II

*(Acts whose publication is not obligatory)*

# COMMISSION

## COMMISSION DECISION

**of 20 December 1979**

**imposing a fine on Fabbrica Pisana, Pisa, pursuant to Article 15 of Regulation No 17**

**(Only the Italian text is authentic)**

(80/334/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 14 and 15 thereof,

Having heard the undertaking concerned on 12 October 1979 pursuant to Article 19 (1) of Regulation No 17 and to Regulation No 99/63/EEC of the Commission [2],

Having regard to the opinion of the Advisory Committee on Restrictive Practices and Monopolies, delivered on 30 November 1979, pursuant to Article 10 of Regulation No 17,

Whereas :

I

1. On 22 March 1978, the Director-General for Competition gave written authorization for two officials of the Inspection Directorate to carry out an investigation at Fabbrica Pisana SpA in Milan, pursuant to Article 14 of Regulation No 17.

The investigation was commenced on 3 May 1978 at the undertaking's head office in Milan in the presence of two members of its management, the head of the legal department and the sales manager, and was resumed on 10 July 1978 in the presence of the sales manager, a representative of the competent Italian authority being present on both occasions.

The essential purpose of the investigation was to obtain information on the manufacture and marketing of glass within the Community and in particular on all correspondence exchanged by Fabbrica Pisana with other glass manufacturers or with any trust or management company carrying out since 1 January 1975, on behalf of the manufacturers in question, coordination and/or supervision relating to the manufacture and/or marketing of glass.

2. Having produced their authorizations, the inspectors drew the attention of the undertaking to the provisions of Articles 14 and 15 of Regulation No 17 concerning the Commission's powers of investigation, and in particular to the provisions of Article 15 (1), as set out in the authorizations and under which the Commission may by decision impose fines on undertakings where they submit to an investigation but, intentionally or negligently, produce the required books or other business records in incomplete form.

When they were duly called upon, the undertaking's representatives expressed willingness to submit to the investigation.

3. On 3 May 1978, the Commission's inspectors examined the files of correspondence exchanged since 1 January 1975 between Fabbrica Pisana and associations of wholesalers and processors and between Fabbrica Pisana and other Italian and foreign glass manufacturers.

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[1] OJ No 13, 21. 2. 1962, p. 204/62.
[2] OJ No 127, 20. 8. 1963, p. 2268/63.

With regard to the latter point, Fabbrica Pisana stated that it kept no files of correspondence with other glass manufacturers other than those relating to the sale or purchase of products.

4. On 10 July 1978, the inspectors requested Fabbrica Pisana to supply all company papers concerning manufacturing or marketing agreements between glass manufacturers in Italy or in other Community countries since 1 January 1975.

Fabbrica Pisana replied that it was unaware of any such agreements, but agreed to make all its documents and files available to the Commission's inspectors.

5. A meticulous examination of the files in several of the offices of Fabbrica Pisana revealed a copy of a letter dated 7 March 1977 from Fabbrica Pisana to the trust company Fides Unione Fiduciaria SpA, Milan, giving detailed lists of invoices, broken down by customer, for the period from April 1976 to January 1977, and confirming a meeting to be held on 14 March 1977 at Fides' head office.

Following this discovery, the inspectors requested Fabbrica Pisana, as recorded in the minutes, to supp.ly all documents (letters, correspondence, internal memoranda and notes, summaries, minutes, records) dating from 1 January 1975 onwards and relating to contacts, discussions, meetings, negotiations or talks with representatives of other glass manufacturers or with any trust or management company entrusted by the manufacturers with coordination and/or supervision of glass manufacture and/or marketing.

Fabbrica Pisana's reply, recorded in the minutes, was that it had 'made all its files available to the inspectors, who had examined them'.

The inspectors immediately recorded a statement in the minutes that 'the correspondence and documents produced relating to the period for which they had been requested were incomplete'.

II

6. During an investigation carried out on 7 February 1979 pursuant to Article 14 of Regulation No 17 at the Milan offices of Fides, the Commission's inspectors took copies of the following documents:

(a) A memorandum of agreement dated 30 March 1976 and applicable until 1978 between Fabbrica Pisana Saint-Gobain, SIV-Società Italiana Vetro SpA, and Fabbrica Lastre di Vetro P. Sciarra SpA. This consisted essentially of:

(i) a specialization agreement covering certain types of flat glass, applicable from 1 April 1976;

(ii) an agreement restricting sales on the Italian market by means of quota-sharing;

(iii) an arrangement whereby Fides was authorized to supervise volumes manufactured and sold, notably by means of checks on the stores accounts and warehouses of the manufacturing firms;

(iv) a system of checks on list prices and prices actually charged by manufacturers.

(b) A letter dated 8 April 1976 from Fabbrica Pisana to Fides. The purpose of the letter 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 function under that agreement. Fides representatives were given access to all the undertaking's offices, factories and warehouses. Confirmation was also given that Fabbrica Pisana had agreed that the information collected be passed on to Fabbrica Lastre di Vetro P. Sciarra and SIV-Società Italiana Vetro. Lastly, the letter determines how the expenses incurred in paying Fides were to be shared, 50 % being charged to Fabbrica Pisana, 25 % to Sciarra and 25 % to SIV.

(c) A letter dated 21 June 1976 from Fides to Fabbrica Pisana, Milan. This letter states the names of the persons authorized by Fides to perform the checks.

(d) A letter dated 22 September 1976 from Fides to Fabbrica Pisana addressed (personal and confidential) to the managing director. This letter accompanied Fides' invoice No MR 219 of 22 September 1976 for services rendered.

(e) A letter dated 4 August 1977 from Fides to Fabbrica Pisana. This confirmed the oral agreements in force, whereby Fides was charged to supply sets of data at regular intervals concerning domestic consumption, based on import and export figures and overall domestic production.

(f) 10 statements sent by Fides to the managing director of Fabbrica Pisana concerning work carried out by Fides on behalf of Fabbrica Pisana :

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|---|---|---|---|
| statement : | | 999.95 | Mg/zz of 5 April 1976, |
| statement : | | 912 | Bo/fm of 7 July 1976, |
| statement : | | 912 | Bo/sv of 22 October 1976, |
| statement : | | 912 | Pt/sv of 9 December 1976, |
| statement : | | 19110 | Sh/tr of 15 February 1977, |
| statement : | | 19110 | Bl/tr of 4 April 1977, |
| statement : | | 29110 | Sh/ag of 3 June 1977, |
| statement : | x | 19110 | Os/zl of 17 October 1977, |
| statement : | x | 19110 | Os/lc of 14 November 1977, |
| statement : | x | 19110 | Os/lc of 19 June 1978. |

7. All the above documents relate to an agreement between glass manufacturers, entered into on 30 March 1976, the supervision and implementation of which was entrusted to Fides, acting on behalf of the manufacturers.

These documents were accordingly directly concerned by the oral and written requests presented during the investigations on 5 May and 10 July 1978.

Nevertheless, Fabbrica Pisana did not present any of these documents to the Commission's inspectors.

III

8. By letter dated 16 July 1979, replying to the Commission's statement of objections and at the hearing held on 12 October 1979, Fabbrica Pisana put forward the following arguments :

(i) At the first inspection on 3 May 1978, attended on its behalf by the head of the legal department and the sales manager, the information requested by the Commission inspectors concerned only the market for flat glass and the company's activities in general, while the questions on the relations between manufacturers were purely incidental.

(ii) During the inspection on 10 July 1978, on the other hand, specific questions on relations between glass manufacturers or about a trust company acting on their behalf were put to the sales manager, who was the company's only representative present on that occasion. The sales manager, who had only recently taken up that post in the undertaking, supplied no information relating to the agreement in question because he was unaware of its existence and had played no part in it.

9. Fabbrica Pisana argues that it had fulfilled its obligation to submit the required documents to the inspectors by stating through its representative that all the undertaking's records were at their disposal.

The inspectors, not knowing where the documents in question were kept, duly examined records kept in various of the undertaking's departments and offices, but not those in the 'administration department', where the papers concerning the agreement were, in fact, kept.

Fabbrica Pisana maintains that these events occurred solely as a result of an exceptional combination of circumstances, namely the general manager's absence on 10 July 1978, the fact that the Commission's inspectors did not examine the records of the administration department where the documents concerning the agreement of 30 March 1976 were kept so that the said agreement could be administered efficiently and the accounts kept, and, finally, the fact that the sales manager was unaware of the abovementioned agreement.

IV

10. Under Article 14 of Regulation No 17, in carrying out the duties assigned to it by Article 89 of the EEC Treaty, the Commission may undertake all necessary investigations into undertakings. To this end, the officials authorized by the Commission are vested with the powers described in Article 14 (1) of the said Regulation *inter alia* to examine the books and other business records, to take copies of, or extracts from, the books and business records, and to enter any premises, land and means of transport of undertakings.

Under Article 14 (2) of the said Regulation, the officials authorized by the Commission for the purpose of these investigations shall exercise their powers upon production of an authorization in writing specifying the subject matter and purpose of the investigation and the penalties provided for in Article 15 (1) (c) of the Regulation in cases where production of the required books or other business records is incomplete.

Under Article 15 (1) of Regulation No 17, the Commission may, by decision, impose on undertakings fines of from 100 to 5 000 units of account where, intentionally or negligently, they produce the required books or other business records in incomplete form during investigations under Article 14.

On 3 May and 10 July 1978 Fabbrica Pisana agreed to submit to the investigation with all its attendant obligations pursuant to Articles 14 and 15 of Regulation No 17, and it is not for the Commission's inspectors

to assess or dispute the competence or extent of knowledge of the representatives of the undertakings they are investigating.

The undertakings named in investigation authorizations are alone responsible for designating their representatives. However, in the case in question, Fabbrica Pisana had had prior notice of the investigations to be carried out on 3 May and 10 July 1978 and was thus fully in a position to make the necessary arrangements to designate competent representatives.

The argument that Fabbrica Pisana had satisfactorily fulfilled its obligations by generally putting all its files at the investigators' disposal must be rejected, since the obligation on undertakings to supply all documents required by Commission inspectors must be understood to mean not merely giving access to all files but actually producing the specific documents required.

Nor can the argument that the Commission's inspectors did not examine the business records of the administration department be accepted, as none of the undertaking's representatives had told them that the documents requested were, or might be, kept in that department and where there was otherwise no reason to suppose that documents of that nature might be found there.

11. Since Fabbrica Pisana was informed not later than 10 July 1978 of the true nature and extent of the requests submitted by the Commission's inspectors, as is shown by the minutes drafted at the time of the investigation, it had ample time in the period immediately following that date to demonstrate its good faith by informing the Commission that it intended to produce all the documents which had been requested.

The fact that the inspectors drew attention to the copy of the letter sent on 7 March 1977 by Fabbrica Pisana to Fides which they discovered during the investigation on 10 July 1978, could leave no doubt in the mind of Fabbrica Pisana's representative as to the exact nature of the documents requested by the Commission.

Furthermore, it can reasonably be supposed that Fabbrica Pisana was informed by its agent Fides without delay of the latter's refusal to submit to an investigation on 8 June 1978 concerning agreements in the glass manufacturing industry.

The letter dated 6 October 1978 sent by Fabbrica Pisana to Fides, no copy of which had been received by the Commission at the time, authorizing Fides to present its papers to the Commission inspectors should they renew their request, in no way serves to demonstrate the undertaking's good faith, but must be considered merely as a precautionary measure should the Commission decide to investigate Fides, which it did on 30 January 1979.

12. Fabbrica Pisana's argument that its failure to present the documents requested on 3 May and 10 July 1978 was due to an exceptional combination of circumstances, namely the absence of its general manager, the lack of knowledge on the part of the sales manager and the failure of the Commission inspectors to examine the files of the administration department, is not valid since it is always the undertaking's own responsibility to designate competent representatives to reply to requests from Commission inspectors and to present any documents requested under Article 14 of Regulation No 17.

13. By presenting documentation which was clearly incomplete to Commission inspectors carrying out an investigation under Article 14 of Regulation No 17, Fabbrica Pisana intentionally infringed Article 15 (1) (c) of Regulation No 17. Furthermore, the company cannot have been unaware of the extent of the Commission's powers of investigation, or of the exact nature of the documents which were sought, especially since the investigation was carried out on two separate days, namely 3 May 1978 and 10 July 1978 and since their agent, Fides, refused to allow an investigation at their offices on 8 June 1978.

The conditions for the application of Article 15 (1) are therefore fulfilled.

14. The infringement is clearly serious because the failure to produce the documents requested made more difficult the Commission's task of ensuring compliance with the rules on competition in the Treaty.

A fine must therefore be imposed in proportion to the gravity of the infringement committed by Fabbrica Pisana,

HAS ADOPTED THIS DECISION:

*Article 1*

The production by Fabbrica Pisana, Pisa, of incomplete documentation during an investigation carried out on 3 May 1978 and 10 July 1978 by the Commission under Article 14 of Regulation No 17 constitutes an infringement of Article 15 (1) (c) of that Regulation.

*Article 2*

The Commission hereby imposes on Fabbrica Pisana a fine of 5 000 units of account or Lit 5 795 050.

Such amount shall be paid, within three months following notification of this Decision to the undertaking concerned, to the account of the Commission of the European Communities: COMIT Roma 971 699/13/25.

*Article 3*

This Decision shall be enforceable as provided in Article 192 of the Treaty.

*Article 4*

This Decision is addressed to Fabbrica Pisana SpA, Via Aurelia 1, Pisa, Italy.

Done at Brussels, 20 December 1979.

*For the Commission*

Raymond VOUEL

*Member of the Commission*