COMMISSION

COMMISSION DECISION

of 21 December 1993

declaring a concentration to be compatible with the common market

(Case No IV/M.358 — Pilkington-Techint/SIV)

Council Regulation (EEC) No 4064/89

(Only the English text is authentic)

(Text with EEA relevance)

(94/359/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings, and in particular Article 8 (2) thereof [1],

Having regard to the Commission's decision of 2 September 1993 to initiate proceedings in this case,

Having given the undertakings concerned to opportunity to make known their views on the objections raised by the Commission,

After consultation of the Advisory Committee on concentrations [2],

Whereas :

I. THE NOTIFIED OPERATION

(1) The present case concerns the proposed acquisition of a 50 % stake apiece by Pilkington plc (hereinafter referred to as 'Pilkington') and Techint Finanziaria S.r.l. (hereinafter 'Techint') in Società Italiana Vetro S.p.A. ('SIV'). SIV is a vertically integrated flat-glass and automotive safety glass producer whose principal production assets are located in Italy. SIV is currently owned by the Italian State but is now being privatized.

During the course of the proceedings, the parties informed the Commission that immediately following completion of the acquisition Techint would assign its 50 % interest in SIV to a newly created subsidiary called Vetrotec Limited, which is 95 % held by Techint and 5 % by Techint Curaçao NV, a wholly owned subsidiary of San Faustin NV, the ultimate parent company of Techint.

II. THE PARTIES

(2) Pilkington is principally engaged in the manufacture of flat and automotive safety glass, insulation and vision-care products. Pilkington is one of the main producers of flat glass in Western Europe and is also active in several third countries, especially in the United States.

(3) Techint is the Italian subsidiary of a conglomerate which owns business throughout South America, with a substantial bias towards Argentina. The group's principal activities are : steel production and manufacturing, engineering and construction, mechanical engineering, oil and gas, services and other activities. Techint is not engaged in activities which overlap with those of Pilkington or of the company to be acquired, SIV.

III. COMMUNITY DIMENSION

(4) The operation has a Community dimension. The total worldwide turnover of Pilkington in the financial year ended 31 March 1993 was ECU 3 380,3 million while the Community turnover for the same period was ECU 1 556,7 million. Techint's

[1] OJ No L 395, 30. 12. 1989, p. 1 ; corrected version OJ No L 257, 21. 9. 11990, p. 13.
[2] OJ No C 173, 25. 6. 1994.

aggregate worldwide turnover, calculated taking into account the turnover of the San Faustin group which controls Techint, amounted to ECU ... million (1) for the financial year ending 30 June 1992 and its Community-wide turnover for the same year amounted to ECU ... million. The total turnover of SIV was ECU 448 million and the Community-wide turnover amounted to ECU 442 million. Only the San Faustin group achieves two-thirds of its Community turnover in Italy.

IV. CONCENTRATIVE JOINT VENTURE

Joint Control

(5) Upon completion of the proposed transaction, each of the notifying parties will hold a 50 % interest in the JV. In addition, the Board of Directors will consist of six Directors, each party nominating three of them. The Chairman of the Board will be elected by the board from amongst the Pilkington-designated directors for the first three years and from amongst the Techint-designated directors for the next three years, and will continue to alternate on this basis. The board will elect the managing director of SIV on the same basis, beginning with a Techint-designated director.

(6) In accordance with Article 5 of the Bidding and Shareholders Agreement, a series of key business decisions including the annual budget and financial statements, acquisitions and disposals, specified loans and advances as well as major capital spending and borrowings, requires approval by at least five of the six Directors.

Each party therefore has extensive veto powers and it can be concluded that SIV will be jointly controlled by Pilkington and Techint.

Autonomous full function JV

(7) The JV will act as an independent and autonomous economic entity. SIV is already a full function State-owned company that is being privatized. The company manufactures and sells in Italy and abroad a wide range of glass products including float glass, automotive glass and architectural glass.

Immediately after the acquisition of the shares, the notifying parties shall enter into an agreement with SIV for the provision, against of appropriate fees, of technical, commercial, administrative, international network and managerial support.

Pilkington will also enter into a supply agreement with SIV for the supply of not less than 80 % of the float-glass requirements of SIV to the extent that it is unable to meet its needs from its own production facilities.

Absence of risk of coordination

(8) With regard to potential coordination of competitive behaviour between Techint and Pilkington or between Techint and SIV it should be borne in mind that Techint is not active on the same markets as Pilkington or SIV. At the same time, the fact that Pilkington is already active on the Community's flat and safety glass market, as well as in the automotive glass market, means that Pilkington will play a leading role in the management of SIV. As no overlap exists in the other activities of the parents of the JV, it is unlikely that the creation of the JV will lead to any sort of coordination of competitive behaviour between Pilkington and Techint.

Conclusion

(9) Based on the above findings, the notified operation is therefore a concentration with a Community dimension falling within the meaning of Article 3 of Regulation (EEC) No 4064/89.

(10) The following assessment is based on information supplied by the parties and obtained during the course of the Commission's enquiry. This enquiry involved written requests for information from competitors and customers as well as meetings with competitors and customers.

V. COMPATIBILITY WITH THE COMMON MARKET

The relevant product and geographical reference markets

A. The different types of flat glass

(11) Float glass is by far the commonest type of flat glass and accounts for more than 90 % of flat-glass capacity in the world's developed economies.

(1) Deleted as a business secret. The combined turnover of Pilkington, the San Faustin Group and SIV exceed ECU 5 000 million.

Apart from float glass there are other types of flat glass, namely plate glass, sheet glass, polished, wired and patterned glass, which are manufactured using completely different production methods. Plate and sheet glass are no longer manufactured in Western Europe due to lower quality and little demand. Though some overlaps with float glass exist as regards specific uses these overlaps are far too small to have an effect on competitive conditions in the float glass market. The same applies for polished, wired and patterned glass which meet only very specific demands.

Therefore, float glass has to be considered as a separate product market to the other types of flat glass.

(12) The float-glass production process was invented and brought into commercial production by Pilkington in 1959. Float glass has effectively replaced sheet and plate glass production except in the less developed economies.

Under the float-glass production process, molten glass is poured continuously from a furnace onto a large shallow bath of molten tin. The molten glass floats on the tin, spreads out and forms a level surface. Thickness is controlled by the speed at which the solidifying glass ribbon is drawn off the float bath. After annealing, the glass emerging as a fire-polished product with virtually parallel surfaces.

Float glass is produced in varying thickness ; according to its application thickness can vary from 1 to 25 mm. Float glass can be modified during the production process through body tinting and on-line coatings. Tinting technology imparts a colour to the clear float glass, typically green or bronze, and is an increasingly important factor for vehicle manufacturers when deciding where to place new business. On-line coating modifies some or all of the solar energy transmission, colour and thermal insulation properties of the float glass. According to the parties, on on-line coatings are cheaper to apply than off-line coatings and have additional advantages in terms of quality, hardness and durability.

B. The float glass market

(13) There is a substantial degree of vertical integration in the float glass market, particularly where Pilkington and Saint Gobain are concerned, and manufacturers are engaged to a varying extent in the further processing or distribution of float glass.

The float glass market can be analysed at two main levels :

— level 1, which corresponds to the production of the primary, raw float glass and

— level 2, where the raw float glass is generally subject to further processing before sale and distribution to the final user. It should be observed that 'level 2' actually consists of more than one further downstream level, depending on the different customer groups and the variety of further processing of float glass.

C. The float glass market — level 1

(14) According to the information submitted by the parties in their notification, the size of the float glass market in the Community in 1992 amounted to 5,36 million tonnes at level 1. According to the market share data provided by the parties, over 90 % of market demand was supplied by the six float-glass producers in the Community, namely Saint Gobain (the market leader) followed by Pilkington, the American-owned companies PPG and Guardian, and Glaverbel (which is owned by the Japanese company Asahi) and SIV.

There are no other producers with float glass plants in the Community. The number of producers with plants in the Community is therefore very limited.

Relevant product market

(15) Raw float glass is a homogeneous, commodity-type product which, after further processing, has as its principal applications at level 2, safety glass in motor vehicles and glass for buildings. For those applications it has no substitute. Body tinting and on-line coating facilities are becoming increasingly important and introducing a certain heterogeneity into flat glass production. However, the Commission considers that these features do not lead to differentiated relevant product markets according to whether or not the raw float glass is tinted or croated during the production process. Body tinting is obtained by adding, prior to melting, small quantities of metal oxide to colour the glass. Subject to the requisite technical knowledge, tinting can in principle be operated on all float glass production lines. With regard to on-line coating, only a relatively small number — about a quarter — of float production lines have such a facility. Coatings can also be applied after production and not all float glass manufacturers appear to share the parties' views on the advantages of on-line coating. Therefore, for the purpose of this Decision the relevant product market is considered to be raw or primary float glass.

Geographical reference market

(16) Although a significant volume of raw float glass is transported across international borders, raw float glass is a bulky, heavy product. As a result, it is expensive to transport over great distances, for example, the cost of transportation by lorry amounts to between 7,5 and 10 % of the selling price at a distance of 500 km. Above 1 000 km the transport cost by lorry becomes prohibitive and relatively little float glass is transported beyond this distance. Although transport by boat is little used, the cost per km for sea transport is lower.

Consequently, the natural geographical area of supply from a given float-glass production plant can be represented by concentric circles with a length of radius determined by the relative transport cost. Based on the information submitted by the parties, 80-90 % of a plant's production is sold within a radius of 500 km, although of course some float glass is transported beyond this distance. In this light, the various supply areas can be seen as a series of overlapping circles with their centres at the float-glass plant. There are in total float-glass plants in the Community, with the further seven plants in Eastern Europe and Scandinavia. Within the Community there is a relative concentration in UK/Benelux/Northern France and Germany on the one hand and in Northern Spain/Northern Italy on the other hand. To a certain extent the argument could be made that there is a Northern European and Southern European market. However, given the dispersion of the individual float plants and the varying degrees of overlap for the natural supply areas, so that effects can be transmitted from one circle to another, it seems appropriate to consider that the geographical reference market is the Community as a whole.

This would seem to be confirmed by the available price data. Based on the price information submitted by the parties for Belgium, France, Italy, Germany and the United Kingdom, prices for the benchmark 4 mm clear float class, cross-over and track one another typically within a narrow band.

Although the float glass producers tend to have their highest market shares in the Member States where their float glass production is located, the market share data submitted by the parties demonstrates that there is a substantial degree of interpenetration at the national level.

Therefore the Commission considers that the conditions of competition are sufficiently homogenous to allow the geographical reference market to be taken as the Community as a whole.

D. The float glass market — level 2

(17) At level 2, raw float glass has primarily two different uses : the automotive trade and the general trade. In the automotive trade, float glass is supplied after further processing for use as windows, windscreens, mirrors, etc. in motor vehicles. In the general trade, float glass is sold to end-users either directly through the producer's distribution network or via merchants and distributors – usually, but not always, after further processing for use primarily as windows in buildings and as mirrors. For this reason general trade glass is sometimes referred to as architectural or building glass. Based on the data supplied by the parties, some 21 % of all glass by weight in the Community in 1992 was ultimately used in the automotive trade and 79 % in the general trade. This picture is broadly comparable to that calculated by the Commission using data collected on European float glass production, where the calculated split is 17 and 83 %.

Automotive trade glass

(18) The glass which is supplied to vehicle manufacturers after processing is called a safety glass. This is because it does not shatter into sharp pieces on impact, which could be dangerous to occupants of the vehicle in the event of accident. There are two types of safety glass : laminated glass which is used almost exclusively in windscreens and toughened glass (or 'bodyglass') which finds its use mainly in side and rear windows.

Laminated glass is manufactured by bonding together at high temperatures and under pressure two bent sheets of glass cut to the same size, between which a plastic interlayer is inserted. Toughened glass is produced by heating and bending a pre-cut piece of glass which is subsequently rapidly cooled to compress the surface of the glass. Laminated glass is more expensive than toughened glass.

Although the production techniques, price and specific use of both glass types are different, they can be considered as belonging to the same relevant product market, namely automotive safety glass. The supply side (mainly the float glass producers) as well as the demand side (the vehicle manufacturers) consist of identical players in both segments. The nature of the two glass types is complementary, as both types are almost without

exception required for a given model. Furthermore, the float glass producers have comparable market shares for laminated and toughened glass, if the two are considered separately. With reference to the enquiries carried out by the Commission, it is clear that the distinction between laminated and toughened glass is not considered by vehicle manufacturers to be relevant in the competitive assessment of suppliers. Therefore competitive conditions are comparable in both segments, and are reflected by similar supply structures for windscreens and bodyglass. Consequently, the competitve assessment is the same in both segments, as in the overall automotive glass market.

(19) However, it is appropriate to distinguish separate product markets for the original equipment sold to vehicle manufacturers (original equipment manufacturers — OEM and original equipment suppliers — OES) and replacement equipment sold to the independent aftermarket (IAM) due to different conditions of competition.

According to the information submitted by the parties, the automotive trade had a total value of ECU 3 264 million in 1991. In OEM segment represented 85 % by value of the total and the replacement glass segment 15 %. 79 % by value of the replacement glass segment related to windscreens (i.e. laminated glass) and 21 % to bodyglass (i.e. toughened glass). Further details are provided in the table below :

	OEM		OES		IAM	
	million pieces	ECU millions	million pieces	ECU millions	million pieces	ECU millions
Laminated	14,2	920	2,6	241	3,9	149
Bodyglass	96,5	1 850	2,7	51	2,4	53
Total	110,7	2 770	5,3	292	6,3	202

The geographical reference market for OEM/OES automative glass is at least Community-wide. Vehicle manufacturers frequently purchase automotive glass from suppliers located in different Member States and the higher value added in automotive glass means that transport costs are a relatively low percentage of product cost. The Commission's enquiries shows this lies typically in the range of 3 to 4 % at a distance of 1 000 km. For the same reasons the geographical reference market for automotive glass manufactured for the IAM sector would also appear to be Community-wide.

General trade glass

(20) Within the Community, more than 70 % of raw float glass which enters the general trade is subject to further processing. The unprocessed glass finds its use primarily in glazing. The proportion of unprocessed glass is lower in Member States where greater use is made of double glazing (see sealed units below) and higher in Member States with less rigorous climatic conditions or where less stringent environmental or safety regulations obtain ; thus in Germany the proportion is lower whilst in Italy, particularly in Southern Italy it is much higher.

(21) With regard to processed glass, the parties have distinguished the following separate relevant product markets :

— silvered glass, which finds its use mainly in mirrors,

— laminated, glass, which is used — as in the automotive sector — for safety reasons,

— toughened glass, which is also used for safety reasons,

— sealed units (also referred to as double or multiple glazing units), which consist of two or more pieces of glass with an insulating layer of still air or an inert gas. Sealed units incorporate float glass of varying thicknesses, laminated glass, toughened glass, coated glasses or combinations of such glasses.

The fact that there are different levels of processing, with a varying degree of vertical integration by the float glass producers interacting with a large number of mainly small processors, renders the precise analysis of the flow of processed glass to the end-user complicated. It also introduces a certain overlap between the product markets described above. It is therefore not possible to determine exactly the proportion of general trade glass used in each application. The broad position would seem to be as follows : sealed units 50 %, unprocessed glass 25 % and each of laminated, toughened and silvered glass below or around 10 %.

(22) The parties are not only active in the four described sectors of further processing, but also in the distribution and merchandizing of glass, which is the last link in the supply chain from the float glass manufacturer to the end-user. According to the information available to the Commission, Saint Gobain in particular, followed by Pilkington and to a lesser extent Glaverbel, have the most extensive own distribution networks. However, the position varies according to Member State, with producers having relatively stronger positions in the Member States where their float glass production is concentrated.

(23) The General Trade appears to be divided into two main groups as regards the geographic dimension.

Silvered and laminated glass are products with little added value. They are supplied by a small number of large plants which serve more than one country, whilst at the same time there are also a large number of much smaller operations. There is a tendency for glass produced by the largest plants to be transported over longer distances and subsequently sold-on through a second level of distribution.

Toughened glass, sealed units and merchanting and distribution appear to involve national or even regional markets. Toughened glass and sealed units are both products which cannot be processed further and as such they are not ordinarily processed for stock. Production economies of scale are less significant than in the case of silvering and laminating. Rapid response times and the quality of local service are seen to be essential to win repeat business.

The Commission has carried out a survey with the float glass producers to determine transportation costs as a percentage of the selling price for the four sectors of general trade glass described above. Costs vary by sector and there are differences between producers. Owing to the value added by further processing, transportation costs are lower than for the raw float glass and amount to approximately 3-6 % of the selling price at a range of 500 km and 7-10 % at a range of 1 000 km. It is clear that the float glass producers transport a significant amount of general trade glass across national borders. However, for the purposes of this Decision, the precise geographical reference market can be left open, since even the narrowest possible definition would not alter the competition assessment.

Competitive assessment

(24) It is clear that the proposed concentration does not lead to the creation of a dominant position for Pilkington/SIV alone either at level 1 or in any of the reference markets at level 2. However, it is necessary to examine the question whether the concentration will give rise to the creation of a collective dominant position between the five major float glass producers in the Community. Although this assessment needs to include both market levels, it should primarily relate to level 1 by reason of the characteristics of the float glass industry, the fact that raw float glass for both automotive and general trade is produced on the same float lines, and the fact that at that level the five Community producers have collectively a particularly strong position.

Assessment at level 1

(i) *Market shares*

Small number of players with high degree of concentration

(25) According to the information provided by the parties in their notification, market shares (1) in the Community in 1992 and in the five larger Member States plus Belgium and Luxembourg — which together account for more than 90 % of the Community market volume — are as follows:

Raw float glass at level 1 (1)

	Germany %	France %	Italy %	UK %	Spain %	Belgium/ Luxembourg %	EC %
Pilkington	25 – 50	< 5	5 – 15	25 – 50	< 5	< 5	15 – 25
SIV	< 5	< 5	25 – 50	< 5	5 – 15	< 5	5 – 15
Total	25 – 50	5 – 15	25 – 50	25 – 50	5 – 15	< 5	25 – 50
Saint-Gobain	25 – 50	> 50	15 – 25	15 – 25	> 50	15 – 25	25 – 50
PPG	5 – 15	25 – 50	15 – 25	5 – 15	< 5	5 – 15	5 – 15
Glaverbel	5 – 15	< 5	< 5	< 5	< 5	25 – 50	5 – 15
Guardian	5 – 15	< 5	< 5	5 – 15	15 – 25	5 – 15	5 – 15
Total	90	95	94	89	93	82	92

(1) In the interests of business secrecy, market shares have been indicated as a range.

(1) The market shares presented by the parties are based on the production of raw float glass (a large part of which is processed internally by the float glass producers) and therefore include captive production.

It is clear that after the acquisition of SIV, the sixth and smallest float glass producer in the Community, Pilkington will still remain the number 2 producer after the market leader, Saint Gobain.

Although Pilkington/SIV and Saint Gobain will have, on the basis of the above figures, a combined market share of ... % [1] at the Community level, the Commission does not consider that these two companies would be able to exercise joint-dominance. As will be confirmed by the subsequent analysis on the possible creation of collective dominance by a wider group composed of all five remaining float glass producers, Saint Gobain and Pilkington would be subject to effective competition from Glaverbel, PPG and Guardian which have a comparable product range, are financially strong and possess significant excess capacity for the production of raw float glass which can in turn be further processed by the considerable number of independent processors at level 2.

The data also shows that in the five larger Member States, the five remaining float glass producers will have after the completion of the proposed operation a combined market share of 89 % or more and at the Community level a market share of 92 %. The implication is that 8 % of the Community imports can be attributed to imports by independent competitors.

(26) Although the above total market share is very high, the Commission considers that it underestimates the combined market share of the float glass produces. These figures fail to take account of imports of float glass into the Community from plants outside the Community owned or controlled by the same producers. These plants are located primarily in Eastern Europe and Scandinavia, and their float glass capacity is approximately 10 % of float capacity within the Community. There is a significant import of float glass from these additional plants into the Community. There are no other float plants in Europe, with the exception of two float plants belonging to the Turkish company Türkiye Sise Ve Cam Fabrikalari A.s. (TSCF).

(27) The Commission has calculated revised market shares at level 1 by reference to the actual production of float glass from plants located in the Community plus the imports from plants owned by the Community producers in Eastern Europe and Scandinavia as well as other imports [2]. The Commission considers that the revised calculation basis more accurately reflects the overall market position [3].

The individual market shares derived are broadly comparable to the Community market share presented by the parties, although producers with imports from plants outside the Community (i.e. Pilkington, Glaverbel and Guardian) have a somewhat higher market share.

In this basis, market shares [4] are as follows:

	1990 %	1991 %	1992 %
Pilkington [1]	20 – 30	20 – 30	20 – 30
SIV [1]	5 – 10	5 – 10	5 – 10
Total [1]	20 – 30	20 – 30	20 – 30
Saint-Gobain	30 – 40	30 – 40	30 – 40
Glaverbel	10 – 15	10 – 15	10 – 15
PPG	10 – 15	10 – 15	10 – 15
Guardian	5 – 10	5 – 10	5 – 10
Total	> 96	> 96	> 96
Others (including TSCF)	< 4	< 4	< 4

[1] In the interests of business secrecy, market shares have been indicated as a range.

The remaining five producers account for over 96 % of the Community supply of float glass.

Asymmetrical market shares

(28) Saint Gobain and Pilkington have market shares, respectively above and below 30 % at level 1. Nevertheless, Saint Gobain remains the clear market leader in both the general and (still more) in the automotive trade. The market shares of Glaverbel, PPG and Guardian are much lower. Each has a market share at level 1 that is approximately 15 to 25 % below those of Saint Gobain and Pilkington, although there has been some variation in their respective market shares.

[1] Exceeding 50 %.
[2] Imports have been obtained from the Comext data base.
[3] On the one hand, the calculation basis understates the market share of the above companies to the extent that it has not been possible to identify all relevant imports, e.g. imports by PPG and ASF (Asahi/Glaverbel) from the United States. On the other hand, strictly speaking, exports from the Community should be excluded. Nevertheless, the difference is not considered material to the assessment.
[4] On the grounds of confidentiality, market shares for other parties are indicated as a range.

At the Community level, the level of aggregation is so large that it dampens or masks changes in market share at national levels which are indicative of past competition.

For example, in the United Kingdom over the period 1990 to 1992, Pilkington's market share for raw flat glass used in the general trade fell from approximately 55 % to 43 %, whilsts Saint Gobain's share rose from 13 to 18 %. The main factors explaining this movement in market share were as follows:

— on the one hand, the relatively high exchange rate of sterling against other currencies in the Community led to an increase of imports (Pilkington is the only producer with plants in the United Kingdom),

— on the other hand, the acquisition by Saint Gobain of one of the United Kingdom's leading distributors, Solaglas, resulted in the gradual replacement of Pilkington by Saint Gobain as a supplier to the Solaglas business.

Similarly, over the same period Pilkington increased its penetration in the French market with its market share rising from 3 % to 6 %.

Guardian has behaved as an aggressive market competitor in the past. It is only one of the six existing float glass producers whose Community market share shows a systematic increase over the three year period. Guardian only entered the Community market in 1981, when it established its first float tank in Europe in Luxembourg on a green field site. Since that time it has built futher float tanks in Luxembourg and Spain. Its second float tank in Spain was expected to come into production in November 1993.

(ii) *Production and market characteristics*

Structural interdependence

(29) Because of the structural characteristics of the production of float glass, the main market players are highly interdependent in their actions. The production of float glass is highly capital-intensive. The minimum efficient production volume of a new float plant is approximately 150 000 tonnes a year, with a capital cost of around ECU 100 million. Once a float line furnace has been lit and production commences, the float line must be operated continuously around the clock for the next ten years or so. For technical reasons the plant must operate at close to full capacity : at low output levels quality suffers and, given the relatively high break-even point for capacity utilization, plant operation will not be profitable. Consequently, the impact of new production will of necessity be felt by other producers in the market since it is not feasible to operate at low output levels. Hence the market players are highly interdependent in their actions.

Mature market with increasing over-capacity

(30) The market for float glass is mature and relatively stable, showing slow but steady growth over the longer term. Consequently, there is no major spur to engage in active competition motivated by the prize of capturing substantial market growth. All the float glass producers have excess capacity. Current theoretical (1) capacity utilization varies between 78 and 93 %. This corresponds to excess capacity of between 7 % and 22 % at level 1. Whilst these are relatively low figures in relation to other industries, in comparison to the norm for the float glass industry they are significant, particularly when regard is had to the demand characteristics for float glass products.

Moreover, with regard to the current market situation and that in the immediate future, demand for float glass is depressed and caused by the cyclical downturn in the construction and motor car industries.

Low elasticity of demand

(31) The economic consultants of the parties have stated the following:

'In the short and medium term, the demand for float glass is highly price-inelastic over a wide range of prices. Demand for float glass stems almost entirely from the automotive and construction sectors. In both these sectors the cost of glass forms only a small fraction of total input costs and, moreover, there are no good substitutes. For these reasons, a rise in the price of glass is unlikely to result in a significant drop in demand. From discussion with executives experienced in the industry we infer that the elasticity of demand is very low, probably in the region of 0,1 to 0,3 over the historically experienced range of real price variation.

(1) For technical reasons, there are different ways of calculating theoretical capacity utilization. In general, a factor to reflect lost output due to cold repairs, hot repairs, production mix changes (tint and thickness), quality/breakage losses on line (incl. edge and cutting loss), warehouse loss, has to be applied to the theoretical melt capacity.

Firms supplying a product which has a price-inelastic demand (at the competitive price) tend to have a strong incentive to form a cartel or to engage in cartel-like behaviour where this is feasible.'

Without endorsing the precise range quoted for the price elasticity of demand, the Commission fully subscribes to the view expressed and in particular to the inference that the elasticity of demand is very low and a strong incentive exists to engage in cartel-like — that is, parallel — behaviour.

Prior cartel behaviour

(32) The Commission is aware of two examples of past cartel behaviour in the sector.

— Firstly, by Decision 89/93/EEC [1] the Commission fined three Italian flat-glass producers for infringing Article 85 (1) of the EEC Treaty. The decision also found that they had infringed Article 86 of the Treaty. The three producers were SIV, Fabbrica Pisani SpA (FP), a subsidiary of the Saint Gobain group and Vernante Pennitalia (VP) a subsidiary of PPG. The three companies brought separate actions aganst the decision and the case has heard by the Court of First Instance. In its judgment of 10 March 1992 [2], the Court upheld various aspects of the Commission decision as regards the infringement of Article 85 (1) by FP and SIV. As regards VP, the Court annulled the Commission's decision on the ground that the Commission had failed to adduce the required degree of proof of VP's having been a party to a concerted practice.

— Secondly, the Bundeskartellamt in a recent decision [3] condemned a price and discount cartel operated for the distribution of flat and sealed glass in northern Germany. Fines were imposed on 16 companies, including some belonging to the Saint Gobain and Pilkington groups. This decsion has become definitive since it was not the subject of an appeal before the German courts.

Prices and profitability

Nominal prices

(33) In their submissions, the parties have pointed to substantial price decreases for float glass. The price of the benchmark 4 mm thick clear float glass has fallen by 30 % or so in the last three years and even more if measures against the peak prices obtained in 1989. These price falls have been corroborated by the other price data collected by the Commission. Whilst a small part of these price falls could be explained by an improvement in production efficiency, the Commission considers they are substantially the result of declining demand relative to supply, coupled with low-price elasticity for float glass demand.

The end of the last decade was generally a period of relatively high growth within the Community for a number of reasons. Examination of GEPVP [4] data submitted by the parties shows that capacity utilization was extremely high in this period. Indeed, in 1987 and 1988 capacity utilization exceeded 100 % of theoretical capacity [5]. Consequently, the sharp increase in prices that occurred at the end of the 1980s was to be expected as production was bid up.

On the other hand, at the beginning of this decade the Community economy stagnated and then increasingly moved into recession. The negative economic climate and the prevalent high real rates of interest have a particularly adverse impact on demand for capital goods such as construction and motor vehicles, where the great bulk of float glass is employed. Consequently, as demand fell it is not surprising that there was a sharp decline in prices. The benchmark price for 4 mm clear float glass in the major Community glass-producing countries (Belgium, France, Germany, Italy and the United Kingdom) at the middle of 1993 was below the pre-1986 level, even in nominal terms. At the same time, the highly capital-intensive nature of float glass production which results in relatively low variable costs exacerbates price decline. Even with steeply reduced prices, producers cover their variable costs and can make a contribution towards recouping the fixed costs already incurred. Conse-

[1] OJ No L 33, 4. 2. 1989, p. 44.
[2] Cases T-68/89 and T-78/89, SIV and Others v. Commission [1992] ECR II-1403.
[3] Decision of 22 February 1993 by First Division of the Federal Cartel Office.
[4] GERVP: Groupement Européen des Producteurs de Verre Plat (European Group of Flat-Glass Producers).
[5] On the basis of the GERVP figures, theoretical capacity utilization for the Community float glass producers was 100,5 % and 101,6 % in 1987 and 1988 respectively.

quently, the price level for raw float glass appears to be strongly correlated with the general level of economic activity.

Real prices

(34) The parties have provided historical data prepared by their economic consultants showing that there has been an approximate halving, in real terms, of European float prices over the last 20 years or so. Real prices for France, Germany and the United Kingdom have been calculated by deflating the nominal price by a consumer price index. According to the economic consultants, this picture argues against the existence of a collective dominant position enjoyed by float glass producers in the past. The Commission would point out that this analysis fails to take account of the considerable productivity and process improvements achieved by float glass producers over the same period, although there seems little doubt that customers have also benefited from these efficiency gains.

Profitability

(35) Subsequent to the substantial price decrease, there has been a major fall in profitability of float glass producers in the 1990s. Financial data submitted by the economic consultants of the parties shows that the operating profits of Saint Gobain, Pilkington and Glaverbel fell by between 27 and 36 % in 1991 compared to 1990. The fall in the operating margin for the same companies was higher. Pilkington's total profits for the financial year ending 31 March 1993 were 75 % down on the 1991 figures. Glaverbel recently reported major losses for the first six months of 1993, the first time the company has been in deficit since 1980. SIV is also currently incurring losses. However, the validity of the yardstick provided by profits is affected by other influences, and cannot therefore be a conclusive indicator for the absence of past market power. For the reasons already described, profitability is likely to be strongly cyclical.

(iii) *Market transparency*

Price transparency

(36) The results of the Commission's enquiries reveal that little market insight can be achieved by examination of producer price lists. This is because either no price lists exist (e.g. Guardian) or where they do still exist (e.g. Pilkington), they are of little meaning because account must be taken of the substantial and variable discounts individually negotiated with customers.

Producer links

(37) A number of producer links exist. Whilst these could enhance market transparency, their overall contribution is insufficient or irrelevant in creating collective dominance.

Technological links

(38) At the technological level, the basic production method was developed by Pilkington, which of necessity led to the licensing of the production process to other producers. There are also a number of product licence agreements between Saint Gobain, Pilkington, SIV and Glaverbel.

Cross-supply links

(39) There is a history of cross-supply between the producers. The Commission has investigated these cross-supplies in 1990, 1991 and 1992. Among the six [1] producers, Guardian's cross-supply involvement is very limited. For the other producers, cross-supply typically varies between 3 % and 7 % of production volume (for both sales and purchases) except for Saint Gobain, whose purchases are much smaller. In the case of SIV it is relatively large, especially for the year 1992, when SIV purchased over 60 % of its automobile glass requirements from Pilkington and Saint Gobain.

There are genuine technical reasons leading to greater efficiency which justify small supply orders. The operational efficiency of a float line is impaired when production changes are made. Whilst frequent changes to the thickness of the float glass produced also lowers operational efficiency, a move from clear to tinted glass or *vice-versa* can result in the loss of between five and seven days of production. Consequently, where an urgent small order for tinted glass is required, it can be more efficient to obtain the required supply from another producer rather than disturb the existing production schedule.

[1] In this context SIV is considered as a separate producer.

Supply orders can also be vital when a float line is undergoing cold repair, during which time no glass is produced by the float line. The cold repair of a furnace takes approximately six months and is required once every ten years on average. In order to maintain production downstream, it can be necessary to seek alternative supplies from another producer, particularly if the original producer has a limited number of float plants. SIV has the least number of float plants. In 1992 a major cold repair was carried out at the Flovetro plant of SIV. In order to maintain its production of automotive glass, it was necessary for SIV to seek alternative supply since such glass could not be provided by SIV's San Salvo and Porto Marghara plants. Now that the cold repair is completed, this supply has ceased.

The Commission also notes that in tandem with the decline in demand in recent years, there has also been a substantial reduction in the volume of cross-supply sales.

Joint-venture links

(40) One of the three SIV plants for the production of float glass is operated as a 50:50 joint venture between SIV and Fabbrica Pisana SpA under the name of Flovetro. Fabbrica Pisana SpA is a wholly owned subsidiary of Saint Gobain. Through the joint acquisition of SIV by Pilkington and Techint, production links will be established between Saint Gobain and Pilkington. However, Flovetro does not involve the remaining three float glass producers and there would appear to be no remaining production links in the sector.

In the past SIV also established two joint ventures with Glaverbel: Splintex for the production of automotive glass and Ilved for the manufacture of mirrored glass. Due to disagreement between the parents on the price of float-glass supplies, the operation of these JV's has irretrievably broken down. The Commission understands that Splintex is now again under the sole control of Glaverbel. With regard to Ilved, SIV and Glaverbel are currently engaged in arbitration in Geneva as well as in court proceedings in Brussels and Vasto (Italy).

Saint Gobain and Asahi (the parent of Glaverbel) have recently established a joint venture (1) for coordinating research and development by the parents into a plastic-coated safety glass primarily for the automotive sector. The parents have agreed that the end product, a laminated safety glass, will be independently manufactured, marketed and sold by the parties. This case is currently being separately assessed by the Commission.

(iv) *Production costs and product heterogeneity*

Costs

(41) Float glass production is highly capital intensive. According to the estimates supplied by the parties, fixed costs constitute a large part (approximately 65 %) of total costs. To the extent that capital costs are equal, and having regard to the fact that the basic production method is identical, float glass production costs should be comparable. Moreover, there is near-universal agreement between the float glass producers that the minimum efficient size of plant means a capacity of approximately 150 000 tonnes with a capital cost of around ECU 100 million.

With respect to variable costs, the Commission acknowledges that inputs such as manpower, energy, raw materials (cost and transport to plant) vary. However, their overall price impact is diminished by the low proportion of variable costs in total costs. As a result, no float glass producer would appear to enjoy a substantial cost advantage relative to other producers.

Product heterogeneity

(42) Although clear float glass is a homogeneous, commodity-type product, approximately 70 % of primary float glass is subject to further processing in the general trade. Research and development is increasingly important as manufacturers have sought to extend the range of value-added products. This has led to innovation in on-line coating and the development of new glasses with energy-saving and solar-control benefits. Product innovation leads to product differentiation, thus complicating the emergence of anti-competitive parallel behaviour.

Although all float glass producers possess the basic manufacturing capacity to produce both laminated and toughened safety glass the glass required by modern car design is becoming more and more sophisticated. This leads to market demand for safety glass of increasingly complex shape and curvature having favourable thermal properties.

(1) OJ No C 111, 21. 4. 1993, p. 6.

(v) *Actual and potential competition — market entry barriers*

Actual competition

(43) The Commission has been able to identify only one other significant producer importing float glass into the Community. This is the Turkish firm TSCF. Its market share is insignificant, approximately 1 %. It is currently operating at close to full capacity.

Potential competition

(44) Potential entry does not seem likely in the Community float glass market.

— The production of float glass is extremely capital intensive and the estimated cost for the minimum efficient float plant is ECU 100 million. Moreover, the investment in the float plant is a massive sunk cost which cannot be recovered if entry proves to be a failure.

— The general overcapacity situation and the forecast increase in idle capacity is of itself a major disincentive to new entry.

— Technology and know-how skills are required to operate a float plant efficiently. Competitors outside the existing float glass producers may not posses such skills.

— Even where an investor has the capital resources, the technological skills and the willingness to risk market entry, the latter cannot be considered as a short-term proposition. The mere time required for plant construction is already of the order of two years, but more importantly, planning permission may be delayed or even refused because of major environmental objections.

Under present conditions, potential entry is not likely in the medium term. The parties themselves have stated in their notification that new entry is unlikely for at least the next three years and that, with regard to other major independent float glass manufacturers in the Far East, Pilkington does not expect them to try to enter the Community market on their own.

Impact of import tariffs

(45) Imports of float glass as well as laminated and toughened glass, sealed units and mirrored glass are generally subject to import tariffs (between 3,8 and 6,5 %). For the EFTA countries, Turkey, Poland, Hungary and the Czech and Slovak Republics, there is a zero rate of duty. Therefore, imports into the Community from countries apart from the EFTA countries, Hungary, the Czech and Slovak Republics, Poland and Turkey (imports from these countries have been included in the calculation of the Commission derived market shares) would be subject to a tariff rate of duty.

(vi) *Stability of possible anti-competitive parallel behaviour*

Incentive to renege on tacit parallel behaviour

(46) In view of the economics of float glass production, that is, the relatively low variable costs resulting in high marginal profits from additional sales, there is a strong temptation for an individual producer to undercut competitors' prices so as to increase market share. As the rapid detection of such behaviour is difficult, parallel behaviour will be undermined since each producer knows that the others have an incentive to renege on any tacit price understanding. Although the price elasticity of demand at the overall market level is low, the individual price elasticity of demand faced by a single firm appears to be much higher.

Asymmetrical vertical integration

(47) There is considerable variation in the extent of vertical integration. Of the remaining five producers, Saint Gobain exhibits the greatest degree of vertical integration, followed by Pilkington and Glaverbel. PPG and Guardian are integrated to a much lesser extent. Having regard to the importance of processors and the fragmented supply chain, parallel behaviour has the best chance of success if conducted at level 1. But in this case, its feasibility is undermined by the variation in vertical integration. Independent processors are more likely to purchase from PPG and Guardian as they are not in competition with them through downstream subsidiaries as in the case for Saint Gobain and Pilkington.

Effects of new capacity

(48) Guardian has established a new float line at Tudela, in Navarra (Spain). This is relatively large plant for which production was expected to commence in November 1993. This will further increase float glass overcapacity within the Community. The requirement for Guardian to sell this additional output will significantly frustrate any attempt to create a situation of anti-competitive parallel behaviour.

(vii) *The Flovetro joint venture*

(49) The Flovetro plant is the smallest of the three SIV plants and its ouput represents 2 % of Community sales of float glass. The plant is operated using Saint Gobain technology. The two SIV representatives on the four-man Board of Directors of Flovetro are bound by a confidentiality declaration not to disclose this technology. Having regard to the relative inflexibility of float glass production, there is little scope for marketing considerations to intervene in the production process. In principle, the JV operates on a strict 50 : 50 basis with both parents taking an equal share of production. Flovetro is self-financing, using the profits earned on the sales to both parents. It has limited storage facilities for stock, and output is separately organized and collected by lorry for the parents.

The original Flovetro JV agreement between SIV and Saint Gobain was notified to the Commission on 31 January 1978 and was the subject of an administrative comfort letter dated 9 August 1979. The comfort provided for such administrative letter is not unlimited in duration. The Commission can review the status of an existing comfort letter in the light of a material change in circumstances.

Assessment at level 2 — general trade

Market characteristics

(50) The supply chain to the end-user is extremely complicated. The particular difficulty is that as glass moves down the supply chain, it can also be processed at different levels. The best example is unprocessed glass which can be toughened or laminated, and all three glass types can subsequently be used in the manufacture of sealed units.

The complexity of analysis is compounded by the large number of participants in the supply chain. According to the findings of the Commission, there are at least several thousand independent producers (that is, producers not linked to a float glass producer) making sealed glass units in the Community, more than 100 for toughened glass and 20 or more for both laminated and silvered glass.

It is difficult to calculate precise market shares, but the collective market position of the float glass producers is generally much less strong at level 2 than at level 1. This is confirmed by the information gathered by the Commission which indicates that the six existing float glass producers have a combined market share of approximately 30 % for sealed units, 65 % for toughened glass, 60 % for laminated glass and 80 % for silvered glass manufactured within the Community.

Market share addition

(51) The overlap in market shares between Pilkington and SIV arising from the concentration in either non-existent or insignificant, with the exception of laminated glass in Germany. Firstly, SIV does not produce silvered or toughened glass for the general trade. Secondly, for sealed units SIV has a market share in Italy of less than 1 % whilst Pilkington is not active on the Italian market. Thirdly, with respect to the sale of laminated and unprocessed glass to the end-user, the addition in the estimated market shares is indicated in the table below.

Laminated Glass (1)

Country				Other competitors		
	Pilkington %	SIV %	Total %	Saint Gobain %	Glaverbel %	Independents %
France	< 5	5 – 15	5 – 15	25 – 50	5 – 15	25 – 50
Germany	25 – 50	5 – 15	25 – 50	25 – 50	5 – 15	5 – 15
Italy	< 5	15 – 25	15 – 25	25 – 35	25 – 50	15 – 25

(1) In the interests of business secrecy, market shares have been indicated as a range.

Unprocessed glass, sold to end-user (1)

Country				Other competitors	
	Pilkington %	SIV %	Total %	Saint Gobain %	PPG %
France	< 5	< 5	5 – 15	25 – 50	25 – 50
Germany	25 – 50	< 5	25 – 50	25 – 50	< 5
Italy	< 5	25 – 50	25 – 50	25 – 50	25 – 50

(1) In the interests of business secrecy, market shares have been indicated as a range.

With the exception of laminated glass in Germany, the addition in market share is insignificant. Although Pilkington will now have an estimated market share of .... % (1) for laminated glass in Germany it will be subject to competition from Saint Gobain and Glaverbel and particularly from the independents.

It is clear that Pilkington/SIV will not acquire a position of single dominance.

Collective dominance

(52) In general terms the creation dominance at level 2 is more difficult and unlikely, given the additional presence of the independent processors and the significant market shares that they hold and their ease of market entry. Moreover, this will remain so provided there is a competitive supply of raw float glass from level 1. For the reasons already described in the analysis at level 1, a competitive source of supply should remain in the future.

With respect to the sales of unprocessed glass to end-users in Germany although Pilkington and Saint Gobain have a combined marekt share exceeding .... % (2), PPG, Glaverbel and Guardian (the last-named of which has a market share of approximately .... % (3) are all present on the German market and will restrict the ability of Saint Gobain and Pilkington to impose higher prices. Pilkington and Saint Gobain have been unable, through structural means alone, to impose higher prices in Germany in the past and the market share of Pilkington is only marginally increased through the acquisition of SIV.

(1) Deleted as a business secret. Between 25 and 50 %.
(2) Deleted as a business secret. Above 50 %.
(3) Deleted as a business secret. Less than 15 %.

Assessment at level 2 — automotive trade

Market characteristics

(53) The automotive trade is considerable different from the general trade in that there are fewer independent processors at level 2, especially in the OEM/OES sector. On the one hand this means that the volume of sales at level 1 for processing is limited, but on the other hand that the competition assessment at level 1 is not significantly different from that at level 2, particularly for the OEM/OES sector.

Although all six of the existing float glass producers are active in the automotive trade, the relative degree of concentration is much higher and Guardian has only recently entered the market. Given the specific requirements of vehicle manufacturers in terms of product quality and development, volume and just-in-time delivery, the only significant supplier to the OEM/OES sector outside the float glass producers is the independent family-owned business, Soliver in Belgium.

In the independent aftermarket (IAM) sector, there are many more independent suppliers such as Duglass and Rioglass (Spain), Heywood Williams Group (United Kingdom), Trösch (Switzerland), Vetro-Sud (Italy), Irda Safety Glass (Greece), W-Laminated AB (Sweden), Lamil AB (Norway), Lipponen Tarnglass and Jaakko-Tuote (both Finland).

Market shares

(54) According to the data submitted by the parties, 1991 market shares based on number of glass pieces are as follows (4).

(4) In the interests of business secrecy, market shares have been indicated as a range.

	OEM/OES		IAM	
	Laminated	Toughened	Laminated	Toughened
Pilkington	5 – 15	5 – 15	25 – 50	15 – 25
SIV	15 – 25	15 – 25	5 – 15	5 – 15
Total	25 – 50	25 – 50	25 – 50	25 – 50
Saint Gobain	25 – 50	25 – 50	25 – 50	25 – 50
PPG	5 – 15	5 – 15	5 – 15	5 – 15
Guardian	< 5	< 5	< 5	< 5
Glaverbel	5 – 15	5 – 15	< 5	< 5
Others	< 5	< 5	15 – 25	15 – 25
Total	100	100	100	100

These markets shares are broadly comparable to those calculated by the Commission based on value, except that Pilkington's market share is somewhat understated and SIV's somewhat overstated in the IAM sector, and the Guardian has already entered both the OEM/OES and IAM sectors with significant sales in the latter sector.

Through the concentration, Pilkington will improve its market position especially in the OEM/OES sector for both laminated and toughened glass, but it will still clearly remain in second place behind the market leader, Saint Gobain.

Collective dominance

OEM/OES Sector

(55) The combined market share of Saint Gobain and Pilkington/SIV in the OEM/OES sector will roughly exceed .... % (1) after the concentration. The Commission does not consider that this will give rise to a duopoly for the following reasons.

Demand side purchasing power

(56) Vehicle manufacturers possess considerable purchasing power. This is being strengthened by a certain trend toward single sourcing per glass piece. Instead of receiving a variable share of the requirements of vehicle manufacturers, single sourcing as opposed to multiple sourcing means that suppliers receive all or none of order requirements and are therefore placed under greater competitive pressure to win the full order. This competitive pressure is further accentuated by the ease with which vehicle manufacturers can switch suppliers. Even where the existing producer possesses the corresponding intellectual property rights, the strength of the vehicle manufacturers' purchasing position in relation to new orders is such that the latter can oblige existing producers to make these rights available to new suppliers. At the same time, the sophistication of the purchasing departments of vehicle manufacturers means that they can closely monitor the production costs and prices of the float glass producers.

None of the vehicle manufacturers contacted by the Commission has indicated concern over the proposed concentration. Given the severity of the decline in motor vehicle sales in the Community (approximately 20 % in 1993), they have been able to renegotiate existing contracts and establish new long-term contracts with price-down pressure. This is an example of the new aggressive purchasing techniques being developed in the sector whereby supply prices decrease even in nominal terms during the course of the contract. Such contracts are now becoming commonplace.

Excess capacity

(57) In the OEM/OES sector, excess capacity is much greater at level 2 than it is for the production of the raw float glass at level 1. According to the capacity utilization data collected by the Commission, excess capacity for the six existing float glass producers and Soliver lies broadly in the range of 20 to 35 % for laminated glass and 15 to 40 % for toughened glass. In particular, compared to Saint Gobain and Pilkington/SIV, Glaverbel and PPG have relatively high excess capacities. This is also true for Guardian, who only recently entered the

(1) Deleted as a business secret. Above 50 %

OEM/OES and IAM markets in the Community and whose new Grevenmacher plant in Luxembourg commenced production in February 1993.

IAM Sector

(58) Although Pilkington/SIV and Saint Gobain have a combined market share exceeding .... % (1) in the IAM sector for both laminated and toughened glass, the Commission does not consider that a duopoly will be created in this sector for the reasons set out below.

Number of independent suppliers

(59) In addition to the OEM/OES suppliers, there is a relatively large number of independent suppliers to maintain effective competition.

Need to maintain IAM sector

(60) Whilst there is a certain increase in purchasing power taking place on the demand side with the expansion of companies such as Auto-Windscreens (2) and Carglass which are organizing the distribution of replacement glass on national and international lines and building chains of fitting centres, this still falls far short of the purchasing power enjoyed by the vehicle manufacturers in the OEM/OES sector. However, it is not in the interest of the float glass producers to weaken the position of IAM outlets. To compete with the authorized OES dealers IAM outlets already need to charge lower prices to the final customer. Consequently, such a policy would only serve to displace demand for replacement glass from the IAM to the OES segment. This would be disadvantageous to the float glass producers since supply prices in the IAM segment are already higher than in the OES segment and it would further increase the substantial purchasing power of vehicle manufacturers.

VI. CONCLUSIONS

(61) Having regard to the market shares and strengths of other producers, the acquisition of SIV by Pilkington/Techint will not lead to a position of single dominance. Nevertheless, the proposed concentration operation will further increase the degree of concentration in a sector that is already highly concentrated and subject to high entry barriers. The economic characteristics of the float glass industry provide strong incentives to engage in anti-competitive parallel behaviour and the industry has already been the subject of cartel behaviour in the past.

(62) The float glass market in the Community is suffering from increasing surplus capacity caused by a relative decline in demand for its two main applications, namely architectural glass used in construction and safety glass employed in vehicle construction. This has led to a price decrease over 30 % in the last three years. Overcapacity is expected to increase in the next few years.

(63) On the basis of the Commission's findings and analysis, there is insufficient evidence to conclude that the market structure created after implementation of the proposed concentration will allow the creation of anti-competitive parallel behaviour.

There are asymmetries in the market position of the remaining five float glass producers which render anti-competitive parallel behaviour difficult and there appears to be insufficient market transparency to allow such behaviour. In the general trade, there are numerous independent processors and distributors downstream. In the automotive trade, vehicle manufacturers can exert considerable purchasing power which seems to be increasing. In particular Guardian has acted as an aggressive competitor in the past and has significant new capacity coming onstream which it must seek to sell.

At the same time, current excess capacity in the industry and the high marginal profits earned on additional sales as well as the inadequate market transparency mean that there are strong incentives to renege on anti-competitive parallel behaviour. Consequently, there is an ongoing threat undermining the creation and stability of any possible anti-competitive parallel behaviour.

VII. OVERALL ASSESSMENT

(64) The Commission has therefore come to the conclusion that the proposed concentration does not create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the common market or in a substantial part of it,

(1) Deleted as a business secret. Above 50 %.
(2) This is a subsidiary of the Heywood Williams Group.

HAS ADOPTED THIS DECISION:

Article 1

The proposed joint acquisition of Società Italiana Vetro SpA by Pilkington plc and Techint Finanziaria Srl is declared compatible with the common market.

Article 2

This Decision is addressed to:

Pilkington plc,
Prescot Road,
Saint Helens,
UK-Merseyside WA10 3TT;

Techint Finanziaria Srl,
Corso Venezia 48,
I-20121 Milan.

Done at Brussels, 21 December 1993.

For the Commission
Karel VAN MIERT
Member of the Commission