

fact does not preclude the agreements affecting trade between Member States within the meaning of Article 85 of the EEC Treaty, as the judgment of the Court of Justice in *Consten/Grundig* ⁽¹⁾ makes clear.

Finally, trade in cast glass between Italy and the other EEC member countries has been appreciably influenced by these agreements.

4. The agreements in question have as their **object and effect** the prevention, restriction or distortion of competition between the undertakings concerned on the market in cast glass in Italy. By predetermining part (that intended for the Italian market) of the production of the undertakings concerned, which is a restriction of competition specifically covered by Article 85 (1) (b), the agreements in question were intended to stabilize those undertakings' production and to permit them at least partly to protect the prices of their products from the effects of consumer demand. The manufacturers, having quotas fixed the basis of established market shares, no longer had any incentive to reduce their prices to win a larger market share as, if they had done so, they would have forfeited the opportunity of drawing the maximum benefit from their production quotas. The Commission has been unable to discern any reduction or stabilization of the prices of the various kinds of cast glass during the period covered by the agreements. **By attempting to bring about so-called 'specialization' between the undertakings party to the agreement, the agreements in question caused competition to be restricted to the extent that an undertaking's market position is strengthened by the disappearance of competitors. However, the sharing of production and sales which the undertakings established among themselves through the memorandum applied only to certain kinds of cast glass, so that it was too limited, and based on criteria of marketing convenience rather than on objective criteria taking account of the production facilities necessary and the intrinsic characteristics of the products. Moreover, the agreements covered all of Italy and sales in that country only; consequently, on the one hand, the volume protected from competition was very large, since it took in all the parties' sales of cast glass in Italy, and on the other hand, the sharing did not concern products for export; it cannot, therefore, be considered true specialization.**

⁽¹⁾ Joined Cases 56 and 58/64 (1966) ECR 341.

As regards more particularly the obligations which Fides concluded with Fabbrica Pisana, SIV and Fabbrica Sciarra, these in fact were complementary to the memorandum of 30 March 1976, since they made it possible to implement the memorandum: the manufacturers in question decided not to exchange directly the statistical data and other information relating to their manufacturing and marketing policies, but to do so through a third party, namely Fides, so ensuring that the information to be provided by the participants on the basis of the memorandum of 30 March 1976 was objective. In assessing whether the agreements concluded between Fabbrica Pisana, SIV and Fabbrica Sciarra on the one hand and Fides on the other were liable to restrict competition on the market in cast glass, despite the fact that the first three companies are manufacturing undertakings and Fides a service undertaking, it must be borne in mind that Fides enabled and consciously assisted the implementation of the restrictions of competition which were the very purpose of the agreements, and consequently it is jointly responsible for the resulting restrictive effects.

The agreement based on the said obligations constitutes a restriction of competition which is liable to influence the business policy of each manufacturer *vis-a-vis* the others inasmuch as it requires the undertakings concerned to exchange, through Fides, commercial information on amounts sold and prices for each type of product, information which is not normally shared between competitors. The verification of compliance with the sales quotas for cast glass on the Italian market similarly contributed to the realization of a restriction of competition. In conclusion, the agreement concluded by Fides with Fabbrica Pisana, SIV and Fabbrica Sciarra also had as its object and effect the restriction of competition on the market in cast glass in Italy.

B. Inapplicability of Article 85 (3)

Under Article 85 (3), the provisions of Article 85 (1) may be declared inapplicable in the case of any agreement, any decision or any concerted practice which contributes to improving the production or distribution of goods or to promoting technical or economic progress while allowing consumers a fair share of the resulting benefit, and which does not impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives or afford such undertakings the

possibility of eliminating competition in respect of a substantial part of the products in question.

1. Under Article 4 (1) of Regulation No 17, agreements in respect of which the parties concerned seek the application of Article 85 (3) must be notified to the Commission. Until they have been notified, no decision in application of Article 85 (3) may be taken. In this instance, no such notification was given. Consequently it is not possible to examine whether the requirements under Article 85 (3) have been met by the agreements in question.

At all events, at least one of the requirements under Article 85 (3) has not been met, since, through the agreements which are the subject of this decision, more than half of Italian production of cast glass was shielded from competition, thus eliminating competition in respect of a substantial part.

2. Consideration must next be given to the question whether the undertakings concerned could have thought that, by virtue of the nature of the agreements, they did not need to notify them, on the grounds that the agreements were covered by the block exemption provided for in Regulation (EEC) No 2779/72. Article 1 of that Regulation (subsequently amended by Regulation (EEC) No 2903/77) states that Article 85 (1) of the EEC Treaty shall not apply to agreements whereby, with the object of specialization, undertakings mutually bind themselves for the duration of the agreements not to manufacture certain products or cause them to be manufactured by other undertakings, and to leave it to the other Contracting Parties to manufacture such products or cause them to be manufactured by other undertakings.

However, as has been demonstrated above (point II.A.4), the agreements in question do not provide for true specialization amongst the undertakings concerned. They also provide for quantitative sharing of production and sales and the exchange of commercial information on production and sales; these clauses are not among those covered by the abovementioned Regulation. In addition, the block exemption relating to specialization agreements may not be invoked in this instance, because the threshold of 10 % of the volume of business conducted in the products covered by the agreements in a member country (the threshold laid down in Article 3 (1) (a) of the abovementioned Regulation) was significantly exceeded.

In conclusion, therefore, Regulation (EEC) No 2779/72 does not apply in the present case.

3. Furthermore, the reference to the sectoral crisis situation which the signatories of the memorandum of 30 March 1976 put forward as a justification of the conclusion of their agreements cannot be considered as being such for the purposes of Article 85 (3). On the one hand, that provision makes no reference to such a situation and, on the other, no decision genuinely to reduce the productive capacities of the undertakings which took part in the practice in question (which might have been appropriate to the structural crisis situation) was taken; it was merely decided unilaterally to set quantitative shares for sales of cast glass on the Italian market, to the benefit exclusively of the manufacturers, without any advantage for consumers. It is therefore not possible to allow, in the guise of a crisis cartel, restrictions of competition which are not indispensable.

4. The Commission has established that implementation of the agreements in question did indeed cease on or before the expiry date laid down, i.e. 30 March 1978, and that even while they were in force they were applied only partially and in limited degree. These facts must be taken into account in assessing the case.

With particular reference to the Fides company, the latter, although not directly involved in the production or distribution of the products in question, was nevertheless jointly responsible for the application of the agreements restricting competition. Consequently, if fines were to be imposed on the undertakings which concluded the agreements in question, Fides also would have to be taken into consideration to the extent of its joint responsibility. In such a case, it would be necessary when assessing the gravity of the infringement also to take into account the fact that until now, the Commission has never addressed a decision pursuant to Article 85 (1) to undertakings in a position of joint responsibility of this kind.

For all these reasons it is considered that fines should not be imposed.

HAS ADOPTED THIS DECISION:

Article 1

The agreements concluded by Fabbrica Pisana SpA, Società Italiana Vetro SpA (SIV) and Fabbrica Lastre di Vetro Sciarra SpA on 30 March 1976 and in force until 30 March 1978, and agreements with those companies entered into with Fides-Unione Fiduciaria SpA by exchange of letters concluded on 20 April 1976, infringed Article 85 (1) of the Treaty establishing the European Economic Community as regards their clauses concerning:

- (a) in the memorandum of 30 March 1976:
 - the quantitative sharing of the various kinds of cast glass,
 - the exchange of commercial information on quantities sold and prices of each type of product;
- (b) in the agreements with Fides:
 - the measures for implementing the obligations concerning the forwarding of the abovementioned information and the supervision of compliance with the quantitative sharing between the undertakings.

Article 2

This Decision is addressed to:

1. Fabbrica Pisana SpA, Pisa;
2. Società Italiana Vetro (SIV) SpA, San Salvo (Chieti);
3. Fabbrica Lastre di Vetro Sciarra SpA, Rome;
4. Fides-Unione Fiduciaria SpA, Milan.

Done at Brussels, 17 December 1980.

For the Commission

Raymond VOUEL

Member of the Commission