

CARTELS AND OXFORD COMPETITION LAW

Coverage of key cases and decisions with translations, analysis, commentary, key instruments and more...

The mysteries of some aspects of competition policy should never be allowed to obscure the most simple fact of all: that competitors are meant to compete with one another for the business of their customers, and not to cooperate with one another to distort the process of competition. Horizontal agreements between independent undertakings to fix prices, divide markets, to restrict output and to fix the outcome of supposedly competitive tenders are the most obvious target for any system of competition law. Hard-core cartels are prohibited by virtually all systems of competition law and are the subject of ever more draconian penalties.

Competition Law by Richard Whish and David Bailey

Key European Cartel Cases

Finnish Asphalt Cartel		
Sector	Asphalt works and ancillary services.	
Parties	Municipality of Helsinki v Lemminkäinen Oyi and VLT Trading Oy	
Decision	Lemminkäinen and Valtatie were jointly and severally liable for € 9,274,691.05 (capital amount).	

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Fruit Packing Supplies Cartel		
Sector	Plastic packaging for red fruit	
Parties	Veripack Embalajes, SL v Spanish NCA	
Decision	The NCA's decision was upheld except as to the plaintiff's liability for the cartel before the purchase date of the former cartel participant's assets. The NCA was ordered to calculate the fine anew for the remainder of the duration.	

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Legislative Update		
Act	The Enterprise and Regulatory Reform Act 2013 received Royal Assent in April 2013.	
Amend	Section 47 amends s 188 of the Enterprise Act 2002 to remove the dishonesty requirement from the cartel offence, and adds ss 188A and 188B to clarify the circumstances in which the offence is committed. The provisions entered into force in April 2014.	

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Silver Skin Onions Cartel		
Sector	Food	
Parties	Complainants v Netherlands Authority for Consumers & Markets	
Decision	For the first time, the NCA based the fines imposed on the cartel participants' EU-wide turnover instead of national turnover. The Court held that the NCA was right to do so, since Regulation 1/2003 authorised the NCA to apply EU competition rules and impose fines.	

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Sugar Cartel		
Sector	Retail & Distribution	
Parties	Pfeifer & Langen et al v Bundeskartellamt	
Decision	On 18 February 2014 the German NCA imposed fines of €280,000,000 on three major German sugar manufacturers for a cartel fixing sales areas, quotas and prices. The infringement concerned the sale of sugar in both industrial and retail markets, with agreements taking place over several years up to 2009, and some instances dating back to the mid '90s.	

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Romanian Construction Cartel		
Sector	Construction	
Parties	SC Conmag SA and SC Inspet SA	
Decision	The plaintiffs infringed Romanian Competition Law and Article 101 TFEU by bid rigging the public procurement procedure. Both plaintiffs were fined in excess of €1 million each.	

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Canned Mushroom Cartel		
Sector	Food	
Parties	Lutèce, Prochamp and Bonduelle	
Decision	The European Commission has imposed fines totalling over €32 million. Lutèce was not fined, benefiting from immunity for revealing the existence of the cartel to the Commission.	

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Wire Harnesses Cartel		
Sector	Automotive industry (car parts suppliers)	
Parties	Sumitomo, Yazaki, Furukawa, S-Y Systems Technologies (SYS) and Leoni	
Decision	The European Commission fined the car parts suppliers in excess of €141 million for operating five cartels for the supply of wire harnesses to Toyota, Honda, Nissan and Renault.	

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The Settlement Process

Overview of the procedure leading to the adoption of a (settlement) Decision pursuant to Articles 7 and 23 of Regulation No (EC) 1/2003

1

Investigation as usual

- Parties may express their interest in a hypothetical settlement.

2

Exploratory steps regarding settlement

- Letter to all companies (and MS) informing of the decision to initiate proceedings in view of settlement (Article 11(6)) and requesting them to express their interest in settlement.

3

Bilateral rounds of settlement discussions

- Disclosure and exchange of arguments on potential objections, liability, fines range.
- Disclosure of evidence used to establish potential objections, liability, fines.
- Disclosure of other non-confidential versions of documents in the file, when justified.

4

Settlement

- Conditional settlement submissions by the companies, jointly represented where applicable.
- DG COMP sends acknowledgement of receipt.

5

'Settled' statement of objections

- Notification of streamlined SO endorsing company's settlement submissions, where appropriate.
- Company's reply to SO confirming clearly that it reflects its settlement submission.

6

'Settlement' Decision Pursuant to Articles 7 and 23 of Regulation No (EC) 1/2003

- Advisory Committee on a draft streamlined final decision. If College of Commissioners agrees:
- Adoption of streamlined final decision.

Find out more about the settlement process in *Faull & Nikpay: The EU Law of Competition (3rd Edition)*.

Leniency

The Leniency Notice (2006) provides for full immunity from fines for qualifying leniency applicants who are 'first through the door' and submit information and evidence which, in the Commission's view, will enable it either to carry out a targeted inspection in connection with the alleged cartel or to find an infringement of Article 101(1). Find out more about the Leniency Notice in *Bellamy and Child: European Union Law of Competition*.

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