COMMISSION DECISION

of 23 July 1984

relating to a proceeding under Article 85 of the EEC Treaty

(IV/30.988 — Agreements and concerted practices in the flat-glass sector in the Benelux countries)

(Only the Dutch and French texts are authentic)

(84/388/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation No 17 of 6 February 1962, First Regulation implementing Articles 85 and 86 of the Treaty (1), as last amended by the Act of Accession of Greece, and in particular Articles 3 and 15 thereof,

Having decided on its own initiative on 8 August 1983 to open proceedings in respect of a set of agreements and related concerted practices in the flat-glass sector in the Benelux countries involving the undertakings BSN SA, Paris, Glaverbel SA, Brussels, Maasglas BV and Glaverned BV, both of Tiel, the Netherlands, on the one hand, and Compagnie de Saint-Gobain SA, Paris, Glaceries de Saint-Roch SA, Sambreville, Belgium, Glasfabriek Sas van Gent BV, Sas van Gent, the Netherlands, and Alglas BV, Driebergen-Rijsenberg, the Netherlands, on the other hand,

Having given the parties an opportunity to reply to the objections raised by it, in accordance with Article 19 (1) of Regulation No 17 and with Commission Regulation No 99/63/EEC of 25 July 1963 on the hearings provided for in Article 19 (1) and (2) of Council Regulation No 17 (2),

Having consulted the Advisory Committee on Restrictive Practices and Dominant Positions,

Whereas:

I. THE FACTS

A. THE PRODUCTS

(1) The products concerned in this case are types of flat glass, which fall into two main categories:

1. raw glass products straight out of the furnace, only cut into certain sizes: floatglass, sheet glass, cast glass;

2. finished glass products of which there is a very wide and continually increasing range: insulating-glass, toughened glass and laminated glass for the construction and motor industries, silvered glass, reflecting-glass, worked glass, etc.

B. THE UNDERTAKINGS

(2) The undertakings concerned in this case are, on the one hand:

— Glaverbel SA, Brussels (hereinafter 'Glaverbel'),

— Maasglas BV (formerly Machinale Glasfabriek De Maas BV), Tiel, the Netherlands (hereinafter 'Maasglas'),

— Glaverned BV, Tiel, the Netherlands (hereinafter 'Glaverned'),

— BSN SA, Paris (hereinafter 'BSN'), and

— Asahi Glass, Japan (hereinafter 'Asahi'),

and on the other hand:

— Glaceries de Saint-Roch SA, Sambreville, Belgium (hereinafter 'Saint-Roch'),

— Glasfabriek Sas van Gent BV, Sas van Gent, the Netherlands (hereinafter 'Sas van Gent'),

— Alglas BV, Driebergen-Rijsenberg, the Netherlands (hereinafter 'Alglas'), and

— Compagnie de Saint-Gobain, Paris la Défense, France (hereinafter 'Saint-Gobain').

(3) Until May 1981 Glaverbel and Maasglas were owned by BSN through its Belgian holding company Mécaniver SA. In May 1981 BSN sold 80 % of the two companies' equity to the

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

Japanese group Asahi Glass. Asahi later went on to take over the remaining 20 % of the two companies, but since a capital increase by Glaverbel, 21 % of the company has been owned by Belgian interests and 1 % by a German bank, leaving Asahi with 78 %.

Glaverned BV is the joint sales agency of Glaverbel and Maasglas in the Netherlands.

Glaverbel's sales during the period relevant to this Decision were as follows:

— 1978: Bfrs 8 656 826 392,

— 1979: Bfrs 9 061 194 690,

— 1980: Bfrs 10 172 416 265,

— 1981: Bfrs 10 547 625 000;

Maasglas's sales were:

— 1978: Fl 79 147 295,

— 1979: Fl 80 430 509,

— 1980: Fl 90 350 636,

— 1981: Fl 95 060 655.

(4) Saint-Roch was majority owned during the period relevant to this Decision by Saint-Gobain. Saint-Gobain's stake was 50,05 % until a capital increase in 1982, when it rose to 66,5 %.

Sas van Gent is a 100 % subsidiary of Saint-Roch, and Alglas BV is their joint sales agency in the Netherlands.

The sales of Saint-Roch and Sas van Gent during the relevant period were as follows:

Saint-Roch:

— 1978: Bfrs 6 827 000 000,

— 1979: Bfrs 7 702 000 000,

— 1980: Bfrs 8 442 000 000,

— 1981: Bfrs 7 949 133 000;

Sas van Gent:

— 1978: Fl 33 000 000,

— 1979: Fl 36 000 000,

— 1980: Fl 41 500 000,

— 1981: Fl 42 960 000.

Until the beginning of 1982 Glaverbel, Maasglas and Saint-Roch were the only producers with industrial plant for making basic flat glass in the Benelux countries.

C. THE BENELUX MARKET

(5) The Benelux market is dominated by the local producers. Though there are some imports, some of these are from producers who belong (or belonged) to the same groups elsewhere which exported the products either direct or via the local Benelux producers. However, the sales of firms belonging to the same group are coordinated to a greater or lesser extent to avoid undesirable competition between sister companies.

The volume of the Benelux market for all flat-glass products in recent years is indicated by the following table, compiled from figures supplied by the companies concerned and official Benelux trade statistics:

(tonnes)

Year	Glaverbel Maasglas	Saint-Roch + group	Imports	%	Total
1978	(1)	(1)	178 000	27	640 000
1979			209 660	32	670 000
1980			241 645	32,9	735 000
1981			253 942	37,6	668 000

(1) Pursuant to Article 21 (2) of Regulation No 17, business secrets are not published in the *Official Journal of the European Communities.*

(6) The figures in the table require some comment. Saint-Roch's sales figures have been adjusted for amounts sold in Belgium and subsequently exported. Secondly, part of the imports are in fact intra-group sales, the most notable example being the imports of cast glass by Saint-Roch from a German firm in the Saint-Gobain group. This somewhat reduces the impact of imports from the level suggested.

Bearing these adjustments in mind, it is safe to say that imports represented about 25 to 35 % of apparent consumption in the Benelux countries during the relevant period, with local-based producers accounting for 65 to 75 %, including supplies from sister companies within the same group.

D. PRICES AND OTHER TERMS

1. Identical published prices and other terms

(7) A comparison of all the price-lists published in recent years in Belgium and the Netherlands by

Glaverbel and Saint-Roch and their respective sales agencies in the Netherlands, which also sell the products of Maasglas and Sas van Gent, shows that the lists were identical and in the majority of cases came into effect on the same dates.

2. Identical unpublished prices for different classes or groups of customer

(8) Besides the published price-lists which are sent to all direct customers, the producers also maintain confidential price-lists differentiated by class or group of customer. These prices are for the basic product, clear and coloured floatglass.

Evidence obtained during inspections of the companies shows that during the period in question (1978 to 1981), Glaverbel and Saint-Roch and Glaverned and Alglas drew up identical confidential price-lists for different classes or groups of customer and brought them into effect on the same dates.

The voluminous documentary evidence, which was appended to the Statement of Objections, includes papers bearing identical remarks about invoicing and acceptance of orders at the old prices, as well as copies of the identical unpublished price-lists themselves, as evidenced by the minutes of meetings between representatives of the companies concerned at which prices and customer ratings in Belgium/Luxembourg and the Netherlands were discussed. One such document dated 22 November 1979 reports a joint meeting between Glaverbel and Glaceries de Saint-Roch held on 14 November 1979 about customer ratings and prices for the Belgian market. Another dated 20 September 1978 is a record of a meeting between representatives of the same firms held on 18 September 1978 about prices and the classification of customers by importance in the Netherlands.

3. Customer ratings

(a) *Belgium*

(9) The companies classified their direct customers in four and later three classes, each class qualifying for different rates in the confidential price-lists.

Glaverbel's and Saint-Roch's customer rating lists in January 1980, for example, were identical and bore the same remarks and additions. The Saint-Roch document dated 22 November 1979, which is referred to in point 8 above, proves that the lists were drawn up together and also indicates that the prices and customer-lists were considered part of the same problem which had to be dealt with simultaneously.

(b) *Netherlands*

(10) In the Netherlands, too, customers were placed in rating categories, the number of which was reduced from four to three in 1981. A comparison of lists obtained from the companies confirms that collusion had taken place because the Glaverned and Alglas lists in October 1978 were identical and almost identical in the other years.

The collusion is evidenced in particular by the document dated 20 September 1978, referred to in point 8 above.

4. Other evidence of agreements or concerted practices on prices and other terms to customers

In addition to the evidence reported above, the Commission also found other evidence that the undertakings concerned had colluded on prices and other terms.

(11) A coordination meeting was held between Glaverbel and Saint-Roch senior executives on 7 June 1977 to agree prices to be charged in the Benelux countries, and particularly the price-lists for various most-favoured customers. The meeting also discussed promotional discounts and exchanges of information on specific projects.

(12) A Saint-Roch internal memorandum dated 9 June 1977 reported a telephone conversation between a Saint-Roch executive and a Glaverbel employee about the Dutch price-list and summarized what had been agreed on prices and discounts for window glass.

(13) The managing director of Saint-Roch wrote in an internal memorandum dated 7 November 1979 about a Dutch customer that 'the Marketing and Sales Departments should look into the possibility of raising the prices simultaneously with Glaverbel'.

(14) Another Saint-Roch memorandum dated 14 January 1980 reported that 'Glaverbel now appears to have come round to introducing an across-the-board 10 % price increase on the old price-list' for insulating-glass in the Netherlands.

(15) A memorandum from Saint-Roch, also dated 14 January 1980, referring to insulating-glass including cast glass, expressed the company's astonishment at certain differences that had been found between Glaverbel's price-list and its own despite the discussion that had taken place between the two producers, and observed that 'it is anomalous for an identical line to be quoted differently'.

(16) On 5 December 1979 Glaverbel representatives met a Saint-Roch representative at Glaverbel's headquarters to discuss the forthcoming price-list for cast glass in Belgium. Suggestions were made at the meeting for variable percentage rises for different articles.

(17) A Saint-Roch memorandum dated 5 March 1980 also shows that Saint-Roch and Glaverbel agreed or at least colluded on the Belgian price-list for sealed triple-glazing units.

(18) Another Saint-Roch memorandum dated 27 March 1980 on the 'Dutch price-list for float' mentions that the Dutch price-lists had been draw up jointly with a Glaverned representative under Alglas's leadership.

(19) In a memorandum written by the Saint-Roch Marketing Department on 21 March 1980 concerning the Dutch price-list for float, it is stated that a draft price-list had been discussed and 'we were asked not to make any counter-proposal, as the draft was final and resulted from discussions between Alglas and Glaverbel'.

(20) The new Belgian price-list for cast glass, which was introduced on 7 July 1980, had been discussed between Glaverbel and Saint-Roch not only with reference to the percentage rises for different products and to discounts and surcharges but also with reference to the date of its introduction. This is reported at length in a Saint-Roch memorandum dated 23 June 1980.

(21) The especially close relations that existed between Glaverbel and Saint-Roch are attested by a comparative table of the companies' preferential prices for floatglass to particular customers in Belgium compiled by Glaverbel with information supplied by Saint-Roch, whereby the companies let one another know their prices charged to certain customers and notified one another of a forthcoming 8 % increase.

(22) A meeting between Glaverbel and Saint-Roch executives on 19 March 1980 discussed price increases in various sectors and the need to 'abide by the agreed programme'.

(23) On 7 February 1978 a Glaverbel representative met a Saint-Roch executive to 'discuss together the situation on the Benelux markets in the building sector and explore the possibility of increases there' and 'compare the instructions we had received directly or indirectly from our respective divisions'. The minute of this meeting said that the subject of prices had been raised for Belgium and the Netherlands and that in view of the divergences and to avoid any mis-understanding 'it was necessary to draft a joint paper for submission to our respective departments and forwarding to the respective divisions'.

(24) Another minute by Saint-Roch of a meeting between Glaverbel and Saint-Roch executives on 17 April 1978 shows that its main purpose was to look for ways of carrying out a parallel price increase. The minute quotes the basic prices to specified best customers in Belgium and the Netherlands.

(25) On 14 March 1978 two senior executives from the Saint-Gobain group met Saint-Roch managers at Sambreville. During the visit the Saint-Gobain executives referred briefly to the history of the agreements between their own and the BSN group and stressed the need to avoid price wars.

(26) A Saint-Gobain memorandum dated 27 February 1978 discussed price levels in the Benelux countries and the action that could be taken to arrest the fall in prices and begin to restore them to the level of listed prices and if possible raise them above that level by means of action agreed between the respective divisions of the two groups.

E. THE SHARING OUT OF THE BENELUX MARKET BETWEEN GLAVERBEL AND SAINT-ROCH AND THEIR ASSOCIATED COMPANIES UNDER ARRANGEMENTS ARRIVED AT BETWEEN THE SAINT-GOBAIN AND BSN GROUPS

(27) A memorandum dated 8 August 1979 from Glaverbel to the Flat Glass Division of the BSN

group, with attached tables, contains a section entitled '1980 Plan — Balance with Saint-Gobain'.

The document sets out to establish the quantities of glass that Glaverbel-De Maas must sell to maintain the balance with Saint-Gobain.

The tables attached to the memorandum show the sales of the Mécaniver and Saint-Gobain/Saint-Roch groups in the Benelux countries in 1978, their estimates for 1979 and their plans for 1980. The percentage shares of the market as they emerge from the figures are as follows:

— 1978: Mécaniver 62,6 %; Saint-Gobain/ Saint-Roch 37,4 %;

— 1979: Mécaniver 60,2 %; Saint-Gobain/ Saint-Roch 39,8 %;

— 1980: Mécaniver 60,1 %; Saint-Gobain/ Saint-Roch 39,9 %.

Glaverbel justifies its sales forecasts for 1980 by citing the figures in the detailed tables which show the relative positions of the two groups, and refers to their respective 'sales entitlements', which correspond precisely with those positions. The memorandum of 8 August 1979 also alludes to agreements with a certain 'group A', which, as the Commission showed in the Statement of Objections, must refer to the Saint-Gobain group.

(28) Among other evidence of market sharing collected by the Commission and described in the Statement of Objections, mention should be made of a hand-written note made at Glaverbel on 7 January 1980 concerning targets for 1980, point 2 of which reads: 'Achieve 60:40 balance in Benelux (as against 58:42 in 1979)', which is again a reference to the balance with the Saint-Gobain/Saint-Roch group.

(29) A Saint-Roch document dated 19 March 1980 about a meeting between senior executives of Glaverbel and Saint-Roch stated in point (a) on page 1: 'The two companies have agreed for the time being to maintain the status quo in their current overall positions in the construction and automotive markets. The two companies' positions will thus continue to oscillate in the range 60:40 to 62:38, and efforts will be concentrated not on gaining tactical advantages over one another (which only has a momentary effect on volume but a lasting detrimental one on profitability) but on acting against the competition (imports + Luxguard).'

(30) The minute of the meeting between Glaverbel and Saint-Roch executives on 7 February 1978 already referred to in point 23 also mentions the relative positions the two companies and their associates wish to hold in certain sectors in Belgium and the Netherlands.

(31) A Glaverbel memorandum dated 17 April 1978 refers to the need for the company to regain market share and lists a number of steps Saint-Roch might take to allow it to mount a 'volume' campaign, principally allowing the customers controlled by Saint-Roch to purchase from Glaverbel.

(32) A Saint-Roch document dated 20 March 1978 following a meeting between Saint-Roch and Glaverbel sets out country by country the detailed targets of the BSN group for 1979, compared with sales in 1977. Glaverbel's proposed campaign to regain market share and Saint-Roch's counter-proposals for Belgium and the Netherlands are described.

(33) The report on the visit of Saint-Gobain executives to Saint-Roch on 14 March 1978 already referred to in point 25 quotes from the agreements between the Saint-Gobain and BSN groups and sets out the quantified proposals as to their respective positions in all the countries concerned and the Benelux countries in particular.

(34) An analysis of the above evidence shows that the two companies agreed to maintain the status quo in their overall positions and that the parent companies of the Saint-Gobain and BSN groups were not only aware of the situation but organized and encouraged it. The sales figures of the companies also shows that the targets they set were broadly achieved.

F. EXCHANGES OF SALES FIGURES BETWEEN GLAVERBEL AND SAINT-ROCH

(35) Other papers and memoranda which were also appended to the Statement of Objections provide clear evidence that Glaverbel and Saint-Roch exchanged article-by-article figures, in square

metres and tonnes and giving the conversion rates for square metres into tonnes, of their sales in Belgium/Luxembourg and the Netherlands. One of these papers states that the exchanges were to be made every quarter.

The papers indicate that the purpose of the exchanges was to determine and monitor the respective market shares (excluding competing importers) of the BSN and Saint-Gobain groups in the Benelux countries.

G. PROCEDURE UNDER ARTICLES 19 (1) AND (2) OF REGULATION No 17

(36) In their replies to the Statement of Objections on 13 January 1984, the undertakings concerned waived the right to an oral hearing under Article 1 of Commission Regulation No 99/63/EEC.

II. LEGAL ASSESSMENT

A. ARTICLE 85 (1)

(37) Article 85 (1) of the EEC Treaty 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.

(38) The agreements and concerted practices outlined above fall within the terms of Article 85 (1) and the undertakings involved in them, which are listed in point 2 above, are undertakings within the meaning of the Article since they are engaged in the business of producing, processing and selling flat glass.

(39) The practices were not denied by the undertakings in their reply to the Statement of Objections. However, they attempted to minimize the importance and impact of the practices and pleaded extenuating circumstances.

The agreements and concerted practices on prices

(40) In their letters dated 13 January 1984 the undertakings concerned claimed that the agreements and concerted practices had been unnecessary because prices in Belgium and the Netherlands would have been the same in any case because of the following factors:

— the existence of a duopoly made for greater market transparency, especially for the parties' sales forces when they were dealing with the same customers;

— the producers supplying the market in question owned comparable industrial plant, used the same raw materials purchased at more or less the same prices, consumed energy supplied at the same rates, employed labour with similar skills and shared the same social environment since their factories were close together. The costs of flat-glass producers on the Benelux market were thus very similar;

— the pricing of the Glaverbel-Maasglas and Saint-Roch-Sas van Gent groups was necessarily subject to the same conditions and constraints and had been influenced in Belgium and even in the Netherlands by price control.

The companies also claimed that their published and unpublished price-lists had not been observed. The recession in the flat-glass industry also allegedly forced the firms to concert their policy.

(41) Whatever the influence of some of the above factors may have been, the data gathered by the Commission demonstrate that the parties regularly made agreements or concerted their policies on their published and unpublished price-lists and their other terms.

As to the argument that price control in Belgium was responsible for the identical prices, whilst it is true that this price control may have prevented, delayed or limited price rises announced by the producers, the decision to propose a price rise, the amount proposed and finally how the rise was actually implemented in the price-lists and when it took effect were in fact the subject of agreement or consultation between the producers.

The rises approved by the Ministry of Economic Affairs are in most cases averages which can be allocated between the various articles in the

price-list. Glaverbel's and Saint-Roch's price-lists for floatglass, which came into effect at the end of January 1977 and were in force until October 1978, for example, were based on Ministry approval for an average increase of 15 % with a maximum of 20 %. The price increases for the same articles of 10, 11, 12, 14, 17 and 20 % were, however, identical in both lists. Clearly, the parties must have consulted one another on these price-lists.

The parties also concerted their policies on other terms to customers which were not always specified in their applications for price increases. For example, the parties' price-lists for floatglass applicable from 5 May 1980 both reduced the maximum discount for different categories to 15 % from the previous 25 %.

Price rises also came into effect on the same dates, although the dates were not set by the authorities. The companies must, therefore, have concerted their plans for implementing approved price increases.

As to price control in the Netherlands, this is more flexible than in Belgium so that the above comments apply with greater force.

(42) The maintenance by the producers of the same unpublished price-lists applying from the same dates in both Belgium and the Netherlands and the same customer rating lists, and the many minutes and other papers about coordination meetings between the producers on these matters, attest to the fact that the producers agreed, or at least engaged in a concerted practice, to apply the same prices and other terms, and that the parent companies of the groups to which they belong, or belonged over the period in question, were aware of this situation and assisted in bringing it about. Whether or not the prices were always implemented by the parties does not alter the fact that agreements or concerted practices existed which are in themselves infringements of Article 85. Furthermore, even if the agreements were not always observed, this does not mean they did not nevertheless have a significant effect on the firms' behaviour.

(43) There can be no doubt that agreements and concerted practices of this kind on prices between firms producing the same goods are restrictions of competition within the meaning of Article 85 (1). By such agreements and concerted practices the firms surrendered a major part of their independence in dealing with their customers. The price-fixing must have had a particularly large impact on the Benelux market where Glaverbel and Saint-Roch and their associated companies together accounted for 65 to 75 % of sales.

This meant that there was little competition between the local producers which customers could exploit, and since local producers accounted for the vast majority of sales on the market, despite some imports, large wholesalers would have found it difficult to do without purchases from the local producers without endangering the regularity of their supplies.

Sharing of the market

(44) The sharing of the market between the two companies and their subsidiaries and associated companies in the Benelux countries or more precisely the predetermination of the two groups' relative positions within a narrow band (between 60:40 and 62:38), is an extremely serious restriction of competition which was designed to keep the parties' market shares stable and so largely insulate them from customer pressures.

The 60:40 ratio was related to the two groups' installed capacity in the Benulux countries. It meant that their respective capacities were operated at similar levels at any given time. This must have affected the groups' ability to compete both on price and delivery and possibly also their investment.

The agreement to maintain the groups' relative positions would involve corrective measures to enable a party to catch up if its share fell below the planned level. Such measures were in fact taken.

Exchanges of sales figures

(45) The exchange of sales figures by the competitors served not only to keep them better informed of

the general state of the market but also to allow them to monitor closely the sales of their main rival so that they could react more effectively if this proved necessary. The exchanges thus helped the parties to ensure they maintained their relative positions, within the planned fluctuation margin, for not only were the data which were exchanged very detailed, but the exchanges were frequent (quarterly) and they were the subject of discussions on interpretation and calculation methods.

Effect on trade between Member States

(46) The practices described above affected trade between Member States, because the jointly fixed prices for Belgium and Luxembourg also applied to the Belgian producers' sales in Luxembourg and, in the case of cast glass sold by Saint-Roch, to a product supplied by a German subsidiary of the Saint-Gobain group. In this particular case the price-fixing agreement covered both Belgian-made products and imports from Germany.

The effect on trade in the Netherlands was even more significant since, although there was some domestic production, most of the glass sold by the agencies Alglas and Glaverned came from the groups' factories in Belgium. Here the price-fixing agreements and concerted practices between Belgian firms covered products exported to the Netherlands, where Glaverbel-Maasglas and Saint-Roch-Sas van Gent also held 60 to 68 % of the market.

The ratio range of 60:40 to 62:38 referred to the groups' aggregate shares in the Benelux countries. These ratios were composites of a series of different ratios for different sectors and countries. Alteration of any of these individual ratios was liable to destabilize the whole system. This acted as a restraint on the firms from freely expanding their sales in a particular country or for a particular product. In the absence of the above practices, their sales could have been expanded by imports into any of the Benelux countries of products manufactured by group companies in neighbouring countries.

(47) More generally, inter-State trade was impeded by observance of the 60:40 ratio to the extent that, although the firms involved belonged to multinational groups which also manufactured the same products in neighbouring countries, each of the parties was prevented from calling on its group to increase its market share.

The exchange of sales statistics for the three Benelux countries allowed the parties to control or modify the trade flows between the three countries whenever they perceived their market share in a particular country or sector to be declining or to need improvement. The exchange of statistics and the conclusions which could be drawn from them were thus likely to bring about quantitative or qualitative changes in the trade flows between the three countries.

(48) It therefore seems to the Commission that the restrictions observed in this case constituted a coherent whole which falls squarely within the prohibition in Article 85 (1).

(49) These infringements are not only the responsibility of the companies directly involved in the Benelux markets but first and foremost that of the parent companies of the groups to which they belong or did belong until recently, namely Compagnie de Saint-Gobain and BSN. Not only could such far-reaching agreements on prices and other terms, market sharing and exchanges of confidential information not have been unknown to the parent companies, they could not have been devised and enforced without instructions from or the consent of the parent companies. Some of the evidence referred to above shows that this was indeed the case.

B. ARTICLE 85 (3)

(50) To be eligible for exemption under Article 85 (3), an agreement or concerted practice must have been notified to the Commission in accordance with Article 4 (1) of Regulation No 17, unless it is dispensed from notification by virtue of Article 4 (2) of the Regulation.

The agreements or concerted practices in the present case, although not falling within the category not requiring notification under Article 4 (2) of the Regulation since they concern exports between Member States and involve more than two undertakings, were not notified to the Commission.

(51) However, even if they had been notified, no exemption under Article 85 (3) could have been granted because of the gravity of the restrictions of competition involved, the predominant position the producers concerned occupy in the Benelux countries and the fact that the restrictions satisfy none of the tests for exemption.

C. ARTICLE 15 (2) OF REGULATION No 17

(52) On the above facts, the Commission has no alternative but to impose fines under Article 15 (2) of Regulation No 17 on the undertakings which, over a period stretching from at least 1 January 1978 to the date of the Commission's first on-the-spot inspection on 9 October 1981, committed infringements of Article 85 (1) of the EEC Treaty by entering into agreements and concerted practices which they were to operate in Belgium, Luxembourg and the Netherlands on prices and other terms to customers, the sharing of the market according to a fixed ratio, and the regular exchange of detailed sales figures to monitor the maintenance of those market shares.

In deciding the size of the fines to be imposed on the various undertakings involved account must be taken of the duration and gravity of the infringements.

The nature of the infringements, which are quite classic types clearly falling within Article 85, the economic importance of the undertakings and the share they have or used to have of the Benelux market, and the duration of the infringements (1978 to October 1981), all lead to the conclusion that the agreements and concerted practices in question were particularly serious. Although the arrangements were terminated after the Commission's first inspections in late 1981, this was not done spontaneously out of respect for Community rules but as a reaction to the Commission's intervention and under the pressure of events, notably the gradual withdrawal of the BSN group from the flat-glass sector.

(53) There are also aggravating circumstances in the present case which warrant the imposition of high fines:

1. The undertakings concerned acted deliberately. The agreements and concerted practices in which they engaged were specifically intended to restrict competition.

2. The Saint-Gobain and BSN groups had already been found guilty of previous infringements of Article 85 (Decisions 74/292/EEC [1], 80/1334/EEC [2] and 81/881/EEC [3]). The infringements were thus repeat offences for these groups.

3. In 1975 the Saint-Gobain and BSN groups agreed to break off the numerous links between them, following protracted negotiations with the Commission aimed at introducing greater competition into the flat-glass market [4]. Although the letter of this undertaking was observed by the two groups, its spirit was not, since the old links were replaced, at least in the Benelux countries, by undercover relationships.

(54) As to the apportionment of responsibility for the infringements, the circumstances described above and the parts each of the undertakings played in them indicate that the parent companies of Saint-Gobain and BSN were the main culprits since the infringements were part of arrangements devised at group level. The fines on these two companies should therefore be higher than those on the other companies.

The groups' two main production companies in the Benelux countries, Glaverbel and Saint-Roch, must also be apportioned some of the responsibility, in view of the degree of independence they enjoyed and the active part they played in setting up and monitoring the agreements and practices.

The Dutch companies Maasglas, Glaverned, Sas van Gent and Alglas, however, only played a supporting role confined to executing the arrangements, which makes it possible to consider waiving fines on these companies.

The same applies to the Asahi Glass group, which only took over 80 % of Glaverbel and Maasglas in June 1981 and did not have time to assume full control of the firms' commercial policy between then and October of the same year.

The fines on the BSN and Saint-Gobain companies should be assessed on their turnover

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(1) OJ No L 160, 17. 6. 1974, p. 1.
(2) OJ No L 383, 31. 12. 1980, p. 19.
(3) OJ No L 326, 13. 11. 1981, p. 32.
(4) See press release of 24 July 1975.

in this sector in other countries as well as in the Benelux countries, so as to reflect the true standing of their respective groups.

The fines on Glaverbel and Saint-Roch should be assessed on their turnover in the Benelux countries.

(55) The undertakings have pointed out that during the period in question the flat-glass industry was going through a major recession and was also in the throes of technological change. They also claim that the sheet-glass divisions of Glaverbel and Saint-Roch were making heavy losses, so that the agreements and concerted practices between the groups had very little impact on the Benelux market, with glass prices rising less than those of other manufactured products and import penetration increasing.

While such arguments cannot be held to justify the agreements and concerted practices, the Commission nevertheless feels that the difficult trading conditions prevailing at the time should be taken into account in assessing the fines, although without forgetting the aggravating circumstances described above,

HAS ADOPTED THIS DECISION:

Article 1

The agreements and concerted practices which were applied on the flat-glass market in the Benelux countries over the period 1 January 1978 to 9 October 1981 by the undertakings BSN-Gervais-Danone SA (now BSN SA), Glaverbel SA, Maasglas BV and Glaverned BV, on the one hand, and Compagnie de Saint-Gobain SA, Glaceries de Saint-Roch SA, Glasfabriek Sas van Gent BV and Alglas BV, on the other hand, concerning the fixing of prices and other terms to customers, sharing of the market and regular exchanges of detailed sales figures for the purposes of monitoring the agreed market shares, constituted infringements of Article 85 (1) of the EEC Treaty.

Article 2

1. As a result of the infringements referred to in Article 1, the following fines are hereby imposed:

— BSN SA: a fine of 935 000 (nine hundred and thirty-five thousand) ECU (FF 6 423 627),

— Glaverbel SA: a fine of 850 000 (eight hundred and fifty thousand) ECU (Bfrs 38 529 395),

— Compagnie de Saint-Gobain SA: a fine of 1 450 000 (one million, four hundred and fifty thousand) ECU (FF 9 961 775), and

— Glaceries de Saint-Roch SA: a fine of 765 000 (seven hundred and sixty-five thousand) ECU (Bfrs 34 676 455).

2. The fines shall be paid into the following accounts of the Commission of the European Communities within three months of the date of notification of this Decision:

— BSN SA and Compagnie de Saint-Gobain SA:

Account No 5.770.006.5 CCE at the Société Générale, Agence internationale, direction de l'étranger, 23, rue de la Paix, F-75002 Paris;

— Glaverbel SA and Glaceries de Saint-Roch SA:

Account No 310-0231000-32 CCE at the Banque Bruxelles-Lambert, Agence européenne, B-1040 Brussels.

Article 3

This Decision is addressed to the following undertakings:

1. BSN SA, 7, rue de Téhéran, F-75008, Paris;
2. Glaverbel SA, chaussée de la Hulpe 166, B-1170 Brussels;
3. Maasglas BV, Panovenweg 20, NL-4000 AA Tiel;
4. Glaverned BV, Panovenweg 20, NL-4000 AA Tiel;
5. Saint-Gobain SA, Les Miroirs, 18, avenue d'Alsace, F-92026 Paris la Défense;
6. Glaceries de Saint-Roch SA, rue des Glaces Nationales 169, B-5700 Sambreville;
7. Glasfabriek Sas van Gent BV, Sas van Gent, the Netherlands;
8. Alglas BV, Stationsweg 3, NL-3972 KA Driebergen-Rijsenberg.

This Decision in enforceable pursuant to Article 192 of the EEC Treaty.

Done at Brussels, 23 July 1984.

For the Commission

Frans ANDRIESSEN

Member of the Commission